

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

[2025] NZERA 541
3318600

BETWEEN ZHIFEI (FRANK) SHEN
Applicant

AND LANQUAN LIMITED
First Respondent

AND ZHOSHENG (HELEN) CHEN
Second Respondent

AND DONGMING (TOM) LIN
Third Respondent

Member of Authority: Rachel Larmer

Representatives: Applicant in person
Zhousheng Chen for the First and Second Respondents
Third Respondent in person

Investigation Meeting: 30 June, 1 and 2 July 2025 in Auckland

Submissions and Other 2, 4 and 11 July 2025 from the Applicant
Information Received 2 and 14 July 2025 from the Respondents

Date of Determination: 29 August 2025

DETERMINATION OF THE AUTHORITY

Employment relationship problem

The parties

[1] The applicant, Mr Zhifei (Frank) Shen, has made numerous claims against his former employer, the first respondent, Lanquan Limited (Lanquan). Mr Shen has also sought leave to pursue the second respondent, Ms Zhousheng (Helen) Chen, and the third respondent, Mr Dongming (Tom) Lin, personally for any wage arrears and other money that Lanquan defaulted on paying him.

[2] Ms Chen is Lanquan's sole director and shareholder. The third respondent, Mr Lin is Ms Chen's husband. Ms Chen and Mr Lin were at the material time both employed by Lanquan. Mr Lin is Mr Shen's uncle, as one of Mr Lin's sisters is Mr Shen's mother.

[3] Mr Shen is married to Ms Wenting (Wendy) Wei, and they have two school age children. Mr Shen and Ms Wei were both previously employed by Lanquan. Ms Wei made several employment claims against Lanquan, and she made the same claims Mr Shen has made under s 142Y of the Employment Relations Act 2000 (the Act) against Ms Chen and Mr Lin. Ms Wei's claims were determined by the Authority on 15 August 2025.¹

Material background

[4] Mr Lin in his capacity as Mr Shen's uncle took steps, in conjunction with discussions involving their extended family members who live in China, to arrange for Mr Shen and Ms Wei to work in New Zealand. This was provided as an opportunity for them to get ahead.

[5] Mr Shen's employment was provided by Ms Chen's company, Lanquan. Lanquan's offers of employment to Mr Shen and his wife arose because of the wider family's decisions and objectives, which had focused on how to help Mr Shen set himself and his immediate family up financially.

[6] Unfortunately, the employment relationship and family relationships broke down. The parties blame each other for that. These communication breakdowns have resulted in considerable stress and distress for all the parties. The parties' problems have also adversely affected their extended family who live in China.

[7] All parties reported that their health had been adversely impacted by the employment relationship problems that occurred. Although the Authority repeatedly encouraged the parties to resolve their differences by agreement, and has attempted to help them do so, that had not been possible as the parties remain deeply aggrieved with each other.

Accredited Employer Work Visa

[8] Ms Chen helped Mr Shen obtain his first Accredited Employer Work Visa (AEWV) to enable him to work in a Chinese restaurant owned by her cousin. Mr Shen's first AEWV was

¹ *Wei v Lanquan & Ors* [2025] NZERA 491.

a three-year work visa which permitted him to work as “Kitchen Staff” for Si Yuan Limited (Si Yuan) from 20 April 2023, provided he was paid not less than \$30.00 per hour.

[9] Mr Shen’s AEWVs stated in bold at the bottom of the first page “If you do not comply with these conditions, you may become liable for deportation.”

[10] Mr Shen did not do any work for Si Yuan. Instead, Mr Shen paid Si Yuan \$3,600.00, consisting of \$1,800.00 on 28 August 2023 plus \$1,800.00 on 4 September 2023. He made these payments so he could be recorded as an employee in Si Yuan’s employment records.

[11] Si Yuan returned most of the money Mr Shen had paid to him as “wages”, from which PAYE had been deducted and remitted to the Inland Revenue Department (IRD), as proof of the work he had supposedly done for Si Yuan. Mr Shen received back the money he had paid, less the PAYE that had been sent to IRD by Si Yuan as the employer. This arrangement was put in place to make it look as if Mr Shen had been working for Si Yuan in August and September 2023, even though he had not.

[12] Accordingly, Mr Shen’s IRD records showed that Si Yuan paid him “wages” of \$3,600 in 2023. The witnesses told the Authority this was done because it was thought that if Mr Shen already had an employment history (meaning wages payments that had been reported to IRD) with Si Yuan then that would make it easier for him to transfer his AEWV to Lanquan.

[13] A New Zealand Licensed Immigration Advisor (LIA) helped the parties with Mr Shen’s AEWV applications. Ms Chen paid the LIA \$5,000.00 for Mr Shen’s first AEWV. Mr Shen’s AEWV also permitted his wife to work in New Zealand for any employer and without any restrictions. In contrast, both of Mr Shen’s AEWVs had strict conditions (restrictions) associated with them regarding who he could work for, his role, the minimum hours he was required to work and the minimum hourly rate he was to be paid.

[14] After the parties discovered that any employer could become an Accredited Employer (and not just Chinese restaurants as the parties had initially thought), Lanquan took steps to become an Accredited Employer under the AEWV Scheme, solely for the purposes of employing Mr Shen.

[15] Lanquan did not employ any other employees who required a work visa, so it did not need to use its Accredited Employer status to employ anyone else. It cost Lanquan \$2,763.35 to obtain Accredited Employer status, which it used solely for Mr Shen's benefit.

[16] Lanquan was given Accredited Employer status on 14 August 2023. The only Accredited Employer "job token" Lanquan used was used to employ Mr Shen. Lanquan's Accredited Employer status resulted in Mr Shen obtaining a second AEWV on 25 September 2023 that named Lanquan as the employer.

Mr Shen's role

[17] Mr Shen's second AEWV required him to be employed by Lanquan as a "Retail Supervisor", for at least 30 hours per week "as per the roster" at a rate of not less than \$29.66 per hour.

[18] Ms Chen told the Authority there was no "Retail Supervisor" role, so Mr Shen worked in the store and did the same duties as Lanquan's other employees did. The evidence established Mr Shen's Retail Supervisor job title was in name only. It did not reflect the work he was required to do, as he had no supervisory, or management, duties or responsibilities.

[19] Mr Shen did not work as a "supervisor", as the other employees were experienced and did not need to be supervised. Ms Chen also managed the business as its owner, so any employment issues were dealt with by her as the working manager, and not by Mr Shen as a "supervisor". Mr Shen's duties were those of a "Retail Assistant", which was the same role all the other employees had.

Mr Shen's pay rate

[20] Before agreeing that Lanquan would support Mr Shen's work visa application, Ms Chen told him that the business could not afford to pay him \$29.66 per hour, which was the applicable minimum hourly rate he had to be paid in order to obtain an AEWV.

[21] Ms Chen said the parties therefore agreed the rate of \$29.66 per hour would be recorded in Mr Shen's employment agreement for Immigration New Zealand (INZ) to assist him with changing his work visa from Si Yuan to Lanquan, so he met the criteria to get an AEWV, but that he would in fact only be paid \$23.00 per hour.

[22] Accordingly, Mr Shen was paid \$23.00 per hour up until 4 March 2024, when Ms Chen said she increased his hourly rate to \$23.50 per hour. That meant for the duration of his employment Mr Shen was paid less than his AEWV and employment agreement required him to be paid.

Lanquan's business

[23] Lanquan operated only one physical store, the "\$2 Plus" store, which was in a small shopping mall in Stanmore Bay, Whangaparaoa (the store). It operated seven days a week, apart from Good Friday, Easter Sunday, the morning of Anzac Day, Christmas Day and New Year's Day.

[24] Ms Chen created and set up the store as a business opportunity for herself via her entity Lanquan. Ms Chen and Mr Lin had both worked fulltime in the store since its inception until it was sold on 30 September 2024. Because it was Ms Chen's business, she also managed it, in addition to working in the store.

[25] The store operated seven days a week. Prior to Mr Shen's and his wife's employment, the store operated with two employees on duty each day, one at the counter managing customers and the register and the other handling inventory, restocking, shelf organisation and cleaning. It was a flat structure, meaning there was no hierarchy because all employees (including Mr Lin and Ms Chen) had the same duties and did the same work in the store.

[26] From the time the store opened it had four employees working in it, two fulltime and two part-time. That staffing arrangement did not change until Mr Shen, and then Ms Wei, became employed in 2023 and 2024.

[27] Ms Chen and Mr Lin were the two fulltime employees who worked in the store, and they were each paid a fortnightly salary of \$2,500.00. When Mr Shen started working for Lanquan in October 2023, one part-time employee was being paid \$24.00 per hour and the other was being paid \$23.00 per hour. That had slightly increased by the time the business was sold.

[28] Lanquan's employee headcount increased to five when Mr Shen was employed. It further increased to six employees during the three days Ms Wei worked in August and September 2023, dropped to five employees in September 2023, and then increased again to

six employees again from 4 March to 2024 to 7 May 2024, when Ms Wei was also employed by Lanquan (for the second time) to work three days a week.

[29] When Mr Shen and his wife were employed by Lanquan there would be three employees rostered to work in the store. Either Mr Lin or Ms Chen, one of the part-time employees and either Mr Shen or Ms Wei.

[30] Ms Wei and Mr Shen were effectively ‘supernumerary’ employees, because the days and hours of work of Lanquan’s four other employees did not change after Ms Wei and Mr Shen were employed.

[31] Ms Wei and Mr Shen had more limited English language skills than the other employees, who also had English as their second language. That language barrier affected Ms Wei’s and Mr Shen’s ability to engage with customers and work on the register at the counter in the store in the same way the other employees could. That meant the store had three employees present, instead of the previous two employees.

[32] When the business was sold on 30 September 2024, Ms Chen and Mr Lin were still working full time but were paid \$1,600.00 each per fortnight for their fulltime hours, one part-time employee was paid \$25.00 per hour and the other was paid \$23.50 per hour. Both Ms Wei’s and Mr Shen’s employment had ended prior to the sale of the business.

The family dynamic

[33] Lanquan’s employment of Ms Wei and Mr Shen was not an operational business decision, because the store was fully staffed with four employees, so did not need any extra employees. Although the store was fully staffed, Mr Lin convinced Ms Chen to offer Ms Wei and Mr Shen work so they could come and live in New Zealand with their two school age children to better their family’s financial situation.

[34] Even though there was no business need for Lanquan to employ Mr Shen or his wife, Ms Chen arranged for Lanquan to do so to “help out family.” If Ms Wei and Mr Shen had not been family members, then Lanquan would not have employed them.

[35] Lanquan appeared to have treated Ms Wei and Mr Shen as ‘one person’ in terms of calculating one overall wage for them by basing their wages on what they as a ‘family unit’ would be paid, instead of on the actual hours and rate of pay that applied to each of them as

separate employees. The Authority corrected that, by ensuring Mr Shen's contractual and statutory entitlements were calculated and paid to him as an individual employee.

[36] Notwithstanding the family dynamic that existed, Lanquan as the employer still had to comply with the same minimum code legislation that applied to all other New Zealand employers and employees. Family members who are employed by a family business do not forgo any employment rights just because there is a family connection/relationship between the employer and employee.

Mr Shen

[37] Mr Shen arrived in New Zealand on 13 July 2023, and he lived for free with Mr Lin and Ms Chen until Ms Wei and their two children arrived in New Zealand on 23 August 2023. The four of them lived with Mr Lin and Ms Shen for around seven and a half weeks. Mr Shen, Ms Wei and their two children moved to their own rental unit on 15 October 2023. They took items from the store (for free) when they set up their new home.

[38] From 2 October 2023, Mr Lin reduced his fortnightly fulltime salary from \$2,500.00 to \$1,600.00 per fortnight (without reducing his working hours) so that money could be used for Mr Shen's wages.

[39] Mr Shen claimed he started work for Lanquan on 16 July 2023. The respondents denied that and said Mr Shen did not start work until 2 October 2023. Up until 3 March 2024, Mr Shen worked six days a week, which included working every Sunday. After his wife started working for Lanquan on 4 March 2024, Mr Shen's days of work reduced from six days to four days per week, including Sundays, and it remained that way until he was made redundant on 6 August 2024.

Ms Wei's employment

[40] Ms Wei had two separate periods of employment by Lanquan. She worked for a total of three days in 2023. Ms Wei returned to China with the children on 6 December 2023. She returned to live and work in New Zealand again in late February with her son, as her daughter remained in China.

[41] After returning to New Zealand in late February 2024, Ms Wei had a second period of employment by Lanquan that ran from 4 March to 7 May 2024. She worked for a total of 28

days, consisting of three eight-hour days per week, over this period for a total of 24 hours per week.

[42] In March 2024 Ms Chen reduced her own fortnightly salary for the fulltime hours she worked in the store (without reducing her working hours) from \$2,500.00 to \$1,600.00 so part of her salary could be used to employ Ms Wei.

Mr Shen's claims

[43] In his second amended statement of problem (2ASoP), Mr Shen made multiple claims, which have been briefly summarised as:

- (a) Wage arrears claims.
- (b) Breaches of his employment agreement.
- (c) Breach of good faith.
- (d) Breaches of the Employment Relations Act 2000 (the Act).
- (e) Breaches of the Holidays Act 2003 (the HA03).
- (f) Breaches of the Wages Protection Act 1983 (the WPA).
- (g) Penalty claims.
- (h) Personal grievance for unjustified disadvantage.
- (i) Unjustified dismissal personal grievance.
- (j) Breaches of employment standards.
- (k) Leave application to pursue Ms Chen and Mr Lin personally for any wage arrears or other money Lanquan defaulted on paying him.

[44] Mr Shen was represented by counsel until 28 May 2025. Mr Shen attended the investigation meeting as a self-represented party. However, Mr Shen's former counsel lodged submissions on his behalf on 11 July 2025.

[45] While Mr Shen was still represented by counsel, the Authority repeatedly expressed concern during the Case Management Conference (CMC), in Directions of the Authority (DoA), and in communications with the parties prior to the investigation meeting, that Mr Shen was pursuing an unnecessarily complicated case with multiple claims which would lengthen the investigation time required and increase legal costs.

[46] However, that concern did not result in a reduction in the number of discrete claims Mr Shen wanted determined. Quite the opposite. After the CMC, Mr Shen lodged an amended statement of problem (ASoP) and a second amended statement of problem (2ASoP) that made even more claims than the original statement of problem (SoP) had.

[47] Mr Shen also made several claims related to s12A of the WPA, regarding to the alleged payment of an employment premium. These employment premium claims were investigated by the Authority during the investigation meeting. Mr Shen subsequently withdrew those claims during the investigation meeting. However, that only occurred after the respondents had given evidence, and it was clear from their evidence that no employment premium had been requested or paid.

Respondents' response to the claims

[48] The respondents denied all of Mr Shen's claims, except Ms Chen agreed Mr Shen had not been paid time and a half for the hours he had worked on public holidays.

[49] Mr Lin said he was not 'a person involved in breaches of employment standards' as defined by s 142W of the Act, because he was not involved in running or managing the store, as it was solely Ms Chen's business.

The Authority's investigation

[50] The Authority held a three-day in-person investigation in Auckland and was assisted by a Mandarin interpreter who provided full interpretation of the proceedings.

[51] Ms Shen and Ms Wei gave evidence on his behalf. Ms Chen and Mr Lin gave evidence for the respondents. One of Lanquan's part-time employees, Mr Richard Chae, gave evidence in-person for the respondents, with the assistance of a Korean interpreter.

[52] JQL Trading Limited (JQLT) purchased Lanquan's business on 5 August 2024. Although the settlement date was initially 19 August 2024, that was extended to 30 September 2024 because of issues that arose regarding the renewal of the lease for the store.

[53] JQLT's sole director and shareholder Ms Liling (Lily) Kang provided a witness statement regarding the circumstances of the purchase, and explained JQLT's decision as purchaser not to offer Mr Shen new employment after the business had been sold occurred.

[54] The Authority did not require Ms Kang to not attend the investigation meeting because her evidence about the sale of Lanquan's business was supported by legal documents, Company Office records, and other documentation that proved her account of events, and established the business sale was a genuine commercial transaction.

[55] The parties lodged further information and submissions after the investigation meeting.

Issues

[56] As per Mr Shen's second amended statement of problem, the following issues had to be determined:

- (a) What date did Mr Shen start work for Lanquan?
- (b) Did Mr Shen's first wages payment on 15 October 2023 pay him for all the hours he had worked up to that date?
- (c) Was Mr Shen given a written employment agreement before he started work for Lanquan?
- (d) What were Mr Shen's agreed terms and conditions of employment before he signed the employment agreement on 12 September 2023?
- (e) Did Lanquan keep, and produce, legally compliant employment documentation for Mr Shen?
- (f) Was Lanquan's record of Mr Shen's working hours inaccurate/incorrect?
- (g) Was Mr Shen's evidence about the days and hours he worked, and the amount he was paid, proven to be incorrect?
- (h) If so, what days, dates and hours did Mr Shen work?
- (i) What public holidays did Mr Shen work?
- (j) Is Mr Shen owed unpaid public holiday entitlements?
- (k) Is Mr Shen owed wage arrears because his hours of work were decreased?
- (l) Was Mr Shen paid for less than his contracted hours of work?
- (m) Is Mr Shen owed notice pay arrears?
- (n) Did Lanquan fail to pay Mr Shen correctly?

- (o) What was Mr Shen paid?
- (p) What should Mr Shen have been paid?
- (q) Is Mr Shen owed wage arrears?
- (r) Should interest be awarded on any wage arrears Mr Shen is owed?
- (s) Did Lanquan unilaterally reduce Mr Shen's weekly hours of work in breach of his employment agreement?
- (t) Did Lanquan fail to give Mr Shen one week's notice of roster changes?
- (u) Did Lanquan breach the HA03 by declining Mr Shen's request for bereavement leave?
- (v) Does the Authority have jurisdiction over reimbursement of the stock and/or security camera claims Mr Shen has made?
- (w) Is Lanquan required to reimburse Mr Shen for the stock and/or security camera he purchased in China?
- (x) Did Lanquan's letter to Mr Shen dated 18 July 2024 breach its good faith obligations to him?
- (y) Did Lanquan breach Mr Shen's employment agreement?
- (z) Should penalties be imposed on Lanquan for any breaches of the employment agreement, the HA03 and/or the WPA that have occurred?
- (aa) If so, what penalties should be imposed on Lanquan?
- (bb) Should any penalties imposed be paid to Mr Shen, instead of, or as well as, the Crown?
- (cc) Has Lanquan breached employment standards?
- (dd) If so, was Ms Chen and/or Mr Lin 'a person involved in the breach of employment standards'?
- (ee) Is Lanquan able to pay Mr Shen the wage arrears or other money he is owed?
- (ff) Should Mr Shen be granted leave to pursue Ms Chen and/or Mr Lin personally to recover any wage arrears and other money if Lanquan defaulted on paying him?

- (gg) Should Ms Chen and/or Mr Lin be ordered to personally pay Mr Shen the money he is owed by Lanquan?
- (hh) Did Lanquan unjustifiably disadvantage Mr Shen by demoting him from “Store Manager” to “Cleaner”?
- (ii) Was Mr Shen’s dismissal justified? In particular:
 - (i) Did Lanquan comply with its s 41A(c)(i) good faith obligations?
 - (ii) Did Lanquan comply with the four procedural fairness tests in s 103A(3) of the Act?
 - (iii) Does s 103A(5) of the Act apply?
 - (iv) Did Lanquan fail to negotiate with the purchaser about the matters in clause 34(b) of the employment agreement?
 - (v) Did Ms Chen fail to personally meet with Mr Shen to discuss the sale of the business and his proposed redundancy?
 - (vi) Did Lanquan breach clauses 33 and 34 of the employment agreement?
 - (vii) Did Lanquan breach s 69OI of the Act?
 - (viii) Did Lanquan breach Part A, Subpart 1 of the Act?
 - (ix) Did Lanquan fail to consider redeployment options for Mr Shen?
 - (x) Was Mr Shen entitled to redundancy compensation?
 - (xi) Did the respondents mislead Mr Shen about the sale of the business?
 - (xii) Was Ms Shen’s dismissal substantively justified?
- (jj) What remedies should be awarded for any successful personal grievance claims?
- (kk) Should remedies be reduced on the grounds of contribution?
- (ll) What costs and disbursements should be awarded?
- (mm) What orders should the Authority make?

What date did Mr Shen start work for Lanquan?

[57] Mr Shen said he started work for Lanquan on 16 July 2023. The respondents denied that, and claimed his first day of work was 2 October 2023. This dispute was resolved on the balance of probabilities.

[58] After testing the parties' evidence, the Authority concluded that Mr Shen more likely than not officially started work for Lanquan on Sunday, 1 October 2023. This was a day earlier than had been recorded in Lanquan's records, which Ms Chen had prepared.

[59] Mr Shen's evidence that he had worked for Lanquan from 16 July 2023 onwards was not accepted. Although Mr Shen provided photos of himself in the store before 1 October 2023, it was likely these were taken during social visits he had made, not on days he had been employed to work in the store.

[60] Mr Shen was living for free with Ms Chen and Mr Lin from his arrival in New Zealand on 13 July 2023 until his family arrived on 23 August 2023, so he had no expenses. Mr Shen did not know anyone else in Auckland, he was at a loose end and had nothing to do while Mr Lin and Ms Chen were working in the store. Mr Shen had limited English skills, so he was focused on learning English. He did not have a New Zealand driver licence so he could not drive, and he also had limited funds.

[61] Mr Shen was likely in the store socialising, familiarising himself with the products and learning/practising his English instead of working as an employee. There was no work for Mr Shen to do as Lanquan was fully staffed. Mr Shen was also officially employed by Si Yuan, as the employer recorded in his AEWV, until 24 September 2025.

[62] Ms Chen said she knew Mr Shen was not legally permitted to work for Lanquan until his AEWV had been changed to record Lanquan as his employer, so she did not let him do so.

[63] The store had sufficient staff on duty, so there was no need for Mr Shen to have started work earlier than his work visa permitted him to. Ms Chen said Mr Shen would come to the store so he could practice his driving and his English, not because he was working as an employee.

[64] The Authority relied on a WeChat group chat dated 1 October 2023 involving Mr Lin, Mr Shen's mother and his aunt who was living in China that said:

- (a) "Today is Zhifei's first time going to work alone";
- (b) "He [Mr Shen] will get off work in another 15 minutes";
- (c) "If he [Mr Shen] had passed his driver's licence test earlier, he could have started working two weeks' ago ..."; and

- (d) “The working hours on Sunday are 10am to 5pm, which is the shortest in a week.”

[65] Allowing for that fact these messages have been translated, it still indicated that 1 October 2023 was likely Mr Shen’s first day of work as an employee, as opposed to him socialising in the store with Mr Lin and Ms Chen as he had likely been doing prior to that. It was significant that a group chat message at the material time reflected that while Mr Shen could have started work before 1 October 2023, he had not done so.

[66] Mr Shen’s first day of working for Lanquan was likely 1 October 2023.

Did Mr Shen’s first wages payment on 15 October 2023 pay him for all hours he had worked up to that date?

[67] Lanquan failed to pay Mr Shen for the 6.5 hours he had worked on 1 October 2023. It also paid him \$23.00, or from 4 March 2024 \$23.50, per hour instead of the \$29.66 per hour he was contractually entitled to be paid.

[68] Accordingly, Lanquan underpaid Mr Shen in his first wages payment by \$6.66 per hour for the hours it said he had worked and by not paying him at all for the hours the Authority concluded Mr Shen had worked on 1 October 2023.

Was Mr Shen given a written individual employment agreement before he started work?

[69] Mr Shen was given a written employment agreement dated 12 September 2023, which was signed by the parties and was used to obtain his second AEWV, which named Lanquan as his employer. This was eighteen days prior to his employment starting on 1 October 2024.

[70] Mr Shen’s claim he was not given an employment agreement before he started work did not succeed.

What were Mr Shen’s agreed terms and conditions of employment prior to 12 September 2023?

[71] Mr Shen was not employed prior to 12 September 2023, so his employment agreement of that date recorded all his agreed terms and conditions of employment.

[72] Clause 37.3 of Mr Shen's employment agreement recorded that it was the "entire agreement between the parties". Accordingly, there were no additional or other agreed terms that pre or posted dated the employment agreement the parties had signed.

Did Lanquan keep, and produce, legally compliant employment documentation for Mr Shen?

[73] Lanquan, as Mr Shen's employer, was required to keep legally compliant employment documentation for Mr Shen, consisting of:

- (a) Wage and time records for him, as required by s 130 of the Act; and
- (b) Holiday and leave records for him, as required by s 81 of the HA03.

[74] Although Lanquan was directed by the Authority to produce Mr Shen's wage and time records and his holiday and leave records, that did not occur.

[75] Lanquan's failure to keep and (when directed to do so) produce legally compliant wage and time records, and holiday and leave records, for Mr Shen breached its obligations under s 130 of the Act and s 81 of the HA03.

Was Lanquan's record of Mr Shen's working hours inaccurate/incorrect?

Mr Shen's claims

[76] Mr Shen said Lanquan's record of the days and hours he worked was incorrect, as it did not record any of the work he claimed he had done from 16 July to 1 October 2023. He also said he had worked days that Lanquan had failed to record as days he had worked.

Lanquan's records

[77] Lanquan's record of the dates, days and hours Mr Shen worked was prepared by Ms Chen and it started with his first day of work being Monday, 2 October 2023. These were not legally compliant wage and time records as required by s 130 of the Act or s 81 of the HA03. Lanquan recorded Mr Shen as having worked:

- (a) Between 38.5 and 46.5 hours per week over the period 2 October 2023 to 3 March 2024.
- (b) 30 hours per week over the period 4 March to 6 August 2024, excluding:
 - (i) Three weeks when he had one sick day in each of those three weeks; and

- (ii) The week commencing 25 March 2024 when he did not work on 28 March 2024 and the store was closed for Good Friday and Easter Monday.
- (iii) The week commencing 5 August 2024, as Mr Shen only worked on 6 August 2024 that week, as his employment ended that evening.

The Authority's findings

[78] The Authority found that Mr Shen likely started work for Lanquan on Sunday, 1 October 2023. This was a day earlier than Lanquan's record of Mr Shen's work hours had recorded. The store was open for seven hours on Sundays. Mr Shen therefore likely worked for 6.5 hours on 1 October 2023, because he would have had a thirty-minute unpaid lunch break.

[79] For the purposes of assessing Mr Shen's contractual and statutory entitlements his first day of work for Lanquan was 1 October 2023, not 2 October 2023 as Ms Chen had recorded.

[80] Mr Shen's claim that the work record Lanquan gave the Authority of the days, dates and hours he had worked was inaccurate/incorrect succeeded.

Was Mr Shen's evidence about the days and hours he worked, and the amount he had been paid, proven to be incorrect?

Effect of s 132(2) of the Act

[81] Lanquan's lack of legally compliant employment documentation meant that s 132(2) of the Act applied. Section 132(2) of the Act permitted the Authority to accept Mr Shen's evidence about the wages he was paid and the hours, days and times he had worked, unless that evidence was proven to be incorrect.

What days and hours were disputed?

[82] The dispute between the parties about the accuracy of Mr Shen's work record that Ms Chen prepared for Lanquan involved the following material differences:

- (a) His start date (he said 16 July 2023 but the respondents said 2 October 2023);
- (b) Mr Shen said he worked the following days, which the respondents denied:
 - (i) 8 hours on Friday, 25 November 2023;

- (ii) 7.5 hours on Saturday, 30 December 2023;
 - (iii) 7.5 hours on Saturday, 6 January 2024;
 - (iv) 7.5 hours on Saturday, 24 February 2023.
- (c) Whether or not he had taken paid annual holiday on:
- (i) Friday, 23 November 2023;
 - (ii) Tuesday, 5 December 2023;
 - (iii) Wednesday, 6 December 2023;
- (d) Whether he worked at all on 28 March 2024, and if so how many hours he had worked (he said he worked 4 hours that day while the respondents said he did not work at all);
- (e) Whether he worked on Wednesday, 5 June 2024;
- (f) Whether he had paid sick leave on the following dates (he said he was not paid but the respondents said he was):
- (i) Sunday, 14 July 2024;
 - (ii) Monday, 15 July 2024;
 - (iii) Tuesday, 30 July 2024.
- (g) Whether he worked the Auckland Anniversary public holiday on Monday, 29 January 2024.

Finding on the disputed evidence

[83] Most of these disputes were resolved in Mr Shen's favour, as his evidence was not proven to be incorrect. The exception to that was the dispute about 28 March 2024.

[84] The Authority did not accept Mr Shen's evidence that he had worked from 12pm until the end of the day on 28 March 2024. Documents established he had asked for 28 March 2024 off work so he could continue helping a friend with a plumbing problem, and that his wife had worked for eight hours on 28 March 2024 instead him.

[85] It would not have made sense for Mr Shen to have also worked the afternoon of 28 March 2024, as that would have resulted in four employees working when only two were

needed. Mr Shen also told the Authority at the investigation meeting that he did not wish to pursue the four hours he claimed he had worked that day.

What dates, days and hours did Mr Shen work?

Disputed working days

[86] In addition to the dates Ms Chen recorded Mr Shen as having attended work, the Authority relied on s 132(2) of the Act to find it more likely than not that Mr Shen also worked the following days and hours that were not recorded by Lanquan or Ms Chen as days he had worked:

- (i) 8 hours on Friday, 25 November 2023;
- (ii) 7.5 hours on Saturday, 30 December 2023;
- (iii) 7.5 hours on Saturday, 6 January 2024;
- (iv) 7.5 hours on Saturday, 24 February 2023; and
- (v) 7.5 hours on Wednesday, 5 June 2024.

Disputed annual leave

[87] The Authority relied on s 132(2) of the Act to accept Mr Shen's evidence that he had worked eight hours on Friday, 23 November 2023 and had not taken paid annual holiday that day, as the respondents had claimed. Mr Shen was therefore entitled to be paid his normal wages (\$29.66 per hour) for the eight hours he worked on 23 November 2023.

Paid annual leave

[88] It was agreed that Mr Shen did not work on 5 or 6 December 2023, as he was spending that time helping his wife and children prepare for their return to China on 6 December 2023. The dispute was about whether Mr Shen had been paid annual leave for these two days he did not work.

[89] The Authority preferred Ms Chen's evidence that she gave Mr Shen \$2,000.00 cash on 4 December 2023, so he had money to give his wife and children when they returned to China on 6 December 2023.

[90] Accordingly, Mr Shen was likely paid \$474.56 gross annual holiday pay in cash on 4 December 2023 for the two days paid annual leave he took on 5 and 6 December 2023. The

balance of \$1,525.44 in cash that Mr Shen had received from Ms Chen on 4 December 2023 was a family related Christmas gift, not wages.

[91] Lanquan's failure to record the remaining \$1,525.44 cash in its wage and time records or to remit PAYE deductions on it to IRD, meant the balance of this \$2000.00 cash payment was not to be treated as wages.

Paid sick leave

[92] Mr Shen did not attend work because he was sick for three days in July 2024. He had worked for six months by then, so was entitled to paid sick leave. This required Mr Shen to be paid \$667.35, being his relevant daily pay, as per s 9 of the HA03 for these three days as follows:

- (i) \$192.79 on Sunday, 14 July 2024, being 6.5 hours x \$29.66 per hour.
- (ii) \$237.28 on Monday, 15 July 2024, being 8 hours x \$29.66 per hour.
- (iii) \$237.28 on Tuesday, 30 July 2024, being 8 hours x \$29.66 per hour.

Dates, days and hours worked by Mr Shen

[93] The Authority finds it more likely than not that Mr Shen worked the following dates, days and hours:

- (a) 6.5 hours on Sunday, 1 October 2023 (1 day).
- (b) 8 hours on the following weekdays 2, 3, 4 and 6 October 2023 (4 days).
- (c) 6.5 hours on Sunday, 8 October 2023 (1 day).
- (d) 8 hours on the following weekdays 9, 10, 12 and 13 October 2023 (4 days).
- (e) 6.5 hours on Sunday, 15 October 2023(1 day).
- (f) 8 hours on Mondays to Fridays over the period 16 October to 1 November 2023 (9 days).
- (g) 6.5 hours on 23 October 2023, the Labour Day public holiday (1 day).
- (h) 6.5 hours on the following Sundays (7 days):
 - (i) 22 and 29 October 2023.
 - (ii) 5, 12, 19 and 26 November 2023;

- (iii) 3 December 2023.
- (i) 8 hours on the following weekdays 4, 7 and 8 December 2023 (3 days).
- (j) 6.5 hours on every Sunday over the period 8 October 2023 to 3 March 2024 (22 days), being:
 - (i) 8, 15, 22 and 29 October 2023.
 - (ii) 5, 12, 19, and 26 November 2023.
 - (iii) 3, 10, 17, 24 and 31 December 2023.
 - (iv) 7, 14, 21 and 28 January 2023.
 - (v) 4, 11, 18, and 25 February 2023.
 - (vi) 3 March 2023.
- (k) 7.5 hours on the following Saturdays (3 days):
 - (i) 30 December 2023.
 - (ii) 6 January 2024.
 - (iii) 24 February 2024.
- (l) 8 hours on Mondays to Fridays over the period 11 to 24 December 2023 (10 days).
- (m) 6.5 hours on 26 December 2024, the Boxing Day public holiday (1 day).
- (n) 6.5 hours on 2 January 2024, the Day After New Year's Day public holiday (1 day).
- (o) 8 hours on Tuesdays to Fridays over the periods (6 days):
 - (i) 27 to 29 December 2023.
 - (ii) 3 to 5 January 2024.
- (p) 8 hours on Mondays to Fridays over the following periods (28 days):
 - (i) 8 to 28 January 2024.
 - (ii) 30 January to 5 February 2024.
 - (iii) 7 to 16 February 2024.
- (q) 7.5 hours on Saturdays over the period 9 March 2024 to 1 May 2024 (10 days).

- (r) 6.5 hours on 29 January 2024, the Auckland Anniversary public holiday (1 day).
- (s) 6.5 hours on 6 February 2024, the Waitangi Day public holiday (1 day).
- (t) 8 hours on the following weekdays 19, 20, 22 and 23 February 2024 (4 days).
- (u) 8 hours on 26 to 29 February and 1 March 2023 (5 days).
- (v) 8 hours on the Mondays and Thursdays over the following periods (18 days) from:
 - (i) 4 March to 24 April 2024 (14 days).
 - (ii) 29 April to 9 May 2024 (4 days).
- (w) 8 hours on Monday, 22 April 2024 (1 day).
- (x) 4 hours on Thursday, 25 April 2024 (Anzac Day) (1 day).
- (y) 8 hours on the Mondays, Tuesdays and Thursdays over the period 13 to 30 May 2024 (9 days).
- (z) 8 hours on the following weekdays 3, 4, 5 and 6 June 2023 (4 days).
- (aa) 6.5 hours on 3 June 2024, the King's Birthday public holiday (1 day).
- (bb) 8 hours on the Mondays, Tuesday and Thursday over the period 10 June to 11 July 2024 (15 days).
- (cc) 8 hours on the following weekdays 17, 18, 23, 24, 25, 31 July, 1 and 6 August 2024 (8 days).

Overview of hours worked

[94] Mr Shen's working hours varied over the course of his employment. He worked six days a week from 1 October 2023 to 3 March 2024, except for the week commencing 9 October 2023 which was his second week of employment, during which he had only worked five days that week. From 4 March 2024 to 6 August 2024 Mr Shen worked four days a week.

[95] Mr Shen's days of work also varied. For example:

- (a) From 1 October 2023 to 3 March 2024 Mr Shen only worked three Saturdays (30 December 2023, 6 January 2024 and 24 February 2024).
- (b) From 4 March to 12 May 2024 Mr Shen worked every Saturday (ten Saturdays).

- (c) From 13 May 2024 to 6 August 2024 Mr Shen did not work any Saturdays.
- (d) From 1 October 2023 to 3 March 2024 Mr Shen worked every Friday.
- (e) From 4 March to 6 August 2024 Mr Shen did not work any Fridays.

Summary of hours worked

[96] Mr Shen worked for a total of 1,428.5 hours. That included the ordinary time hours he had worked on seven public holidays but excluded:

- (a) The two paid annual leave days on 5 and 6 December 2023.
- (b) 28 March 2024 he did not work.
- (c) Three paid sick days on 14, 15 and 30 July 2024.

[97] Mr Shen worked 1,428.5 hours over the course of his employment from 1 October 2023 to 6 August 2024, calculated as follows:

- (a) 8 hours on 135 weekdays, = 1,080 hours.
- (b) 7.5 hours on 13 Saturdays, = 97.5 hours
- (c) 6.5 hours on 38 Sundays and public holidays, = 247 hours.
- (d) 4 hours on the Anzac Day public holiday on 25 April 2024, = 4 hours.

[98] Mr Shen should have been paid \$42,369.31 gross, consisting of \$29.66 per hour x the 1,428.5 total ordinary time hours he had worked over the period 1 October 2023 to 6 August 2024.

[99] The amount of \$42,369.31 gross wages excluded:

- (a) Two days of paid annual leave taken in advance of his annual leave entitlement.
- (b) Three days of paid sick leave.
- (c) Public holiday pay for the three public holidays that fell on what would otherwise have been a working day for him.
- (d) Public holiday entitlements, consisting of time and a half for the 43 hours he worked on public holidays plus the seven alternative holidays he got for working on seven public holidays.
- (e) Four weeks' pay in lieu of notice.

- (f) Annual holiday pay of eight percent of Mr Shen's total gross earnings, which he should have been paid when his employment ended.

What public holidays did Mr Shen work?

Public holidays the parties agreed Mr Shen had worked

[100] It was agreed that Mr Shen had worked 6.5 hours on the following public holidays:

- (a) Monday, 23 October 2023 (Labour Day).
- (b) Tuesday, 26 December 2023 (Boxing Day).
- (c) Tuesday, 2 January 2024 (New Year's Day).
- (d) Tuesday, 6 February 2024 (Waitangi Day).
- (e) Monday, 3 June 2024 (King's Birthday).

Disputed public holidays that were worked

[101] During the investigation meeting, Ms Chen agreed Mr Shen had worked on the Auckland Anniversary public holiday on Monday, 29 January 2024. However, Ms Chen acknowledged Lanquan had not recorded that as a public holiday Mr Shen had worked in its records.

[102] Because Mr Shen worked 6.5 hours on Monday, 29 January 2024, he should have received:

- (a) \$192.79, being his hourly rate of \$29.66 x the 6.5 hours he had worked.
- (b) \$96.40, as time and a half for the 6.5 hours he worked on 29 January 2024 (being \$14.83 per hour x 6.5 hours).
- (c) One day alternative holiday.

[103] Mr Shen's claim that he had worked four hours on Anzac Day, 25 April 2024, was accepted under s 132(2) of the Act. The store was open from 1pm to 5pm on Anzac Day. Mr Shen normally worked on Thursdays, so his evidence that he worked four hours on the Anzac Day public holiday was accepted.

Finding on public holidays worked

[104] Mr Shen worked on seven public holidays, not five as Lanquan had claimed. Mr Shen worked 6.5 hours on six public holidays plus four hours on the Anzac Day public holiday on 25 April 2024. He therefore worked for a total of 43 hours over seven public holidays.

[105] Mr Shen's claim that he had not been paid for all the public holidays he had worked succeeded.

Is Mr Shen owed unpaid public holiday entitlements?*Time and a half for hours worked on public holidays*

[106] Lanquan agreed it had not paid Mr Shen time and a half for any of the hours he had worked on public holidays.

[107] Mr Shen was entitled to be paid an extra \$14.83 per hour for every hour he worked on a public holiday, as time and a half in accordance with s 50 of the HA03, in addition to his normal hourly rate of \$29.66. Mr Shen worked a total of 43 hours over the seven public holidays he worked (6 days x 6.5 hours plus 1 day x 4 hours).

[108] Mr Shen should have been paid time and a half of \$637.69 (being \$14.83 per hour x 43 hours) for the 43 total hours he had worked on public holidays. This \$637.69 was to be paid to Mr Shen in addition to his normal hourly rate of \$29.66 for each hour he had worked on a public holiday.

[109] Mr Shen's contractual pay of \$29.66 per hour, plus his time and a half pay of \$14.83 per hour, meant Mr Shen should have been paid \$44.49 per hour for each of the 43 hours he had worked on public holidays. However, that did not occur. He was paid either \$23.00 per hour or \$23.50 per hour for the public holidays he worked from 4 March 2024 onwards.

[110] Mr Shen's public holiday pay arrears claim succeeded.

Alternative holiday for public holidays worked

[111] Lanquan admitted it had failed to give Mr Shen an alternative day holiday for each public holiday he had worked, so this claim succeeded.

[112] Mr Shen was entitled to be paid \$1,660.96 (being \$237.28 per day x 7 days) for the seven alternative holidays he had accrued, but had not used, when his employment ended on 6 August 2024.

Public holidays not worked

[113] Lanquan did not pay Mr Shen anything for any public holiday that he had not worked. However, s 49 of the HA03 required Mr Shen to be paid at not less than his relevant daily pay or average daily pay for a public holiday that fell on a day that would “otherwise be a working day” for him.

[114] There were twelve public holidays over the course of Mr Shen’s employment. He worked on seven of them. Mr Shen did not work on three public holidays that were “otherwise a working day” for him, because he had always worked on Mondays.

[115] Mr Shen should have been paid (but was not) for the following public holidays he did not work because, but for the public holidays, he would normally have worked these Mondays:

- (a) Monday, 25 December 2023 (Christmas Day).
- (b) Monday, 1 January 2024 (New Year’s Day).
- (c) Monday, 1 April 2024 (Easter Monday).

[116] Mr Shen worked eight hours on Mondays, so he was entitled to be paid \$237.28 on each of the three public holidays that fell on a day that was otherwise a working day for him, meaning but for the public holiday he would have been at work that day.

[117] Mr Shen therefore should have been paid \$711.84 gross for the three public holidays he did not work, in accordance with s 49 of the HA03.

Public holidays Mr Shen was not entitled to be paid for

[118] The following public holidays were not otherwise working days for Mr Shen, because he did not work on Fridays, so he was not entitled to be paid for them:

- (a) Friday, 29 March 2024 (Good Friday); and
- (b) Friday, 28 June 2024 (Matariki).

Is Mr Shen owed wage arrears because his hours of work were decreased?

[119] Mr Shen was only entitled to be paid for hours he had worked, unless he was entitled to some other form of paid leave on a day he did not attend work, such as annual holiday, public holiday entitlements, or paid sick leave.

[120] Mr Shen's employment agreement and AEWV stated he was to be paid for at least 30 hours a week at the rate of not less than \$29.66 per hour. Mr Shen never worked less than 30 hours a week, unless he also had other paid days off work during that week (for example annual holiday taken in advance, paid sick leave or paid public holidays). That meant Mr Shen was never paid for less than 30 hours per week over the duration of his employment.

[121] Mr Shen's hours of work decreased from 40-50 hours per week to 30 hours per week from 4 March 2024. This reduction in Mr Shen's hours of work occurred so Lanquan could employ his wife. It was also permitted by Mr Shen's employment agreement, which only required him to be rostered to work for at least 30 hours per week.

[122] Mr Shen's claim he was owed wage arrears because he had only worked 30 hours a week from 4 March 2024 onwards did not succeed.

Was Mr Shen paid for less than his contracted hours of work?

[123] Lanquan always rostered Mr Shen to work at least his contractual 30 hours work per week.

[124] Mr Shen's claim that he was contractually entitled to be paid \$30.00 per hour for 40 hours work per week was not accepted, as that was not what his employment agreement required.

Is Mr Shen owed notice pay arrears?

[125] Clause 26 of Mr Shen employment agreement provided for four weeks' notice or pay in lieu. He was dismissed without notice on 6 August 2024, so was entitled to four weeks' pay in lieu of notice.

[126] When Mr Shen's employment ended on 6 August 2024, he had regularly been working four days a week. This consisted of three eight-hour days he worked on weekdays plus 6.5 hours he worked on Sundays.

[127] If Lanquan had paid Mr Shen correctly, he should have been paid \$904.63 gross per week, being 30.5 hours worked per week x \$29.66 per hour. Accordingly, Mr Shen should have been paid \$3,618.52 gross as pay in lieu of notice (being 4 weeks x \$904.63 per week), but that did not occur.

[128] Mr Shen's notice pay arrears claim succeeded.

Did Lanquan fail to pay Mr Shen correctly?

[129] Lanquan failed to calculate and pay Mr Shen's wages correctly.

Incorrect hourly rate

[130] Mr Shen's wages were calculated by Lanquan based on \$23.00 per hour, or from 4 March 2024 \$23.50 per hour. However, Mr Shen's employment agreement recorded his hourly rate as \$29.66, and his second AEWV required that he be paid not less than \$29.66 per hour.

[131] Accordingly, Mr Shen's normal hours of work should have all been paid at \$29.66 per hour. Mr Shen is owed wage arrears arising from the difference between what he should have been paid per hour (\$29.66) and what he was paid per hour (\$23.00 or \$23.50).

[132] All of Mr Shen's annual holiday, sick leave, public holiday, alternative day and notice pay entitlements should have been calculated at the rate of \$29.66 per hour, not the \$23.00 or from 4 March 2024 \$23.50 per hour he was paid, so these had to be recalculated by the Authority.

Public holiday arrears

[133] Mr Shen was not paid for the Anzac Day public holiday. He should have received:

- (a) \$118.64 for the four ordinary time hours he worked on 25 April 2024, (4 hours x \$29.66 per hour).
- (b) \$59.32 time and a half for the four hours he worked on 25 April 2025, (4 hours x \$14.83 per hour).
- (c) One day alternative holiday.

[134] Ms Chen agreed Mr Shen had only received either \$23.00 per hour up to 3 March 2024, or \$23.50 per hour from 4 March 2024 onwards, for the hours he had worked on public holidays.

[135] Mr Shen worked for 6.5 hours on each of the following public holidays. He was therefore owed wage arrears for unpaid time and a half totalling \$481.98, consisting of \$14.83 per hour for the 32.5 hours in total he worked over the following public holidays that MS Chen agreed Mr Shen had worked:

- (a) 6.5 hours on Monday, 23 October 2023 (Labour Day).
- (b) 6.5 hours on Tuesday, 26 December 2023 (Boxing Day).
- (c) 6.5 hours on Tuesday, 2 January 2024 (Day After New Year's Day).
- (d) 6.5 hours on Tuesday, 6 February 2024 (Waitangi Day).
- (e) 6.5 hours on Monday, 3 June 2024 (King's Birthday).

Entitlements for the public holidays Mr Shen had worked

[136] Mr Shen worked on seven public holidays that were otherwise working days for him, so in accordance with s 56 of the HA03 he was entitled to seven days paid alternative holidays. This consisted of the five public holidays Ms Chen agreed Mr Shen had worked plus the two additional public holidays Mr Shen said he had worked (being Auckland Anniversary and Anzac Day).

[137] Mr Shen had not used any of these alternative holidays, so s 60 of the HA03 required Lanquan to pay him for these seven days alternative holidays when his employment ended.

[138] Section 9 of the HA03 required Mr Shen's seven alternative holidays to be paid at his relevant daily pay rate, which at that time was \$237.28, being 8 hours x \$29.66 per hour. Mr Shen was therefore owed \$1,660.96 for his seven alternative holidays.

Paid sick leave

[139] Because Lanquan failed to keep legally compliant holiday and leave records for Mr Shen it was unclear what, if anything, he had been paid on the three days he did not work due to illness.

[140] Mr Shen's sick leave entitlement anniversary date was 1 April 2024. That was six months from 1 October 2023 which was the date he had started working for Lanquan. Mr Shen was therefore entitled to be paid his relevant daily pay or average daily pay for the sick leave he took on 14, 15 and 30 July 2024.

[141] Mr Shen should have been paid \$667.35 for the three days' sick leave he used in 2024, consisting of:

- (a) \$192.79 for Sunday 14 July 2024, being \$29.66 hourly rate x 6.5 hours worked on Sundays).
- (b) \$237.28 on Monday 15 July 2024.
- (c) \$237.28 on Tuesday, 30 July 2024.

Quarterly advance annual holiday cash payments not proved

[142] Ms Chen said to "help out" Mr Shen, Lanquan paid him quarterly cash payments equal to eight percent of his wages.

[143] Mr Shen denied he had received cash payments for his annual holiday pay, although he did acknowledge he had been paid \$2000.00 cash on 4 December 2023, which he did not consider to be wages or holiday pay. The Authority found that \$474.56 of the \$2000.00 Mr Shen was paid in cash was likely an advance annual holiday pay, paid to him for the annual leave he took on 5 and 6 December 2023.

[144] The other alleged quarterly cash payments of annual holiday pay in advance were not proved on the balance of probabilities to have occurred. These alleged cash payments were not documented, and Mr Shen had not signed an acknowledgment of having received them. The HA03 also does not permit an employer to pay out an employee's annual holiday entitlement in that way.

[145] Section 132(2) of the Act has resulted in Mr Shen's evidence (except for the payment of \$474.56 in cash on 4 December 2023) that he was not paid his annual holiday pay in advance in cash payments being accepted.

[146] Because Ms Chen's claim that Mr Shen was paid ten percent annual holiday pay quarterly in cash was not accepted, no deduction was to be made from his final annual holiday pay entitlement to reflect that.

'Pay as you go' holiday pay was not permitted

[147] Ms Chen's claim that Lanquan had paid Mr Shen's 'pay as you go' holiday pay of ten percent of his gross wages "in advance" was not accepted.

[148] Section 28 of the HA03 prescribes when employer is permitted to provide ‘pay as you go’ holiday pay to an employee, and none of those conditions were met in Mr Shen’s case. In particular:

- (a) Mr Shen was not a fixed term employee.
- (b) His work was not so intermittent or irregular that it was impracticable to provide him with annual holidays under s 16 of the HA03.
- (c) There was no written employment agreement that recorded he would be paid ‘pay as you go’ holiday pay.
- (d) The annual holiday pay was not paid as an identifiable component of his pay.
- (e) It was not clear how much annual holiday pay had been paid with Mr Shen’s normal wages.

Errors in Lanquan’s annual holiday pay calculations

[149] Mr Shen’s leave anniversary date was 1 October, so his employment ended before he had worked for Lanquan for 12 months.

[150] Section 23(2) of the HA03 required Mr Shen to be paid eight percent of his total gross earnings as holiday pay, less the \$474.56 holiday pay he had already been paid in cash on 4 December 2025, in advance of his annual holiday entitlement arising.

[151] Mr Shen was not paid correctly for the duration of his employment, so he did not receive his correct annual holiday entitlements when his employment ended.

[152] Section 27(2) of the HA03 required Lanquan to pay Mr Shen his annual holiday pay in his final pay after his employment had ended on 6 August 2024. That did not occur. Mr Shen’s annual holiday pay arrears claim therefore succeeded.

What was Mr Shen paid?

[153] There was a dispute between the parties about what if any cash payments Mr Shen received, the amount of any such payments and what they were for. This was complicated by the family arrangements in which property and money exchanged hands for family reasons.

[154] Examples of money and property changing hands informally included but were not limited to board and lodging, purchase of a vehicle, payment of visa application fees, cash gifts,

payment of vehicle insurance, property from the store taken to Mr Shen's new home without being paid for, money being gifted to Mr Shen when he arrived in New Zealand, payment of his travel and petrol costs, as well as cash gifts of money being made for Christmas presents.

[155] The only cash payment to Mr Shen the Authority considered was proven on the balance of probabilities was the \$2000.00 Ms Chen gave him on 4 December 2023. The Authority concluded that only \$474.56 of this was likely paid as wages, namely consisting of two days' paid annual holiday which was paid to Mr Shen in advance of his leave anniversary date of 1 October 2024, to assist his family with their return to China.

[156] The Authority concluded in the absence of wage and time records, holiday and leave records or PAYE deductions being remitted to IRD that the \$1,524.44 remaining cash balance was paid as a Christmas gift to benefit Mr Shen's family members so was not wages.

[157] Except for a cash payment of \$2,000.00 Mr Shen agreed he had received from Ms Chen on 4 December 2023, none of the other cash payments she claimed had also been made to him as "annual holiday pay paid in advance" were proven to the required standard of proof. Any additional cash payments (if they occurred) were not reported to IRD by any of the parties, so these were not treated as "wages" by the Authority.

[158] The IRD print out of what Mr Shen was paid by Lanquan was used to establish what he had been paid. That was the most reliable evidence because it was based on the wages Lanquan had officially reported to IRD.

[159] According to IRD Mr Shen was paid:

- (a) \$48,313.00 gross by Lanquan over the period 16 July 2023 to 6 August 2025, consisting of:
 - (i) \$41,921.00 from October 2023 to July 2024; and
 - (ii) \$6,392.00 from August to September 2024.
- (b) \$3,600.00 by Si Yuan over the period August to September 2023, being \$900.00 in August and \$2,700.00 in September 2023.

[160] Lanquan paid Mr Shen \$48,787.56. in total over the duration of his employment. This consisted of \$48,313.00 Lanquan reported to IRD plus the \$474.56 cash payment of annual holiday pay Ms Chen made to Mr Shen on 4 December 2023.

What should Mr Shen have been paid?

[161] If Lanquan had paid Mr Shen correctly, excluding the annual holiday pay he should have been paid when his employment ended, he would have been paid \$50,140.23 gross during the course of his employment, consisting of:

- (a) \$42,369.31 for the total 1,428.5 hours he had worked over the period 1 October 2023 to 6 August 2024 (excluding paid leave days).
- (b) \$667.35 as three days' paid sick leave (\$192.79 for 1 day plus \$237.28 per day x 2 days).
- (c) \$474.56 two days' paid annual leave, which was paid to him in cash on 4 December 2023, in advance of his leave anniversary date.
- (d) \$637.69 time and a half for the hours he had worked on public holidays (this was an extra \$14.83 per hour for the 43 hours he had worked in total over the seven public holidays worked).
- (e) \$1,660.96 for the seven alternative holidays he had owing when his employment ended (\$237.28 per day x 7 days).
- (f) \$711.84 for the three public holidays he did not work, but which fell on days that were otherwise working days for him (\$237.28 x 3 days).
- (g) \$3,618.52 four weeks' pay in lieu of notice (30.5 hours x \$29.66 per hour = \$904.63 x 4 weeks).

[162] Pursuant to s 23(2) of the HA03, Mr Shen was entitled to be paid eight percent of his total gross earnings of \$50,140.23 as annual holiday pay, which amounted to \$4,011.22.

[163] However, s 23(2)(a) of the HA03 required \$474.56 to be deducted from \$4,011.22, because the \$474.56 cash payment Mr Shen had received on 4 December 2023 was paid to him "for annual holidays taken in advance". The annual holidays paid in advance of his annual holiday entitlement arising were the two days of paid annual leave he had taken on 5 and 6 December 2025.

[164] That meant Lanquan should have paid Mr Shen \$3,536.66 annual holiday pay under s 23(2) of the HA03 in his final pay when his employment ended, in addition to the \$474.56 cash annual holiday payment in advance that it had already paid him on 4 December 2023.

[165] Accordingly, the total gross amount of wages Mr Shen should have received from Lanquan was \$53,676.89. This represented his total gross wages of \$50,140.22 plus the \$3,536.66 gross annual holiday pay he should have been paid in his final pay.

Is Mr Shen owed wage arrears?

[166] Lanquan should have paid Mr Shen \$53,676.89 total gross wages.

[167] However, Lanquan only paid Mr Shen \$48,787.56, consisting of \$48,313.00 wages it reported to IRD plus the \$474.56 cash payment made on 4 December 2023.

[168] Lanquan owed Mr Shen wage arrears of \$4,889.33 being the \$53,676.89 he should have been paid less the \$48,787.56 he was actually paid.

Should interest be awarded on Mr Shen's wage arrears?

[169] Lanquan has had the benefit of using Mr Shen's wages which should have paid to him (at the latest) in the pay run after his employment ended on 6 August 2024. It was therefore appropriate to award Mr Shen interest on his wage arrears to recognise he has been deprived of the use of his own money by Lanquan's failure to pay him wages and holiday pay when they became due.

[170] Interest is to be paid on Mr Shen's wage arrears of \$4,889.33 from 7 August 2024 (the day after his employment ended) until 29 August 2025 (being the date of this determination). Interest is to be calculated using the Civil Debt Calculator on the Ministry of Justice website.

[171] Accordingly, Lanquan is ordered to pay Mr Shen \$277.29 interest for the period 7 August 2024 to 29 August 2025. Interest continues to accrue from 30 August 2025 (the day after this determination has been issued to the parties) until Mr Shen has been fully paid the wage arrears he is owed.

Did Lanquan unilaterally reduce Mr Shen's weekly hours of work in breach of his employment agreement?

[172] Clause 5.1 of Mr Shen's employment agreement required Mr Shen to be rostered to work for 30 hours each week, between the hours of 8.30am and 5.30pm Mondays to Sundays. Although clause 5.2 of the employment agreement said Mr Shen could be offered more hours, it also stated that he was free to decide whether to work more than 30 hours in any given week.

[173] The parties verbally agreed on 12 January 2024 that Mr Shen would work 40 hours per week, consisting of eight hours per day, to be worked over five days. This was not variation to Mr Shen's employment agreement but was instead an agreement the parties made to accommodate Mr Shen's wife's return to New Zealand in 2024, so she could also work for Lanquan again.

[174] However, after Ms Wei returned to New Zealand in late February 2024 Lanquan changed the roster, so Ms Wei worked 24 hours (consisting of three 8 hours day per week) and Mr Shen worked 30 hours per week, consisting of two weekdays plus the weekend. Mr Shen claimed this roster change was a unilateral reduction in his hours, that breached his employment agreement.

[175] Mr Shen's claim that Lanquan had breached his employment agreement by reducing his hours of work to 30 hours a week from 4 March 2024 did not succeed. The contractual obligation was to offer Mr Shen at least 30 hours work per week, and Lanquan did that.

Did Lanquan fail to give Mr Shen one week's notice of roster changes?

[176] Clause 5.2 of the employment agreement required Lanquan to give Mr Shen one week's notice of roster changes, unless there were "exceptional circumstances" that meant that could not occur.

[177] Lanquan's failure to give Mr Shen one week's advance notice of the 4 March 2024 roster change (which resulted in him working 30 hours per week, over two weekdays and the weekend instead of 40 hours over five days a week), breached clause 5.2 of his employment agreement. There were not any "exceptional circumstances" that meant Lanquan was unable to have given him one week's notice of his roster change.

[178] Lanquan therefore breached the notice requirement in clause 5.2 of Mr Shen's employment agreement when it failed to give him one week's notice of the change to his rostered days and hours of work that occurred in the 4 March 2024 roster. Mr Shen's claim about that succeeded.

Did Lanquan breach the HA03 by declining Mr Shen's request for bereavement leave?

[179] Mr Lin's father, who lived in China, passed away on the evening of 26 March 2024. Mr Lin's deceased father was also Mr Shen's grandfather. Mr Lin's father had his funeral in China on 27 March 2024 and was cremated that same day.

[180] Mr Shen did not attend work on 27 March 2025 because he was helping a friend fix a plumbing problem. Mr Shen claimed that on the evening of 27 March 2024 his wife had asked for bereavement leave on his behalf, which he claimed was declined by Ms Chen in breach of ss 69 and 70 of the HA03. This claim was viewed offensive to Mr Lin and Ms Chen, and they strongly refuted it.

[181] Mr Lin was so outraged at the bereavement leave allegations that he had to leave the Authority's investigation meeting twice to calm himself down. Mr Lin told the Authority he could not believe his late father was "being dragged into this" and he dismissed Mr Shen's bereavement leave allegations as "total lies".

[182] Section 63 of the HA03 required an employee to have worked for six months before they are entitled to paid bereavement leave. Mr Shen was not entitled to paid bereavement leave on 28 March 2024 because he had not worked for six months by then.

[183] Ms Wei's evidence that she had requested bereavement leave was so vague that it fell short of establishing a request for bereavement leave had actually been made.

[184] Mr Shen had asked for 28 March 2024 off work (which was granted) because he had not finished helping his friend with the plumbing issues they had been working on together on 27 March 2024. It was unlikely Mr Shen would have been declined bereavement leave, but would be given a day off work to help a friend with a plumbing issue.

[185] Mr Shen's bereavement leave claim did not succeed.

Does the Authority have jurisdiction over the reimbursement of stock and/or security camera claims Mr Shen has made?

[186] In August 2023 when Mr Shen was visiting the store he examined the security camera system and said he could purchase better quality second-hand equipment from China at lower cost. Mr Shen also said he could obtain stock the store sold for cheaper in China. Mr Shen told

Ms Chen he planned to ship household items to New Zealand, so suggested they did a combined shipment to save costs. Ms Chen agreed with that proposal.

[187] These items arrived in New Zealand on 13 October 2023. Mr Shen set up the new store security camera system using his own phone number in China. Mr Shen said that had prevented him from transferring access to the store's security camera to Ms Chen's phone number when she had asked him to.

[188] These discussions about shipping stock from China and obtaining a new security camera system pre-dated the employment relationship. These were therefore family arrangements entered into as part of the goodwill family members extended to benefit and help each other.

[189] Accordingly, because this purchase of stock and a security camera was an arrangement between family members, it was not entered into as and part of the employment relationship and it did not form a term or condition of Mr Shen's employment by Lanquan.

[190] On 20 October 2023 Ms Chen asked Mr Shen to let her know how much she owed him, and he gave her receipts showing it was RMB 7,305, to which he added \$112.00 NZD for freight and \$75.00 NZD for GST/Customs duties. The total Mr Shen said was payable to him amounted to \$1,878.00 NZD.

[191] Mr Shen later increased that amount to \$3,213.19, by adding an extra shipping fee of \$500.00 plus the cost of two mobile phones he had given Mr Lin and Ms Chen as gifts when he had arrived from China. Ms Chen and Mr Lin never used these 'gifted' phones as they were not suitable for them, but in the interests of maintaining family harmony they agreed to pay for the phones anyway, despite not wanting them. These 'gifted' mobile phones that Mr Shen made Ms Chen and Mr Lin pay for were sent back to China without ever being used by them.

[192] Ms Chen responded to Mr Shen's invoice by setting out that she had personally paid \$5000.00 for Mr Shen's first AEWV visa with Si Yuan, and noting it had cost Lanquan \$2,763.35 to become an Accredited Employer plus a further \$800.00 to transfer Mr Shen's AEWV from Si Yuan to Lanquan.

[193] Ms Chen considered that Mr Shen owed her money if all costs between the parties were properly accounted for. However, Ms Chen told Mr Shen she was happy to let the various costs

lie where they fell if he agreed with that. That is the basis on which matters were left, until Mr Shen lodged his statement of problem on 20 August 2024.

[194] Ms Chen's solution that each party bear the costs they had incurred was a practical one that reflected the natural 'give and take' of family members who had been informally helping each other out in different ways. It was noteworthy that Mr Shen ended up financially better off under Ms Chen's proposal than she did.

[195] The Authority declined to make any orders about the security camera or stock on the grounds it lacked jurisdiction to do so.

Is Lanquan required to reimburse Mr Shen for the stock and/or security camera he purchased in China?

[196] No, Lanquan is not ordered to reimburse Mr Shen for the stock or security camera. These arrangements pre-dated the employment relationship so were part of informal family arrangements, meaning these matters fell outside of the Authority's jurisdiction.

[197] Mr Shen received financial benefits as an extended family from Mr Lin and Ms Chen that exceeded by thousands of dollars the costs he had incurred for the stock and security camera. This claim did not succeed.

Did Lanquan's letter to Mr Shen dated 18 July 2024 breach its good faith obligations to him?

[198] On 18 July 2024 the respondents' then advocate wrote to Mr Shen asking him to turn over access to the security camera to Ms Chen, which she had been trying to achieve, without success, in the lead up to the letter. Mr Shen blamed technical issues, saying he had to go back to China to change the security camera out of his name and phone number so Ms Chen could access it.

[199] Ms Chen did not accept the explanations Mr Shen had been giving her for why he was the only person who could access the store's security camera and for why she as the owner had no ability to access it. She therefore escalated the matter via Lanquan's then advocate, who wrote a letter instructing Mr Shen to transfer telephone access to the in-store security camera to her. The letter also warned Mr Shen that he could face serious misconduct allegations if he failed to do so.

[200] Mr Shen claimed this letter breached Lanquan's good faith obligations to him. The letter simply amounted to an instruction to get the security camera access returned to Ms Chen. That was not unreasonable in the circumstances, as she wanted sole access to it, particularly because the respondents' relationship with Mr Shen and Ms Wei was beginning to break down around this time.

[201] It was not a breach of good faith for this instruction to be issued to Mr Shen (via Lanquan's then advocate) after previous discussions had not resulted in the outcome Ms Chen had been seeking. Accordingly, Mr Shen's breach of good faith claim did not succeed.

Did Lanquan breach Mr Shen's employment agreement?

[202] Lanquan breached clause 5.2 of Mr Shen's employment agreement when it failed to give him one week's notice of the change to the 4 March 2024 roster. Lanquan also breached Mr Shen's employment agreement by failing to pay him his:

- (a) Contractual rate of pay, which was \$29.66 per hour, for every hour he had worked.
- (b) Annual holiday pay, correctly and on time when his employment ended on 6 August 2024.
- (c) Correct public holiday entitlements.
- (d) Correct pay in lieu of notice.

[203] Mr Shen's claims that Lanquan had breached his employment agreement by not providing him with paid bereavement leave, and/or by unilaterally reducing his hours of work, did not succeed.

Should penalties be imposed on Lanquan for its breaches of the employment agreement, the Act, the HA03 and/or the WPA?

[204] The breaches of the employment agreement and HA03 related to the failure to pay Mr Shen correctly or on time. These were serious breaches which left Mr Shen out of pocket and which have still not been remedied. The breaches of s 130 in the Act and s 81 of the HA03 related to the failure to keep legally compliant employment records.

[205] Penalties should be imposed on Lanquan for its breaches of Mr Shen's employment agreement, and for breaches of its obligations under the HA03 as his employer, and for its record keeping breaches.

[206] However, Mr Shen's alleged breaches of s 12A of the WPA have been withdrawn, so no penalty can be imposed for that. Mr Shen had not sought that any other penalties be imposed under the WPA that did not relate to the employment premium allegations, so no penalties can be imposed under the WPA as these were not claimed in the 2ASoP.

What penalties should be imposed on Lanquan?

[207] The purpose of penalties is to punish those who breach minimum standards, to deter companies and individuals from committing employment breaches, to eliminate unfair competition and to compensate those who have been affected by breaches. All those factors apply in this case.

[208] Penalties in this matter are required to signal public disapproval Lanquan's conduct and to deter it, and other employers, from operating in a way that breaches minimum code legislation. Accordingly, penalties are to be imposed on Lanquan for its breaches of the Mr Shen's employment agreement, the Act and the HA03.

Relevant law

[209] When assessing penalties, the Authority is required to consider the various factors identified in s 133A of the Act.

[210] The Authority is also to be guided by the Employment Court decisions in *Borsboom (Labour Inspector) v Preet PVT Limited and Warrington Discount Tobacco Limited*, as summarised by the Court in *Nicholson v Ford* and *A Labour Inspector v Daleson Investment Limited*.²

Assessment of penalty factors

Statutory consideration 1 – the object of the Act

[211] The s 3 objects of the Act that were relevant in this case included:

² *Borsboom (Labour Inspector) v Preet PVT Ltd & Warrington Discount Tobacco Ltd* [2016] NZEmpC 143; *Nicholson v Ford* [2018] ERNZ 393; and *A Labour Inspector v Daleson Ltd* [2019] NZEmpC 12.

- (a) Recognition of the implied mutual obligations of trust and confidence inherent in employment relationships.
- (b) The requirement of mutual good faith behaviour by parties in an employment relationship.
- (c) Promotion of the effective enforcement of employment standards.
- (d) Acknowledgment of the inherent inequality of power in employment relationships.
- (e) Recognition that “productive employment relationships” were built through the “promotion of good faith” in the employment relationship.

[212] Section 4B in the Act reflects the importance of an employer keeping legally compliant and accurate employment records relating to minimum entitlement provisions as being one of the three “key provisions” accompanying the Act’s objects.

[213] Section 4B in the Act requires employers to keep records in sufficient detail to demonstrate compliance with minimum entitlement provisions, as defined in s 5 of the Act. Section 4B(2) of the Act provides that obligation is in addition to the requirements of any other provisions, such as ss 65 and 130 of the Act and s 81 of the HA03, relating to record keeping.

[214] These objects were particularly relevant in this case which involved a worker from overseas. Mr Shen had moved his family to New Zealand, and he was working here on a restrictive AEWV. He was not familiar with New Zealand employment law, or what legal obligations New Zealand employers had to their employees. Mr Shen relied on Ms Chen to run Lanquan’s business in a legally compliance manner.

[215] Lanquan’s failure to pay Mr Shen correctly and on time was inconsistent with good faith behaviour, and should attract penalties.

Statutory consideration 2 – nature and extent of the breach

(i) Nature of the breaches

[216] The breaches included failure by Lanquan to:

- (a) Pay Mr Shen his contractual rate of pay for the duration of his employment, in breach of what was stated in his employment agreement and AEWV.

- (b) Failure to provide Mr Shen with his correct public holiday entitlements, in breach of ss 49, 50, 55, 56 and 60 of the HA03.
- (c) Pay Mr Shen his correct annual holiday pay when his employment ended on 6 August 2024 (in breach of ss 23 and 27 of the HA03).
- (d) Keep legally compliant employment documentation for Mr Shen (namely the wage and time records required by s 130 of the Act and the holiday and leave records required by s 81 of the HA03).

[217] The breaches of the Act, the HA03 and of Mr Shen's employment agreement meant he was owed wage arrears of \$4,851.36, which his family had needed to support themselves.

(ii) Number of breaches

[218] Each category of breaches (of the employment agreement, the Act, and the HA03) occurred multiple times, because these breaches occurred throughout the duration of the employment relationship.

[219] There are too many breaches to individually count as each time Mr Shen was not paid correctly and each week legally compliant employment documentation was not kept for him, resulted in breaches of the employment agreement, the Act and the HA03.

(iii) Maximum penalty available for the breaches

[220] Because Lanquan is a company, the potential maximum penalty that could be imposed on it for each breach was \$20,000.00.

(iv) Should penalties be globalised?

[221] The record keeping breaches that occurred involved s 130 of the Act (wage and time records) and s 81 of the HA03 (holiday and leave records) and these consisted of the same type of breach (namely, failure to keep legally compliant employment records). It was therefore appropriate to treat these as one globalised record keeping breach for the purposes of assessing penalties. That approach reflected that there was a single course of continuing conduct by Lanquan that had resulted in those multiple breaches.

[222] Likewise, the underpayment of wages, public holiday entitlements, notice pay and holiday pay and Lanquan's failure to pay Mr Shen on time or correctly regarding his final pay, all involved wage arrears issues. It was therefore appropriate to globalise these multiple

breaches into one representative breach per piece of minimum code legislation and one representative breach of the employment agreement. This meant penalties would be assessed based on one breach of the employment agreement, the Act and the HA03.

[223] Globalisation therefore reduced the total maximum potential penalty to \$60,000.00, which reflected three globalised breaches, which attracted a maximum potential penalty of \$20,000.00 per breach.

Statutory consideration 3 – whether the breach was intentional, inadvertent, or negligent?

[224] The breaches occurred due to Lanquan's negligence. Lanquan had been in business prior to Mr Shen's employment, and it had employed two part-time employees from its inception. The business should have been run in a legally compliant way, but that did not occur.

[225] Lanquan also used a licensed immigration advisor (LIA) to help it obtain Accredited Employer status, and to help it change Mr Shen's AEWV from Si Yuan to Lanquan. Lanquan therefore had ready access to professional advice from its LIA about the importance of providing INZ with accurate information and of complying with the terms of the AEWV.

Statutory consideration 4 – the nature and extent of any loss or damage

[226] The financial loss or damage involved in the breaches was the \$4,851.36 gross wage arrears owed to Mr Shen, which he has still not yet been paid.

Mandatory statutory consideration 5 – compensation, reparation or restitution, steps to avoid or mitigate breach

[227] Mr Shen has not been compensated for his loss. Lanquan has not mitigated the breaches of its employment law obligations that have occurred.

Statutory consideration 6 – circumstances of the breach and any vulnerability

[228] These breaches occurred over the period 1 October 2023 to 6 August 2024. The breaches were caused by an Accredited Employer, and they adversely affected an overseas worker who was employed on an AEWV. The breaches also occurred within the context of an extended family relationship, where the employment had only occurred to help Mr Shen and his wife get ahead financially.

Mandatory statutory consideration 7 – previous conduct

[229] Lanquan is to be treated as a first offender.

Preet additional mandatory consideration 1 – deterrence

[230] Lanquan is no longer operating, so was also unlikely to engage in breaches of employment law obligations in future.

[231] However, the imposition of penalties also acts as deterrent to other employers. The level of penalty therefore had to send a strong signal to all employers throughout New Zealand that they had to comply with the payment terms in an employment agreement and that their business practices must uphold minimum code employment law obligations, pay employees their correct minimum entitlements and keep legally compliant employment records for employees.

Preet additional mandatory consideration 2 – degree of culpability

[232] This factor required the Authority to consider the severity of the breach to establish a provisional starting point for assessing penalties. This included adjusting for any aggravating and mitigating factors relating to the breaches.

[233] The Authority adopted a provisional starting point for assessing penalties of \$18,000.00, being thirty percent of the potential total maximum of \$60,000.00 for these three globalised breaches.

Preet additional mandatory consideration 3 – consistency

[234] Consistency of penalties compared to those imposed in other cases could be achieved by imposing a total penalty in this matter of \$5,400 for the three globalised breaches that occurred.

Preet step 3 – ability to pay

[235] Lanquan is no longer in business and has sold its assets.

Preet additional mandatory consideration 4 – proportionality

[236] When imposing penalties the Authority needed to ensure that the outcome of its penalty assessment was proportional to the severity of all the breaches taken together. This included a consideration of all factors discussed in this determination, including the amount of money involved, the fact one employee was affected, and the need for consistency with other cases.

[237] The Authority concluded that a seventy percent deduction for proportionality was appropriate, giving a total penalty of \$5,400.00 for all breaches.

Penalty imposed on Lanquan

[238] It is appropriate to impose a penalty of \$5,400.00 on Lanquan for all its breaches. This is proportionate with the wrongdoing and consistent with penalties imposed in other cases. It also recognised the financial and emotional harm Mr Shen (as a vulnerable AEWV employee) suffered by not being paid correctly or when his wages and holiday pay became due, which had still not yet been remedied.

[239] A penalty of \$5,400.00 is considered sufficient to punish and deter Lanquan (and Ms Chen as its sole director) from engaging in such conduct in future, and to act as a deterrence to other employers who may be inclined to breach their legal obligations.

Should the penalty be paid to Mr Shen instead of, or as well as, the Crown?

[240] Penalties imposed by the Authority are required to be paid to the Crown bank account. However, s 136(2) of the Act permits the Authority to order that some or any part of any penalty imposed may be paid to “any person”.

[241] The breaches that occurred have harmed Mr Shen and he cannot be compensated for that. He has incurred the time and expense of bringing these breaches to the Authority’s attention. It is appropriate for Lanquan to pay \$3,000.00 of the total penalty imposed directly to Mr Shen to recognise that.

[242] The remaining \$2,400.00 balance of the \$5,400.00 penalty imposed on Lanquan is to be paid directly to the Crown bank account.

Has Lanquan breached employment standards?

[243] Section 5 of the Act defines employment standards. This definition includes:

- (a) A breach of s 64 of the Act, which requires an employer to retain a copy of an employee's individual employment agreement or their individual terms and conditions of employment.
- (b) A breach of s 130 of the Act which requires an employer to keep and produce wage and time records for employees.

- (c) Breaches of the minimum entitlements and payments to employees due under the HA03.
- (d) A breach of the requirements in s 81 and 82 of the HA03, regarding the employer's obligation to keep and produce holiday and leave records for employees.
- (e) A breach of the minimum entitlements provided for by the Minimum Wage Act 1983 (the MWA).
- (f) A breach of the provisions of the WPA.

[244] Lanquan has engaged in multiple breaches of employment standards, as defined by s 5 of the Act, because it failed to:

- (a) Pay Mr Shen correctly or on time.
- (b) Pay his holiday pay when his employment ended.
- (c) Comply with the HA03.
- (d) Keep and produce on request Mr Shen's employment documentation in breach of s130 of the Act and s 81 of the HA03.

Was Ms Chen and/or Mr Lin 'a person involved in a breach of employment standards'?

Section 142W of the Act

[245] Section 142W of the Act sets out when a person is involved in a breach of employment standards. That occurs where the person has (among other things) aided, abetted, counselled, or procured the breach or has induced the breach or has in any way, directly or indirectly, knowingly concerned in or party to the breach.

[246] Section 142W(2) of the Act provides that where a company has engaged in a breach of employment standards then a person may only be treated as a person involved in a breach if they are an officer of the company.

Ms Chen's involvement

[247] Ms Chen as Lanquan's sole director was responsible for ensuring Lanquan complied with its employment law obligations, but she failed to do so.

[248] Mr Shen's claim that Ms Chen was 'a person involved in a breach of employment standards', as defined in s 142W of the Act succeeded.

Mr Lin's involvement

[249] Mr Lin was not an officer of Lanquan, so he did not fall within s 142W(3) of the Act. Mr Lin did not exercise "significant influence over the management or administration" of Lanquan, as that was exclusively Ms Chen's domain.³

[250] Mr Lin did not own or manage the business. All business decisions were made by Ms Chen, who was also solely responsible for the rosters, pay matters, employment documentation and the like.

[251] Mr Shen's claim that Mr Lin was 'a person involved in a breach of employment standards' as defined in s 142W of the Act did not succeed.

Is Lanquan able to pay Mr Shen the wage arrears and other money he is owed?

[252] Lanquan sold its business in September 2024 so it does not have any income or assets. Lanquan failed to lodge its annual return with the Companies Office. The Companies Registrar has advertised the intended removal of Lanquan from the Companies Register under s 318 of the Companies Act 1993. Mr Shen had been advised to contact the Companies Registrar to ensure Lanquan is not removed from the Register.

[253] It appears that Lanquan will likely be unable to pay Mr Shen the wage arrears and other money he has been awarded in this determination. However, to obtain clarity about that, within 28 days of the date of this determination Ms Chen as Lanquan's sole director is ordered to:

- (a) Either take the necessary steps to ensure Lanquan paid Mr Shen the wage arrears and other money he has been awarded in this determination;
- (b) Or advise Mr Shen in writing that Lanquan is unable to pay the wage arrears and other money he has been awarded in this determination and explain why it cannot pay him.

³ Section 142W(3)(e) of the Act.

[254] Compliance by Ms Chen with this order will make it clear whether Lanquan has defaulted on paying Mr Shen. That information will put Ms Chen and Mr Shen on notice about whether Ms Chen must personally pay Mr Shen the amount Lanquan defaulted on paying him.

Should Mr Shen be granted leave to pursue Ms Chen and/or Mr Lin personally for the wage arrears and money he is owed if Lanquan defaults on paying him?

[255] Section 142Y of the Act provides that an employee may recover from a person who is not their employer wages or other money that they are owed by the employer if the default in the payment of wages or other money to them by the employer is due to a breach of employment standards, and the person who is liable to pay is ‘a person involved in the breach of employment standards’, within the meaning of s 142W.

[256] That is the case here. There has been a breach of employment standards by Mr Shen’s employer Lanquan. Ms Chen was the person who was directly involved in the multiple breaches of employment standards that have occurred. Mr Lin was not a person involved in the breaches of employment standards that have occurred.

[257] Section 142Y of the Act permits the recovery of wage arrears and other money from an individual with the prior leave of the Authority, to the extent that the employees’ employer is unable to pay the wage arrears or other money, as per s 142Y(2) of the Act.

[258] Mr Shen has been granted leave to recover the wage arrears and other money he is owed by Lanquan from Ms Chen personally, to the extent Lanquan defaults on paying him. Lanquan is no longer a going concern, as it sold its business on 30 September 2024 and is not generating any income, so it will likely be unable to pay Mr Shen.

[259] Mr Shen’s application for leave to pursue Ms Chen personally for money Lanquan defaulted on paying him succeeded, but his application to pursue Mr Lin personally did not.

Should Ms Chen be ordered to personally pay Mr Shen the money is owed by Lanquan?

[260] If Lanquan defaults on paying Mr Shen, then within 28 days of the date of this determination Ms Chen is ordered to personally pay Mr Shen the wage arrears and other money he is owed.

Did Lanquan unjustifiably disadvantage Mr Shen by demoting him from “Store Manager” to “Cleaner”?

[261] Mr Shen claimed he had been unjustifiably disadvantaged because he had been demoted from “Store Manager” to “Cleaner”. Mr Shen was never the “Store Manager” and he never had any store or staff management responsibilities. His employment agreement and work visa described his as “Retail Supervisor” but he was not a supervisor, so he had no ‘supervisory’ duties.

[262] Mr Shen was employed by Lanquan to work as a Retail Assistant, and that is what he agreed to. His role was the same as all other employees. Mr Shen was never demoted to “Cleaner” as there was no such position. All employees did the same work and had the same duties and that applied to Mr Shen.

[263] Mr Shen’s unjustified disadvantage personal grievance claim regarding an alleged demotion did not succeed.

Was Mr Shen’s dismissal justified?*Relevant facts*

[264] Lanquan sent Mr Shen a letter dated 5 August 2024 that said the business had been sold, the purchaser was not going to offer him employment, and Lanquan had no redeployment opportunities so he would likely be made redundant. Mr Shen was given until 4 pm on 20 August 2024 to identify any redeployment opportunities he thought may exist.

[265] The 5 August 2024 letter was sent to Mr Shen via his then counsel, who did not pass it on to him until after he had finished work on 6 August 2024. Before Mr Shen had seen the 5 August letter, Lanquan sent him a second letter dated 6 August 2024. This was also sent to him via his former counsel, and it was also not passed on to him until after he had finished work on 6 August 2024.

[266] Lanquan’s letter dated 6 August 2024 said Mr Shen had not responded to the 5 August 2024 letter, so he had been made redundant, and would be paid four weeks’ pay in lieu of notice. Mr Shen’s employment therefore ended that same day, on 6 August 2024.

[267] Because Mr Shen had worked on 6 August 2024, he did not see Lanquan’s two letters until the evening of 6 August 2024. Mr Shen therefore saw the 5 August and 6 August 2024

letters at the same time, but by the time he saw the letters his employment had already been ended.

[268] Lanquan's letter dated 5 August 2024 stated that Ms Chen was selling the business due to her ongoing health problems, and that her health did not permit her to meet with Mr Shen personally. She therefore said that all relevant information had been included in the 5 August 2024 letter.

[269] There were no redeployment opportunities. Lanquan had informed the purchaser of Mr Shen's details, but the purchaser declined to offer him new employment. Because Lanquan closed after it sold its business on 30 September 2024, there was no other work Mr Shen could have done. This is a situation where consultation would not have changed the outcome, even if it had occurred.

[270] Mr Shen knew the business was going to be sold from early May 2024, as that had been discussed with him and his wife. He also knew Lanquan had put the business on the market in July 2024. However, there was no formal consultation with him prior to the business actually being sold on 5 August 2024.

[271] The lack of any formal consultation deprived Mr Shen of advance notice of the impending business sale, of what information about employees had been passed to the purchaser or why the purchaser did not want to offer him new employment. Mr Shen also had no prior warning of the possible termination of his employment, as it was presented to him as a *fait accompli* on 6 August 2024.

Statutory justification test

[272] Justification is to be assessed in accordance with the justification test in s 103A of the Act. This required the Authority to objectively assess whether Lanquan's actions, and how it acted, were what a fair and reasonable employer could have done in all the circumstances at the time Mr Shen was dismissed.⁴

[273] There are two elements to justifying a dismissal, procedural fairness (which includes good faith considerations) and substantive justification, which requires the employer to have a good reason for dismissing the employee.

⁴ Section 103A(2) of the Act.

[274] A fair and reasonable employer is expected to comply with its statutory and contractual obligations. Failure to do so could fundamentally undermine its ability to justify its actions and/or dismissal of an employee.

[275] Relevant statutory obligations included the good faith requirements in s 4(1A)(c) of the Act to provide access to relevant information, and an opportunity to comment on it, before a final decision was made. It also included each of the four minimum procedural fairness tests set out in s 103A(3) of the Act.

Did Lanquan comply with the good faith obligations in s 4(1A)(c)(i) of the Act?

[276] Section 4(1A)(c) of the Act requires an employer that is proposing to make a decision that could adversely affect an employee's ongoing employment, to provide the employee with access to information and a reasonable opportunity to comment on it.

[277] Lanquan did not comply with its good faith obligations in s 4(1A) of the Act because it failed to provide Mr Shen with access to any relevant information, or an opportunity to comment on the information that had influenced Ms Chen's decision to end his employment. Section 4(4)(d) of the Act makes it clear that good faith requirements apply to a proposal by an employer to sell its business.

[278] Although Lanquan wrote to Mr Shen by letter dated 5 August 2024, this did not attach any relevant documents. The letter had also informed him that the business had already been sold, so there was no opportunity for Mr Shen to be heard before a final decision about the sale had been made. That breached ss 4(1A)(c) and 4(4)(d) of the Act.

Did Lanquan comply with the four procedural fairness tests in s 103A(3) of the Act?

[279] Section 103A(3) of the Act sets out four minimum procedural fairness tests that an employer is expected to comply with before an employee is dismissed. Lanquan failed to comply with any of these four tests. In particular, Lanquan failed to:

- (a) "Sufficiently investigate" the circumstances that resulted in Mr Shen's dismissal, because it did not adequately consult him before the sale was finally agreed, in breach of s 103A(3)(a).
- (b) "Raise concerns" with Mr Shen before he was dismissed, because the restructuring proposal was not put to him to respond to, in breach of s

103A(3)(b) of the Act. The 5 August 2024 consultation letter was not seen by Mr Shen before he was dismissed.

- (c) Give Mr Shen a “reasonable opportunity to respond”, because it ended his employment two weeks before his response was due, in breach of s 103A(3)(c) of the Act.
- (d) “Genuinely consider” feedback from Mr Shen, in breach of s 103A(3)(d) of the Act, because he was deprived of any opportunity to give feedback on the proposed sale and the effect it would have on him before the Agreement for Sale and Purchase was signed.

Does s 103A(5) of the Act apply?

[280] Lanquan’s failure to comply with minimum statutory good faith and procedural fairness requirements fundamentally undermined its ability to justify Mr Shen’s dismissal.

[281] These process errors were not minor and did result in Mr Shen being treated unfairly. Section 103(5) of the Act therefore did not preclude the Authority from finding Mr Shen’s dismissal was conducted in a procedurally unfair, and therefore unjustified, way.

Other issues raised by Mr Shen

(i) Did Lanquan fail to negotiate with the purchaser about the matters in clause 34(b) of the employment agreement?

[282] Ms Chen negotiated with the purchaser regarding the transfer of all employees to the new owner of the business. The purchaser said it did not want to employ Mr Shen because:

- (a) His pay rate of \$29.66 was too high compared to the \$25.00 and \$23.50 the other employees were being paid.
- (b) He was a full-time employee (at least 30 hours per week) while the other two employees only worked part-time.
- (c) The two part-time employees had been working longer than Mr Shen so were more experienced and knew the customers better than Mr Shen.
- (d) The two part-time employees had much better English language skills than Mr Shen, whose ability to speak English was limited.

- (e) There was also insufficient work for three employees, so the purchaser elected to only offer ongoing employment to the two part-time employees.

(ii) Did Ms Chen fail to personally meet with Mr Shen to discuss the sale of the business and his proposed redundancy?

[283] Ms Chen was too unwell to meet with Mr Shen personally. She was also under medical advice to limit her stress. In addition to these underlying health concerns, Ms Chen had also had an accident and injured herself on 2 August 2024, so she was not up to meeting with Mr Shen in person.

[284] Ms Chen was justified in communicating with Mr Shen about the sale of the business in writing. However, Lanquan should not have sent its letters dated 5 and 6 August 2024 to Mr Shen's then counsel, as that meant he had not been given a copy of these letters until after he had been dismissed. These letters should have been delivered to Mr Chen personally while he was at work on 6 August 2024.

[285] Mr Lin had spoken to Mr Shen's wife about the proposed sale of the business on 30 April and he spoke to Mr Shen about it on 4 May 2024. Ms Wei's employment had ended because of the upcoming sale of the business, so Mr Shen had known about the impending sale of the business as soon as the decision had been made to sell the business in May 2024.

[286] Mr Shen's claim that Ms Chen's failure to personally meet with him meant his redundancy dismissal was unjustified did not succeed.

(iii) Did Lanquan breach clauses 33 and 34 of the employment agreement?

[287] Clause 33 of Mr Shen's employment agreement dealt with redundancy. It stated that a redundancy situation occurred if Mr Shen's position was surplus to Lanquan's requirements. If so, clause 33.2 stated that no redundancy compensation was payable. Clause 34 was the employee protection provision.

[288] Lanquan complied with clauses 33 and 34 of the employment agreement, so Mr Shen's claims to the contrary did not succeed.

(iv) Did Lanquan breach s 69OI of the Act?

[289] Section 69OI of the Act is an interpretation section that defines the terms used in Part 6A, Subpart 3 of the Act. It covers employee like Mr Shen to whom Schedule 1A of the Act did not apply.

[290] Section 69OJ of the Act requires employment agreements to contain an “employee protection provision” that applies if the business is contracted out or sold. Clause 34.1 of Mr Shen’s employment agreement contained the employee protection provision. It required Lanquan to:

- (a) Meet with Mr Shen to provide information about the proposed restructuring and how it would affect his employment;
- (b) Commence negotiations with the potential new employer, about:
 - (i) Whether Mr Shen would be offered employment by the new employer;
 - (ii) If so, the terms of employment he would be offered by the new employer;
 - (iii) The date on which he would transfer to the new employer; and
 - (iv) If he did not transfer to the new employer what is any entitlements he had.

[291] Lanquan communicated with Mr Shen about the proposed sale of the business during the first week of May 2024, so it was not a surprise. He was informed it was up to the purchaser to decide who if anyone it would take on after it had bought the business.

[292] Mr Shen was informed that the business would no longer be operating if it were sold, so there would no longer be work for him to do. That was also self-evident given the small size of the business, Ms Chen’s health issues and the fact the business would no longer be a going concern.

[293] As part of the sale negotiations, Lanquan did negotiate with the purchaser about offering employment to its employees. Mr Shen’s details were given to the purchaser, along with the other employees’ details, but JQLT elected not to offer Mr Shen employment.

[294] Ms Chen did not meet with Mr Shen in person to discuss the proposed sale and the impact it would have on his employment. However, that information was recorded in

Lanquan's letter dated 5 August 2024 letter to Mr Shen. Mr Shen was advised that the purchaser did not want to offer him employment, so Lanquan informed him he was entitled to be paid four weeks' pay in lieu of notice.

[295] Mr Shen's claim that s 69OI of the Act had been breached did not succeed.

(v) Did Lanquan breach Part 6A, Subpart 1 of the Act?

[296] Part 6A Subpart 1 of the Act provides protection to specified categories of employee in the event their work is restructured, which includes a proposed sale of the business. Schedule 1A of the Act specifies the vulnerable employee to whom Part 6A of the Act applied. This does not include Retail Assistants, so Mr Shen was not protected by Subpart 1 of the Act.

[297] Mr Shen's claim that Lanquan breached Part 6A, Subpart 1 of the Act did not succeed.

(vi) Did Lanquan fail to consider redeployment options for Mr Shen?

[298] The business was sold, and its lease was transferred to the purchaser, so there was no alternative work available for Mr Shen to do.

[299] There were no re-deployment opportunities available. Ms Chen engaged with the purchaser about employing Mr Shen, but it elected not to do so, which was a business decision the purchaser was entitled to make. Re-deployment was considered, but there were no opportunities available.

[300] Mr Shen's claim that Lanquan failed to consider redeployment did not succeed.

(vii) Was Mr Shen entitled to redundancy compensation?

[301] Clause 33.2 of Mr Shen's employment agreement stated he was not entitled to redundancy compensation if his employment ended due to redundancy.

[302] Accordingly, Mr Shen's claim that Lanquan breached clause 33 of his employment agreement by not paying him redundancy compensation did not succeed.

(viii) Did the respondents mislead Mr Shen about the sale of the business?

[303] The respondents did not mislead Mr Shen about the sale of the business.

[304] Mr Shen's claim that the respondent's mislead him about the sale of the business did not succeed.

Was Mr Shen's dismissal substantively justified?

[305] Evidence from the respondents established that the store had faced sharply declining sales since January 2024. Its traditionally busy times had been unexpectedly slow, and sales were not where they needed to be for a profitable business.

[306] At the same time Lanquan's wages bill had increased in March 2024, due to Ms Wei's employment. Mr Lin (from 2 October 2023) and Ms Chen (from 4 March 2024) had both reduced their salaries by \$900 each per fortnight to accommodate Mr Shen's and Ms Wei's employment, which had been surplus to business requirements.

[307] Around this time Ms Chen was suffering from potentially serious health issues and was under medical advice to reduce stress. Lanquan's lease in the mall also expired in August 2024. These were additional factors that resulted in Ms Chen's decision to exit the business.

[308] Mr Shen and Ms Wei were told in early May 2025 that the business was going to be sold before it was put on the market. The business was put on the market in July/August 2024. Mr Shen was informed the business had been sold in a letter dated 5 August 2025, which he did not receive until he had finished working on 6 August 2024.

[309] The purchaser JQLT elected not to offer Mr Shen employment. Lanquan was no longer operating it had no alternative work for him to do.

[310] Lanquan established that it had genuine commercial reasons for ending Mr Shen's employment, so his redundancy dismissal was substantively justified.

Outcome of Mr Shen's dismissal grievance claim

[311] Mr Shen's personal grievance for unjustified dismissal partly succeeded. Although Lanquan had a good reason for making Mr Shen redundant, the way it implemented that decision was unfair because it did not involve a fair or proper process, which made his dismissal procedurally unjustified.

What remedies should be awarded?

Lost remuneration

[312] Although Mr Shen's dismissal was substantively justified, it was conducted in a procedurally unjustified manner. Mr Shen is therefore not entitled to an award of lost

remuneration, as a fair and proper process would have resulted in his redundancy dismissal being justified.

Distress compensation

[313] Mr Shen was hurt, humiliated and distressed to receive a letter dated 6 August 2024 from Ms Chen that terminated his employment. Losing his income without any prior formal consultation adversely affected the family and put them under considerable financial pressure. Mr Shen said his health had suffered as a result of that.

[314] Lanquan is ordered to pay Mr Shen \$9,000.00 without deduction, under s 123(1)(c)(i) of the Act to compensate him for the humiliation, loss of dignity, and injury to feelings his abrupt dismissal had on him.

Should remedies be reduced on the grounds of contribution?

[315] Section 124 of the Act required the Authority to assess the extent to which Mr Shen contributed to the situation that gave rise to his personal grievance, and if so, reduce remedies accordingly. Contribution denotes blameworthy conduct that has been proven on the balance of probabilities. That was not established here, so Mr Shen's remedies are not to be reduced.

What costs and disbursements should be awarded?

[316] Mr Shen was self-represented during the investigation meeting, as he said he could not continue to afford the legal fees he had incurred prior to then. Mr Shen's actual legal costs were \$30,000.00.

[317] Mr Shen as the successful party is entitled to a contribution towards the actual legal costs he has incurred. The parties told the Authority that no 'without prejudice except as to costs' communications had occurred and that no settlement offers had been made. There was no prospect of the parties agreeing on legal costs, so the Authority has determined costs to bring this matter to a conclusion.

[318] The notional starting tariff for this three-day investigation meeting is \$11,500.00, being \$4,500 for the first day of the investigation meeting plus \$3,500.00 for each subsequent day. This notional starting tariff then needed to be adjusted to reflect the particular circumstances of this case.

[319] There are three factors that require the notional starting tariff to be reduced, namely:

- (a) The way Mr Shen elected to run his case unnecessarily and unreasonably increased his own legal costs. The Authority repeatedly warned him that such an approach could have adverse costs consequences for him. Lanquan and Ms Chen should not have to pay for the way in which Mr Shen elected to pursue these proceedings.
- (b) Mr Shen's success was limited. He pursued several claims he did not succeed on, and which the Authority considered ought not to have been pursued.
- (c) Mr Shen's employment premium claims were not withdrawn until after they had been investigated by the Authority.
- (d) The daily tariff has been set to include a representative's attendance at the investigation meeting, but Mr Shen was self-represented at that point, so an adjustment should be made to reflect that.

[320] Mr Shen is entitled to a contribution towards his actual legal costs of \$5,500.00 and he is to be reimbursed \$71.55 for his filing fee. This is to be allocated as follows:

- (a) Lanquan is to contribute \$5,000.00 towards Mr Shen's \$30,000 legal costs plus it must reimburse him \$71.55 for his filing fee; and
- (b) Ms Chen is to pay Mr Shen \$500.00, as the claims against her did not take up much of the investigation meeting time.

[321] Mr Lin successfully defended Mr Shen's claims against him, so no costs were awarded against him.

What Orders should the Authority make?

[322] Based on the findings in this determination, the Authority makes the following orders.

Lanquan

[323] Within 28 days of the date of this determination, Lanquan is ordered to pay Mr Shen \$22,238.17, consisting of:

- (a) \$4,889.33 wage arrears.
- (b) \$277.29 interest on his wage arrears from 7 August 2024 to 29 August 2025, calculated using the Civil Debt Calculator on the Ministry of Justice website.

- (c) \$3,000.00 of the total \$5,400.00 penalty imposed for breaches of the employment agreement, the Act and the HA03.
- (d) \$9,000.00 without deduction, as distress compensation under s 123(1)(c)(i) of the Act for his procedurally unjustified dismissal.
- (e) \$5,000.00 contribution towards his actual legal costs.
- (f) \$71.55 to reimburse him for his filing fee.

[324] Within 28 days of the date of this determination, Lanquan is ordered to pay \$2,400.00 of the total \$5,400.00 penalty imposed on it directly to the Crown Bank Account.

Ms Chen

[325] Within 28 days of the date of this determination, Ms Chen is ordered to pay Mr Shen \$500.00 towards his actual legal costs, to reflect that he succeeded on his claims against her personally under ss 142W and 142Y of the Act.

[326] Within 28 days of the date of this determination, Ms Chen as Lanquan's sole director, is also ordered to take the necessary steps to ensure Lanquan:

- (a) Paid Mr Shen the \$22,238.17 he has been awarded in this determination.
- (b) Paid the \$5,400.00 total penalty that was imposed on it (\$3,000.00 to be paid to Mr Shen and \$2,400.00 to be paid to the Crown Bank Account).
- (c) Informed Mr Shen in writing of any wage arrears and/or other money it had been ordered to pay him, but which it was unable to pay him and the reasons for that.

[327] If Lanquan defaulted on paying Mr Shen any of the wage arrears or other money he has been awarded in this determination, then he has been granted leave to personally recover the wage arrears and other money Lanquan owed him from Ms Chen personally.

[328] Accordingly, if Lanquan is unable to pay Mr Shen within 28 days of the date of this determination, then Ms Chen is ordered to personally pay Mr Shen the wage arrears and other money Lanquan is unable to pay him. In which case, Ms Chen is ordered to personally pay Mr Shen any amount Lanquan has defaulted on paying him within 28 days of the date of this determination.

Interest

[329] Interest continues to accrue on the wage arrears of \$5,166.62 (consisting of \$4,889.33 wage arrears plus interest up to the date of this determination of \$277.29) from 30 August 2025 (the day after this determination has been released to the parties) until Mr Shen has been paid in full.

[330] Interest has also been awarded on any part of the \$22,238.17 Mr Shen has been awarded in this determination that remains outstanding from 26 September 2025 (being 28 days after the date of this determination), which will continue to accrue until he has been paid in full.

[331] All interest is to be calculated using the Civil Debt Calculator on the Ministry of Justice website.

Rachel Larmer
Employment Relations Authority Member