

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2026] NZERA 272
3355623

BETWEEN YING YIN
 Applicant

AND GRAND HARBOUR
 INVESTMENTS LIMITED
 Respondent

Member of Authority: Matthew Piper

Representatives: May Moncur, advocate for the Applicant
 Michael Kim, counsel for the Respondent

Investigation Meeting: 9 and 10 September 2025 in Auckland

Submissions and
additional information
received: 9 September 2025 and 2 February 2026 from the
 Applicant
 8 November 2025 and 3 February 2026 from the
 Respondent

Determination: 4 May 2026

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Ms Yin was employed as a Dim Sum server by Grand Harbour Investments Limited (Grand Harbour). Ms Yin said that she required time away from work to undergo medical treatment and that she was dismissed when she tried to return.

[2] Grand Harbour's position was that Ms Yin was a casual employee and that she declined work on that basis. It says it did not dismiss Ms Yin but that it did not have casual work available for her immediately at the time she confirmed she had again become available.

[3] Ms Yin also claimed that she had not received holidays entitlements and that wage and time records were not produced by Grand Harbour when they were requested by her.

The Authority's investigation

[4] For the Authority's investigation written witness statements were lodged from Ms Yin, Mr Stephen Chan, Mr Chan Fai Cheung, Mr King Chuen Tsui and Mr Eric Cao. All witnesses answered questions under oath or affirmation from me and the parties' representatives.

[5] On the first day of the investigation meeting Ms Yin withdrew her claim that she had not been paid in accordance with the Minimum Wage Act 1983.

[6] On the second day of the investigation meeting Grand Harbour conceded that it had not paid Ms Yin her holiday pay as required by the Holidays Act 2003. It said this was a result of an error in how it administered her contract.

[7] After the investigation meeting the respondent was directed to provide further information, including wage and time records, which it did on 26 September 2025. Part of the purpose of requiring this information from the respondent was to assess whether Ms Yin had received her holiday pay.

[8] On 29 October 2025 the applicant's representative confirmed she would not be lodging submissions on behalf of the applicant. On 8 November 2025 the respondent lodged its submissions and said it would pay Ms Yin's holidays entitlements.

[9] On 21 January 2026 the Authority inquired of the parties as to whether Grand Harbour had made payment to Ms Yin in respect of the holiday pay it conceded during the investigation meeting was owed to her. On 28 January 2026 the respondent confirmed that payment in respect of holiday pay due had been made, and on 2 February 2026 the applicant withdrew her claims for unpaid holiday pay.

[10] As permitted by s 174E of the Employment Relations Act 2000 (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 issues

[11] The issues requiring investigation and determination were:

- (a) Was Ms Yin a casual or a permanent employee?
- (b) Was Ms Yin's personal grievance claim raised in time?
- (c) Was Ms Yin dismissed, and if so, was the dismissal justified?
- (d) Did the parties comply with their respective good faith obligations?
- (e) Should remedies should be awarded to Ms Yin, considering:
 - (i) Lost wages (assessing the period for which loss is claimed; what was done, if anything, in that period to find alternative work and income; and whether what was, or was not done over that period was reasonable in the circumstances); and
 - (ii) Compensation under s 123(1)(c)(i) of the Act?
- (f) If any remedies are awarded, should they be reduced (under s 124 of the Act) for blameworthy conduct by Ms Yin that contributed to the situation giving rise to her grievance?
- (g) Should penalties be imposed on Grand Harbour for breach of the Holidays Act 2003 and failure to provide wage and time records under s 130 of the Act?
- (h) Should either party contribute to the costs of representation of the other party.

Background

[12] Grand Harbour operates a Chinese restaurant in Auckland offering dim sum.

[13] Messrs Cheung and Tsui together own a majority stake in Grand Harbour. Both also work in the restaurant's kitchen, but do not directly manage front of house staff.

[14] Management of front of house staff was delegated to the restaurant's General Manager, who was supported by Mr Cao, who in turn was responsible for organising rosters.

[15] Mr Chan works on the financial operations of the business (such as paying accounts) but was not directly involved in managing restaurant staff.

[16] Ms Yin is originally from China and has been in New Zealand for approximately 20 years. She was first engaged by Grand Harbour in 2013. Since that time Ms Yin has worked consistently for Grand Harbour as a server selling dim sum to customers.

[17] Ms Yin claimed that she was employed for an indefinite duration. Grand Harbour said she was a casual employee.

[18] Ms Yin signed an employment agreement in March 2023 which recorded that she was a casual employee, that she was employed “as required” and that she was free to accept or decline work. Ms Yin has limited English and told the Authority that she did not understand the agreement and signed merely because it was placed in front of her by the General Manager of the restaurant.

[19] Accordingly, Ms Yin’s patterns of work, ability to turn down shifts offered to her (i.e. the relationship of the parties between rostered engagements), her employment agreement and the way her holidays were paid are all relevant factual considerations to determining her status.

[20] Ms Yin worked for Grand Harbour almost every week since at least 2018 and her hours were reasonably consistent over that period.

[21] Ms Yin told the Authority that since her engagement in 2013 she has never turned down a shift and only did not work if she was sick. She said that she worked every week and was unaware that she was entitled to paid holidays. This appears to be largely reflected in the wage and time records, which do not show Ms Yin taking any annual or sick leave, despite there having been some weeks where she did not work.

Ms Yin’s time away

[22] In March 2024 Ms Yin needed thyroid surgery. The week prior to the operation Ms Yin phoned Mr Cao and told him that she would need time away to rest. She told him that she would inform him when she was ready to work again because she knew he needed to arrange the roster.

[23] Ms Yin did not tell Mr Cao about the surgery or specifically why she was going to be away. Ms Yin did not otherwise apply to sick leave, although she accepted in the

investigation meeting that the General Manager and Mr Cao were her managers to whom such an application could have been made.

[24] On 28 March 2024, Ms Yin also communicated with Mr Cheung to say she had undergone surgery and would need about two weeks to recover. Ms Yin asked Mr Cheung to keep the information private, and not to tell anyone about it. Mr Cheung, not being involved in directly managing Ms Yin, kept her confidence and did not inform any other staff members about Ms Yin's surgery.

[25] Ms Yin's surgery took place on 27 March 2024, and she remained in hospital for two days, after which she said she needed to rest for two to three weeks to recover. Ms Yin did not consider herself to be eligible for, or to be taking, sick leave. Rather she said she was taking time away to do something she needed to do.

[26] In mid-April 2024, Mr Cao, as part of setting the roster, called Ms Yin asking if she could work. Ms Yin said she would be away for another month. Mr Cao believed Ms Yin was a casual employee who could decline shifts and was therefore unconcerned by her declining work and did not consider her to be on sick leave.

[27] Ms Yin said that after her surgery she was not fully recovered for one to two months and that she still had scarring from the procedure. Under questioning, Ms Yin accepted that she would have been fit to work, albeit with some visible scarring, from the end of June at the latest. She may well have been able to work sooner than this.

[28] However, without any communication to Grand Harbour Ms Yin travelled to China in June and returned in the middle of July. Ms Yin accepted that she was not on annual leave during this time.

[29] During the period she was away from work between March and August 2024, Ms Yin said she did not undertake any other work and lived off her savings.

Ms Yin seeks work

[30] A few weeks after arriving home from China, Ms Yin wished to go back to work at Grand Harbour. On 5 August 2024 Ms Yin contacted Mr Cao asking to return. He told her that business was slow and that there may be work for her when things picked up again. Mr Cao said he told Ms Yin he would contact her when work became available.

[31] Ms Yin then contacted Mr Cheung and Mr Tsui respectively to ask if either could arrange work for her, but each responded to the effect that managing staff was not part of his role and that the right person for her to speak to was Mr Cao.

[32] On 16 August 2024, after not having been offered a shift, Ms Yin attempted to escalate the matter by asking Mr Tsui to require Mr Cao to place her on a roster. She also said she had consulted a lawyer and that she felt employment laws had been breached by her not having been given work. Mr Tsui did not respond because he considered the escalation in tone meant it was better for others to respond.

[33] Through her advocate, Ms Yin raised a personal grievance on 30 August 2024 alleging, among the other matters now withdrawn, breaches of good faith, and unjustified dismissal.

[34] On 22 October 2024 Ms Yin sought wage and time records in order to understand her position and quantify her claim against Grand Harbour. These documents were not provided to her until after the Authority's Investigation Meeting and only at the direction of the Authority.

Was Ms Yin a casual or a permanent employee?

[35] Ms Yin's work pattern suggests that although she may have started as a casual employee, the relationship between the parties developed into one where each had expectations of the other between engagements.¹ In other words, Grand Harbour likely had an obligation to offer Ms Yin further work and Ms Yin likely had an obligation to carry out that work.

[36] This is demonstrated by the consistency of Ms Yin's work pattern, her evidence that she never turned down a shift and the fact that Grand Harbour continued offering the work over an extended period. Ms Yin had an established role within the business that could have been performed by a permanent employee and the demand for the work performed by her role did not materially fluctuate, as can sometimes be seen in truly casual employment relationships.

[37] While it is correct that Ms Yin's weekly earnings fluctuated over time and that this may be a factor that points to a casual relationship, it does not determinatively do

¹ See *Jinkinson v Oceana Gold (NZ) Limited* [2009] ERNZ 225.

so. An employee's weekly earnings fluctuating over time can be a product of factors that are consistent with permanent employment.

[38] In all the circumstances, I find that despite the wording in the employment agreement between the parties, Ms Yin was a permanent employee of Grand Harbour.

Was Ms Yin's personal grievance for unjustified dismissal raised in time?

[39] Section 114 of the Act says a personal grievance for unjustified dismissal must be raised within 90 days of the date on which the action alleged to amount to the personal grievance occurred or came to the notice of the employee (whichever is later).

[40] Grand Harbour argued that Ms Yin failed to raise her personal grievance in time because it said that the company's not rostering Ms Yin for further shifts occurred in mid-April 2024 for the week beginning 22 April 2024. It says Ms Yin would have been aware of this fact at the time and therefore any grievance had to be lodged by 21 July 2024.

[41] However, Ms Yin's claim was not about whether she was allocated shifts in April of 2024. Rather her claim was that Grand Harbour dismissed her when it failed to allocate her shifts in August 2024 after she returned from China and signalled her availability.

[42] This being the case, and given her grievance was raised on 30 August 2024, it was raised well within time.

Was Ms Yin dismissed from her employment and, if so, was the dismissal justified?

[43] Ms Yin needed time away from work to have surgery and then recover. She was less than clear with her employer about why she was having time away and how long she would need.

[44] Ms Yin conceded that she travelled to China and did not present for work at a time when she would have been able to perform duties for Grand Harbour, although she said she would have had visible scarring on her neck. This period spanned more than a month.

[45] By failing to report to Grand Harbour when she was ready to perform work, Ms Yin repudiated her employment agreement. A reasonable person in Grand Harbour's

position could have formed the view that Ms Yin did not intend to continue to perform her contract.

[46] When Ms Yin contacted the company in August 2024 looking to return, she was not told it no longer wished to employ her. Rather, each witness for Grand Harbour gave evidence they had no problem with Ms Yin while she worked for the company, and it was clear each would have been happy to have her work again but for the changes in demand and staffing arrangements that had occurred in her absence.

[47] Ms Yin did not provide evidence supporting any motive Grand Harbour may have had for dismissing her, other than not having enough work for at the time she asked for it.

[48] Considering these actions and circumstances together, I find Ms Yin's employment relationship with Grand Harbour ended at her initiative and she was not dismissed.

[49] Given I have found Ms Yin was not dismissed from her employment, it is unnecessary to consider whether Grand Harbour's actions were unjustified or whether she is entitled to remedies for unjustified dismissal.

Did the parties comply with their respective good faith obligations?

[50] Ms Yin claimed that Grand Harbour breached its good faith obligations by failing to engage in meaningful dialogue about her employment status in August 2024. This claim is not established both because I have found Ms Yin had ended her employment before August 2024 and because Grand Harbour did in fact engage with Ms Yin.

[51] Grand Harbour's position was that Ms Yin had failed to meet her good faith obligations by failing to keep the company informed of her health status or ability to work again. Although Ms Yin did not communicate well about the conclusion of her employment, in all the circumstances I do not consider her actions or omissions justify any orders against her or award in favour of Grand Harbour.

Should penalties be imposed on Grand Harbour?

Should a penalty be imposed for breach of the Holidays Act 2003

[52] When Grand Harbour became aware during the Authority's Investigation Meeting that it had not correctly paid Ms Yin her holidays entitlements, it immediately conceded this point. It then proactively made payment of the arrears, which resulted in this element of Ms Yin's claim being withdrawn.

[53] This pattern supports the conclusion that the non-compliance was not deliberate. The fact the breach was remedied without order of the Authority was appropriate. These breaches should not, therefore attract the imposition of a penalty.

Should a penalty be imposed for Grand Harbour's failure to provide wage and time records?

[54] The delay in providing wage and time records to Ms Yin was not satisfactory. Although they were provided, it was only after directions from the Authority, and even then, they were delayed.

[55] Section 130 of the Act requires all employers to keep a wages and time record showing specific information in relation to each employee, and to provide that record to the employee or their representative "immediately" upon request.²

[56] Ms Yin requested a copy of her wage and time record by email dated 22 October 2024. The obligation to provide such records is well known and is forms part of the minimum requirements all employers must meet.

[57] Grand Harbour is liable for a penalty of up to \$20,000, as set out in s 135(2)(b) of the Act.

[58] Having considered the law in relation to quantification as set out in *Borsboom (Labour Inspector) v Preet PVT Limited*³, I note that section 133A requires I have regard to the object of the Act, the nature and extent of the breach, whether they were intentional, the nature and extent of any loss or damage, steps to mitigate effects of the breach, circumstances of the breach, any vulnerability of the employee and, finally, previous conduct.

² Section 130(2) of the Employment Relations Act 2000.

³ [2016] ERNZ 514.

[59] Failure to provide minimum standards directly disadvantages employees and often arises in circumstances involving a distinct power imbalance. This was the case for Ms Yin who was unable to quantify her claim because of the information not provided by Grand Harbour.

[60] Grand Harbour received the email of 22 October 2024 but failed to take reasonable steps to comply with their legal obligations, including after the applicant's representative indicated penalties may be sought for non-compliance.

[61] In this sense Grand Harbour's failure to provide the information was deliberate.

[62] With respect to the breach's severity, I note the judgement of the Court in *Preet* suggests failures to keep required records should be assessed at 50% of the maximum of \$20,000.

[63] There is no evidence of similar previous conduct by the respondent, and I must be cognisant of issue such as consistency and proportionality. That, when combined with a perusal of recent penalties would also suggest a discount is appropriate.

[64] Having weighed these factors, I consider the imposition of a penalty of \$2,000 on Grand Harbour to be appropriate.

[65] Ms Yin was unable to properly understand her position in relation to her claims against Grand Harbour. This situation was ongoing and had it been remedied promptly, claims that were ultimately withdrawn could have been resolved sooner. I therefore consider it appropriate that half of the penalty imposed on Grand Harbour should be paid to Ms Yin.

Summary and orders

[66] Although Ms Yin established she was a permanent employee and her grievance was raised in time, she has not established she was unjustifiably dismissed, and her other monetary claims were withdrawn. I therefore do not award any remedies to Ms Yin.

[67] A penalty of \$2,000 is imposed on Grand Harbour for failing to provide wage and time records to Ms Yin. For the reasons set out above, Grand Harbour is ordered to pay \$1,000 of this penalty to Ms Yin and the other \$1,000 is to be paid to the Crown

bank account. These payments must be made within 28 days of the date of this determination.

Costs

[68] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[69] Although Ms Yin has not established her personal grievance for unjustified dismissal, her now withdrawn claims for holiday pay were only acted upon by the company because of the litigation she embarked on. The parties should consider this position when attempting to resolve the question of costs.

[70] If the parties are not able to resolve costs and an Authority determination on costs is needed, Ms Yin may lodge, and then should serve, a memorandum on costs within 28 days of the date of issue of the written determination in this matter. From the date of service of that memorandum Grand Harbour would then have 14 days to lodge any reply memorandum. Costs will not be considered outside this timetable unless prior leave to do so is sought and granted.

[71] The parties could expect the Authority to determine costs, if asked to do so, on its usual notional daily rate unless particular circumstances or factors required an upward or downward adjustment of that tariff.⁴

Matthew Piper
Member of the Employment Relations Authority

⁴ See www.era.govt.nz/determinations/awarding-costs-remedies.