

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-A-TARA ROHE**

[2026] NZERA 89
3287359

BETWEEN LUAT TRAN
Applicant
AND AQ TRADING & SERVICES
LIMITED
Respondent

Member of Authority: Claire English
Representatives: Allen Goldstone, advocate for the Applicant
Katheryn McKinney, counsel for the Respondent
Investigation Meeting: 1, 2, and 4 July 2025 in Auckland and by AVL
Submissions received: Up to 12 February 2026 from Applicant
Up to 17 February 2026 from Respondent
Determination: 20 February 2026

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The applicant, Mr Luat Tran, came to New Zealand to work as a nail technician in nail salons owned by the respondent, AQ Trading & Services Limited (AQ). He arrived in New Zealand on 4 December 2022, and started work on 5 December. He says for about 2 or 3 weeks, he was working in AQ's three nail salons in Rotorua. After this, the owner of AQ, Mr Lien Pham, had him doing other work for him in addition to salon work after hours. Mr Tran says this other work was maintenance, construction, and even painting a car for Mr Pham.

[2] Mr Tran became concerned that he was being paid less than the hourly rate of \$28.00 set out in his employment agreement, and also that AQ was deducting money for taxes, but was not passing on all of these deductions to IRD. He confronted Mr Pham about this, and went on sick leave.

[3] AQ then invited Mr Tran to a disciplinary meeting. The parties were unable to resolve matters and Mr Tran never returned to work. On 1 June 2023, AQ wrote to him saying that it assumed he had resigned, and ended his employment. Mr Tran wrote back acknowledging this.

[4] Mr Tran now brings a claim of unjustified constructive dismissal. He seeks remedies of two months lost remuneration, compensation for hurt and humiliation, and costs. He also seeks some \$17,000 being what he says are underpaid wages for hours worked but paid at less than his contractually agreed rate.

[5] AQ says that Mr Tran was paid for all hours worked at the rate of the minimum wage. It says that Mr Tran was not competent or skilled enough to work as a nail technician, and that Mr Pham asked him to do other work, to help him out. AQ accepts that Mr Tran was never paid at his contractual rate, but was always paid at the hourly rate of \$21.20 per hour which was the applicable minimum wage rate at the time.

[6] In addition, AQ raises counterclaims against Mr Tran. It says he cost AQ money because of the costs of recruiting and replacing him with another qualified staff member, and because a qualified nail technician should have provided AQ with a profit of approximately \$60,000 in a year, and Mr Tran was not skilled enough for this.

The Authority's investigation

[7] For the Authority's investigation written witness statements were lodged from Mr Tran, and his wife Ms Lien Dao. For AQ, witness statements were provided by Mr Pham, and his sister in law and store manager Ms Mai Nguyen. All witnesses answered questions under affirmation from me and the parties' representatives. The representatives also gave legal submissions.

[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 but all information submitted has been considered.

The issues

- [9] The issues requiring investigation and determination were:
- (a) Did Mr Tran raise his personal grievance claim within time?
 - (b) Was Mr Tran unjustifiably (constructively) dismissed?
 - (c) If AQ'S actions were not justified, what remedies should be awarded, considering:
 - Lost wages (subject to evidence of reasonable endeavours to mitigate loss); and
 - Compensation under s123(1)(c)(i) of the Act
 - (d) If any remedies are awarded, should they be reduced (under s124 of the Act) for blameworthy conduct by Mr Tran that contributed to the situation giving rise to his grievance?
 - (e) Was Mr Tran paid at the incorrect hourly rate and should he be awarded short-paid wages?
 - (f) Is Mr Tran owed payments for work on certain public holidays?
 - (g) Should either party contribute to the costs of representation of the other party?

Background

[10] Mr Tran gave evidence that his ex-wife owned a nail salon in Vietnam, his daughter worked in the industry, and he himself had a small business as a nail technician. His evidence was that he worked for himself in a small shop as a nail technician, using traditional nail polish, gel, and powder finishes, as well as false nail application. He says he was good at his job and particularly enjoyed performing nail art for his clients, which he was good at and was a service they most appreciated him for.

[11] Mr Tran and Ms Dao, began investigating coming to New Zealand for work. Ms Dao owned and ran a small farm growing durian and coffee. Her evidence was that there was no pressing financial need for them to come to New Zealand, however, three of her family members had died of cancer in a short space of time, which was a source of grief and stress to her, and she was concerned about exposure to environmental pollutants. Accordingly, she and Mr Tran decided to come to New Zealand as it was a

place where they could earn good wages to send back to Vietnam and benefit from a healthy natural environment.

[12] They sought the advice of a broker or agent, Mr Pong. Mr Pong helped prepare their visa applications and all supporting documentation. He also put them in touch with Mr Pham, who through AQ, was able to offer them employment and an associated visa.

[13] Mr Tran's evidence was that he provided three documents to Mr Pong in support of his visa and work application, being his national identification document, his passport, and a blank sheet of paper with his signature on it. He says he has no English language skills (which was not a requirement to work as a nail technician), and no knowledge of the visa application process, and that he relied entirely on Mr Pong to arrange the necessary documents for the visa process.

[14] Mr Pong communicated with Ms Dao by a messaging app, Zalo. This included references to Mr Tran needing certain certifications and training, and that he was "learning" his skills. Mr Pong also told Mr Tran to dye his hair and Mr Tran then did so. There was also reference to Mr Pong's preferred nail salon not being able to provide documents as there was an issue with a permit. Ms Dao and Mr Tran said that they would arrange this, and it was explained that this was a reference to their family salon and they were able to update the required permit.

[15] AQ takes the position that the various certificates provided on behalf of Mr Tran showing that he was certified in eyelash extensions and as a nail technician were false, and that Mr Tran did not have the required skills to work as a nail technician. AQ relies on the evidence of its store manager, Ms Nguyen, that Mr Tran's skills were not sufficient, and he was not able to work on customers and when he did so, customers complained.

[16] Mr Tran does not defend the certificates, and essentially accepts they were false or at least, misleading. He says that he had nothing to do with producing these documents, but that was all done by Mr Pong as it was Mr Pong who knew what was needed and who guided them through the visa process.

[17] Nevertheless, Mr Tran says that he is an experienced nail technician, and has successfully run his own business for many years. He says that there is no specific

national qualification for this in Vietnam, and no requirement for such to work as one. He also says that he was not aware of any customer complaints in relation to the work he performed for AQ, and to the contrary, he received tips from clients. He also says that he was required to demonstrate his nail technician skills to Mr Pham by way of video call. Mr Pham says he was only provided with edited video clips.

[18] Mr Pham offered Mr Tran employment in his Rotorua nail salon. Mr Tran arrived on 5 December 2022. He was provided accommodation at a house owned by Mr Pham, for which he paid rent. He says he was required to sleep in the garage.

[19] Mr Tran started work in AQ's nail salon. Although his employment agreement provided he would be paid \$28 per hour for 35 to 40 hours per week, he soon realised that he was being paid at a lesser rate. Mr Pham says that Mr Tran was unskilled, therefore he decided to pay him at a lesser rate of \$17.50 per hour.

[20] Mr Tran was then asked by Mr Pham to perform work on Mr Pham's house as a builder during the day, and to work at the nail salon performing cleaning work and handy-man and even some gardening work after hours. He says he was working more than the 40 hours per week specified in his employment agreement, and was not paid for these hours even at the reduced rate of \$17.50 per hour.

[21] Mr Pham says that that he directed Mr Tran to perform cleaning and other such duties at the nail salon after hours, as he was not skilled enough to perform nail technician work, and his work generated many customer complaints, so this was a way of finding work for him to do.

[22] Mr Pham then asked Mr Tran to perform other work, including repainting a vehicle and repairing furniture, and other carpentry work at and on one of Mr Pham's properties. Some of this work was performed in Auckland, at Mr Pham's property in Browns Bay. During this time, Mr Tran and his wife, who had also recently arrived from Vietnam, were living in Mr Pham's Brown's Bay nail salon, as they could not afford to rent elsewhere. They described having to sleep in a room next to stored chemicals that they could smell, and that they had to use public bathrooms near the beach. Ms Dao accompanied him at times and took videos of him performing such work.

[23] Mr Tran says he raised concerns with Mr Pham, about his low wages, the substandard accommodation, and that he was not performing work in the nail salon as per his employment agreement, but that Mr Pham was dismissive and insulting, and said things which amounted to a threat of deportation, and challenged him to go find employment elsewhere if he didn't like the conditions.

[24] On 2 April 2023, Ms Dao, secured work in Tauranga, at a factory, with a pay rate of \$23.70 per hour. On 4 April 2024, Mr Tran visited an Inland Revenue office, and inquired as to how much PAYE had been remitted in respect of his employment. He was told none had been remitted¹. When he inquired again a few days later, he was told that the sum of \$2,612.18 had by then been paid.

[25] Mr Tran then applied for two days sick leave on 11 and 12 April. Mr Pham granted this, but required Mr Tran to provide a medical certificate at his own cost. Mr Tran had to borrow \$130 to provide the certificate.

[26] Mr Tran continued to ask Mr Pham about his outstanding wages, but received no responses.

[27] Mr Pham then invited Mr Tran to a disciplinary meeting on 13 April, but this meeting never occurred as Mr Pham did not attend.

[28] It was around this time that Mr Tran moved to Tauranga. Mr Pham continued to put him on the roster, but he did not report for work.

[29] On 15 May 2023, Mr Pham invited Mr Tran to attend another disciplinary meeting. On 17 May 2023, Mr Tran replied, stating that he would not attend such a meeting as he feared for his safety, had made a report to the Labour Inspectorate, and intended to resign.

[30] Mr Pham asked Mr Tran to reconsider his resignation, and continued to put Mr Tran on the roster.

[31] On 25 May 2023, AQ wrote to Mr Tran again, raising disciplinary allegations. AQ advised that unless Mr Tran responded otherwise, it would accept his resignation.

¹ This is confirmed in a note from an Inland Revenue Community Compliance Officer.

Mr Pham's evidence is that "I again gave Mr Tran an opportunity to revisit the position if he wished". Mr Tran did not respond.

[32] On 1 June 2023, AQ emailed Mr Tran advising that it had accepted his resignation. AQ also suggested mediation. Mr Tran responded, acknowledging the acceptance of his resignation, and agreeing to attend mediation.

[33] On 22 August 2023, Mr Tran raised a personal grievance claim of unjustified constructive dismissal and unjustified disadvantage against AQ.

Counterclaim

[34] AQ raises counterclaims against Mr Tran, that Mr Tran breached his statutory duty of good faith by engaging in misleading and deceptive conduct by misrepresenting his skills and work experience, by making slandering and threatening posts on Facebook, and by misleading AQ that he was still was still an employee when he had in fact started new employment.

[35] AQ seeks a penalty of \$10,000 against Mr Tran for the breach of good faith; damages of \$35,000 for losses incurred due to Mr Tran's misrepresentation; and further damages of \$100,000 for loss of business reputation. In addition, AQ seeks that any sum payable by it to Mr Tran is offset against these amounts.

[36] AQ submits that "the 90 days runs from the last day of the applicant's employment, being 17 May 2023". Therefore his personal grievance claim raised on 23 August 2023 was out of time, and AQ does not consent to the raising of a personal grievance claim out of time.

Did Mr Tran raise his Personal Grievance Claims within time?

[37] I will first consider whether Mr Tran raised his personal grievance claim against AQ within the 90 days required by s 114 of the Act.

[38] His representative wrote to AQ on 22 August 2023, raising personal grievance claims of unjustified disadvantage and constructive dismissal.

[39] Mr Tran says that these claims were raised within 90 days, as his employment ended on 1 June 2023, when AQ wrote to him stating it had accepted his resignation

and his employment was at an end. He emailed in reply the same day, acknowledging this.

[40] AQ says that these claims were not raised within 90 days, as Mr Tran's employment ended on 17 May 2023, as Mr Tran never returned to work after this date. I note that 17 May was the date that Mr Tran emailed Mr Pham indicating his intention to resign.

[41] Mr Tran's evidence is that the last day he performed work for AQ was on 1 April 2023, and he only claims wage arrears up to this date. In addition, his in-person evidence was that he started work with a new employer in the Tauranga area on 8 May 2023.

[42] In the face of Mr Tran's evidence that he commenced working for a new employer on 8 May 2023, I must find that his employment with AQ came to an end on 7 May 2023 at the very latest.

[43] I note that AQ's position that Mr Tran's employment with it came to an end on 17 May 2023 (being the date Mr Tran first mentioned his intention to resign) appears to be fundamentally inconsistent with its own contemporaneous correspondence, and its on-going attempts to engage with him and keep him on the roster. However, these actions were built on a faulty premise, and AQ was not aware that Mr Tran had commenced new employment with another employer, as Mr Pham and Mr Tran never met again to discuss matters. In these circumstances, it is plainly wrong of Mr Tran to state that he should be able to rely on AQ's letter of 1 June 2023 telling him that it accepted his resignation as of that date and "your employment is at an end", when this letter was built on incorrect information, and was occasioned by Mr Tran's own decision not to tell Mr Pham that he had secured new employment and did not intend to return to work.

[44] I find that Mr Tran's last day of employment was 7 May 2024. He is therefore out of time to raise his personal grievance claims. As a result I do not need to consider whether Mr Tran was constructively dismissed. However, he is able to pursue his claims for wage arrears and unpaid wages because such claims are not required to be raised within 90 days.

Is Mr Tran owed wages by AQ?

[45] Mr Tran raises claims for wages arrears arising from what he says was the failure to pay wages at the agreed contractual rate.

[46] Mr Pham did not dispute that AQ paid Mr Tran at the minimum wage rate as opposed to the higher rate agreed in his employment agreement. Although Mr Tran was concerned that PAYE tax had not been remitted by AQ in respect of these wages, it appears this has now been rectified, following Mr Tran's obtaining an IRD number and a New Zealand bank account and providing these details to AQ. Accordingly, I make no further comment on this.

[47] Mr Pham says that he made a deliberate decision to pay Mr Tran at the rate of the minimum wage, as he felt that Mr Tran's skills did not justify the higher hourly rate agreed in the employment agreement. In relation to the work done by Mr Tran in the nail salon, this decision was made by Mr Pham unilaterally without consulting Mr Tran or getting his agreement to be paid at a lower hourly rate. In relation to the renovation, handy-man, gardening and associated work on Mr Pham's properties, Mr Pham says that Mr Tran was employed by him personally (not AQ) in respect of this work, and Mr Tran agreed to work at the rate of the minimum wage for these tasks. Mr Pham also says that he needed to find some other work for Mr Tran to do as he could not work in the nail salon, and that AQ could have terminated Mr Tran's employment over his lack of skill, but did not do so as he was making an effort to help Mr Tran instead.

[48] In respect of the additional after-hours work performed by Mr Tran, including working on the house and nail salon in the evenings, Mr Pham kept no records of these hours. Instead, Mr Tran would provide details of the hours he worked to Mr Pham, and was paid accordingly.

[49] When Mr Tran began asking for his contractually agreed wages, and indicating that he would make complaints to the Labour Inspectorate, the relationship between the parties began to break down. It was only at this point, when Mr Tran began to take sick leave, that AQ and Mr Pham began to raise concerns about his lack of skills and qualifications, and to do so in a disciplinary fashion. Throughout this, Mr Tran remained concerned that if AQ and Mr Pham withdrew their support for his visa, he would be deported.

[50] Overall, Mr Tran says that he is owed the sum of \$17,230.12 gross, being the difference between the hourly rate he was paid for his work completed, and the higher contractual wage rate of \$28 per hour that he was promised by AQ.

[51] I find that AQ had agreed to pay Mr Tran at the rate of \$28 per hour, as set out in the employment agreement. Having made this agreement, it is not open to AQ or Mr Pham to unilaterally reduce Mr Tran's hourly rate without his agreement. AQ is obliged to pay Mr Tran for all work done at the agreed contractual rate.

[52] The agreed contractual rate of \$28 per hour clearly applies to all work done by Mr Tran in and for the nail salon. I am not persuaded that Mr Tran agreed with Mr Pham that he would be paid at the rate of the minimum wage for tasks not connected to the nail salon. Mr Tran denies any such agreement, and there is no contemporaneous record of it. In any event, I find that there was not a clear distinction between the different types of work as Mr Pham now suggests.

[53] Mr Tran was instructed to perform work in and around the nail salons including maintenance and such things as restocking and laundry, which could arguably be within the scope of his job description as a "nail technician assistant" and which clearly were for the benefit of the salons. These tasks had an overlap with the maintenance-type work he was also asked to perform on Mr Pham's properties. Finally, the employment agreement provided no job description or list of duties which would support Mr Pham's contention that there were two distinct types of work. Mr Pham simply issued instructions to Mr Tran from time to time, which Mr Tran carried out. I conclude that Mr Tran should be paid at the agreed contractual rate of \$28 per hour for all work done, as AQ had agreed to do.

[54] I am also not persuaded by the suggestion in submissions that Mr Pham personally was Mr Tran's employer for some of these tasks and not others. This is inconsistent with the employment agreement, the visa arrangements, and is not supported by any contemporaneous documentation. Right up until the end of his employment, all formal correspondence with Mr Tran was in the name of AQ as his employer. I find that AQ was Mr Tran's employer at all relevant times.

Does there need to be an allowance made for gross payments?

[55] AQ raises a concern that the arrears sought by Mr Tran do not include an allowance for PAYE tax that was paid to Inland Revenue on his behalf. In other words, the arrears sought by Mr Tran have been incorrectly inflated by the inclusion of the amount of tax paid. AQ has now provided information showing the gross earnings/schedular payments, showing that it paid Mr Tran a total of \$13,336.60 gross over the course of his employment, and PAYE has been remitted to IRD.

[56] Mr Tran claims that he performed 1,055.5 hours of work for AQ over the duration of his employment. To the extent that there is disagreement about the number of hours worked, I accept Mr Tran's calculation of his hours of work, in circumstances where he was recording his hours and reporting them to AQ. At the rate of \$28.00 per hour, these hours amount to \$29,554.00 gross. AQ's records show that he was paid a total of \$13,336.60 gross. This leaves a shortfall of \$16,217.40 gross.

[57] AQ is ordered to pay this amount of outstanding wages to Mr Tran, and to remit PAYE tax to Inland Revenue in the normal way. Orders are made accordingly.

Payment for Public Holiday Entitlements

[58] Mr Tran says that he worked on four public holidays, being Boxing Day 2022, New Years Day and the Second of January, and Waitangi Day 2023. He says he worked a total of 43 hours on these days, but was paid for 16.5 hours only.

[59] Mr Pham makes a general comment to the effect that the nail salon was usually closed on a public holiday, but AQ does not go on to dispute that Mr Tran worked on these days, or dispute the number of hours he claims to have worked.

[60] Accordingly, I find that Mr Tran performed work on specified public holidays. In accordance with s 50 of the Holidays Act 2003, Mr Tran is entitled to be paid at the rate of time-and-a-half for work done on these days. He claims to have worked for a total of 43 hours over these four public holidays. His evidence was that he had received no pay, and he claims payment of \$1,806 gross, calculated for 43 hours at his contractual rate of \$28 per hour multiplied by 1.5, eg \$42 per hour. I consider this payment is required by s 50 of the Holidays Act 2003. Orders are made accordingly.

[61] Mr Tran is also entitled to receive an alternative holiday in respect of each of the public holidays on which he worked, as set out in s 56 of the Holidays Act 2003.

As Mr Tran worked on four public holidays, he is entitled to receive payment for four alternative holidays.

[62] Payment for alternative holidays is to be calculated in accordance with s 60 of the Holidays Act 2003. When alternative holidays are paid out at the end of employment, they are to be calculated at the rate of either the employee's relevant daily pay or average daily pay for his or her last day of employment.

[63] The time records produced by Mr Tran, which were relied on by AQ, do not specify the number of hours worked in a day, and have a degree of variation, from a high of 54 hours in a week, to two weeks when Mr Tran says only 8 hours were worked. In these circumstances, I consider it necessary and appropriate to rely on Mr Tan's calculations in respect of these four alternative holidays owing in accordance with s 132 of the Act. Mr Tran calculates that he is owed a further four days, being 8 hours per day or 32 hours in total, at his contracted hourly rate of \$28 per hour, that is, \$896.00 gross. Orders are made accordingly.

The Respondent's Counterclaims

[64] The first claim by AQ against Mr Tran is that he breached his duty of good faith by misleading and deceiving AQ as to his skills as a nail technician. AQ relied on the evidence of its salon manager, Ms Nguyen, who gave evidence that in her opinion, Mr Tran was not experienced as a nail technician. AQ was also deeply critical of Mr Tran's documentation as provided by the agent (or more correctly, broker) in Vietnam.

[65] Mr Tran maintained firmly that he was a nail technician, and had the skills and experience required, and that any defects in the documentation were the fault of the agent, not himself. He also pointed out that AQ and Mr Pham did not raise any performance concerns with him, even during the 90-day trial period, and the first time this was mentioned was in a letter from AQ on 15 May 2023.

[66] Perhaps unusually, it appeared from the in-person evidence at the investigation meeting, that the documents provided by the agent attesting to Mr Tran's qualifications as a nail technician were most likely false. Mr Tran says that to the best of his knowledge, there is no standard qualification for nail technicians, and he relied entirely on his agent to prepare whatever documents might be required for his visa. He

maintains that he had the practical experience required for the position however, and had run his own small nail business for some years.

[67] I am not persuaded that it is appropriate to conclude that a breach of good faith by Mr Tran has occurred warranting a penalty in all the circumstances. The evidence that Mr Tran was not sufficiently skilled for the job came from Ms Nguyen, and I agree with the submissions of counsel for the applicant that she cannot be considered an independent witness as a migrant employee of AQ herself and a relative of Mr Pham. Mr Pham made the decision to employ Mr Tran based not just on documents provided by the agent, but also on the basis of video clips of Mr Tran working, and considered these satisfactory enough to offer him employment.

[68] I also take into consideration that AQ did not act to raise any performance concerns with Mr Tran until 15 May 2023, well after the relationship between the parties had begun to break down. No training or other less formal remonstrance was made in the 4 months that Mr Tran was working for AQ, as might have been expected if these concerns were as stark as AQ now suggests they were. Indeed, AQ could have ended Mr Tran's employment in reliance on the 90-day trial period provision in the employment agreement, but did not do so. Mr Pham now says that this was because he wanted to help Mr Tran, but again this statement sits uncomfortably with the lack of training or practical assistance actually provided.

[69] In all the circumstances, I decline to find that a breach of good faith has been made out in relation to the suggested misrepresentation of skills. Given that I have not found a breach is made out, the claim for a penalty resulting from this breach also fails.

[70] The second claim against Mr Tran by AQ is that he breached his duty of good faith by engaging in conduct likely to damage AQ's reputation and negatively impact its potential earnings by making slandering and threatening posts on Facebook. This is a reference to a Facebook post by Mr Tran, where AQ states that Mr Tran had shared a news article about the murder of a business owner over the sum of \$35, with the comment "what is the result if the amount is not \$35 but thousands?" (or a phrase to that effect depending on translation). Mr Pham says he interpreted this as a public threat to murder him and his family.

[71] Mr Tran accepts that he made this comment, but says it was not a threat to murder Mr Pham, but an expression of frustration that Mr Pham had agreed to meet

with him to discuss his wages, but then failed to turn up to the meeting. Mr Tran says Mr Pham insulted him in turn, including making derogatory remarks about his lost fingertip. He says that when he reconsidered the post, he took it down promptly.

[72] I have considered the statement attributed to Mr Tran, which is said to be “what is the result if the amount is not \$35 but thousands?”, or “I wonder what the consequences would be for thousands of dollars”, as the translation to English varies. I have no translation for the underlying article. On its face, this is not (as Mr Pham describes it) a public threat to kill him and his family. To the extent that I can reach any conclusions about it given my concerns about the accuracy and limitations of the translation and information provided, I consider this to be more likely than not, a comment by Mr Tran related to him seeking information about his wage rates, bearing in mind this was sent the day after Mr Pham had agreed to meet him to discuss, and then failed to attend the meeting.

[73] More importantly, AQ states that it was this statement that damaged its reputation and impacted its potential earnings, such that I should award it damages in the sum of \$100,000 pursuant to s 162 of the Act. AQ has provided financial statements from 2022 to 2024, which it says show that the business has suffered losses in excess of this amount. The profit and loss statements provided show that in the year 2023, which covered Mr Tran’s employment, the business did suffer a loss of more than \$100,000 as claimed. However, the statements also show that the amount of sales made remained steady over the years 2021 to 2024, and costs increased significantly over the years 2023 and 2024, particularly salary costs in the year 2024, well after Mr Tran’s departure.

[74] AQ has provided no evidence that the post by Mr Tran caused the damages it now claims against him. The financial statements that it has produced do not suggest any impact caused by Mr Tran. I find this claim for damages is not made out.

[75] Finally, I note the claim that Mr Tran’s misrepresentation of his work experience caused losses to AQ because AQ “could not use him for the position he was employed”. AQ states that it would expect a nail technician to generate a profit for it of \$60,000 each year, and Mr Tran should pay it damages of \$35,000 in respect of the profit it expected to receive from him which it says did not occur. Mr Pham’s evidence was that he had calculated the amounts himself by reference to his own past experience.

[76] Even if I were to accept Mr Pham's unsupported assessment at face value, AQ has not been able to demonstrate any linkage between Mr Tran's actions and the supposed loss claimed. This claim is fundamentally inconsistent with Mr Pham's evidence that he personally instructed Mr Tran to perform a variety of tasks to make up for work he was not performing in the salon. In other words, Mr Pham considered what work Mr Tran could do, and instructed Mr Tran to perform work that Mr Pham considered valuable to him. Mr Tran performed the work as instructed. Mr Pham cannot now turn around and seek to claim damages against Mr Tran for doing as instructed.

[77] For all these reasons, this claim is not made out. No orders are made.

Orders

[78] Mr Luat Tran is owed outstanding monies by AQ Trading & Service Limited.

[79] AQ Trading & Service Limited is ordered to pay to Luat Tran within 28 days of the date of this determination :

- a. The sum of \$16,217.40 gross as arrears of wages;
- b. The sum of \$1,806 gross as payment for time-and-a-half for work done on specified statutory holidays;
- c. The sum of \$896.00 gross as payment for alternative holidays.

Costs

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

[81] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Mr Tran may lodge, and then should serve, a memorandum on costs within 28 days of the date of this determination. From the date of service of that memorandum AQ will then have 14 days to lodge any reply memorandum. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[82] The parties can anticipate the Authority will determine costs, if asked to do so, on its usual “daily tariff” basis unless circumstances or factors, require an adjustment upwards or downwards.²

Claire English
Member of the Employment Relations Authority

² For further information about the factors considered in assessing costs see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1