

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**[2018] NZERA Auckland 65
3011012**

BETWEEN SUO LI
Applicant

AND DONGLIN TRADING
LIMITED
Respondent

Member of Authority: Eleanor Robinson

Representatives: Applicant in person
Donglin Zhang, representing the Respondent

Investigation Meeting: 26 February 2018 at Auckland

Date of verbal determination: 26 February 2018

Date of written determination: 27 February 2018

WRITTEN RECORD OF ORAL DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Applicant, Mr Suo Li, claims that he was employed by the Respondent, Donglin Trading Limited (DTL), during the period 4 May to July 2015, and he is owed unpaid wages for that period.

[2] Ms Donglin Zhang, director and shareholder of DTL, denies that Mr Li was employed by DTL, or that he is owed any monies.

Issue

[3] The issue for determination is whether or not Mr Li is owed unpaid wages and PAYE by DTL.

Background Facts

[4] Mr Li was appointed as shareholder of C Horizon International Limited in February 2015, and became a director in May 2015. He is currently the sole director and shareholder of C Horizon International Limited which is a cleaning business.

[5] DTL installs CCTV, security and music systems at customer properties. Ms Zhang is currently the sole director and shareholder.

[6] Mr Li said he met Ms Zhang in May 2015, and because his cleaning duties left him free during the day, he had wanted to work for Ms Zhang to learn more technology and earn more money.

[7] As a result he said he entered into an employment relationship with DTL in accordance with which he would carry out duties including wiring and installing CCTV and security systems in customer properties.

[8] The agreed terms of employment were that he would be paid \$150.00 a day, and during the period 4 May to July 2015 he said he worked 40 days. He received one payment of \$150.00 in cash.

[9] He did not receive a written employment agreement, nor did he request one.

[10] From time to time Mr Li said he and Ms Zhang would use his car to visit customer properties, and Ms Zhang would give him money in cash towards the petrol.

[11] He did not complete timesheets or apart from some text messages, keep a record of the dates and times he worked for DTL. He did not pay any tax on the cash payment he said he received from DTL.

[12] Ms Zhang attended the investigation meeting by telephone. She said that she did not employ Mr Li, but she had agreed to teach him how to operate her business with a view to him setting up a similar business on his own account.

[13] Mr Li would accompany her to customers' houses where she showed him how to perform the installation work, and occasionally he would practise the tasks shown.

[14] Ms Zhang said DTL had a van which she allowed Mr Li to use for his and his brother's own business purposes. Ms Zhang said the only money she recalled paying Mr Li was an amount in respect of a full service on the DTL van for which he had personally paid.

[15] During June 2015 Mr Li and Ms Zhang had discussions concerning a transfer of DTL to C Horizon International Limited. A Business Transfer Agreement was drawn up and Mr Li said he paid DTL \$3,000.00 as a deposit, however this had not been returned to him when the transfer discussions were terminated before the agreement was executed.

[16] Ms Zhang said that Mr Li had paid \$3,000.00 to her for a car, and he retained the car after their relationship ended.

[17] Mr Li said he had not carried out any work for DTL after July 2015.

Determination

Is Mr Li owed unpaid wages by DTL?

[18] In an arrears of wages claim the onus is on the applicant to establish his claim to my satisfaction.

[19] Mr Li claims that he was employed by DTL, and that it was agreed he would be paid \$150.00 in cash per day. DTL denies that it employed Mr Li.

[20] There is no written employment agreement or offer letter.

[21] There are no timesheets and Mr Li was unable to provide any record of the hours he worked, or the work he carried out on the occasions he claimed to have worked for DTL.

[22] The IRD records indicate that C Horizon International Limited paid remuneration to Mr Li and remitted PAYE on his behalf during April to November

2015. There is no evidence in the IRD records or Mr Li's bank statements that he received any payment from DTL during the period May – July 2015.

[23] Whilst Ms Zhang's evidence was that Mr Li did some practise work on performing installation work, there is no evidence to establish whether this was performed as part of an employment relationship, or whether it was performed on some other basis, such as an independent contractor basis in which payment is made in return for services.

[24] Moreover the text messages indicate that Mr Li and Ms Zhang met at customer properties during May and June 2015, but are inconclusive in that they do not provide evidence of what work was completed, by whom, or the duration of such work. It is also clear from the text messages that there was no onus on Mr Li to attend, or a time requirement for him to do so.

[25] There is no record of how much was paid to Mr Li in cash by DTL, and Ms Zhang denies that any wages were paid to Mr Li, only a contribution towards the cost of a service on the van belonging to DTL.

[26] I observe that Mr Li had not requested a written employment agreement, and that whilst shareholder and director, he had received remuneration from, and PAYE had been paid on his behalf by, C Horizon International Limited.

[27] As a director and shareholder of a business in New Zealand receiving employment payments I find it unlikely that he would have no knowledge of the minimum legal requirements in respect of employees, including the statutory requirement regarding the provision of employment agreements.

[28] On the basis of the evidence, I find that Mr Li has failed to establish his claim.

[29] Accordingly there is no basis on which I can award him monies in respect of non-payment of wages and PAYE by DTL.

Costs

[30] Costs are reserved.

[31] While costs are reserved, I note here that, subject to her submissions, Ms Donglin parties represented herself and, unless she incurred legal costs, it is therefore unlikely she has grounds to claim a contribution to any fair and reasonable costs.

Eleanor Robinson
Member of the Employment Relations Authority