

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2023] NZERA 746
3230999

BETWEEN BRONSON ALEXANDER ANTONY
 LEE
 Applicant

AND GARY CHEN ELECTRICAL LIMITED
 Respondent

Member of Authority: Helen Doyle

Representatives: Nathanael Wain, Advocate for the Applicant
 No appearance for the Respondent

Investigation Meeting: 7 December 2023 in Christchurch

Submissions Received: On the day from the Applicant

Determination: 13 December 2023

DETERMINATION OF THE AUTHORITY

Identity of the Employer

[1] Bronson Lee named Gary Chen as his employer in his statement of problem. There was no written employment agreement. The respondent was then referred to as Gary Chen Electrical Limited in a notice of direction and notice of investigation meeting. Gary Chen Electrical Limited is a duly incorporated company having its registered office in Prebbleton a short distance from Christchurch. It carries on the business of an electrician.

[2] The sole director of Gary Chen Electrical Limited is not shown as Gary Chen on the company register. The first but not last name is different. Mr Lee clarified at an early stage during a case management conference with the Authority on 14 August 2023 that he knew the

director by the name Gary. I am satisfied that the director is known as Gary Chen in addition to the way he is described on the company register.

[3] There was no written employment agreement. Mr Lee's cousin in a conversation that took place before employment commenced recommended Mr Lee work for Mr Chen. Mr Lee said in his evidence that he understood from talking to his cousin that Mr Chen worked by himself but operated a company. That knowledge was evident in some other ways.

[4] Mr Lee wrote an email in December 2022 setting out in more detail the reasons for his resignation after the relationship ended and it was sent to "Gary Chen Electrical." In February 2023 after the relationship ended Mr Lee made a Labour Standards complaint about Gary Chen Electrical and not Mr Chen in his personal capacity.

[5] Mr Lee's bank statements show payment of salary by "Gary Chen Electrical" although the word Limited did not appear. The registered office and address for service of Gary Chen Electrical Limited is Mr Chen's home and his address as a director as shown on the company register. Often that was the base from which Mr Lee and Mr Chen would depart to undertake work.

[6] I am satisfied when the evidence is considered overall that the correct identity of Mr Lee's employer is Gary Chen Electrical Limited referred to from hereon as Gary Chen Electrical.

Employment Relationship Problem

[7] Mr Lee worked for Gary Chen Electrical as an apprentice electrician between 29 August and 29 November 2022 when his employment ended.

[8] Mr Lee says that he resigned from his employment and that the resignation was in the nature of a constructive dismissal and it was unjustified.

[9] Mr Lee seeks remedies of lost wages and compensation for humiliation, loss of dignity and injury to feelings. He seeks reimbursement of 69 hours of unpaid wages together with holiday pay. Mr Lee seeks a penalty for the failure to provide an employment agreement and that the penalty or a portion thereof be paid to him.

[10] Gary Chen Electrical did not lodge a statement in reply, attend a case management conference or otherwise participate in the Authority process. The Authority delayed the start of the investigation meeting for a short time to await an appearance on behalf of Gary Chen Electrical. An Authority Officer tried unsuccessfully shortly before the investigation meeting commenced to contact Mr Chen by telephone at a number that the Authority had been provided with by Mr Lee. Other telephone calls to that number had also gone unanswered.

[11] In the absence of good cause being advanced for the failure by Gary Chen Electrical to attend or be represented the Authority proceeded to hear evidence from Mr Lee.¹

The Authority's investigation

[12] The parties have not attended mediation.

[13] Gary Chen Electrical did not participate in the Authority process but I am satisfied that the company was served at its registered office and address for service with the statement of problem, case management conference notice, notice of direction dated 14 August 2023, notice of investigation meeting and Mr Lee's statement of evidence. The report generated by NZ Post for proof of delivery shows Mr Chen signed for the notice of direction, notice of investigation meeting and the case management conference notice and the statement of problem were delivered and signed for by a person other than Mr Chen.

[14] Gary Chen Electrical had been directed in the notice of direction to lodge and serve statements of evidence by 10 November 2023. There was no compliance with that direction or appearance on behalf of the company.

[15] The Authority heard sworn evidence from Mr Lee. Mr Wain made closing submissions. As there was no appearance on behalf of Gary Chen Electrical Mr Lee's evidence was unchallenged.

[16] This determination has stated findings of fact and law and conclusions on issues necessary to dispose of the matter. Orders made have been set out. The determination has not

¹ Clause 12 of the second schedule to the Employment Relations Act 2000.

recorded all evidence and information received as permitted by s 174E of the Employment Relations Act 2000 (the Act).

The issues

[17] The statement of problem referred to alleged breaches as unjustified actions causing disadvantage. There is an issue whether these were raised within the statutory timeframe and could be considered as standalone grievances. Mr Wain confirmed that unjustified action grievances were not to be pursued as standalone grievances but were background to the alleged constructive dismissal. A personal grievance was raised for an alleged constructive dismissal on 17 February 2023 within the statutory timeframe.

[18] The issues for the Authority to determine are as follows are:

- (a) What were the reasons for Mr Lee's resignation?
- (b) Was the resignation caused by a breach of duty to Mr Lee?
- (c) If there was a breach of duty was it of a serious nature that would mean it was reasonably foreseeable that Mr Lee would not be prepared to continue to work?
- (d) If there was a constructive dismissal was it justified?
- (e) If an unjustified constructive dismissal is established what remedies is Mr Lee entitled to and are there issues of mitigation or contribution?
- (f) Is there money owing for unpaid wages and holiday pay?
- (g) Was a penalty claim commenced within the statutory timeframe and, if so, should a penalty be awarded?
- (h) Should either party contribute to the costs of representation of the other party?

The legal framework for a constructive dismissal

[19] Mr Lee says that his resignation was caused by breaches of duty. That is the third of the three non-exhaustive categories of constructive dismissal referred to by the Court of Appeal in *Auckland Etc Shop Employees Etc IUOW v Woolworths (NZ) Limited*.²

[20] The Court of Appeal in *Auckland Electric Power Board v Auckland Provincial District Local Authorities Officers IUOW Inc* stated the correct approach to be taken in constructive dismissal cases where breaches are alleged.³ The Authority should firstly conclude whether the resignation has been caused by a breach of duty on the part of the employer. In determining that matter, all of the circumstances of the resignation have to be examined, not simply the communication of the resignation. The Authority needs to assess whether the breach of duty, if one is found, by the employer was of sufficient seriousness to make resignation reasonably foreseeable.

[21] Mr Lee has the burden of establishing that the resignation was actually a dismissal.

What were the reasons for Mr Lee's resignation?

[22] Mr Lee resigned on 29 November 2022. Whilst he advised Mr Chen that he would be resigning he was vague about his reasons for doing so because he was worried about how Mr Chen would react.

[23] Mr Lee sent an email to Mr Chen in December 2022 after the relationship ended expanding on the reasons for the resignation. Mr Lee advised that the reasons he resigned was that he had not been provided with an employment agreement despite requesting one. Further that during the time of his employment he had been accused of theft and dishonesty and he would never steal. He also wrote that he had been called an inappropriate racist name and there had been racist remarks. Mr Lee referred to these matters as being his primary reasons for his resignation in the email. He also referred to an absence of health and safety measures in the workplace resulting in injuries. Mr Lee set out in his email that he had had a black eye from a

² *Auckland Etc Shop Employees Etc IUOW v Woolworths (NZ) Limited* [1985] 2 NZLR 372 (CA) at 374-375.

³ *Auckland Electric Power Board v Auckland Provincial District Local Authorities Officers IUOW Inc* [1994] 1 ERNZ 168 (CA) at 419.

drill spinning back at him on 28 November 2022 that could have been avoided if he had the correct safety equipment.

[24] The three aspects referred to above were the main reasons for Mr Lee's resignation. Inextricably linked with these was the evidence that Mr Lee had become fearful and anxious around Mr Chen impacting communication with him. Mr Lee's fear and anxiety during the employment relationship about how Mr Chen would react to what he said and the unpredictability of that is part of the reason for the resignation.

Was the resignation caused by a breach of duty to Mr Lee?

Employment agreement

[25] Mr Lee was not provided with an employment agreement when he commenced employment on 29 August 2022. He asked Mr Chen when he would receive his written employment agreement. A text message dated 5 September 2022 from Mr Chen to Mr Lee states amongst other matters that Mr Chen was going to sort out (Mr Lee's) contract. Mr Lee also sent a text message to Mr Chen on 2 October 2022 asking if the contract had been completed, but no reply was received.

[26] The failure to have a written employment agreement impacted Mr Lee. He did not know what his hours of work were and sometimes the hours he worked were irregular and he felt unreasonable. He did know that he would be paid minimum wage which was \$21.20 at that time. It was unclear to him if he had been paid for overtime as verbally agreed. Mr Lee raised concerns about the hours he was working and Mr Chen made an offensive racial stereotype comment. Mr Chen was unsympathetic when Mr Lee raised family reasons as to why he needed some regularity of hours.

[27] When Mr Lee commenced his apprenticeship with Mr Chen he expected to be signed up to "Skills" and there was discussion about shared payment of the apprenticeship fees. The signing up was, as Mr Lee understood it, a necessary step to progress in the apprenticeship. As it transpired Mr Lee was never signed up and his work when completed to the requisite standard

was never signed off by Mr Chen. Mr Lee was employed as an apprentice electrician and an employment agreement could have dealt with those aspects.

[28] Another concern of Mr Lee's was that he did not have a description of what his role as an electrical apprentice entailed. Mr Lee said there were numerous occasions when Mr Chen was not ready to leave in the morning, even though they had agreed on a time to start work. Mr Lee on arriving at Mr Chen's house would need to call him numerous times until he woke up. If Mr Chen was not ready by the time Mr Lee arrived at the house, Mr Lee was asked to do chores around the house such as vacuuming, hanging out washing, collecting the mail and putting the rubbish bins out in order to get paid. Mr Lee said he did not think this was part of the job description but didn't complain because he said he didn't know any better. Sometimes Mr Chen would call or text Mr Lee when Mr Lee was on his way to work to say come back later. Mr Lee would have to turn around and go back from an area on the outskirts of the central city to the central city where he lived.

[29] It is a statutory requirement to provide a written employment agreement. The failure to do so was a breach of that requirement. Mr Chen had also said that he would provide an employment agreement and failed to do so and that was a breach of duty.

Breakdown in communication, health and safety issues and accusations

[30] After an initial period of about three weeks the employment relationship became problematic. Mr Lee found Mr Chen became angry if he asked him about different ways or techniques in doing things and reassurance that what he was doing was correct. He recalled in early October 2022 Mr Chen said about this "it fucks me right off". Mr Lee got the impression that Mr Chen thought Mr Lee was doubting his experience by raising such matters. Mr Lee became fearful of Mr Chen's reactions. He would not respond and put his side of things when Mr Chen made comments to him about working too slow or forgetting tasks he had been given because he knew Mr Chen would be angry. Mr Lee recalled that Mr Chen told him in October to get his "fucking ears cleaned out" when Mr Lee was struggling to hear him from a roof top on a windy day. Towards the end of the employment in November 2022 Mr Lee was having some difficulty understanding what Mr Chen was saying about measurement for capping up the wall from a socket outlet to a switchboard. He asked Mr Chen to repeat himself and was unable

to understand what he said and had to ask a third time. Mr Chen responded that he did not want to talk to Mr Lee like he was a “retard.”

[31] Mr Lee said that the only health and safety equipment that he was provided with whilst he was employed with Gary Chen Electrical was ear muffs and work boots. He became concerned about the attitude Mr Chen had towards health and safety matters. Mr Lee said he was often required to go into the roof space to run cable and do other work, but was not provided with a face mask, gloves, or eye protection. He recalled at one specific job that Mr Chen did ask if he wanted a face mask or longs but then said that Mr Lee didn’t really need them. Mr Lee said that he was concerned that Mr Chen may get upset if he disagreed with him.

[32] When Mr Chen noticed that Mr Lee was coughing frequently after coming from the roof space he did not offer a face mask and said it was “good for him [Mr Lee]”. Mr Lee thought that was normal despite having to blow his nose from the dust and other particles. Mr Lee also suffered from the skin condition eczema and the insulation in the pink batts in the roof space irritated this. Mr Chen would tell him that it was “good for him and that he would get used to it”.

[33] On 7 November 2022 Mr Lee left for a holiday to America and while on holiday he received a message from Mr Chen on Snapchat around 10 November 2022. It contained the conversation between him and Mr Lee’s cousin. The Snapchat contained the following message: “Jay ... reckons I should sack you, but I won’t. Sorry for being so hard on you bro.”

[34] Mr Lee said that he was upset by this message as he could see that it appeared there had been talk about him behind his back.

[35] He returned to work on 18 November 2022 and worked that day and five further days before resigning.

[36] Mr Lee was said in November he attended a job where concrete was being cut and the only safety equipment available was earmuffs and work boots. Mr Lee said he was worried about the dust particles but didn’t speak up because he didn’t want Mr Chen to think he couldn’t

handle it or that Mr Chen would consider Mr Lee was doubting him. Mr Lee explained that he felt belittled quite often as he undertook his employment.

[37] There was an incident in November when Mr Lee was drilling holes into beams in a ceiling and the drill was not going through one of the beams. Mr Chen told Mr Lee to push harder and he did and put all of his weight into it. The drill bit got stuck and the drill swung back at Mr Lee resulting in a black eye. Mr Lee said that there was a lack of safety equipment and training about how to use the drill safely but he was worried about getting yelled at so did not raise his concerns.

[38] On another occasion in November, Mr Lee was asked to cut a padlock off with a grinder and he hesitated as he had not done this before. Mr Lee did not, however, want to disagree with Mr Chen and say it was unsafe so he continued to cut the padlock. He noticed that the safety guard wasn't attached to the grinder and he had not been provided with safety glasses, hearing protection, gloves or face mask protection. Whilst cutting the padlock off, Mr Lee said there were sparks flying and he was worried they would hit him so he squinted his eyes to avoid sparks or pieces of metal. Later in the day after he had cut the padlock off, he built up courage to ask Mr Chen why the safety guard was not attached and Mr Chen told him that he didn't need it and that it's "for pussies."

[39] Mr Lee recalls that around October 2022 the first accusation about theft was made. This concerned some pilot drill bits going missing from the work van. Mr Lee told Mr Chen he wasn't sure where they were but they should be where they left them on the bottom shelf of the van in containers. Mr Lee said that Mr Chen told him "I hope you're not stealing from me," and "some apprentices steal material from their companies and re-sell them for money." Mr Lee said that he had never stolen anything and felt hurt from being accused of this. After this Mr Lee felt that Mr Chen didn't trust him with anything he would do or say and he didn't feel comfortable even taking materials out of Mr Chen's garage to load the van in case he was blamed.

[40] Mr Lee recalled being accused of being on his phone at work numerous times. Mr Lee said he was never on his phone but trying his hardest to get the job done. Mr Lee recalls

Mr Chen being annoyed with the speed that he would work at and he would tell him to stop “milking it”.

[41] On the last day of employment on 29 November 2022 Mr Lee and Mr Chen were in the work van travelling to their first job for the day. Mr Lee was driving and Mr Chen told him that material was going missing from the garage at his house. Mr Lee suggested that a camera be installed in his garage to see if anyone was taking material from his garage. Mr Lee said that this advice was ignored and Mr Chen told him that he saw Mr Lee on his door bell ring camera going into the garage and back to his car, then back to the van. Mr Lee said he tried to say that he had some screws from the previous week that he was returning to the van, which he had forgot to bring with him when he was getting the van ready for the day. That required him to go back to his car to retrieve and return the material. Mr Lee said it was obvious that Mr Chen didn't believe him so he asked him “Do you think I'm stealing from you” and Mr Chen replied “yes”. Mr Lee said that he was hurt that Mr Chen would believe that he was stealing from him. He said that when they arrived at the job and were unloading the tools and material Mr Chen came around to the side of the van and he “vividly remembered” Mr Chen making an offensive racist stereotype comment. Mr Lee said that Mr Chen was very aggressive when he made that comment and he did not want to respond to Mr Chen because he was afraid of what the reaction would be.

[42] Later that morning at another job, Mr Lee decided he wanted to resign immediately, and did so.

[43] Gary Chen Electrical had a duty to deal with Mr Lee in good faith and be active and constructive in maintaining a productive employment relationship. There is also an implied duty that Gary Chen Electrical will not without proper cause behave in a manner that is likely to seriously damage or destroy the trust and confidence between it and Mr Lee. Mr Lee was a young employee who as an apprentice needed to be able to ask questions to learn in a safe and supportive environment. Instead he was too anxious about communicating with Mr Chen because of a fear about how he would react. A level of perfection is not expected from either party but the conduct Mr Lee gave evidence about demonstrated a significant departure from

good faith behaviour on the part of his employer. If Mr Chen considered there were performance issues then these should have been dealt with in a fair and reasonable way.

[44] I conclude there was a failure by Gary Chen Electrical to be active and constructive in maintaining the employment relationship with Mr Lee. This is evidenced by angry responses to Mr Lee that deterred him from communicating and responding, the snapchat which was undermining, the offensive racial stereotype comments and the accusations of theft on two occasions without foundation and with no ability for proper response from Mr Lee. These failures breached the duty of good faith and the implied duty that supplements good faith not to seriously damage and destroy the trust and confidence inherent in an employment relationship. The breaches were causative of the resignation.

[45] There were also obligations for Gary Chen Electrical to take reasonable and practicable steps to provide Mr Lee with safe working conditions. Whilst some protective equipment was provided it was not sufficient for all of the work undertaken. Mr Lee said for example there were no safety glasses provided and there were none in the van. He said there was inadequate training on the different types of equipment and if he had been properly trained and had proper equipment the black eye injury could have been prevented. Mr Lee also had obligations to keep himself safe but he was too anxious to raise issues and concerns. When he did raise issues with the chainsaw safety guard Mr Chen demonstrated a rather cavalier attitude to safety. There was a breach of the duty to take all reasonable and practicable steps to provide Mr Lee with safe working conditions and that breach was causative of the resignation.

Were the breaches of a serious nature so that it was reasonably foreseeable that Mr Lee would not be prepared to continue to work for Gary Chen Electrical?

[46] The breach in respect of the failure to provide a written employment agreement viewed individually was not as serious as the other breaches. The breaches of good faith, behaving in a manner causing serious damage to trust and confidence and failing to provide a safe working place were serious and a resignation was reasonably foreseeable if not inevitable. The Snapchat

message sent to Mr Lee indicated some awareness on the part of Mr Chen about how he had treated Mr Lee.

[47] Mr Lee has made out his claim of constructive dismissal.

Was the constructive dismissal justified?

[48] Applying the test of justification in s 103A of the Act on an objective basis the employer's conduct at or about the time of the dismissal is not how a fair and reasonable employer could have acted in all the circumstances.

[49] Mr Lee's constructive dismissal was unjustified. He has made out his personal grievance and is entitled to an assessment of remedies.

Remedies

Lost wages

[50] Mr Lee seeks reimbursement of lost remuneration as a result of the personal grievance under ss 123(b)(i) and 128 of the Act.

[51] The appropriate period within which to consider reimbursement is between 29 November 2022 and 28 February 2023 which is 13 weeks.

[52] I am satisfied that Mr Lee attempted to mitigate his loss and was successful in obtaining employment from 16 December 2022. His hours of work were less than those at Gary Chen Electrical.

[53] Mr Lee's gross earnings between 16 December and 28 February were \$4,317.03 as shown on his IR Inland Revenue (IR) summary of earnings.

[54] When Mr Lee worked for Gary Chen Electrical, he was initially paid cash for three weeks of about \$800 per week or \$2,400 in total. He then received according to his IR summary of earnings \$4,430.80 gross after moving to a pay roll system. I have relied on the IR figures. That will mean my figures are a little different to Mr Lee's. Mr Lee says that he was not paid at all for work in November 2022 and is owed 69 hours at \$21.20 per hour which is a gross sum

of \$1462.80 gross. Adding all of the gross figures together I arrive at \$8,293.60 gross being earning received or that should have been received from Gary Chen Electrical. Mr Lee was employed for 13 weeks but he took about two weeks unpaid leave so it is fair to average out over 11 weeks. On that basis average weekly pay was \$753.96 gross.

[55] Section 128(2) of the Act provides that the Authority must if satisfied that an employee has a personal grievance and has lost remuneration as a result order an employer pay to the employee the lesser of a sum equal to lost remuneration or to 3 months ordinary time remuneration.

[56] Three months average lost wages would be \$9,801.53 gross (13 x \$753.96 gross). Actual loss is \$9,801.53 less \$4,317.03 which is the sum of \$5,484.50 gross. Actual loss is the lesser of the two.

[57] Subject to any issues of contribution Mr Lee is entitled to reimbursement of lost wages in the sum of \$5,484.50 gross.

Compensation

[58] The work experience with Gary Chen Electrical had a negative impact on Mr Lee's mental and physical health. He lost motivation to become an electrician and after he resigned needed medical treatment for a flare up of his skin condition due to stress he had suffered. He undertook counselling sessions to deal with what he described as the trauma of the workplace.

[59] Mr Lee was particularly humiliated and his feelings were injured by the accusations of theft as he said he would never steal from anyone. He was also hurt by the way he was treated and the racially offensive comments. Mr Lee has re-evaluated his career path and no longer wants to be employed in the area in which he trained. He has experienced harm under each of the heads in s 123 (1)(c)(i). In final submissions Mr Wain on behalf of Mr Lee sought an award of \$15,000 under this head of claim. I consider that to be an appropriate award with regard to the harm and other awards of compensation.⁴

⁴ *Richora Group Limited v Cheng* [2018] NZEmpC 113.

Contribution

[60] The Authority is required under s 124 of the Act, where it determines an employee has a personal grievance to consider the extent to which the employee's actions contributed towards the situation that gave rise to the personal grievance. If the actions require, then the Authority can reduce remedies that would otherwise have been awarded.

[61] I do not conclude that Mr Lee contributed in a blameworthy manner to the circumstances that gave rise to the personal grievance. Accordingly, there is no reduction of the amounts set out above for reimbursement and compensation.

Unpaid wages and holiday pay

[62] I am satisfied from Mr Lee's bank accounts, IR earning summary and the wage record Mr Lee kept that his last payment was for work undertaken to the end of October 2022. He was not paid for work undertaken in November. Mr Lee kept a record of his days and hours worked on his phone. The evidence supported that no record was kept and/or made available by Gary Chen Electrical of hours worked.

[63] After the relationship ended Mr Lee sent text messages to Mr Chen seeking reimbursement of hours worked in November as well as payment for the Canterbury anniversary day which Mr Lee said Mr Chen agreed to pay him for although Mr Lee was on unpaid leave at the time. Mr Lee set out the day and hours he was seeking in messages to Mr Chen. Mr Chen initially said that he would sort payment out but then sent text messages saying Mr Lee owed him for roaming phone charges. Mr Lee did not accept that he had used the company phone he had been provided with in America although he had taken it with him. He asked Mr Chen to provide detail in case he did owe money but detail was never supplied.

[64] I accept the claim for unpaid wages for 69 hours. That is the sum of \$1,462.28 gross.

Holiday pay

[65] Mr Lee is entitled to holiday pay. Under s 23 of the Holidays Act 2003 where employment ends within 12 months Mr Lee is entitled to 8% of gross earnings less any amount

paid for annual holidays. Mr Lee confirmed to the Authority that he had not had any paid annual holidays in advance and that the trip to America was unpaid leave.

[66] Gross earnings were in the sum of \$8,293.60. Eight percent of gross earnings is \$663.48 gross. Mr Lee is entitled to that amount for holiday pay.

Penalty

[67] Although there were other breaches that could attract a penalty the only clear action for recovery of a penalty in the statement of problem was for the failure to provide an employment agreement. That action was commenced within 12 months.

[68] The Authority is considering one breach of a failure to provide an employment agreement. The maximum penalty against a company is \$20,000 and that is the starting point. The failure to provide an employment agreement is a serious breach and it is appropriate in this matter that the Authority impose a penalty.

[69] I have had regard to the matters I am required to in s 133A of the Act in determining an appropriate penalty.

[70] For reasons set out earlier the failure to provide an employment agreement had a serious impact on Mr Lee. He was unable to refer to it when issues of concern arose in the employment agreement. Mr Chen said that one would be provided initially however when Mr Lee followed that up there was no response. I conclude the breach was intentional and there are no mitigating factors.

[71] I also weigh that as a very young employee Mr Lee was vulnerable and the balance of power in the relationship sat squarely with Mr Chen.

[72] There is no relevant previous conduct for consideration. I am not aware of the financial situation of the company. I have considered other similar penalty awards in other cases. A fair penalty is the sum of \$3000.

[73] Mr Lee was impacted by the absence of an employment agreement and is to be paid the sum of \$2,250 of the penalty awarded with the balance payable to the Crown.

Costs

[74] Mr Wain said that he had an agreement for payment of costs in the sum of \$1,200. The meeting was half a day and I am satisfied that would be a fair award together with reimbursement of the filing fee.

Summary of orders

[75] Gary Chen Electrical Limited is ordered to pay to Bronson Alexander Antony Lee the following:

- (a) The sum of \$5,484.50 gross being reimbursement of lost wages under s 123 (1)(b)(i) of the Act.
- (b) The sum of \$15,000 without deduction being payment of compensation under s 123 (1)(c)(i) of the Act.
- (c) The sum of \$1,462.28 gross being reimbursement of unpaid wages.
- (d) The sum of \$663.48 gross being holiday pay.
- (e) Within 28 days of the date of this determination a penalty in the sum of \$3000 with \$2,250 payable to Bronson Alexander Antony Lee and the balance to the Crown.
- (f) The sum of \$1,200 for costs and \$71.56 being reimbursement of the filing fee.

Helen Doyle
Member of the Employment Relations Authority