

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2025] NZERA 817  
3266799

BETWEEN                      YUNKAI SHI  
   Applicant  
  
AND                                DONG CONSTRUCTION  
   LIMITED  
   First Respondent

Member of Authority:        Jeremy Lynch  
  
Representatives:              Lennon Xi, advocate for the Applicant  
   Dong Wang, for the Respondent  
  
Investigation Meeting:        7 August 2024, and 10 June 2025  
  
Submissions and Other  
Information Received:        11 July and 20 October 2025 from the Applicant  
   14 October 2025 from the Respondent  
  
Date of Determination:        17 December 2025

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]     Yunkai Shi says he was unjustifiably dismissed from his employment, or in the alternative, that his employment was unjustifiably disadvantaged. He seeks personal grievance remedies including lost wages, and compensation for his hurt and humiliation.

[2]     Dong Construction Limited (DCL) denies that Mr Shi was unjustifiably disadvantaged or unjustifiably dismissed from his employment, and does not accept that any remedies should be awarded.

**The Authority's investigation**

[3]     For the Authority's investigation, a written witness statement was lodged by Mr Shi, in accordance with the timetable directions.

[4] For DCL, a written witness statement was lodged by its director, Dong Wang.

[5] An investigation meeting was held in this matter on 7 August 2024, during which the Authority was assisted by an interpreter of the Mandarin language.

[6] At this meeting, after the parties' evidence had been taken, but prior to closing submissions, Mr Shi sought an adjournment in order that an additional witness be summonsed to give evidence. The Authority granted the adjournment as requested.

[7] A case management conference (CMC) was held by telephone with the parties on 16 August 2024, at which the parties agreed to attend a further investigation meeting to be held in November 2024, in Auckland.

[8] Mr Shi wished to summons the Auckland based licensed immigration adviser Lai Sum Bertha Lam. The Authority prepared a witness summons for Mr Shi to serve on Ms Lam, and a new notice of investigation was sent out to the parties.

[9] However, four days prior to the November 2024 investigation meeting, Mr Shi's representative advised the Authority that he was unable to attend on this date, and sought a further adjournment.

[10] The November 2024 investigation meeting date was vacated. Emails from the Authority offering further CMC dates were ignored by both parties. Eventually, a CMC was held on 28 March 2025. During this CMC, Mr Wang advised that due to travel commitments, he only had a limited window within which he could attend a resumption of the investigation meeting.

[11] Both parties advised they were able to attend a resumption investigation meeting in June 2025, so a new investigation meeting date was set down.

[12] The Authority prepared a further witness summons for Mr Shi to serve on Ms Lam.

[13] The resumption investigation meeting proceeded on 10 June 2025. However, Ms Lam did not attend. Despite the Authority making it clear to Mr Shi's representative that he was required to personally serve the summons on Ms Lam, this did not occur. Instead, Mr Shi's representative advised that Ms Lam was sent copy of the summons notice by email, although was unable to provide evidence of this email being sent to Ms

Lam. Ms Lam was not provided with the required conduct money which was to have covered payment for her travel expenses.

[14] Mr Shi's representative accepted that the summons had not been properly served, and took responsibility for this. This was an appropriate concession.

[15] However, despite the summons not being properly served on her, I am satisfied that Ms Lam had received previous email correspondence from Mr Shi's representative, advising that she was to be summonsed to attend an investigation meeting before the Authority. It is therefore surprising that Ms Lam did not contact Mr Shi's representative, or the Authority about this matter.

[16] Mr Shi advised he wished to proceed in the absence of Ms Lam, with questions being put to DCL that would otherwise have been put to Ms Lam.

[17] Mr Shi attended in person, as did Mr Wang for DCL. Again, the Authority was assisted by an interpreter of the Mandarin language.

[18] At the completion of the evidence, the parties agreed on a timetable for written submissions to be lodged.

[19] As permitted by s 174E of the Employment Relations Act 2000 (the Act), this determination has not recorded everything received from the parties, but has stated findings of fact and law, expressed conclusions and specified orders made as a result.

[20] The Authority has carefully considered all the material provided.

### **The issues**

[21] The issues for investigation and determination are:

- (a) What was the background to the creation of the employment agreement between Mr Shi and DCL, and Mr Shi's arrival in New Zealand?
- (b) Was Mr Shi unjustifiably disadvantaged by DCL not providing him with work or paying him?
- (c) Was Mr Shi dismissed by DCL, and if so, was that unjustified?
- (d) If a personal grievance is established, what remedies (if any) should Mr Shi be awarded, including consideration of lost wages, and compensation under s 123(1)(c)(i) of the Act?

- (e) Should either party contribute to the other party's costs

## **Background**

[22] DCL carries on business as a residential and commercial builder in Auckland.

[23] DCL was an accredited employer under Immigration New Zealand's Accredited Employer Work Visa scheme (AEWV).

[24] Mr Shi is a Chinese national. He said that while he was still living in China, he saw an online advertisement for a position in New Zealand.

### *Alleged premium for employment in New Zealand*

[25] Mr Shi's evidence to the Authority was that while he was in China, he signed a "service agreement" with a person he only knows by the WeChat username of 'Sam'. Mr Shi said that Sam suggested he use Ms Lam's services for his AEWV application. He said he paid RMB ¥85,000.00 to "Ms Lam's company", via Sam, for the role he would eventually be offered by DCL.

[26] Mr Shi said in his evidence to the Authority that Sam acted as his agent, and not the agent of DCL.

[27] DCL says it did not charge a premium for Mr Shi's employment, and did not receive any money from Ms Lam (or anyone else) in respect of Mr Shi's role. Mr Shi did not provide any evidence of the payment being made. As set out above, Ms Lam did not attend the investigation meeting, and so the Authority was unable to question her as to her involvement in this matter.

[28] There is no claim before the Authority for the recovery of an unlawful premium. As such, no findings are made in respect of the alleged premium payment Mr Shi says he made while still in China.

### *The offer of employment*

[29] Mr Shi's evidence was that he had no direct dealings with DCL while he was in China, other than a brief video interview, arranged by Sam, and that shortly after this, again via Sam, he received an offer of employment with DCL.

[30] Mr Shi accepted the offer of employment on 13 January 2023. At this time, Mr Shi had not yet applied for his AEWV.

[31] The employment agreement with DCL provides that the employment would start on 6 March 2023, or on Mr Shi obtaining a valid visa and arriving in Auckland.

*Ms Lam's involvement*

[32] From Mr Shi's file with Immigration New Zealand, it can be seen that he authorised Ms Lam to make the application for the required AEWV on his behalf. Ms Lam submitted this application to Immigration New Zealand on 19 January 2023.

[33] Mr Shi's AEWV was granted by Immigration New Zealand on 18 May 2023.

[34] In addition to acting as licensed immigration advisor for Mr Shi, DCL also engaged Ms Lam to assist it with facilitating Mr Shi's recruitment and employment in New Zealand.

*Mr Shi arrives in New Zealand*

[35] Mr Shi arrived in Auckland from China, on 8 August 2023.

[36] Initially Mr Shi said he did not know who collected him from the airport when he arrived in Auckland. His later evidence was he was met at the airport by "an associate" of his agent Sam, who took him to open a bank account, assisted him in applying for an IRD number, and then delivered him to accommodation at a private boarding house, which he paid for himself.

*DCL attempts to locate Mr Shi*

[37] DCL says that it did not have contact details for Mr Shi, so enquired with Ms Lam for this information. Mr Wang's evidence to the Authority was that he wanted a WeChat username, telephone number, or email address for Mr Shi, so asked Ms Lam for this information.

[38] Mr Wang's evidence was that in March 2023 he contacted Ms Lam to seek an update as to Mr Shi's AEWV status, as he had not heard anything from or about Mr Shi.

[39] From WeChat messages provided to the Authority, it can be seen that Ms Lam refused to engage with Mr Wang, advising that as she was acting as Mr Shi's agent, and because of a confidentiality agreement in place with Mr Shi, she was unable to disclose any personal information about Mr Shi to any third party. Ms Lam advised Mr Wang to contact Immigration New Zealand.

[40] In another WeChat message exchange, which appears to be from May 2023, Ms Lam advises Mr Wang:

your company's system authority on the [Immigration New Zealand] has been completely returned to your company in April. We are no longer your company's authorised agent. And we don't know anything about the subsequent applicants sponsored by your company. So please sort out what you just said and reply directly to the [Immigration New Zealand]. Thank you

[41] Further WeChat messages provided to the Authority by Mr Wang show that in May 2023 Mr Wang again contacted Ms Lam. Mr Wang says he was again trying to find out Mr Shi's visa status. Call records show a WeChat call from Mr Wang to Ms Lam on 23 May 2023 at 1.54 pm, in which Mr Wang leaves a voice message, and then a further attempt to call Ms Lam at 2.23 pm on the same day. After this, Mr Wang sent Ms Lam a WeChat message saying "okay, I'll ask the Immigration Bureau to help me check how many people have been approved for my company, thank you".

[42] Mr Wang said in his evidence to the Authority that he "needed more people working for my company", which is why he was eager to find out any information about when Mr Shi could be expected to commence his employment.

[43] Mr Wang said that after that, in August 2023, DCL was audited by Immigration New Zealand. As part of this audit he was specifically asked about Mr Shi. Mr Wang's evidence to the Authority was that:

I said I don't know where he is, and I asked the Immigration Officer if [Mr Shi] was in New Zealand, and the Officer said because of privacy concerns he could not tell me this.

[44] Mr Wang's evidence to the Authority was that he was "unhappy" with the service he was receiving from Ms Lam, so he terminated their agreement. He said that Ms Lam was not being honest, and her communication was not good enough. He also said that he was not aware that as a licensed immigration adviser, Ms Lam was subject to professional regulations, including a code of practice.

### **Relevant provisions from the employment agreement**

[45] The employment agreement is in English and Mandarin. Each section appears in English first, with a Mandarin translation underneath.

[46] Mr Shi confirmed to the Authority that he was able to understand the employment agreement.

### *Commencement of the agreement*

[47] The employment agreement provides that:

The employee will start working for the employer on 06/03/2023 or upon obtaining a valid visa and arrival in Auckland...

[48] There is no dispute that Mr Shi did not obtain his AEWV until after 6 March 2023. The start of his employment was therefore conditional upon obtaining a valid visa, and arriving in Auckland.

[49] Mr Shi obtained his Visa on 18 May 2023, and arrived in Auckland on 8 August 2023. Mr Shi accepts that he did not communicate either of these things to DCL.

[50] On a strict interpretation of the employment agreement, the start date of Mr Shi's employment was therefore 8 August 2023. However, in the circumstances it would be reasonable to allow a reasonable period for Mr Shi to settle in, prior to commencing work.

[51] In a WeChat message conversation between Mr Shi and his agent Sam, Mr Shi advises on 8 September 2023 "last week I got my IRD number. When can I start working?". I am satisfied that Mr Shi was ready willing and able to start work on 8 September 2023.

### *Place of work*

[52] The employment agreement sets out the address of the place of work:

The employer's premises are located at 113 Royal Road, Massey, Auckland 0614. However, the employee will work at multiple locations within the Auckland area, as required by the employer.

[53] The address details are also provided in Mandarin.

[54] Mr Wang's evidence to the Authority was that although the Royal Road address was not DCL's registered address in 2023, it was the address from which DCL operated throughout 2023, and was also Mr Wang's home address. Mr Wang said DCL's office was at this address, and that all DCL's tools and equipment were kept at this address. He said he owns this property, and it is still used by DCL today.

[55] Mr Shi accepts he did not contact DCL at any stage. His evidence to the Authority was that he did not know how to contact DCL after he had arrived in Auckland. He said that he thought that DCL would contact him. He said he had no idea

whether DCL knew he had arrived in Auckland, but said that he wanted Sam to arrange contact with DCL.

[56] Unfortunately Sam is known only by his WeChat username, and was therefore unable to be summonsed to attend the investigation meeting.

[57] The Authority was therefore unable to ask any questions of Sam about the relationship or communications between him and DCL. Mr Wang's evidence was that he had no contact information for Sam. Consistent with this, Mr Shi confirmed to the Authority that Sam was his agent, and not the agent of DCL.

[58] What is clear from the WeChat messages provided by Mr Shi is that he was unhappy at not being provided with any work by DCL, and had multiple discussions with Sam (and another person with the WeChat username of Emma) about potential work in other roles, with other employers in New Zealand and Australia.

[59] Ms Lam is based in Auckland. She would have been a logical person for Mr Shi to contact regarding his employment with DCL, given she had assisted both parties with the AEWV. However, when asked by the Authority why he did not contact Ms Lam, Mr Shi said that the service agreement he signed in China was with his agent (Sam), and not with Ms Lam. He also said that his agent would not let him contact Ms Lam directly.

[60] Mr Shi accepts that DCL's address information was provided in his employment agreement (in English and Mandarin). However, when asked whether he attempted to attend DCL's premises, he said that he had not done so. His evidence was that he had performed an internet search of DCL's address but because this search showed a residential house, he assumed that the address in the employment agreement must be incorrect, so he did not attend the address. He further said that because he does not speak English, he did not think he would be allowed into the house once he got there, so decided not to attend the address.

### *Disputes*

[61] The employment agreement contains a dispute resolution provision, which sets out:

If the employee has any concerns about their employment, or how they are treated at work, they should tell the employer as soon as possible so these can be resolved.

[62] Although Mr Shi does not speak English, there is no evidence of him asking Sam for assistance in contacting DCL, or of him asking his agents to contact Ms Lam on his behalf.

[63] Mr Shi clearly had concerns about his employment, but did not raise these with DCL, or communicate with DCL at all.

#### *Abandoning employment*

[64] The employment agreement provides:

If the employee is away from work for three working days in a row without telling the employer or getting their permission - and the employer has made reasonable efforts to contact the employee to clarify the reason for their absence and whether they intend to return to work - the employer may regard the employment as abandoned.

The employer will tell the employee that they are deemed to have ended the employment. The employment will be deemed to have finished at the end of the last day the employee worked.

#### **Abandonment or repudiatory conduct**

[65] There are features of Mr Shi's conduct that are consistent with the first part of the abandonment provision in the employment agreement.

[66] In *Lwin v Honest International*, the Court held that if the employee had been guilty of repudiatory conduct which had been accepted by the employer as bringing the contract to an end, it would be open to the employer to have argued that this was the true legal significance of the employee's actions, in spite of not giving that precise reason at the time.<sup>1</sup>

[67] In *Gounder v Healtheries New Zealand Limited*, the Authority noted:<sup>2</sup>

The essential point about abandonment clauses is that where a set of circumstances relevant to a worker's absence match the provisions contained in the abandonment clause, the worker's employment does not end at the initiative of the employer. There is no dismissal. As abandonment clauses typically make clear, the worker is "deemed to have terminated his/her employment". If the factual situation fits the provisions of an abandonment clause, then abandonment becomes a fact because the parties, in negotiating the collective agreement, have agreed that that is so.

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<sup>1</sup> *Lwin v Honest International* [2003], 1 ERNZ 387 at [32].

<sup>2</sup> *Gounder v Healtheries New Zealand Limited* [2001] Employment Relations Authority AA 49/01 at 4.

### **Was Mr Shi unjustifiably disadvantaged, or unjustifiably dismissed?**

[68] Mr Shi says that DCL's failure to provide him with any work (or any pay) constitutes an unjustified dismissal from his employment, or in the alternative the failure to provide him with any work amounts to an unjustified disadvantage to his employment.

[69] I do not accept that Mr Shi was dismissed by DCL (much less unjustifiably), or that he was unjustifiably disadvantaged by DCL. This is because despite arriving in New Zealand on 8 August 2023, having obtained the necessary AEWV, Mr Shi did not communicate this to DCL. He did not advise DCL that he had obtained his AEWV, or booked his travel to New Zealand. He did not attend DCL's address as set out in the employment agreement. He did not attempt to make any contact with DCL (until his personal grievance letter of 28 November 2023 sent by his representative, in which he considered he has been dismissed).

[70] Although DCL's telephone number and contact email address are not listed in the employment agreement (and nor are they required to be) this information is freely available online. There is no evidence that Mr Shi attempted to obtain contact details for DCL. Rather, his evidence was that he thought DCL would contact him, despite accepting that he did not know whether DCL would realise he had arrived in Auckland, or would have had any way of knowing this.

[71] Similarly, there is no evidence that Mr Shi asked Sam to contact DCL or Ms Lam, or asked his agent if he could contact Ms Lam directly, in respect of his concerns about his employment with DCL. In this regard, Mr Shi has not acted consistently with the Disputes provision of his employment agreement.

[72] I accept Mr Wang's evidence that the only means he had of contacting Mr Shi, or finding any information as to his visa status, was via Ms Lam.

[73] I also accept that Mr Wang did attempt to seek this information about Mr Shi from Ms Lam in March and May 2023, but Ms Lam declined to provide this information. It is unfortunate that Ms Lam did not attend the Authority's investigation, or otherwise make contact with the Authority.

[74] I also accept Mr Wang's evidence that he sought information about Mr Shi from an Immigration New Zealand officer during the telephone audit in August 2023.

[75] However, the undesirability of encouraging (by way of an offer of employment) a foreign national AEWV holder to move to New Zealand as a person intending to work, without appropriate means of communication in place between the parties is obvious.

[76] Notwithstanding this, I am satisfied that DCL made sufficient effort to establish communication with Mr Shi.

[77] Although there were other steps open to DCL, such as attending Ms Lam's place of work in person, or contacting the Licensed Immigration Adviser Association, there is no way of establishing whether such steps would have achieved anything within a reasonable timeframe, or at all.

[78] For a dismissal grievance, or an unjustified action grievance, there needs to be some action (or omission) of the employer, that brings the employment to an end, or is the cause of disadvantage.

[79] It was common ground that there was no interaction between the parties following Mr Shi's acceptance of the employment agreement, and that Mr Shi performed no work for DCL. DCL cannot reasonably be said to have performed any action (or omission) that unjustifiably disadvantaged Mr Shi's employment.

[80] A dismissal is the termination of the employment relationship at the employer's initiative.<sup>3</sup> In the circumstances of this matter, I am not satisfied that DCL's actions amount to a sending away, and therefore cannot be said to be consistent with a dismissal.

#### *The duty of good faith*

[81] Mr Shi was offered, and accepted employment by DCL in January 2023. He was therefore a person intending to work. Under s 6(1)(b)(ii) of the Act, a person intending to work is an employee.

[82] The duty of good faith under s 4 of the Act therefore applies to both parties to this employment relationship, and requires both parties to be active and constructive in establishing and maintaining a productive employment relationship in which the parties

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<sup>3</sup> *Wellington, Taranaki and Marlborough Clerical Etc IUOW v Greenwich (T/A Greenwich and Associates Employment Agency and Complete Fitness Centre)* (1983) ERNZ Sel Cas 95 (AC).

are, among other things, responsive and communicative.<sup>4</sup>

[83] Both parties' actions appear to be inconsistent with this mutual obligation.

[84] However, there is no claim before the Authority for a penalty for a breach of the duty of good faith in this matter.

### **Outcome**

[85] Although there are features of Mr Shi's conduct that are consistent with abandonment or repudiation, there are also features of Mr Shi's conduct which are inconsistent with that of being an employee.

[86] In *Rathore v Kiwitax Consultants Limited*, the Authority observed:<sup>5</sup>

... a fundamental feature of an employment relationship is that the employee goes on to perform work in return for payment. Mr Rathore never performed any work for Kiwitax... so in that sense the employment relationship did not commence.

[87] In the circumstances of this matter, whether Mr Shi abandoned his employment, or whether the employment relationship never commenced (to then be abandoned) is not material.

[88] What is clear is that the reason Mr Shi was never provided with any work by DCL was because he did not inform DCL he was ready willing and able to perform work. There were steps open to him to progress the employment relationship that he did not take.

[89] It cannot be said that the failure to provide Mr Shi with any work is an action attributable to DCL.

[90] Mr Shi has not established a personal grievance for unjustified disadvantage, or unjustified dismissal. His application is declined.

### **Costs**

[91] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[92] If the parties are unable to resolve costs, and an Authority determination on

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<sup>4</sup> Employment Relations Act 2000, s 4(1A)(b).

<sup>5</sup> *Rathore v Kiwitax Consultants Limited* [2011] NZERA 234 at [31].

costs is needed, DCL may lodge, and then should serve, a memorandum on costs within 28 days of the date of this determination. From the date of service of that memorandum Mr Shi will then have 14 days to lodge any reply memorandum. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[93] The parties can anticipate the Authority will determine costs, if asked to do so, on its usual “daily tariff” basis unless circumstances or factors, require an adjustment upwards or downwards.<sup>6</sup>

Jeremy Lynch  
Member of the Employment Relations Authority

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<sup>6</sup> For further information about the factors considered in assessing costs see:  
[www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1](http://www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1)