

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Weiming Dong (Applicant)  
**AND** New Zealand Store Limited (Respondent)  
**REPRESENTATIVES** Applicant in person  
Maurice Coughlin for Respondent  
**MEMBER OF AUTHORITY** Alastair Dumbleton  
**INVESTIGATION MEETING** 11 May 2005  
**DATE OF DETERMINATION** 9 September 2005

**DETERMINATION OF THE AUTHORITY**

[1] The applicant Mr Weiming Dong was employed by the respondent New Zealand Store Limited from July 2003 until October 2004. Mr Weiming Dong's employment relationship problem arose out of the termination of his employment which occurred on or about 17 October 2004 a few days after a minor altercation had taken place between him and Mr Saty Tri. With his wife Mr Tri runs the respondents business, selling fruit, vegetables and groceries to the public.

[2] Mr Weiming Dong had become discontented with the way he was receiving his instructions, which he had been used to receiving from Mrs Tri. On 10 October 2004 in the morning he was questioned by Mr Tri about work remaining uncompleted from the previous day. Mr Weiming Dong explained that was because Mrs Tri had asked him to do other work. A loud exchange took place between the two men, with customers nearby. Mr Tri said he stood in front of the office door and asked Mr Weiming Dong to stay until he could get Mrs Tri involved in discussing the matter. There was briefly some pushing and shoving between Mr Tri and Mr Weiming Dong. He claims Mr Tri blocked his path and he had only been trying to get past. Mr Tri claims Mr Weiming Dong pushed first and he had pushed back to protect himself.

[3] The pair then took themselves off to see Mrs Tri who seems to have restored order. She spoke to Mr Weiming Dong later in the day about the need for him to follow the instructions of his employer. Next day he did not attend work as it was his day off, but he returned and worked on 12 and 13 October. After this he obtained a medical certificate putting him off work for a few days.

[4] On 17 October Mr Weiming Dong visited Mrs Tri. He told her he could not return to work and he asked her to pay him \$9,800. This sum he told the Authority was equivalent to the wages he would otherwise have earned over the benefit stand-down period of 13 weeks. Mrs Tri declined to meet his request but paid final wages and holiday pay due to him. She felt intimidated by his request and spoke to the Police about it.

[5] During the investigation meeting the Mr and Mrs Tri invited Mr Weiming Dong to return to work for them, on condition that he would follow instructions given to him and work harder. Mr Weiming Dong declined the offer as he feels he is now in better employment elsewhere.

[6] I am satisfied from the evidence that the pushing and shoving between Mr Weiming Dong and Mr Tri was not instigated by the latter. I find that it was Mr Weiming Dong who was the aggressor and that his physical action was unprovoked. His own description of the disagreement was an argument over a “small matter” of having two different bosses giving him contradictory instructions.

[7] Mr Tri is not physically big and he is elderly, unlike Mr Weiming Dong who is a much younger man. A customer, Ms Hannigan, who witnessed the altercation told the Authority that it was Mr Weiming Dong who began raising his voice and pushing Mr Tri. Jean-Pierre, the Tris' son-in-law, tended to corroborate that evidence with his eye-witness account.

[8] I find that whatever the origins of Mr Weiming Dong's dissatisfaction with the chain of command in his job, he was not justified in acting as he had done during the 10 October altercation. I find that he was not dismissed, either actually, constructively or by any other means, but chose to end the employment himself. His personal dislike for Mr Tri is not by itself enough to found a successful claim against his employer.

[9] Mr and Mrs Tri have employed six or seven people at a time in their business for several years and there is no evidence that they generally treat employees badly, as Mr Weiming Dong would have the Authority believe.

[10] The employment relationship problem is one that Mr Weiming Dong created and its resolution does not require the Authority to find any blame on the part of the employer or make any orders against it.

[11] There will be an order against Mr Weiming Dong for costs. He is to pay \$1,350 to New Zealand Store Limited, pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000.