

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

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

[2024] NZERA 581  
3182039

BETWEEN

TING YU BA  
Applicant

AND

QIANQIAN LI (KNOWN AS  
DANIEL LEE)  
Respondent

Member of Authority: Rowan Anderson

Representatives: May Moncur, advocate for the Applicant  
No appearance for the Respondent

Investigation Meeting: 5 June 2024 by audio visual link

Submissions and further information received: Up to and including 9 September 2024

Determination: 2 October 2024

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] Tingyu Ba was employed by Qianqian Li (known as Daniel Lee) between 2012 and 2015. Following the employment, Tingyu Ba raised a personal grievance. The personal grievance was resolved, and a settlement agreement was signed on 19 and 20 September 2018.

[2] Tingyu Ba claims that Qianqian Li failed to comply with the terms of settlement by failing to pay in full the sum due. She seeks a compliance order relating to payment of the outstanding balance and seeks the imposition of penalties upon Qianqian Li.

[3] Qianqian Li has not responded to the application and has not engaged in the Authority's investigation.

## **The Authority's investigation**

[4] The Authority held a case management conference (CMC) was held on 21 March 2024. Written directions were issued noting Qianqian Li had not lodged a statement in reply but recording that leave to do so would likely be granted should he engage with the Authority's process. Tingyu Ba was asked to clarify matters relating to her claims, including as to whether a compliance order was being sought and on what basis a penalty was being sought. Tingyu Ba's representative later confirmed that a compliance order was being sought and that the basis for the claimed penalty was s 133 of the Employment Relations Act 2000 (the Act).

[5] An investigation meeting was held on 5 June 2014 by audio visual link. Tingyu Ba gave evidence under affirmation at the investigation meeting. The Authority was assisted by an interpreter proficient in Mandarin. Ting Yu Ba confirmed the contents of the written statement that had been provided in accordance with directions issued.

[6] On 6 June 2024, I issued a Minute which noted Qianqian Li's failure to engage in the Authority's investigation. That Minute included a revised list of issues, provided Qianqian Li a further opportunity to seek leave, and put Qianqian Li on notice that if no response was received that the Authority would proceed to determine the issues before it.

[7] Qianqian Li has not engaged in the Authority's investigation. I am satisfied that Qianqian Li was appropriately served with all relevant documents, including the statement of problem and notice of the investigation meeting. This included confirmation by way of read receipt at an email address for Qianqian Li on 24 June 2024 and service of a Minute, accompanied by the relevant documents, following the investigation meeting that was personally signed for by Qianqian Li on 16 September 2024. Despite this, Qianqian Li has not engaged.

[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.

## **Issues**

[9] The issues for investigation and determination include whether a compliance order can be made and, if so, whether one should be. In the alternative, a question arises

as to whether the settlement agreement is binding and enforceable whereas it was not signed by a mediator and whether Tingyu Ba is otherwise entitled to payment of any outstanding sum. The Authority also needs to determine whether any penalty is available and, if so, whether any penalty should be imposed. There is also an issue as to costs.

### **Analysis and discussion**

[10] Tingyu Ba gave evidence as to the settlement agreement that was reached. I am satisfied that the parties intended to be bound by the settlement agreement and that Tingyu Ba and Qianqian Li signed the agreement, on 19 September 2018 and 20 September 2020 respectively.

[11] The settlement agreement expressly provided that the proceedings commenced by Tingyu Ba would be withdrawn upon signing. Clause 3 of the settlement agreement provides that Qianqian Li was to make payment of \$20,000 in terms of s 123(1)(c)(i) of the Act. The payments were to be made by instalments at the rate of \$200 per week. The settlement agreement was not expressed to be contingent on mediator sign off and Tingyu Ba accepted that a mediator did not sign the settlement in terms of s 149(1) of the Act.

[12] Tingyu Ba's evidence is that Qianqian Li made payments towards compliance with the settlement agreement which totalled \$8,200 by 6 January 2021. Five further payments were made between 18 May 2021 and 14 July 2021. Between 9 September 2021 and 11 January 2023, Qianqian Li made payments at the rate of \$50 per week. The outstanding sum said to be due is \$7,500. I am satisfied that the payments made in part performance of Qianqian Li's obligations under the settlement agreement reflect that he intended to be bound by it and that the settlement agreement was reached in resolution of the relevant employment relationship problem.

[13] Having not been signed by a mediator, the settlement agreement was not a settlement agreement for the purposes of s 149 of the Act. Section 137(1)(iii) of the Act provides that the Authority has power to order compliance in relation to terms of settlement that s 151 of the Act provides may be enforced by compliance order. Section 151, for relevant purposes, refers to agreed terms of settlement under s 149(3) of the Act, those being settlement agreements signed by a mediator. In the present case, I find

that a compliance order is not available in terms of s 137(1)(iii) of the Act and I make no compliance order for the purposes of that provision.

[14] Notwithstanding the above, I have determined that the settlement agreement is binding and enforceable. Qianqian Li is required to make payment of the outstanding sum on that basis. I decline to make any order for payment by instalment given that the entire sum due should have been paid some significant time ago. Further, attempts to have Qianqian Li make payment by instalment in the past have clearly been unsuccessful.

[15] Qianqian Li is ordered to make payment to Tingyu Ba, within 28 days of this determination, of \$7,500, that being the outstanding sum due under the settlement agreement.

[16] I have considered the submissions made as to the issue of penalty. I am not satisfied that an appropriate basis on which a penalty could, or should, be imposed upon Qianqian Li at this point in time in terms of s 133 of the Act. Having regard to the Authority's determination of the issues before it, including that there is an enforceable settlement agreement and that an order should be made requiring payment of the outstanding sum due, it may be that penalties are available in the event of future non-compliance with the Authority's determination. I decline to impose any penalty at this time.

### **Costs**

[17] Tingyu Ba seeks a contribution towards the costs of representation she has incurred. The Authority has discretion to award costs, may order any party to pay costs and expenses as it thinks reasonable, and may apportion such costs and expenses between the parties as it thinks fit.<sup>1</sup>

[18] The principles as to the exercise of that discretion are well known, including that costs will generally follow the event, that awards will be modest, that Calderbank offers may be taken into account, and that costs are not to be used as a punishment or as an expression of disapproval of the unsuccessful party's conduct.<sup>2</sup> The daily tariff is

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<sup>1</sup> Employment Relations Act 2000, Schedule 2, clause 15.

<sup>2</sup> *PBO Limited (formerly Rush Security Limited) v Da Cruz* [2005] ERNZ 808 at [44] to [46].

usually taken as a starting point,<sup>3</sup> although not used in a rigid manner, with principled adjustments made having regard to the particular characteristics of a case.

[19] Tingyu Ba has been successful in pursuing her claims and it is appropriate that costs follow the event. I am satisfied that Tingyu Ba has incurred costs in excess of the appropriate starting point of the daily tariff. This matter involved an investigation meeting of no more than a half day.

[20] I consider a costs award in the amount of \$2,250 is appropriate, that representing a half day investigation meeting at the tariff rate.

### **Summary of orders**

[21] Qianqian Li (known as Daniel Lee) is ordered to make payment to Tingyu Ba, within 28 days of this determination, of:

- (a) \$7,500, that being the outstanding sum due under the settlement agreement;
- and
- (b) \$2,250 as a contribution towards her costs in successfully pursuing her claims.

Rowan Anderson  
Member of the Employment Relations Authority

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<sup>3</sup> Employment Relations Authority Practice Direction, August 2023, <https://www.era.govt.nz/assets/Uploads/practice-direction-of-era.pdf>