

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKĀURAU ROHE**

[2026] NZERA 222
3325900
3325920

BETWEEN	ZIYU XIAO & YOUTIAN YANG Applicants in 3325900
AND	LIMEI LIU Applicant in 3325920
AND	FAST HORSE LIMITED t/a FAST HORSE EXPRESS Respondent

Member of Authority: Peter Fuiava

Representatives: May Moncur
No appearance by the Respondent

Investigation Meeting: 31 March 2026 in Auckland and by audio-visual link

Determination: 13 April 2026

DETERMINATION OF THE AUTHORITY

What is the employment relationship problem?

[1] In an earlier determination,¹ I found that Ziyu Xiao and her husband Youtian Yang and Ms Limei Liu, were all employees of Fast Horse Limited, a parcel courier business that traded in Auckland as Fast Horse Express (FHE or the company). Having resolved the question of employment status in their favour, this determination resolves the question of whether or not the applicants were unjustifiably dismissed, and in Ms Liu's case, unjustifiably disadvantaged by FHE.

¹ *Xiao, Yang & Liu v. Fast Horse Express* [2025] NZERA 644.

How has the Authority investigated the preliminary issue?

[2] Following the preliminary determination, a case management conference was held on 24 November 2025. FHE has not engaged with this investigation since it notified the Authority on 6 May 2025 that it would be acting for itself having previously been legally represented by counsel who filed a statement in reply on the company's behalf. Despite efforts to telephone FHE for the teleconference, the Authority's calls were not answered and a voicemail message could not be left either. The teleconference proceeded in the company's absence and directions for the filing of written witness statements were subsequently made.

[3] For my substantive investigation, I was provided with written statements from each of the applicants. As was expected, FHE did not provide any written statements in reply and failed to attend the investigation meeting which proceeded in its absence pursuant to clause 12 of the Second Schedule to the Employment Relations Act 2000 (the Act).

[4] Leave was granted for Ms Xiao, Mr Yang, and Ms Liu to attend the investigation meeting by audio-visual link. As permitted by s 174E of the Act, this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

What happened?

[5] Ms Xiao worked full time for FHE as a delivery driver for approximately six months from 13 September 2023 to 18 March 2024. Her employment ended shortly after a verbal altercation she had one evening with her manager, Mr Qi. Delivery drivers were expected to collect their parcels from the company's warehouse on Rosebank Rd which is a busy road that carries a high volume of commuter, freight and service traffic.

[6] When matters came to a head between Ms Xiao and Mr Qi, she had been told to park her car across the road. As Ms Xiao was moving a cage of parcels to her vehicle, Mr Qi took exception to her crossing a busy road with parcels, and losing his temper, verbally abused her. Understandably, Ms Xiao took exception to her manager's rude treatment of her and made a complaint to the company the following day, asking for

mediation. However, the second day after the incident, Ms Xiao found herself blocked from FHE's smartphone app which is the primary means by which drivers are assigned work.

[7] Mr Yang, Ms Xiao's husband, who was also a delivery driver for FHE from January to March 2024, found his access to the app blocked also. Mr Yang was never given a reason by his employer why he was denied access to the app but attributes this to retaliatory action by the company as a result of his wife's complaint against Mr Qi.

[8] In common with Ms Xiao and Mr Yang, Ms Liu, also worked as a delivery driver for FHE from 12 December 2023 to 22 February 2024, but had separately been employed as a warehouse worker from 22 February to 12 March 2024. The change in the nature of Ms Liu's employment was due to FHE not being able to provide her with 40 hours of work per week as a delivery driver which was important to her as her husband had recently been made redundant at the time.

[9] With respect to her employment, Ms Liu says that her driver manager, Zhang Tianyu, threatened to suspend her when she suggested that it would improve operational efficiency if office-bound parcels were delivered on Mondays and not over the weekend when businesses were closed. While she intended to be helpful, her suggestion was met with the threat of suspension and "retraining".

[10] Ms Liu further says that she challenged FHE's practice of using holders of accredited work visas as delivery drivers who were then paid in cash. The practice took work away from resident-visa holders such as Ms Liu who needed the work to support their own families. When Ms Liu challenged this practice, FHE removed her from its WhatsApp group chat on 4 March 2024 and offered her no further work in its warehouse. On 11 June 2024, Ms Liu and her husband moved to Australia for better opportunities. The couple have not returned to New Zealand since.

Unjustified disadvantage and unjustified dismissal

[11] Section 103A of the Act sets out the legal test for determining whether an employer's actions, and how it acted, were what a fair and reasonable employer could have done in all the circumstances at the time the dismissal or action occurred.

[12] There being no evidence in reply from FHE to what the applicants have individually and collectively put before the Authority, I have no difficulty finding that Ms Xiao and her husband were unjustifiably dismissed from their employment. As for Ms Liu, by threatening her with suspension and “retraining”, FHE did not act as a fair and reasonable employer. The company had also dismissed Ms Liu unjustifiably when she challenged her employer about its workplace practices with respect to the use of accredited work visa holders who appear to have been paid in cash.

[13] Because FHE has not engaged with my investigation, I have not been able to investigate Ms Moncur’s submission that FHE has engaged in the cash economy. However, if correct, such a practice would have undermined the integrity of the New Zealand immigration and tax system which is heavily reliant on voluntary compliance.

[14] Having established their personal grievances of unjustified dismissal, Ms Xiao and Mr Yang are entitled to remedies, as is Ms Liu for both unjustified disadvantage and dismissal.

[15] The effect of both being unemployed at the same time was to the detriment of Ms Xiao and Mr Yang’s marriage as neither were talking to the other due to stress and anxiety and being without the emotional and financial support of immediate family in New Zealand.

[16] However, Ms Xiao was fortunate to have found alternative employment approximately two to three weeks later as an administrator for a surveying and construction company. As a former VIP driver for FHE at the time of her dismissal, Ms Xiao had worked full-time for 40 hours per week. According to the company’s Q&A section in its app, delivery drivers could earn between \$30-\$35 per hour. As a VIP driver, Ms Xiao would have received the highest hourly rate and is entitled to reimbursement of three weeks lost wages in the amount of \$4,200 gross (\$35 per hour x 40 hours per week x three weeks) which FHE is ordered to pay by Monday 11 May 2026.²

² The Act, s 128.

[17] Mr Yang was not so fortunate in finding work immediately. Although he stated that he was actively looking for work and had sent out 40 to 50 resumes for vacant roles advertised on Sky Kiwi, Trade Me, and Seek, it took Mr Yang approximately four to five months to find employment, which was a full-time position at a drycleaning business where he earns approximately the same as he did as a driver for FHE.

[18] Income summary information from Inland Revenue for Mr Yang indicates that for the two-and-a-half-month period he worked for FHE, he earned \$5,180. As it took him approximately five months to find his next job, apportioned over three months under s 128(2) of the Act, his reimbursement in terms of lost remuneration equates to \$5,651.

[19] The impact of Ms Xiao and Mr Yang's dismissal goes beyond affecting them individually but also as a married couple. For compensation purposes under s 123 of the Act, I consider also the period of employment which was in the order of six months for Ms Xiao and approximately half that for her husband. Individualised, I award Ms Xiao and Mr Yang, compensation for humiliation, loss of dignity, and injury to feelings of \$13,300 and \$9,349, respectively. There is to be no reduction in compensation under s 124 of the Act as I find that neither have contributed to the situation that gave rise to their personal grievance.

[20] Ms Liu's personal circumstances are somewhat different to Ms Xiao and her husband's. A pre-existing injury to her back for which FHE is not responsible, makes it physically impossible for her to crouch or squat. This limitation in mobility has impacted her ability to find suitable alternative employment.

[21] Ms Liu's last day of employment for FHE was 12 March 2024 and she and her husband departed these shores for Australia three months later on 11 June 2024. It was Ms Liu's evidence at the preliminary investigation that she was a "S" level driver for the company.³ Moreover, Ms Liu was not able to continue in that role by FHE's failure to provide her with sufficient work which disadvantaged her employment.

³ *Xiao, Yang & Liu v. Fast Horse Express*, at n 1, at [20].

[22] Ms Liu's employment agreement with FHE as a warehouse labourer has a recorded hourly rate of \$22.70 but with no minimum hours of work per week. It was Ms Liu's evidence that she was not able to find employment before she and her husband left New Zealand three months after her employment with FHE ended in March 2024. While Ms Liu's employment agreement does not guarantee her with a minimum number of hours of work per week, a payslip from February 2024 records that she worked nine hours between 12-25 February 2024. Noting also Ms Liu's physical limitations owing to her back injury, her hours of work per week as a warehouse labourer would have been nominal.

[23] For lost remuneration, I award Ms Liu \$2,724 gross (\$22.70 per hour x 10 hours per week x 12 weeks) and for compensation under all three heads of s 123 of the Act for unjustified disadvantage and unjustified dismissal, I consider compensation in the amount of \$14,776 appropriate in all the circumstances. I make no deduction compensation under s 124 of the Act as it has not been shown that Ms Liu has contributed to her own grievance.

Summary of orders

[24] For the reasons given above Fast Horse Limited is ordered to pay the following monies no later than 11 May 2026:

- (i) \$17,500 to Ms Ziyu Xiao (comprising lost remuneration of \$4,200 and compensation for humiliation, loss of dignity and injury to feelings of \$13,300);
- (ii) \$15,000 to Mr Youtian Yang (consisting of \$5,651 for lost remuneration and \$9,349 for compensation); and
- (iii) \$17,500 for Ms Limei Liu (comprising \$2,724 for lost remuneration and globalised compensation of \$14,776 for unjustified disadvantage and dismissal).

Costs

[25] Being successful with their claims, the applicants are entitled to costs. Ms Moncur has requested that costs be determined as part of this determination. I agree. The Authority has the power under sch 2 cl 15 of the Act to award costs. However, the

discretion to order a party to pay costs to another must be exercised on a principled basis. Those principles are well settled and are outlined in the Authority's Practice Note,⁴ and Practice Direction,⁵ both of which are publicly available online.

[26] The preliminary investigation was held on 3 July 2025 and started at 10 am and was completed by 12.45 pm. The substantive investigation commenced on 31 March 2026; starting at 10 am and ending at 11 am. Applying the notional tariff, I award total costs of \$4,500 that FHE is ordered to pay by 11 May 2026 as a reasonable contribution towards the applicants' actual costs. The amount is inclusive of all filing fees paid to the Authority.

Peter Fuiava
Member of the Employment Relations Authority

⁴ www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1.

⁵ www.era.govt.nz/assets/Uploads/practice-direction-of-the-employment-relations-authority.pdf.