

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**[2016] NZERA Auckland 347  
5624493**

BETWEEN

A LABOUR INSPECTOR  
Applicant

AND

VESTA INTERNATIONAL  
LIMITED  
Respondent

Member of Authority: Eleanor Robinson

Determination: 13 October 2016

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**CONSENT DETERMINATION OF THE AUTHORITY**

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[1] Prior to an investigation meeting taking place, the parties successfully resolved their problem and have requested the Authority make consent orders in respect of their agreement, as set out in a record of settlement signed by the parties. A copy of the record of settlement is attached to this determination.

[2] By consent and by this determination, the terms set out in the record of settlement are made the order of the Authority to resolve this matter. These terms are full, final and binding in respect of all employment related matters between the parties.

**Eleanor Robinson  
Member of the Employment Relations Authority**

## TERMS OF SETTLEMENT

[2016] NZERA Auckland 347  
5624493

APPLICANT	A LABOUR INSPECTOR
RESPONDENT	VESTA INTERNATIONAL LIMITED

### Agreed Terms of Settlement:

1. Vesta International Limited will pay a penalty for the breach of section 12A of the Wages Protection Act 1983 claimed by the Applicant against the Respondent in the sum of \$6,000.00.
2. Vesta International Limited will pay the sum of \$6,000.00 into the Crown Bank Account within 14 days of the date of this determination.
3. The parties have agreed to let costs lie where they fall.

**MAY IT PLEASE THE AUTHORITY:**

1. To determine this matter, orders by consent on the terms set out below are sought from the Authority by the applicant and the respondent parties.
2. The matter before the Authority is a claim commenced by a Labour Inspector to recover a penalty for a breach of section 12A of the Wages Protection Act 1983 ('WPA').
3. As set out in the Statement of Problem lodged by the applicant, at the relevant times the Respondent operated a "Coffee Club" café based in Parnell, Auckland. The sole director of the Respondent is Yingting (Veronica) Hou. In June 2015, during a discussion between the café's Head Chef/supervisor, Mr Shijie (Jason) Lu and Ms Xiaoran Gao, a Chinese national who held a work visa in New Zealand, it was agreed that in return for a payment, the Respondent would support Ms Gao's application for permanent residence in New Zealand.
4. In June 2015, pursuant to this agreement, family members of Ms Gao made two payments totalling \$16,900.00 into Mr Lu's personal bank account. The Respondent now acknowledges that at least some of that amount was used to pay rent owed by the Respondent for the café premises.
5. On 2 June 2016 Ms Gao signed an employment agreement and began working at the Respondent's café. On 30 July 2015 she applied for a Graduate Work Experience Visa, which was approved on 6 August 2015. Prior to making an application for residence, Ms Gao terminated in employment.
6. Ms Hou states that at some time later, she became aware that the payments totalling \$16,900.00 had been made.
7. On 24 February 2016 the director of the respondent, Ms Hou, supplied a bank cheque made out to Ms Gao for \$16,900.00 to the Labour Inspector, to repay the amount paid. On the same date, she provided a letter of apology (annexure "O" to Statement of Problem) expressing her and Mr Lu's remorse and regret for the mistake they had made.
8. The Respondent says it no longer operates the café business.
9. The Respondent acknowledges that a breach of section 12A of the WPA has occurred. The parties have now agreed to seek from the Authority a consent order to resolve the application for penalties and avoid the need for an investigation meeting.

**Orders**

10. The orders now sought by way of a determination are;

- (i) As a penalty for the breach of section 12A of the WPA claimed by the applicant against Vesta International Limited, the respondent shall pay \$6,000 In total to the Authority for payment into the Crown Bank Account.
- (ii) Payment of the \$6,000 shall be made by the respondent within 14 days of the consent order sought from the Authority being made.

11. The parties have agreed to let costs lie where they fall.

12. Counsel consider that in the circumstances of this case public interest factors are properly addressed by the Authority issuing the consent determination sought.

13. In this regard relevant factors include, that the respondent now admits its liability to pay a penalty for the breach and, in the view of counsel, the amount of penalties the parties have agreed upon are in or near those that the Authority is likely to have imposed for the breach claimed by the applicant in all the circumstances. The parties in their discussions have been assisted by determinations of the Authority in other cases where penalties have been ordered for breaches of section 12A WPA, and the Employment Court's decision in *Tan v Yang & Zhang* [2014] NZEmpC 65, [2014] ERNZ 733.

14. If requested counsel will attend upon the Authority to address any matters arising.

Dated: 13 October 2016



Sarah Blick

Counsel for applicant



Mark Ryan

Counsel for respondent