

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2026] NZERA 349
3376603

	BETWEEN	WEIDONG ZHOU Applicant
	AND	LIHE CONSTRUCTION LIMITED Respondent
Member of Authority:	Eleanor Robinson	
Representatives:	Lennon Xi, advocate for the Applicant Tracey Hu, counsel for the Respondent	
Investigation Meeting:	19 May 2026 in Auckland and by AVL	
Submissions and/or further evidence	19 May 2026 from the Applicant 18 and 19 May 2026 from the Respondent	
Determination:	4 June 2026	

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Applicant, Weidong Zhou, claims he was injured whilst employed by the Respondent, Lihe Construction Limited (LCL).

[2] LCL denies that Mr Zhou was an employee and claims that he was an independent contractor, engaged for a specific job.

The Authority's investigation

[3] The Authority received written and, under oath or affirmation, oral evidence from the Applicant, Mr Zhou and from Wenhui Chen

[4] The Authority received written and, under oath or affirmation, oral evidence from the Respondent witness, Mr Luo.

[5] Mr Zhou and Mr Chen gave oral evidence by AVL from China.

[6] The Authority was assisted by the services of a Mandarin interpreter.

[7] Oral and written submissions were received from Mr Li for the Applicant and from Ms Hu for the Respondent. Whilst I have not referred to all the submissions made by the parties; I have fully considered them.

[8] 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.

Note

[9] Any persons not actively involved in the Authority's investigation process, will be referred to only by initials bearing no relation to their actual name.

Issues

[10] The issues requiring investigation are whether or not:

- Mr Zhou was an employee or an independent contractor when working for LCL.

If Mr Zhou is determined to be an employee:

- Was he unjustifiably dismissed by LCL?
- Was he unjustifiably disadvantaged by LCL?

Background

[11] LCL is a small business. Mr Luo is the sole director, and shareholder. LCL obtains referrals for work mainly in the areas of renovations and gardening. Mr Luo normally performs the work himself but occasionally engages additional contract labour for specific jobs as required.

[12] Mr Luo was contacted in early February 2025 by an Indian operated contractor XXD, for whom he had previously worked, in connection with a job which involved the unloading of marble slabs at a residential address on the North Shore of Auckland.

[13] Mr Luo said he worked on his own at the site operated by XXD on 10 February 2025 but a manager of XXD contacted him by WeChat asking him to arrange for more people to come the following day, Mr Luo said he would receive payment from XXD, and he would pay the people who agreed to assist on 11 February 2025.

[14] Mr Luo said he contacted a WeChat contact, SSP, on 10 February 2025 and advised him that he needed people for a job. SSP subsequently posted a message on WeChat noting that five people were required for a job, the rate of pay would be \$24.00 per hour, and providing the address where the work would be carried out. No details as to the identity of the person requiring the workers were provided.

[15] Mr Zhou said he had been unemployed in early February 2025. He had arrived in New Zealand in November 2023 and initially worked for an AEWV employer, however since that employment ended he had worked whenever he was aware of a job being advertised. He said he was usually paid in cash for such work.

[16] Mr Chen, who was a friend of Mr Zhou, said he saw the WeChat advertisement for workers posted by SSP. He intended to accept the work, and he asked Mr Zhou if he would also be interested. Mr Zhou said he and Mr Chen decided to accept the job opportunity advertised by SSP and Mr Chen confirmed acceptance by posting "OK" in the WeChat message exchange.

[17] Mr Luo said he and other workers were on the XXD work site at 8.00 a.m. on 11 February 2025 which was the time advertised in the WeChat messages. Mr Zhou and Mr Chen were a little late arriving.

[18] There was a WeChat message exchange between Mr Luo and the workers who had responded to the messages posted by SSP on the morning of 11 February. This consisted of Mr Luo messaging Mr Chen and Mr Zhou, the workers he was expecting, who had not arrived.

[19] Mr Chen said he responded to Mr Luo in the messages, but Mr Zhou was not part of this messaging exchange.

[20] Mr Zhou said Mr Luo was on site when they arrived, and he was a little angry that they arrived late. He said Mr Luo was issuing directions about how the work was to be performed. Mr Zhou said he had seen some Indian people on the site, but it was Mr Luo who was issuing the directions. Mr Chen confirmed that was also his understanding.

[21] Mr Luo said XXD gave directions in English about the unloading of the marble slabs. He then translated these directions into Chinese for the other workers who did not speak English. Since Mr Zhou and Mr Chen had arrived on site a little later than the other workers, he believed they had not heard the original English instructions issued by XXD.

[22] Mr Zhou said the workers on site were moving a marble slab, which weighed approximately one tonne. This was carried out by six people at a time, three on each side of the slab, when one side slipped and he was seriously injured.

[23] Mr Zhou was taken to hospital where he stayed for three months. His full recovery took approximately a year.

Was Mr Zhou an employee or an independent contractor when working for LCL?

[24] In proceeding to determine whether Mr Zhou was employed by LCL as an employee or engaged as an independent contractor I note that Mr Zhou cannot satisfy the statutory gateway requirements of a 'specified contractor' arrangement as set out in s 6 of the Employment Relations Act 2000 (the Act). There was no written agreement specifying that he was an independent contractor or not an employee as required by s 6 (7) of the Act.

[25] Therefore, in proceeding to determine whether Mr Zhou was employed by LCL as an employee or engaged as an independent contractor I apply s.6 (1) to (3) of the Act which provides:

6 Meaning of employee:

- (1) In this Act, unless the context otherwise requires, **employee** –
 - (a) Means a person of any age employed by an employee to do any work for hire or reward under a contract of service ...
- (2) In deciding ... whether a person is employed by another person under a contract of service, the court or the Authority (as the case may be) must determine the real nature of the relationship between them.
- (3) For the purposes of subsection (2) ... or the Authority-
 - (a) must consider any relevant matters, including any matters that indicate the intention of the parties
 - (b) is not to treat as a determining matter any statement by the persons that describes the nature of their relationship

[26] To do so I apply the well-established tests of control, integration and the fundamental or economic reality test. In *Bryson v Three Foot Six Limited (No2)* the Supreme Court stated the following:

It is not until the Court or the Authority has examined the terms and conditions of the contract and the way in which it actually operated in practice that it will usually be possible to examine the relationship in the light of the control, integration and fundamental test".¹

¹ *Bryson v Three Foot Six Ltd (No 2)*[2005] 1 ERNZ 372

[27] In the recent case of *Rasier Operations BV v e Tō Inc* the Supreme Court confirmed that the traditional common law tests should continue to be applied in determining employee or independent contractor status.² The Supreme Court identified the indications of independent contractor status:³

The cases identify considerations which point toward independent contractor status. They include expertise vis-à-vis the hirer, freedom to work for others at the same time, the right to subcontract performance, the provision of tools and equipment, carriage of a risk of loss and opportunity for profit, limitation of the hirer's supervision to setting the parameters of the task, and payment on a per-task basis.

Control

[28] Mr Luo and Mr Zhou did not meet prior to 11 February 2025. Mr Zhou, having been advised of the job by Mr Chen, arrived at the address provided in WeChat messages posted by SSP where he met Mr Luo.

[29] Mr Luo's evidence was that the site was not controlled by him, it was controlled by XXD, and he was working alongside Mr Zhou and others moving the marble slabs.

[30] It was Mr Luo's evidence that XXD issued the instructions on how the work was to be undertaken which he translated for the benefit of the other workers. I observe that Mr Zhou and Mr Chen arrived a little later at the site than the other workers that day and may therefore have not been fully aware that it was XXD which had issued the original instructions.

[31] Of relevance to the issue of control I note that Mr Luo had no contact details for Mr Zhou. Mr Chen had participated in the messaging on the morning of 11 February 2025, but Mr Zhou had not done so. Mr Luo did not know Mr Zhou's identity and had not entered into any form of communication with him prior to meeting him on site on 11 February 2025. Therefore, if Mr Zhou had not arrived at the site that day, there was no viable avenue open to Mr Luo under which he could enforce performance.

[32] As a corollary, if Mr Zhou had accepted an alternative work for that day, Mr Luo would not have known since he had not met Mr Zhou nor was Mr Zhou identified by name in the WeChat messages in which Mr Zhou was not a participant.

Integration

² *Rasier operations BV v E Tō Ltd* [2025] NZSC 162

³ *Rasier* n 2 above at [122]

[33] LCL consists of Mr Luo. There are no employees, there is no payroll and no organizational structure. As such I find there was no organisation into which Mr Zhou could be integrated.

Fundamental Test

[34] Looking at how the relationship operated in practice; Mr Zhou was to be paid a fixed rate of \$24.00 per hour for the number of hours he worked. Mr Luo was also to be paid a fixed rate for the day's work based upon the work performed by himself and the other workers he had. Whilst Mr Zhou had no ability to share in project profits, nor did Mr Luo since the project was controlled by XXD which also set the price it would pay to Mr Luo.

[35] Mr Zhou did not provide his own tools and equipment. LCL did not provide him with tools and equipment either, so I find this indicator of status to be neutral.

[36] Significantly, Mr Zhou was free to accept other work for that day if he wished to do so. As observed, Mr Luo had no contact details for him and if Mr Zhou had not arrived at the site, there was no action Mr Luo could take against him moreover, Mr Zhou was free to subcontract the work to another person if he wanted to do so.

[37] It is most regrettable that Mr Zhou suffered such a serious injury whilst he was in New Zealand.

[38] However, having considered all the circumstances, I determine that Mr Zhou was not in an employment relationship with LCL.

[39] As such, I am unable to assist him further.

Costs

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

[41] If they are not able to do so and an Authority determination on costs is needed LCL may lodge, and then should serve, a memorandum on costs within 14 days of the date of issue of the written determination in this matter. From the date of service of that memorandum Mr Zhou 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.

[42] All submissions must include a breakdown of how and when the costs were incurred and be accompanied by supporting evidence.

[43] 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

Eleanor Robinson
Member of the Employment Relations Authority
