

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2019] NZERA 423
3059572

BETWEEN YANQIU HUANG
 Applicant

AND SHINETON TRADING
 LIMITED
 Respondent

Member of Authority: Anna Fitzgibbon

Representatives: Ms Esprit Hong, counsel for the Applicant
 No appearance by, or for, the Respondent

Investigation Meeting: On the papers

Date of Determination: 17 July 2019

DETERMINATION OF THE AUTHORITY

- A. Ms Yanqiu Huang was unjustifiably constructively dismissed by Shineton Trading Limited (Shineton)**
- B. Shineton owes Ms Huang the sum of \$6128.47 gross in unpaid wages**
- C. Shineton owes Ms Huang the sum of \$1222.48 gross in unpaid holiday pay**
- D. Within 14 days of the date of this determination, Shineton is to pay Ms Huang the following sums:**
- (a) Compensation of \$7,500 pursuant to s 123(1)(c)(i) of the Employment Relations Act 2000 (the Act) in respect of her unjustified dismissal**
 - (b) Wage arrears in the sum of \$6128.47 gross**
 - (c) Unpaid holiday pay in the sum of \$1222.48 gross**
 - (d) Costs in the sum of \$2000 together with the filing fee of \$71.56.**

Non-appearance of respondent

[1] Shineton Trading Limited (Shineton) failed to file a statement in reply to the applicant, Ms Huang's, statement of problem.

[2] The statement of problem was personally served at Shineton's registered office. No response has been received.

[3] A case management conference was held on 20 June 2019. The Authority directed the applicant to file an affidavit attaching relevant documents in respect of her employment relationship problem and to arrange for it to be served on Shineton personally. A telephone conference was directed to be held on 15 July 2019 at 2pm, so that the Authority member could ask any questions of the applicant in respect of her affidavit.

[4] The applicant's affidavit together with notification of the date of the telephone conference were served at Shineton's registered office on 2 July 2019. An affidavit of service dated 5 July 2019 was filed in the Authority.

[5] The date of the telephone conference was adjourned until 2pm on 16 July 2019. Notification of the change in the date of the telephone conference was served on Shineton at its registered office on 13 July 2019. The notification was handed to Ms Kelly Yin, sole shareholder of Shineton. An affidavit of service was filed in the Authority on 16 July 2019. There was no response by Shineton, nor was any contact made with the Authority or participation in the telephone conference.

[6] There has been no engagement by Shineton in the Authority's process. I am satisfied that Shineton was aware of Ms Huang's employment relationship problem.

Authority's investigation

[7] Ms Huang and another employee, Ms Xiujuan Si, both filed affidavits and answered the Authority's questions. Mr Jin Park, Counsel and Mr Gavin Van Herwaarde, process server each filed witness statements in relation to the service of documents on Shineton. Each witness affirmed that their evidence was true and correct.

[8] The Authority was assisted by an interpreter of the Mandarin language.

[9] As permitted under s174 of the Act, this determination does not set out all the evidence and submissions received. The determination states findings of fact and law, and makes conclusions on issues necessary to dispose of the matter.

Employment relationship problem

[10] Mr Shuang Qin is the sole director of Shineton. Ms Kelly Yin is the sole shareholder. Shineton owned and operated the Knight Bridge Café in Mt Wellington until its closure in April 2019.

Employment by Shineton

[11] Ms Huang was employed by Shineton on 30 July 2018, as a barista in the café. She was not provided with an employment agreement by Shineton, and was not provided with payslips during her employment, despite making regular requests.

[12] Ms Huang says she entered into an arrangement with Mr Qin that she would work for 40 hours a week at the minimum wage. After just three weeks of employment, Ms Huang says Shineton stopped paying her wages in full. She says she received sums of cash from time to time and payments into her bank account from Shineton but these amounts fell short of what she was entitled to for the work being undertaken by her.

Unpaid wages and holiday pay

[13] Ms Huang kept a record of her hours worked, which she has provided to the Authority, along with her Inland Revenue Department (IRD) records and her calculation of unpaid wages. Ms Huang says after deducting payments made to her by Shineton for wages, she is still owed unpaid wages of approximately \$6128.47 gross. Ms Huang seeks an order for payment of this amount together with outstanding holiday pay.

[14] In the absence of contrary evidence, I accept that Shineton failed to pay Ms Huang wages due to her. I order Shineton to pay Ms Huang unpaid wages in the sum of \$6128.47 gross within 14 days of the date of this determination.

[15] Ms Huang was not paid holiday pay during or following the termination of her employment. After hearing Ms Huang's evidence and viewing her IRD records and calculations it appears Ms Huang is entitled to holiday pay of \$1222.48 gross. I order

Shinerton to pay Ms Huang holiday pay in the sum of \$1222.48 gross within 14 days of the date of this determination.

Constructive dismissal

[16] Ms Huang says she became distressed by Shinerton's failure to pay the wages due to her. She made numerous requests for payment but her requests were ignored. Ms Huang says she was finding it difficult to buy food and pay for rent.

[17] Ms Huang provided the Authority with copies of her WeChat messages to Mr Qin. There are numerous messages from Ms Huang which were increasing in urgency. She was still not paid wages due to her.

[18] Ms Huang says that by December 2018 the situation had become intolerable and she resigned. She says she was forced to resign by the actions of Shinerton in failing to pay her wages which by that time amounted to a considerable sum. Ms Huang says she was very upset by her treatment and felt she had no choice but to resign.

[19] Ms Huang says that she was contacted by Ms Kelly Yin in March 2019 asking for her help with the café. Ms Yin promised if Ms Huang returned she would be paid the outstanding wages.

[20] I consider the prolonged action by Shinerton in refusing to pay Ms Huang forced her to resign. I consider the resignation amounted to a constructive dismissal which was unjustified.

[21] Ms Huang spoke of her distress and financial hardship. Ms Huang seeks compensation in the sum of \$7,500 for the humiliation, loss of dignity and injury to her feelings. I believe this is an appropriate compensatory amount.

[22] I order Shinerton to pay Ms Huang the sum of \$7,500 compensation within 14 days of the date of this determination.

Costs

[23] I order Shinerton to pay Ms Huang costs in the sum of \$2000 plus the filing fee of \$71.56. These sums are to be paid within 14 days of the date of this determination

Certificate of determination

[24] I direct that pursuant to Regulation 26 of the Employment Relations Authority Regulations 2000, Ms Huang be provided with a certificate of determination, sealed with the seal of the Authority, recording respectively that Shineton Trading Limited is ordered within 14 days of this determination to pay Ms Huang the sums of:

- \$7500 in compensation under the Act
- \$6128.47 gross in unpaid wages
- \$1222.48 gross in unpaid holiday pay
- \$2000 in costs together with the sum of \$71.56 being the filing fee.

Anna Fitzgibbon
Member of the Employment Relations Authority