

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 21/08
5106113

BETWEEN

HENG LI
Applicant

AND

ASTRAL MANAGEMENT
LIMITED T/A MARINA
CHINESE RESTAURANT
Respondent

Member of Authority: Philip Cheyne

Representatives: Bernie Chow, Advocate for Applicant
No appearance for Respondent

Determination: 3 March 2008

DETERMINATION OF THE AUTHORITY

[1] This is an application to reopen an investigation. The original determination was issued on 24 August 2006. The reopening application was lodged on 13 November 2007.

[2] I am satisfied from the file that this application has been properly served on the respondent company. At the same time, there was served on the respondent a notice explaining my preliminary view that the investigation should be reopened but providing the respondent with the opportunity to raise any objection. No response has been received, the time permitted having now elapsed. Accordingly and for the reasons expressed in the notice, the investigation is reopened.

[3] A significant part of the problem was that the employer's records were grossly deficient. In the original determination I found that there was good evidence from IRD that it had received \$13,139.33 from the respondent as PAYE tax deducted from the applicant. That figure was then used to reduce the applicant's arrears claim.

[4] This finding was a mistake on my part. The IRD documents record PAYE deductions of \$681.33 and \$3,791.96 in the years ending 31 March 2004 and 31 March 2005; a total of \$4,473.29, not \$13,139.33. The documents I refer to bear

an IRD date stamp of 28 August 2006. They report the same figures as the documents marked 23 March 2005 produced during the investigation meeting.

[5] Although more than a year went by before the applicant applied for a reopening and that delay has not been explained, it is in the interests of justice to reopen the investigation. This was a mistake by the Authority which should now be corrected with a minimum of trouble to the parties.

[6] The original finding was that Mr Li should have been paid \$28,387.00 gross during his employment. As above, the employer's PAYE deductions as established by the IRD documents account for \$4,473.29 leaving \$23,913.71 to be accounted for. There remains the earlier finding that \$10,300.00 was paid to Mr Li in cash or sent to China at Mr Li's request. That leaves a balance of \$13,613.71 owed to Mr Li as wages that the respondent cannot account for. Mr Li is entitled to judgment in the sum of \$13,613.71 (net) as arrears of wages. This figure replaces the finding expressed at paragraph [26] of the determination dated 24 August 2006.

[7] This reopening does not affect findings in the 24 August 2006 determination at paragraph [25] rejecting Mr Li's personal grievance, overtime and bonus claims or at paragraph [27] ordering the respondent to pay Mr Li \$2,272.60 (gross) for annual and statutory holidays.

Philip Cheyne
Member of the Employment Relations Authority