

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2026] NZERA 224
3362503

BETWEEN XIAOSHUAI HUANG
Applicant

AND FAST HORSE LIMITED t/a
FAST HORSE EXPRESS
Respondent

Member of Authority: Peter Fuiava

Representatives: Jie Yu for the applicant
No appearance for the Respondent

Investigation Meeting: 1 April 2026 in Auckland and by audio-visual link

Determination: 15 April 2026

DETERMINATION OF THE AUTHORITY

What is the employment relationship problem?

[1] Xiaoshuai Huang claims that he was an employee delivery driver for Fast Horse Limited, a parcel courier business that traded in Auckland as Fast Horse Express (FHE or the company). Mr Huang, who was represented in the Authority by his wife, Ms Yu, says that he was constructively and unjustifiably dismissed by FHE shortly after he applied for ACC after being bitten by a dog while on a delivery run. This determination resolves not only the question of the real nature of the relationship between the parties but also Mr Huang's personal grievance.

How has the Authority investigated?

[2] On 6 May 2025, FHE lodged with the Authority a notice of change of representation which was signed by Ms Yu Hua Lin and advised that the company was now acting for itself in place of its then legal representative.

[3] On 24 November 2025, I held a case management conference with Ms Yu but there was no appearance by FHE. Although the company was telephoned prior to the

teleconference, the Authority's call went unanswered and, consequently, the conference call proceeded and directions for the filing of written witness statements were made in FHE's absence.

[4] Mr Huang's case included a letter of support from his former supervisor, Tianyu Zhang, who said that because he had been bitten by a dog, his manager, Mr Qi, was afraid that Mr Huang would hold the company responsible and cause trouble.

[5] Apart from FHE's statement in reply, which was filed with the Authority on 26 March 2025, no further information from the company was provided.

[6] The investigation meeting was held on 1 April 2026, but FHE failed to appear which meant that the meeting proceeded in its absence pursuant to cl 12 of the Second Schedule to the Employment Relations Act 2000 (the Act).

[7] Because Mr Huang now resides in China, leave was granted for him to attend the investigation meeting by audio-visual link. Leave was also granted for Ms Yu to attend by AVL. 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.

The real nature of the relationship was one of employment

[8] In *Xiao, Yang & Liu v Fast Horse Express*,¹ I found all three applicants to be employees of the company rather than independent contractors. While the applicants had all been provided with an independent contractor agreement, this was at odds with how the relationship operated in reality.² In common with the applicants in that case, Mr Huang had work assigned to him via FHE's smartphone app which both generated his delivery routes and tracked his progress in delivering parcels.

[9] It was Mr Huang's evidence that he worked for FHE from 11 December 2023 to February 2024 as a part-time warehouse labourer. On 3 February 2024, he commenced working as a full-time delivery driver for FHE until 26 February 2025.

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

² At [32].

[10] Mr Huang stated that he was not aware of an independent contractor agreement (ICA) between FHE and himself and he was adamant that he never signed an ICA in any event. It may be noted that the copy of the ICA in the company's statement in reply is unsigned. Mr Huang further stated that he was not able to reject a delivery given to him by FHE because that would result in him being paid at a lower rate. As a full-time delivery driver for FHE, Mr Huang said that he did not have the time to work for anyone else and nor could he make things easier for himself by negotiating an alternative pickup time with the company to collect parcels for delivery the following day.

[11] Mr Huang further stated that the order in which parcels were delivered and the choice of delivery areas were determined by FHE and that he had no say in these matters. Further, Mr Huang recalled being penalised \$35 because a photo he took as proof of delivery did not comply with the company's WeChat instruction of 15 August 2024, which states:

Dear drivers, please adhere strictly to the following requirements when taking two photos:

The first photo should be a comprehensive view of the house, ideally including the house number or mailbox. Carefully verify the house number to ensure accuracy.

The second photo should be taken after the package is placed. Do not hold the package while taking the photo; ensure the photo clearly shows where the package is positioned.

Any photos that do not meet these criteria will be treated as if the package is lost!

[12] Mr Huang provided several other WhatsApp messages from FHE as evidence of its control over the work of its delivery drivers:

[16 July 2024] ... For drivers who return parcels late, the system will automatically deduct fees for the late returns and lower their order acceptance level.

[30 October 2024] Starting from Monday, November 4th:

To enhance our delivery quality and control overtime penalties, we are introducing new rules for delivery and return timings.

*Delivery Penalties: *

1. ...

2.*36-hour Warning: *...

3.*60-hour Penalty: * A NZD 0.5 penalty per order deliveries exceeding 60 hours

4.*84-hour Penalty: * A NZD 5 penalty per order for deliveries exceeding 80 hours

...

[13] I find the nature and circumstances of Mr Huang's work as a delivery driver to be on all fours with the applicants in *Xiao, Yang & Liu v Fast Horse Express*. There was a high level of control exerted by FHE over Mr Huang's work when he was logged into its "app". Further, while noting the wording of an (unsigned) ICA that purported that a driver could accept, reject, and in certain circumstances cancel delivery requests without consequence, the reality was that if Mr Huang did not deliver a parcel on time, he was met with an automatic deduction to his pay. He had no ability to subcontract out his work because the app did not allow for multi-device logins which was the primary means by which deliveries were allocated.

[14] The level of control exercised while a driver was logged into the app was consistent with an employment relationship during those times. Although FHE's independent contractor agreement suggested that the working relationship it had with Mr Huang was not exclusive and that he was free to work with competing businesses, such freedom (if any) was illusory as he was required to pick up parcels from FHE's warehouse the evening prior to his designated delivery run and the full-time nature of his work for the company meant that he had no time to work for himself or anyone else.

[15] Having regard to s 6 of the Act and the common law tests of control, integration and whether the individual is effectively working on their own account (the fundamental test),³ I find that the real nature of the relationship between FHE and Mr Huang was one of employment. I turn to consider his personal grievance of unjustified constructive dismissal.

What happened?

[16] On 29 November 2024, while delivering a parcel for FHE, Mr Huang was bitten by a dog. He reported the matter to the police and sought medical treatment for his injury, which resulted in a medical certificate excusing him from work for a time. Mr Huang was not fit to fully return to work until 26 February 2025, and in the intervening period, he had applied to ACC for worker's compensation for his injury.

[17] However, FHE manager Mr Qi claimed that by registering with its app, Mr Huang had confirmed with the company that he was being engaged as an independent

³ *Bryson v Three Foot Six Limited (No.2)* [2005] ERNZ 372 at [32].

contractor. When Mr Qi required Mr Huang to withdraw his application for ACC cover, he refused to do so believing that, as an employee, he was entitled to compensation. Shortly thereafter, Mr Huang noticed that he was blocked from FHE's WhatsApp group and that he was no longer receiving any new work via the app from 26 February 2025 onwards.

[18] Mr Huang notified FHE in writing that he was raising a personal grievance that he had been denied ACC compensation and that he was not an independent contractor for the company but an employee. On 6 March 2025, Mr Huang commenced proceedings in the Authority.

Mr Huang was constructively and unjustifiably dismissed

[19] 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.

[20] I was provided with a copy of Mr Huang's bank statements which show that after his dog bite injury on 29 November 2024, he received four additional payments from FHE between 5 December 2024 and 6 February 2025. However, these payments are significantly lower than what he had received previously. On its face this suggests two possibilities: either Mr Huang was working limited hours because of his injury or that FHE had restricted his work in retaliation for his refusal to withdraw his application for ACC cover.

[21] Having found Mr Huang to have been employed by FHE as an employee and not engaged as an independent contractor, the company's actions to persuade him from withdrawing his ACC claim were not the actions of a fair and reasonable employer. When coupled with blocking his access to the app itself, which was the primary means by which delivery drivers received their work, it was reasonably foreseeable that Mr Huang would have no other choice but to look for work elsewhere. Mr Huang's personal grievance of unjustified constructive dismissal is made out and he is entitled to remedies.

[22] At the investigation meeting, Mr Huang explained that his last day of employment at FHE was 26 February 2025 and that he was not able to find his next job until May 2025, some three months later. During this period, Mr Huang was not able to find work in New Zealand and subsequently returned to China where he now lives and works.

[23] In the absence of payslip information from FHE, I am left with averaging the payments Mr Huang received from 1 August to 28 November 2024 in order to calculate, as best as can be discerned, the quantum of his lost remuneration under s 128 of the Act. During this 18-week period, he received an average payment of \$1,131.23 per week from FHE. When this figure is extrapolated over three months in accordance with s 128(2), Mr Huang's lost remuneration amounts to \$13,574.71.

[24] Compensation for humiliation, loss of dignity, and injury is for the effects on the employee of the grievance. It is not intended to be a penalty imposed on the employer to indicate the Authority's disapproval of their conduct. Mr Huang reported experiencing considerable emotional and psychological distress as a result of his dismissal. While he stated that he did not see a mental health professional in New Zealand due to cost, Ms Yu provided various receipts from medical professionals her husband has consulted in China as evidence of the stress and anxiety he experienced.

[25] I accept that Mr Huang has sought medical and/or counselling assistance in his country of origin for his anxiety and stress. I also accept that FHE's actions have resulted in a significant loss in self-confidence for Mr Huang, lost sleep, not knowing why the company had treated him in this way when he had been a good worker, and having to work in China apart from his wife.

[26] Assessing compensation is not an exact science but I take into consideration the ongoing impact of this grievance on Mr Huang and on his marriage. Not only did he lose his job, but he was also not able to find another in New Zealand which necessitated his return to China while his wife remains here where she is well settled. I award \$12,500 in compensation for hurt and humiliation under s 123(1)(c) of the Act. There is to be no reduction in lost remuneration or compensation under s 124 of the Act because Mr Huang has not contributed to the situation that has given rise to his personal grievance.

[27] Given the outcome of this determination in which Mr Huang has been successful, he is to be reimbursed the filing fee of \$71.55 that he paid to bring his claim to the Authority.

Summary of orders

[28] For the reasons given above, Fast Horse Limited is ordered to pay the following monies to Xiaoshuai Huang no later than Wednesday 15 May 2026:

- (i) \$13,574.71 in lost remuneration;
- (ii) \$12,500 in compensation for hurt and humiliation; and
- (iii) reasonable expenses of \$71.55.

Costs

[29] Although successful with his claim in the Authority, Mr Huang, was represented by his wife in this investigation and it has not been demonstrated that he has incurred any costs in having a lawyer or an employment advocate represent him at any stage. As such, costs shall lie where they fall.

Peter Fuiava
Member of the Employment Relations Authority