

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON OFFICE**

BETWEEN Hongyu Li (Applicant)
AND Eddie Liew (Respondent)
REPRESENTATIVES Robert Foitzik for the Applicant
Eddie Liew in Person
MEMBER OF AUTHORITY P R Stapp
INVESTIGATION MEETING Wellington, 1 June 2006
DATE OF DETERMINATION 8 June 2006

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Hongyu Li is claiming the amount of \$11,235 outstanding wages from Eddie Liew. He denied that he was personally liable for the wages.

The facts

[2] Hongyu Li worked for WJL Limited t/a Asian Financial Services (the employer: see employment agreement) as a full time permanent office manager from 1 June 2004 until December 2004 (first period) until she went on holiday, and says she continued to work from Monday 31 January 2005 until Friday 26 August 2005 (second period).

[3] An employment agreement dated 24 March 2004 was signed off between her and WJL Limited trading as Asian Financial Services (the company). The salary was \$23,920 per year (\$460 gross per week).

[4] She says she was paid wages from June until December 2004 in cash from Mr Liew, and another person called Chris Weir, who she says had something to do with the business. She then took a Christmas break. An arrangement for her to work for another company (Easy Touch NZ Limited) fell through when she could not change her immigration requirements. She says she was not paid in the period from 31 January 2005, upon returning to work, and Friday 5 August 2005, when the office closed.

[5] She says she is owed \$11,235 by Mr Liew because she says he deceived her to work and not pay her. On 11 October 2005 she requested unpaid wages from the directors for the period 31 January 2005 to 26 August for working as the office manager of the company but told the Authority the office more likely closed around 5 August. She agreed her claim would need to be adjusted.

[6] The applicant says that she has deliberately not been paid by Mr Liew, and says he never intended to pay her upon resuming work. She says Mr Liew misled and deceived her.

The issues and findings

[7] I hold Eddie Liew was not Ms Hongyu Li's employer. This is because the documents produced (including her immigration papers) support her employer being WJL Limited trading as Asian Financial Services. She signed an offer and an agreement with the name of the company being her employer. She understood that Mr Liew was one of the directors and that the company employed her. The documents produced by the applicant's representative at the Authority's investigation meeting show that the company is in liquidation and that the applicant had previously made a claim for her wages against the company.

[8] Can the applicant establish that she worked from February until August 2005? It is probable that the applicant worked for the company because the applicant has given evidence of working that has not been challenged. Despite a request from the Authority for wage and time records these have not been produced by Mr Liew. Ms Hongyu Li's immigration papers permitted her to work as Office Manger for the company in Wellington.

[9] Because I have found that the applicant was not employed by Mr Liew, and WJL Limited t/a Asian Financial Services has been struck off and is in liquidation, and there has been no authority from the Liquidator or the High Court to proceed, and the company is not a party to these proceedings, it is not appropriate for me to make any determination on the period of Ms Hongyu Li's employment from 31 January 2005 until the applicant finished work when the office closed since it would need to be resolved against the company.

[10] The applicant has not established that she was misled and or deceived by Mr Liew in regard to her employment with the company. She previously had an agreement signed off on 24 March 2004 and she was paid wages by the company until December 2004. She told the Authority that she had been paid in cash. Tax records the applicant obtained have been produced to support payments being made. She has not established that Mr Liew deliberately misled and or deceived her because there was no evidence to support what she only thinks happened. This is not sufficient to get over the threshold to make a claim that Mr Liew misled and deceived her, nor that it would be appropriate to resolve her problem under the Fair Trading Act when it is a matter of arrears and enforcement for unpaid wages.

[11] Also she has not been able to establish that the proposed arrangement to work for the other company (Easy Touch NZ Limited) involved any deception or misleading conduct by Mr Liew, with the purpose of him trying to avoid any payments for any work. Her evidence was that there was mutual agreement to cancel that arrangement (Hongyu Li's statement). The other company and the applicant's employer operated out of the same office. The applicant has not been able to establish anything about this to support her claim.

[12] Moreover since the proceedings do not include the company I am not able to make any order for the company to pay any outstanding wages especially since it has been struck off and in liquidation.

[13] The claim must be dismissed.

[14] There is no claim for costs.

P R Stapp
Member of the Authority