

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 273
3248119

BETWEEN CHUNHUA LI
Applicant
AND HORIZON STONE LIMITED
Respondent

Member of Authority: Alex Leulu
Representatives: Applicant in person
May Moncur, advocate for the Respondent
Investigation Meeting: 30 July and 30 October 2024 in Auckland
Submissions received: 2 December 2024, 22 January and 27 February 2025
from the Applicant
20 December 2024, 14 January and 7 March 2025 from
the Respondent
Determination: 16 May 2025

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Chunhua Li was employed by Horizon Stone Limited (HSL) as a labourer. On 10 June 2023 Mr Li suffered a workplace injury while helping other HSL workers unload a stone benchtop slab from a storage container (the accident).

[2] As a result of the accident, Mr Li claimed he was unjustifiably disadvantaged by HSL because it failed to provide him with a safe workplace. Mr Li also claimed HSL breached its obligations under the Wages Protections Act 1983 (WP Act) by failing to pay him his wages when they were due.

[3] HSL disputed Mr Li's grievance claim and claimed it was raised outside the 90-day statutory timeframe. It also disputed Mr Li's claims under the WP Act.

The Authority's investigation

[4] For the Authority's investigation written witness statements were lodged from Mr Li, HSL director Jerry Fang and HSL employees Lanhua Zhang and Yongsheng Han. All witnesses apart from Mr Han answered questions under oath or affirmation from me and the parties' representatives. The representatives also gave written closing submissions.

[5] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

The issues

[6] The issues requiring investigation and determination were discussed and confirmed with the parties at a case management conference on 19 March 2024. The issues were confirmed further at the start of the investigation meeting on 30 July 2024 as follows:

- (a) Did Mr Li raise his personal grievance against HSL within the 90-day time period as set out under s 114 of the Act?
- (b) If so, was Mr Li unjustifiably disadvantaged by the HSL during his employment?
- (c) If Mr Li was unjustifiably disadvantaged, is he entitled to a remedy of compensation for distress, hurt and humiliation?
- (d) If a remedy is ordered in Mr Li's favour, should it be reduced if he is found to have contributed to the circumstances giving rise to his personal grievance?
- (e) Did HSL breach its obligations to Mr Li under the WP Act? If so to also determine:
 - (i) what if any arrears or lost wages are owing to Mr Li; and
 - (ii) whether a penalty is to be imposed against HSL?
- (f) Should one party pay the costs of representation of the other party?

Context

[7] HSL operates as a stone surface manufacturing company located in Manukau. Mr Fang is the sole director of HSL. Mr Li started his employment for HSL on 1 December 2022. His labourer role required him to work with other HSL staff to install stone bench tops for HSL customers.

[8] On 10 June 2023 Mr Li, Mr Zhang and other HSL workers were attempting to unload large stone slabs out of a storage container unit. The stone slabs were significantly heavy and each weighed around 300 to 500 kilograms.

[9] Unloading the stone slabs required a person to fix a clamp to the top edge of the stone slabs while the slabs sat inside the container. Another person would receive the signal to approach the stone slab with a forklift. The forklift operator would then use the tines of the forklift to enter the container and engage with the clamps. The forklift would then manoeuvre the stone slabs out of the container by slightly lifting the slab and slowly pull the slab out by reversing backwards. While the stone slabs are being moved by the forklift, other workers would manually guide the slab out of the container to avoid any unnecessary swing.

[10] On the day of the accident, Mr Li was responsible for attaching the clamp to the stone slab. Along with other HSL workers, he was also responsible for manually guiding the stone slab out of the container. Mr Zhang was responsible for operating the forklift.

[11] Mr Li carried out his role of attaching the clamp to the stone slab. Mr Zhang was in the process of using the forklift to manoeuvre the stone slab out of the container. Mr Li was then manually guiding the slab out of the container. While the stone slab was suspended a short distance above the ground, it slipped out of the grasp of the clamp. The stone slab hit the ground and the side of the slab struck Mr Li on the side of the head.

[12] As a result of the accident, Mr Li suffered physical injuries which included a laceration to his ear and a concussion. He was taken to a hospital for medical treatment. Although Mr Fang and other HSL representatives visited him in hospital, Mr Li did not return to the workplace.

Did Mr Li raise his personal grievance in time?

Statutory requirements

[13] Personal grievances must be raised by an employee with their employer within 90 days from when the alleged personal grievance action occurred or came to the notice of the employee, whichever is the latter.¹ Alternatively, an employer can consent to the raising of a personal grievance outside of the 90-day timeframe.

[14] A personal grievance is raised as soon as the employee has made, or has taken reasonable steps to make, the employer or a representative of the employer aware that the employee alleges a personal grievance that the employee wants the employer to address. This process provides an employer with sufficient notice to be able to appropriately respond to the grievance.²

When the grievance was raised

[15] Mr Li's personal grievance claim for unjustified disadvantage was in respect of HSL's actions relating to the accident on 10 June 2023. Mr Li said he raised his personal grievance with HSL by lodging his statement of problem with the Authority on 30 August 2023, which was 81 days from when the accident occurred. Mr Li lodged his statement of problem with the help of a lawyer. At the time of the investigation meetings, Mr Li was no longer represented by his lawyer.

[16] The statement of problem was not served by the Authority on HSL until the 4 October 2023 which was 116 days from when the accident occurred. HSL argued this was the first time the grievance was brought to its attention and was outside the 90-day time frame. It also did not consent to the grievance being raised outside of the 90-day timeframe. I accept Mr Li's personal grievance was not raised with HSL within the 90-day timeframe.

Are there any exceptional circumstances?

[17] The Authority also has discretion to grant an employee leave to raise a personal grievance out of time and can impose any conditions it sees fit if it:

¹ Employment Relations Act 2000, s 114.

² *Creedy v Commissioner of Police* [2006] ERNZ 517 at [36].

- (a) is satisfied that the delay in raising the personal grievance was occasioned by exceptional circumstances (which may include any one or more of the examples set out in s 115 of the Act); and
- (b) considers it just to do so.

[18] Mr Li was under the obligation to ensure HSL was made aware of his personal grievance. As confirmed by the Employment Court, an employee may raise a personal grievance by lodging a statement of problem with the Authority.³ Mr Li chose to engage a lawyer to advance his grievance claims. His lawyer chose to do so through the lodgement of a statement of problem. Arguably by leaving it to chance to raise his personal grievance in this way, there was a risk of the statement of problem being served on HSL outside of the 90-day period.

[19] There was no evidence before the Authority to explain the lawyer's decision to formally raise a grievance with HSL through lodging a statement of problem (and not also through a direct communication with HSL). However, it appears Mr Li had wanted to raise his grievance with HSL within the statutory timeframe. There was also no issue or defects relating to Mr Li's application to the Authority which contributed to the delay in his statement of problem being served on HSL within the 90-day timeframe.

[20] Mr Li should not be held to account by his lawyer's actions in raising his grievance via a statement of problem and the subsequent delay after the statement of problem was lodged and served. For these reasons, I am satisfied that the delay in Mr Li raising his personal grievance was occasioned by exceptional circumstances. Leave is therefore granted for Mr Li's grievance claims outside of the 90-day time frame.

Unjustified disadvantage claim

The parties' arguments

[21] Mr Li's claim for unjustified disadvantage was focussed specifically on HSL's actions and processes relating to the accident. At the time of the accident, Mr Li claimed HSL had unsafe working conditions and had given its staff inappropriate instructions which led to the accident.

³ *Premier Events Group Ltd v Beattie (No 3)* [2012] NZEmpC 79, (2012) 10 NZELC 79-011.

[22] HSL opposed Mr Li's claims claiming the accident was primarily caused by Mr Li's own actions in failing to securely fasten the clamp on to the stone slab. Because of his failure, HSL said the stone slab slipped which led to his accident and his injuries.

The Authority's assessment

[23] The Authority must consider on an objective basis whether the actions of HSL were fair and reasonable actions of an employer in all the circumstances at the time of the alleged unjustified actions. A fair and reasonable employer is expected to comply with its statutory obligations.⁴

[24] Generally an employer has a statutory obligation to take all reasonably practicable steps to ensure the safety of its employees in the workplace.⁵ Depending on the circumstances of any given case, an employer's failure to provide a safe workplace may also constitute an unjustified disadvantage under the Act.⁶ In assessing any failures by an employer to provide a safe workplace (leading to an incident), the Authority should consider the foreseeability of such harm occurring and risk factors associated with the action leading to the harm.

[25] Based on the available evidence, HSL's practice of unloading the stone slabs appeared to be an inherently dangerous operation. This was because:

- (a) each slab weighed a considerable amount at around 300 to 500 kilograms;
- (b) manual assistance was required by HSL staff to guide the stone slabs as they were lifted out of the container; and
- (c) the staff guiding the stone slabs were at various points in a confined space, inside (or close to the entrance) of the container.

[26] There were also three key factors associated with HSL's own processes which were relevant to the accident. The first factor was there was little evidence before the Authority setting out an industry practice or guideline for the unloading of the heavy stone slabs in the manner carried out by HSL on the day of the accident.

⁴ Employment Relations Act 2000, s 103A.

⁵ Health and Safety at Work Act 2015, s 36.

⁶ *FGH v RST* [2018] NZEmpC 60 at [198].

[27] Secondly, HSL had very little guidance for its employees on how to safely carry out the stone slab unloading process. Although it provided its staff with protective equipment and had guidelines for carrying out general work in the workplace, it did not have a specific guideline which showed it had:

- (a) identified the hazards and risks associated with each HSL staff member engaging in the stone slab unloading process; and
- (b) explained the step-by-step process and precautions for safely unloading the slabs.

[28] HSL as an employer also had a duty to eliminate and/or minimise risks in the workplace.⁷ This would include identifying risks to health and safety in the workplace and taking steps to address such risks.

[29] What HSL did have were a number of documents which covered other areas of work including a document called the “Horizon Stone Benchtop Fabrication and Installation Guide” (the guide). The guide was in the form of a four-page document which provided general health and safety guidance across HSL’s operation. The guide contained a mixture of either general safety precautions or quality assurance prompts for HSL’s services. As an example, clause 11 of the guide stated:

11.Color of Stone Adhesive:

The color of the stone adhesive should match the base color of the countertop as closely as possible, without noticeable or abrupt color differences.

[30] HSL also had their WeChat messaging platform and their toolbox meetings each morning to discuss the work for the day and any risks associated with their daily work. Although these were adequate steps for addressing general health and safety risks in the workplace, there was insufficient evidence to show any reasonable attempts were made either in the WeChat messages or the toolbox meetings to properly address the hazards associated with the stone slab unloading.

[31] The third relevant factor was Mr Zhang was also the person responsible for HSL’s health and safety which included health and safety training. At the investigation meeting, he confirmed he had no qualifications or training to confirm his expertise in health and safety or experience in providing health and safety training to staff. He also

⁷ Health and Safety at Work Act 2015, s 30.

did not hold a forklift licence at the time of the accident. This raised questions as to whether he properly trained to operate a forklift safely at the time of the accident.

[32] Considering these three factors together with the dangerous nature of the task Mr Li was required to undertake, I accept HSL had failed to provide a properly safe work environment for the stone slab unloading process. This failure was not the actions of a reasonable employer. Accordingly, Mr Li's claims for unjustified disadvantage were proven.

Remedies

[33] Mr Li established his personal grievances for unjustified disadvantage and sought compensation of \$50,000 compensation for hurt and humiliation. Because of his injury, he was off work and received accident compensation from ACC. He claimed \$450 weekly from HSL which he said was the shortfall of wages he would have received if he had continued to work.

[34] As a result of the accident, Mr Li suffered a concussion, physical injuries to his head and ears, swelling in his right eye and irreparable nerve damage. He also said he had suffered severe psychological trauma. Mr Li also provided medical evidence of his injuries and I am satisfied he suffered some form of distress and harm. This distress led to a significant time away from work.

[35] After the accident, HSL visited Mr Li in hospital and gave him food and transported him home from the hospital. HSL also maintained contact with Mr Li and assisted with subsequent GP and hospital appointments.

[36] Considering similar cases, an appropriate remedy was an order for HSL to pay Mr Li an amount of \$12,000 for hurt and humiliation in respect of his unjustified disadvantage claim.

[37] In terms of Mr Li's claims for a shortfall of wages while he was on ACC, he provided little evidence confirming when he was receiving ACC payments and for how long. He also did not clarify in either evidence or submissions the total amount of wage arrears he was claiming. For these reasons, no order for payment of lost wages is made against HSL.

Contributory conduct

[38] Under s 124 of the Act the Authority must consider whether any remedies awarded for a personal grievance should be reduced due to any blameworthy conduct by Mr Li which contributed to the situation giving rise to his personal grievance.

[39] HSL claimed the accident was caused by Mr Li's negligence in not properly adjusting the clamp on to the stone slabs. For reasons already stated, HSL failed to provide a safe workplace to Mr Li. If this obligation had been met, it was likely the risk of any improper connection of the clamp on the stone slabs would have been identified and addressed. Accordingly, Mr Li did not contribute to the situation giving rise to his grievance.

Wage claim

[40] Mr Li also claimed HSL's failure to pay him the shortfall \$450 in weekly wages was also a breach of the WP Act. As previously stated, there was little evidence to support Mr Li's arguments in respect of this amount. For this reason no determination is made in respect of Mr Li's wage arrears claims.

Summary and costs

[41] In summary HSL is to pay Mr Li \$12,000 for hurt and humiliation in respect of his unjustified disadvantage claim. HSL is to pay this amount to Mr Li within 28 days of the date of this determination.

[42] Mr Li was not represented at the investigation meeting and therefore he did not incur any costs for representation. Accordingly no costs are awarded to Mr Li.

Alex Leulu
Member of the Employment Relations Authority