

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2024] NZERA 278  
3274959

BETWEEN

MARKO PETRESKI  
Applicant

AND

LIN ZHU  
First Respondent

AND

OPA ARCHITECTS LIMITED  
Second Respondent

Member of Authority: Rachel Larmer

Representatives: Applicant in person  
No appearance by the Respondents

Investigation Meeting: 10 May 2024 in Auckland

Date of Oral  
Determination: 10 May 2024

Written Record Issued: 10 May 2024

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**ORAL DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

*Original substantive determination*

[1] The Authority issued its original substantive determination in *Petreski v OPA Architects Limited* (the substantive determination) on 18 August 2023.<sup>1</sup> The respondent in that matter, OPA Architects Limited (OPA), was ordered to pay the applicant, Mr Marko Petreski his wage arrears, interest and reimbursement of his filing fee

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<sup>1</sup> *Petreski v OPA Architects Limited* [2023] NZERA 458 at [58].

[2] Mr Petreski was also given leave to recover his wage arrears and other money (interest and filing fee) from the first respondent, Mr Lin Zhu, who is the sole director of the second respondent, OPA Architects Limited.<sup>2</sup>

*Re-opening of the original substantive determination dated 18 August 2023*

[3] On 5 April 2024 the Authority re-opened the original substantive determination dated 18 August 2023 to correct some errors in it. The re-opening resulted in the Authority issuing a new determination dated 5 April 2024 containing corrected information, along with new orders that replaced the orders in the original substantive determination.<sup>3</sup>

[4] Although this compliance order application had been set down for an in-person investigation on 5 April 2024, OPA and Mr Zhu did not attend that investigation meeting. Mr Petreski did attend, and he agreed that due to the new ‘re-opening determination’ being issued that day, OPA and Mr Zhu should be given a further opportunity to comply with that before this compliance order application was determined.

[5] OPA and Mr Zhu were therefore given additional time to pay Mr Petreski the wage arrears and other money he was owed. However, they were put on notice that if he was not paid then this compliance order application would be investigated at an in-person investigation meeting on 10 May 2024.

*Applicant’s claims in this matter*

[6] Mr Petreski engaged a debt collector to recover this money from the respondents, without success. None of the money awarded by the Authority has been paid. No arrangements have been made to pay him. The respondents have ignored Mr Petreski.

[7] Mr Petreski now sought to recover the money he is owed by OPA from Mr Zhu personally. He asked the Authority to order OPA to comply with the Authority’s determination dated 18 August 2023. Alternatively, if OPA was unable to pay him, then Mr Petreski asked that Mr Zhu be ordered to personally pay him the money he is owed.

[8] Neither respondent has engaged with the applicant or the Authority about these proceedings.

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<sup>2</sup> Above n1, at [52].

<sup>3</sup> *Petreski v OPA Architects Ltd* [2024] NZERA 201.

## **The Authority's investigation**

### *Order for substituted service*

[9] The DoA issued by the Authority on 6 March 2024 provided for substituted service on Mr Zhu to occur at OPA's registered address for service, as recorded on the Companies Register, because he is OPA's sole director.

[10] That occurred because Mr Zhu was not working, or located, at OPA's business premises. The home address Mr Zhu had recorded (as OPA's sole director) on the Companies Register was a large block of flats. That made personal access to Mr Zhu in order to serve him difficult, or even impossible.

### *Service of these proceedings on the respondents*

[11] The original Statement of Problem (SoP) Mr Petreski lodged on 24 January 2024 was delivered by track and trace courier at the OPA's business premises at Great South Road, Greenlane, Auckland on 31 January 2024. The SoP was signed for by "Chaman Singh".

[12] An Amended SoP (ASoP) was lodged on 6 March 2024.

[13] The ASoP, DoA dated 6 March 2024, the Authority's re-opening determination dated 5 April 2024 and the Notice of Investigation Meeting (Notice of IM) for this investigation meeting set down for 10 May 2024 (together referred to as "the service documents") were served on both respondents at OPA's registered address for service.<sup>4</sup>

[14] A process server from The Investigators New Zealand Limited (The Investigators) served the service documents on the respondents at Suite 5e, 17 Albert St, Auckland Central (OPA's registered address for service) at 10.47am on 8 March 2024.

[15] The process server taped two separate sealed envelopes (one addressed to each respondent) to the office door of OPA's registered address for service. That was necessary because OPA had vacated its registered address for service but had failed to update the Companies Register with its new address for service. Photos were provided to the Authority of the two envelopes taped on the office door of Suite 5e, at 17 Albert Street, Auckland.

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<sup>4</sup> *Petreski v OPA Architects Ltd* [2024] NZERA 201.

*Investigation meeting and non-engagement of the respondents*

[16] Mr Petreski's compliance order application has been served on both respondents, who have both elected not to engage in the Authority's investigation. Neither respondent has communicated with the Authority or the applicant about his claims.

[17] The Authority held an in-person investigation meeting in Auckland on 10 May 2024. Mr Petreski attended but the respondents did not. The Authority questioned Mr Petreski under affirmation about his claims. His evidence that he has not been paid any of the money he is owed was uncontested.

[18] The respondents also failed to lodge a statement in reply (SIR) within the 14 day statutory time limit. Nor did they seek leave to lodge a SIR out of time.

**Issues to be determined**

[19] The following issues are to be determined:

- (a) Has Mr Petreski been paid any of the wage arrears and other money OPA was ordered to pay him?
- (b) Has Mr Zhu complied with the Authority's determination dated 5 April 2024?
- (c) Should a compliance order be issued against one or both respondents?
- (d) What interest is Mr Petreski owed?
- (e) What costs and disbursements should be awarded?

**Has Mr Petreski been paid any of the wage arrears and other money OPA was ordered to pay?**

[20] Mr Petreski's uncontested evidence, given under affirmation, that he had not been paid any of the outstanding wage arrears or other money he was awarded in the Authority's substantive determination dated 18 August 2023 was accepted.<sup>5</sup> Nor has Mr Petreski been paid any of the additional money he was awarded in the Authority's re-opening determination dated 5 April 2024.<sup>6</sup>

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<sup>5</sup> *Petreski v OPA Architects Ltd* [2023] NZERA 458 at [58].

<sup>6</sup> Above n1, at [31].

[21] Mr Petreski told the Authority he had sent emails to Mr Zhu on 10 April 2024, 17 April 2024 and 3 May 2024, at both email addresses he is known to use, asking to be paid the wage arrears and other money he is owed. Mr Zhu did not respond to Mr Petreski.

[22] The respondents failed to engage with the debt collector Mr Petreski instructed to recover the money he was owed. Because the steps Mr Petreski has previously taken to recover his money have been unsuccessful, he sought compliance orders to compel the respondents to pay him.

**Has Mr Zhu complied with the Authority's determination dated 5 April 2024?**

[23] Mr Zhu has not complied with the orders made in the Authority's determination dated 5 April 2024.<sup>7</sup> Mr Zhu has also failed to engage with the applicant and/or the Authority about these obligations.

**Should a compliance order be issued against one or both respondents?**

*Compliance orders issued against OPA*

[24] OPA must be compelled to meet its legal obligation because it has failed to do so voluntarily. Accordingly, OPA is ordered to comply with paragraph [31] of the Authority's determination dated 5 April 2024.<sup>8</sup>

[25] Within 14 days of the date of this determination, OPA Architects Limited is ordered to:

- (a) Either – pay Mr Petreski \$4,849.46, being the full amount of the wage arrears and other money he is owed;
- (b) Or – advise the Authority and Mr Petreski in writing that it is unable to pay him the wage arrears and other money it owes him.

*Compliance orders issued against Mr Zhu*

[26] Within 14 days of the date of this determination, Mr Zhu, as the sole director of OPA, is ordered to comply with paragraph [31] of the Authority's determination dated 5 April 2024 by taking all necessary steps to ensure that OPA complied with the compliance order made in paragraph [25] above.

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<sup>7</sup> Above n1, at [31].

<sup>8</sup> Above, n3.

[27] Section 142Y of the Employment Relations Act 2000 (the Act) provides that, in certain defined circumstances, an employee may recover wages or other money payable by an employer from a person who is not the employer.

[28] The section 142Y circumstances includes where the employer has defaulted in paying the employee's wages or other money owing to the employee, provided the default is due to a breach of employment standards, and the person the employee sought to recover the wages arrears or other money from personally is a person involved in a breach of employment standards, within the meaning of s 142W of the Act.

[29] The substantive determination dated 18 August 2023 recorded that all of the factors required by s 142Y(1) of the Act were met in this case.<sup>9</sup> Mr Zhu, as OPA Architect Limited's sole director, was "a person involved in a breach of employment standards" as defined by s 142W of the Act.<sup>10</sup>

[30] The substantive determination dated 18 August 2023 granted Mr Petreski leave under s 142Y(2) of the Act to recover his wage arrears and any other money (such as filing fees and interest) that OPA was unable to pay him, from Mr Zhu personally.<sup>11</sup> That was also recorded in the determination dated 5 April 2024.<sup>12</sup>

[31] If within 14 days of the date of this determination OPA has failed to pay Mr Petreski the wage arrears and other money he is owed, then Mr Zhu is ordered to comply with paragraphs [31] and [33] of the Authority's determination dated 5 April 2024, by personally paying Mr Petreski the \$4,849.46 he is owed by OPA.<sup>13</sup>

[32] Accordingly, Mr Zhu has until 4pm on 24 May 2024 to comply with paragraph [31] of the determination dated 5 April 2024.<sup>14</sup>

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<sup>9</sup> Above n1, at [51].

<sup>10</sup> Above n1, at [45] – [48].

<sup>11</sup> Above n1, at [43] – [52].

<sup>12</sup> Above n3, at [32].

<sup>13</sup> Above n3.

<sup>14</sup> Above n3.

## **What interest is Mr Petreski owed?**

### *Power to award interest*

[33] The Authority has discretion to award interest in accordance with clause 11 of Schedule 2 of the Act. Interest is to be calculated in accordance with the Interest on Money Claims Act 2016, by using the Civil Debt Calculator on the Ministry of Justice website.<sup>15</sup>

[34] The wage arrears Mr Petreski has been awarded should have been paid to him in February and March 2022. He has therefore been deprived of the use of his own money over a very lengthy period. That has put him in a precarious situation, and has caused (and is continuing to cause him) considerable upset, stress and financial pressure.

### *Interest previously awarded*

[35] Mr Petreski was awarded interest on his full wage arrears of \$12,364.89, which was to run from 1 April 2022 until he had been paid all wages and other money owing to him.<sup>16</sup>

[36] Mr Petreski was owed wage arrears of \$12,364.89 gross when his employment ended on 30 March 2022. From 1 April 2022 to 22 December 2022 he received some sporadic payments amounting to \$8,044.51 gross, leaving \$4,320.38 gross wage arrears outstanding.<sup>17</sup> Mr Petreski has not been paid anything since 22 December 2022.

### *Calculation of interest*

[37] Interest had to be calculated based on the amount outstanding after each partial payment was made to Mr Petreski, because the wage arrears outstanding reduced after each partial payment was made. As the balance of the amount Mr Petreski was owed reduced, the interest payment needed to also reflect that.

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<sup>15</sup> Above n1, at [41].

<sup>16</sup> Above n1 at [41] and above n3 at [31](a)(ii).

<sup>17</sup> Above n3, at [20].

*Award of interest*

[38] Mr Petreski told the Authority he had done the necessary calculations, using the Civil Debt Calculator on the Ministry of Justice website. He provided a print out from the website to support his evidence about the amount of interest he was owed.

[39] The Authority accepted Mr Petreski's uncontested evidence that he was owed total interest to date of \$484.23 consisting of:

- (a) \$457.53 interest for the period 1 April 2022 to 5 April 2024; and
- (b) \$26.70 interest for the period 6 April 2024 to 5 May 2024.

*Ongoing interest*

[40] Interest will continue to run on all of the wage arrears and other money Mr Petreski is owed, from 11 May 2024 until he has been fully paid all wage arrears and other money (including interest and his filing fees) that he is owed.

**What costs and disbursements should be awarded?**

[41] Because Mr Petreski was self-represented, there is no issue as to costs.

[42] Mr Petreski is however entitled to be reimbursed by the respondents \$71.55 for his filing fee.

[43] Accordingly, OPA Architects Limited and Mr Zhu are jointly and severally ordered to pay Mr Petreski \$71.55 to reimburse his filing fee within 14 days of the date of this determination.

**Orders**

[44] The Authority makes the following orders:

- (a) Within 14 days of the date of this determination, Mr Zhu is ordered to take all necessary steps to facilitate OPA Architects Limited's payment to Mr Petreski of \$4,947.71, consisting of:
  - (i) \$4,320.38 gross wage arrears he is still owed;
  - (ii) Interest of \$457.53 for the period 1 April 2022 to 5 April 2024;

- (iii) Interest of \$26.70 for the period 6 April 2024 to 10 May 2024;
  - (iv) \$143.10 to reimburse his filing fees (being \$71.55 filing fee for the substantive matter plus \$71.55 filing fee for this compliance order application).
- (b) If OPA is unable to pay Mr Petreski the full amount owed, then Mr Zhu is ordered to advise the Authority and Mr Petreski of that in writing within 14 days of the date of this determination.

[45] Alternatively, if Mr Zhu and OPA Architects Limited fail to comply with the orders made in paragraph [44] of this determination, then the Authority has made the following additional orders:

- (a) Mr Zhu is ordered to personally pay Mr Petreski any part of the \$4,947.71 that OPA Architects Limited still owe him, plus interest on that amount from 11 May 2024 until it is paid in full;
- (b) In which case, Mr Zhu must pay to Mr Petreski the full amount outstanding plus interest from 11 May 2024 until the full amount has been paid within 28 days of the date of this determination.

[46] This order has been made against Mr Zhu personally in accordance with ss 142Y(1) and (2) of the Act, on the basis OPA Architects Limited was unable to pay Mr Petreski the wage arrears and other money it had been ordered to pay him.

[47] On that basis, compliance orders have been made against both respondents requiring them to comply with paragraph [31] of the Authority's determination dated 5 April 2024.<sup>18</sup>

### **Warning about breaches of these compliance orders**

[48] If OPA and/or Mr Zhu fail to comply with these compliance orders, then Mr Petreski may apply under s 138(6) of the Act to the Employment Court to exercise its powers under s 140(6) of the Act.

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<sup>18</sup> Above n1.

[49] The Employment Court's powers under s 140(6) of the Act include the power to order (among other things) imprisonment for a period not exceeding three months, a maximum fine of \$40,000 or that property be sequestered.

[50] Any breach of the compliance orders made in this determination must therefore be pursued by Mr Petreski in the Employment Court.

**Service of this compliance order determination**

[51] The Authority orders that substituted service of a copy of this compliance order determination is to occur on Mr Zhu at OPA's registered address for service, as it is recorded on the Companies Register on 10 May 2024.

[52] A further copy of this determination will also be sent to the home address Mr Zhu has registered on the Companies Register for him, in his capacity as the sole director of OPA.

Rachel Larmer  
Member of the Employment Relations Authority