

**NOTE: This determination contains an order prohibiting publication of certain information at [1] and [40]**

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI  
TE WHANGANUI Ā TARA ROHE**

[2023] NZERA 704  
3163762

BETWEEN YICAN LIAO  
Applicant

AND WSL INTERNATIONAL  
LIMITED  
Respondent

Member of Authority: Sarah Kennedy-Martin

Representatives: Applicant in person  
No appearance for the Respondent

Investigation Meeting: 3 October 2022 at Wellington (with further information to be provided)

Submissions and further information received: 14 June 2023 and 16 October 2023 from Applicant

Determination: 24 November 2023

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**DETERMINATION OF THE AUTHORITY**

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**Order prohibiting publication**

[1] A non-publication order was made. The names and identifying details of the three witnesses who provided statements and oral evidence to the Authority and the content of their evidence, other than the fact their evidence corroborated other evidence I heard, is not to be published.

## **Employment Relationship Problem**

[2] Yican Liao was employed by WSL International Limited (WSL) as a restaurant manager. WSL is a limited liability company trading as Rams Restaurant and carries out the business of restaurant operation having its registered address in Wellington.

[3] Wenshuo Li is the sole director and shareholder of WSL and is also known as “Jack”. The Companies Office Register currently records that the Registrar intends to remove the company under s 318 of the Companies Act 1993 and invites objections to be lodged before 19 December 2023.

[4] On 2 June 2020 Ms Liao was dismissed from her employment at the restaurant after she mistakenly turned an air conditioning unit off. She says her dismissal was unfair and she was dismissed over WeChat. She also says she is owed unpaid wages because Mr Li required her to pay him so he could pay her wages and she paid a “deposit” of \$10,000 in order to keep her job in 2017 while she was back in China on holiday.

[5] Ms Liao seeks wage arrears for the money she paid Mr Li to fund her wages, a finding she was treated unfairly and reimbursement of the \$10,000.00 payment her mother made to Mr Li on Ms Liao’s behalf.

## **The Authority’s investigation**

[6] For the Authority’s investigation written witness statements were lodged from four witnesses. Ms Liao and another witness gave evidence in person and answered questions under oath or affirmation from me. The Authority requested further information at the conclusion of the investigation meeting, including Inland Revenue records, videos of her employer handling cash, and bank statements. Ms Liao was overseas but advised on her return to New Zealand in March 2023 she could provide further information as and when she could to the Authority. Ms Liao returned in May 2023 and on 14 June provided a memory stick. A further case management teleconference was held on 16 October with Ms Liao and an interpreter in order to

expedite the remaining documents the Authority required. The additional bank statements and Inland Revenue records requested were not provided.

[7] No statement in reply was lodged by WFL and no evidence or submissions have been received from WFL or Mr Li. I am satisfied WFL was aware of the present proceedings and was given a fair and reasonable opportunity to respond. The Authority has the power to proceed if any party fails to attend.<sup>1</sup>

### **Employment with WSL**

[8] Ms Liao worked at Rams Restaurant employed by WSL from the end of November 2016 to the beginning of June 2020, initially part time while she was studying and then as a full time manager at Rams Restaurant. Ms Liao had an open work visa after she had graduated from university allowing her to work for any employer.

[9] Ms Liao says all her salary including tax was paid by her. The way she explained this happened was Mr Li asked her to pay him money through various channels and then he paid her salary.

[10] Shortly after Ms Liao started part-time employment in November 2016, she went home to China for a vacation in February 2017. She says Mr Li asked her to pay him money to keep her job made up of a \$10,000.00 “deposit” that would be returned to her at a later date and a further amount to cover wages. Ms Liao arranged for her mother to transfer the amount Mr Li requested to a bank account in China.

[11] Ms Liao signed a new employment agreement when she returned. Her salary was to be \$26.50 and she worked a 40 hour week which over 24 weeks equals the exact amount she says she paid to Mr Li at his request before she returned from China.

[12] Ms Liao says on her return to New Zealand in 2017, Mr Li regularly asked her for money to pay her salary and provided her with various account numbers for those payments to be made, or accepted cash she withdrew from various bank accounts to pay him.

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<sup>1</sup> Employment Relations Act 2000, Schedule 2, clause 12 and Employment Relations Authority Regulations 2000, Schedule 1, Form 8.

[13] Her evidence was also that Mr Li would not allow her to use sick leave or annual holiday leave and he threatened her with various things to ensure she did not take leave, including that he would cancel her visa. Ms Liao says he had firearms and she saw his firearms at the restaurant.

[14] Ms Liao said she became very stressed to the point she says her mental stress increased to her being on the verge of collapse. She wanted to leave and go home but her family and friends encouraged her to persevere and get her full-time salary and her “deposit” back even if she did not continue with the job.

[15] Ms Liao did take some leave during that time and she says Mr Li messaged her saying the restaurant was busy and he needed people to work and he could consider paying part of her salary. She says she gathered the courage to go back and continue working but the cycle of intense work and from time to time Mr Li’s humiliation of her continued until she was dismissed on 2 June 2020.

[16] When Ms Liao returned the keys to the restaurant after she was dismissed, she asked Mr Li when he could return the money to her. She was referring to payment she arranged in China in 2017. She said Mr Li told her to talk to him later but never contacted her.

[17] Ms Liao also says Mr Li asked her on more than one occasion to sell drugs and cigarettes. She says she refused but those items were in the restaurant from time to time. She provided text messages supporting her evidence with regard to both drugs and the cigarettes. On more than one occasion Ms Liao says she was asked to give cigarettes to a designated person in the restaurant.

[18] In 2020, during the Covid-19 pandemic, when a New Zealand Government wage subsidy scheme was in place Ms Liao received the subsidy but Mr Li made it clear the subsidy was to be paid back to him once she returned to work. The group chat messages confirm that.

[19] Ms Liao said Mr Li was a very irritable boss. Whenever he was in a bad mood, he would lose his temper at her and insult her using words. Ms Liao provided multiple electronic messages consistent with her statement because they show Mr Li using inappropriate language for a workplace, including abusive words directed at Ms Liao

and to other workers and insisting that the workers obey him. These messages were on a group text with other employees and on WeChat directly with Ms Liao. Mr Li also told Ms Liao he was involved in a lot of illegal activities and that if he was threatened, he would retaliate because he has a gun. Mr Li made references to firearms on more than one occasion during the course of Ms Liao's employment. The messages also show Mr Li purported to or threatened to dismiss Ms Liao on more than one occasion and there was more than one instance where Mr Li threatened to take action in relation to her immigration status.

[20] Ms Liao said she was very scared during the time she worked for WSL and sought medical assistance because of her fear and stress during the time she worked at Rams Restaurant. Examples of the information he provided that made her feel threatened include messages between the two of them showing Mr Li telling her he gunned someone down and ran off, a video file of him loading ammunition into a firearm with large quantities of guns and ammunition visible and in one video Mr Li claims to be going to rob a bank.

[21] The first individual employment agreement (IEA) between the parties was signed on 2 November 2016. Ms Liao was employed as a manager on \$21.50 per hour, with a start date of 28 November 2016. An electronic version of a second employment agreement was provided to the Authority but was not able to be opened and Ms Liao did not provide another copy when requested by the Authority. A third employment agreement was signed on 2 April 2018 with a commencement date of the next day. Wages were set at \$26.50 for a 40-hour week.

[22] Ms Liao was dismissed on 2 June 2020 and lodged her application in the Authority on 20 May 2022. The problems Ms Liao said she wished to have solved were an unfair dismissal, unpaid wages and personal threats.

### **Is Ms Liao due unpaid wages?**

[23] Ms Liao says all her salary including tax was paid by her. Her evidence about the way in which this happened was that Mr Li kept asking her for money to pay her salary. The first request was in 2017 when she was in China and resulted in her instructing her mother to transfer 17,200.00 CNY to an account Mr Li specified in China. Ms Liao says that was the equivalent of \$35,400.00 at that time and Mr Li told

her \$10,000 was a deposit to keep her job which would be refunded to her in the future. The remaining \$25,400.00 was her salary. Ms Liao says her salary at that time was \$26.50 so that amount is equivalent of 24 weeks salary.

[24] From then on Ms Liao says Mr Li made requests for money from her every two to three months and provided her with various bank account numbers for those payments to be made or allowed her to withdraw cash to pay him. She also transferred money over WeChat. At times she also had friends and family make payments so she could keep her job. Ms Liao said after one year she could not afford to keep paying as much.

[25] Ms Liao provided a series of text and WeChat messages from Mr Li to her that confirm Ms Liao's statement. The amount requested on more than one occasion was \$12,720.00, which was twelve weeks salary at Ms Liao's hourly rate. Ms Liao was instructed to use various details to appear on their statements such as "Nissan", "Toyota", "gaming pc set", "xbox" and different names. On at least two occasions she was instructed to use "Jack", the name by which Mr Li also known. Ms Liao also provided money in cash and the messages show this.

[26] Ms Liao said she asked friends and family to help. She had three bank accounts in New Zealand and used all three to make transfers. Sometimes other people made the transfers for her. Sometimes the money was transferred in New Zealand dollars and other times in Chinese Yuan.

[27] I am satisfied the messages read as a whole with the transaction records available show Ms Liao was transferring money to Mr Li for wages. The Authority was provided with information that confirms transactions in 2018 for at least two requests for an amount equivalent to exactly three months wages (gross) from Mr Li together with additional transactions for smaller amounts. Ms Liao says Mr Li deleted her from WeChat on a couple of occasions so she there were breaks in her WeChat records.

[28] In 2019 there is a series of transactions for at least one request for three months wages. It was a common pattern for Mr Li to be late paying Ms Liao's wages accompanied with a request to her for money. In 2020 the messages show Mr Li requesting the wage subsidy be returned once business resumes. Ms Liao says on more

than one occasion she provided cash and used WeChat transfers and examples of this are reflected in the messages provided to me.

[29] In accordance with s 131 of the Act where there has been a default in payment to an employee of wages under an employment agreement, the whole or any part, as the case may require, of any such wages or other money may be recovered by the employee by action commenced in the Authority.

[30] Based on Ms Liao's evidence I am satisfied she was required by Mr Li to make payments that were used to fund her wages while she was employed by WSL. From 2 April 2018, the date the third IEA was signed, setting Ms Liao's wages at \$26.50, to 2 June 2020, Ms Liao should have received 113 weeks wages.

[31] In light of the nature of the evidence, I consider it is appropriate to make an order for wage arrears to be paid to Ms Liao for half of that period on the basis Ms Liao was regularly providing money to Mr Li, the sole director and shareholder of WSL Limited. The total amount has not been able to be quantified.

### **Was a premium payment requested and made?**

[32] In employment law a payment to secure employment is not permitted. Section 12A of the Wages Protection Act 1983 prohibits such payments being sought or received by an employer or a person on behalf of an employer. The person who paid the money may recover that amount from the employer as a civil debt due to that person.

[33] Ms Liao's statement was that she was asked to pay 17,200.00 CNY in order to secure her position at Rams Restaurant on her return to New Zealand in 2017. Ms Liao provided a copy of her mother's bank statement from a Chinese bank showing a payment on 15 February 2017 for 17,200.00 CNY. She says the name on the bank statement is a relative of Mr Li in China and the transfer coincides with the timing of Ms Liao's trip home to China.

[34] This payment was clearly a premium payment however because it was made overseas it is outside the jurisdiction of the Wages Protection Act 1983. Payments made overseas despite being related to employment in New Zealand are considered to be beyond the reach of s12A of the Wages Protection Act 1983 because of the territorial application of New Zealand's statute laws.

[35] In the case of *Labour Inspector v Tech 5 Recruitment*, the Court stated that a “premium” naturally captures paying to acquire a job, and went on to hold that it extends to situations where an employer recoups, or attempts to recoup, recruitment-related costs or other expenses that would normally be borne by an employer.<sup>2</sup> The payments by Ms Liao of her wages to Mr Li were also payments that fall within the definition of a premium payment if they were payments required in order for Ms Liao to secure her employment.

[36] Premium payments are breaches of the Wages Protection Act 1983 and WSL and Mr Li would have been liable to penalties had they been raised within 12 months of the action occurring or coming to Ms Liao’s attention.<sup>3</sup>

### **Unfair dismissal**

[37] Had Ms Liao raised a grievance within the statutory time frame of 90 days it is likely based on her statement that her dismissal would have been found to have been unjustified.

### **Person involved in a breach**

[38] There is a mechanism in the Act allowing a person to be named as a person involved in a breach of employment standards. Such a finding means the named person will be liable for any default by the employer for any amounts awarded as a result of minimum standards breaches.<sup>4</sup> Failing to pay wages is a breach of minimum employment standards.<sup>5</sup>

[39] No application was made to have Mr Li named as a person involved in the breaches, however, had one been made, it would likely have been successful given Mr Li’s direct involvement and the fact he is the sole director and shareholder of WSL. Leave is reserved for Ms Liao to return to the Authority to make an application to have Mr Li named as a person involved in the breaches.

### **Non-publication**

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<sup>2</sup> *Labour Inspector v Tech 5 Recruitment* [2016] NZEmpC 167.

<sup>3</sup> Employment Relations Act 2000, s 137(5) and s 13(3) of the Wages Protection Act 1983.

<sup>4</sup> Above n3, ss 142W and 142Y.

<sup>5</sup> Wages Protection Act 1983, s 4.

[40] Non-publication orders were sought for the identity of three witnesses who provided evidence to the Authority. This was on the basis there were safety concerns. The evidence I heard satisfied me there were real concerns about their personal safety and therefore the public interest in publication was outweighed in this case in favour of specified information being kept private. I made an order there be no publication of the names or identifying details of the three witnesses or of the content of their evidence, other than the fact it corroborated other evidence I heard.

### **Orders**

[41] WSL International Limited is ordered to pay Yican Liao wage arrears in the amount of \$59,890.00 under s 131 of the Employment Relations Act 2000.

### **Costs**

[42] Ms Liao appeared in person. I do not consider it would be appropriate to make a costs award. Costs on this application will lie where they fall.

Sarah Kennedy-Martin  
Member of the Employment Relations Authority