

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2025] NZERA 304  
3358184

BETWEEN

RUI (LYNN) WANG  
Applicant

AND

COZY LIFE KITCHEN  
LIMITED  
Respondent

Member of Authority: Rachel Larmer

Representatives: Applicant in person  
No appearance by the Respondent

Investigation Meeting: 30 May 2025 in Auckland

Oral Determination: 30 May 2025

Written Record of Oral Determination: 30 May 2025

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**ORAL DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] The applicant, Rui (Lynn) Wang, worked for the respondent, Cozy Life Kitchen Limited, from 18 September 2023 to 20 September 2024 pursuant to an individual employment agreement signed by the parties on 20 September 2023.

[2] The applicant was employed as an Administrative Coordinator. She was a permanent full time employee who work eight hours a day, five days a week. She was paid \$27.00 per hour for the first six weeks of her employment, then \$28.00 per hour from 30 October 2023 until her employment ended.

[3] Ms Wang sought to recover \$15,680.00 unpaid wage arrears from the respondent, consisting of ten weeks' unpaid wages for hours worked plus four weeks' unpaid annual holiday pay.

### **Non-engagement of respondent**

[4] The respondent has not engaged with the Authority regarding Ms Wang's claim. Phone calls the Authority Officer made to the respondent's number have not been answered. Nor has the respondent replied to the Authority officer's emails or voicemail messages.

[5] In Directions of the Authority (DoA) dated 11 April 2025 the respondent was informed that its non-engagement would not stop the Authority's investigation into Ms Wang's claims, which would be determined based on the available evidence.

### **The Authority's investigation**

[6] Ms Wang's statement of problem (SoP) was served on the respondent by track and trace courier to its registered address for service as recorded on the Companies Register on 24 February 2025. The SoP was signed for by "Wang Bing" at 9.08am on 24 February 2025.

[7] The statement in reply (SiR) was due by 20 March 2025. No SiR was lodged, so the respondent required the Authority's leave to lodge its SiR out of time, if it wanted to defend this matter.

[8] By letter dated 24 March 2025, which was sent to the respondent's registered address for service, the respondent was informed of the time and date of the case management conference (CMC) and was asked to provide a phone number so it could be contacted. The respondent was also directed to provide a copy of Ms Wang's wage and time records, and holiday and leave records.

[9] The respondent was also advised it required leave to defend Ms Wang's claims, and it was given until 1 April 2025 to seek the required leave from the Authority. The process for doing so was set out in the letter dated 24 March 2025. However, no leave application was lodged.

[10] The respondent did not provide the information it had been directed to provide. It did not attend the CMC held on 11 April 2025. The respondent did not seek leave to lodge a SiR out of time and no SiR has been lodged.

[11] The DoA dated 11 April 2025 again directed the respondent to provide Ms Wang's wage and time records, her holiday and leave records, her pay slips, and final pay advice. The respondent was told it had to provide the applicant's wage and time records, and holiday and leave records, regardless of whether or not it intended to defend her claim. That did not occur.

[12] The DoA and Notice of Investigation Meeting (NoIM) were served on the respondent at its registered address for service by track and trace courier at 10.49am on 15 April 2025. The courier provided photo proof of delivery of the DoA and NoIM to the Authority.

[13] The DoA put Mr Li on notice that he could potentially be held personally responsible to pay any wage arrears and other money the respondent owed Ms Wang but defaulted paying her.

[14] The Authority held an in-person investigation meeting (IM) in Auckland on 30 May 2025. The start time of the IM was delayed by 30 minutes to give the respondent extra time to appear, however it failed to do so.

[15] Ms Wang attended the IM and was questioned about her claim. The Authority was assisted by a Mandarin interpreter. The applicant's evidence of the amount of wage arrears owed was uncontested.

## **Issues**

[16] The following issues are to be determined:

- (a) Is Ms Wang owed wage arrears?
- (b) Should interest be awarded on any wage arrears Ms Wang was owed?
- (c) Has there been a breach of employment standards?
- (d) If so, was Mr Lin (Eric) Li a 'person involved in the breach of employment standards', as per s 142W of the Employment Relations Act (the Act)?

- (e) Should Ms Wang be granted leave pursuant to s 142Y(2) of the Act to recover any wage arrears or other money the respondent defaulted paying her from Mr Lin (Eric) Li personally?
- (f) What if any costs and disbursements should be awarded?

**Is Ms Wang owed wage arrears?**

[17] The respondent failed to provide the Authority with copies of Ms Wang's wage and time records, and holiday and leave records, when directed to do so. It's failure to do so breached its obligations under:

- (a) Section 130 of the Employment Relations Act 2000 (the Act) to keep and provide upon request her wage and time records;
- (b) Section 81 of the Holidays Act 2003 (the HA03) to keep and produce on request her holiday and leave records.

[18] Section 132(2) of the Act therefore applied, which allowed the Authority to Ms Wang's evidence about the wage she was paid and the hours, days and times she had worked, because her evidence about that had not been proven to be incorrect.

[19] Ms Wang said she had worked for ten weeks without being paid any wages. This covered the eight hours a day she worked for five days a week over the following periods:

- (a) 1 to 7 July 2024;
- (b) 15 July to 11 August 2024; and
- (c) 19 August to 20 September 2024.

[20] Ms Wang's last day of work was 20 September 2024, so when her employment ended she had worked for 12 months. Ms Wang said she did not take any paid or unpaid leave while employed by the respondent. When her employment ended the respondent should have paid Ms Wang four weeks annual holiday pay. However, that did not occur. Ms Wang has still not been paid any annual holiday pay.

[21] The respondent is ordered to pay Ms Wang wage arrears of \$15,680.00 within 28 days of the date of this determination, consisting of:

- (a) \$11,200.00 for hours she had worked but had not been paid, being \$28.00 per hour for 8 hours a day x 5 days x ten weeks; and
- (b) \$4,480.00 holiday pay arrears, being 4 weeks x \$1,120.00 per week.

**Should interest be awarded?**

[22] The respondent has had the benefit of using Ms Wang's money that it should have paid her in September 2024. It was therefore appropriate to award Ms Wang interest to recognise she has been deprived of the use of her own money by the respondent's failure to pay her wages and holiday pay when they became due.

[23] Interest is to run on Ms Wang's total wage arrears of \$15,680.00 from 20 September 2024 until that amount has been paid in full to her. Interest is to be calculated using the Civil Debt Calculator on the Ministry of Justice website.

[24] The respondent is ordered to pay Ms Wang \$572.41 interest from 20 September 2024 to the date of this determination. Interest continues to run from 31 May 2025 onwards until Ms Wang has been paid all of the money (including ongoing interest) she has been awarded in this determination.

**Has there been a breach of employment standards?**

[25] 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 Holidays Act 2003 (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); and
- (f) A breach of the provisions of the Wages Protection Act 1983 (WPA).

[26] The respondent has clearly engaged in multiple breaches of employment standards, as defined by s 5 of the Act. It failed to pay Ms Wang for hours she had worked in breach of the WPA, it failed to produce on request her employment documentation in breach of s130 of the Act and s 81 of the HA03, and it failed to pay her any holiday pay when her employment ended in breach of s 24 of the HA03.

**Is Mr Li “a person involved in breaches of employment standards”?**

[27] Section 142W of the Act sets out when a person is involved in a breaches of employment standards. That occurs where the person has 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 (among other things).

[28] 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.

[29] Mr Li was the respondent's sole director from 14 June 2019 to 26 March 2025. Ms Li's sister, Ms Ying Li, became a director of the respondent on 21 March 2025. Ms Li became the respondent's sole director on 26 March 2025, when Mr Li's directorship ended on that date.

[30] The respondent's failure to pay Ms Wang for work she had done for it occurred from July to September 2024, when Mr Li was the sole director. The failure to pay Ms Wang any holiday pay occurred in September 2024, again when Mr Li was the respondent's sole director.

[31] Ms Wang's SoP was lodged on 18 February 2025 and served on the respondent on 24 March 2025. Mr Li was still the respondent's sole director on these dates.

[32] Ms Wang told the Authority that all of the communications about her employment, hours of work, wage arrears and holiday pay were with Mr Li. Mr Li was the person responsible

for running the respondent's business when Ms Wang worked there. He was responsible for ensuring Ms Wang was paid correctly and on time, so it was as a direct result of Mr Li's actions/inaction that did not occur.

[33] Mr Li was at the material time "a person involved in a breach of employment standards" that have occurred in this matter, as required by s 142W of the Act. It was Mr Li's responsibility as the respondent's sole director to take the necessary steps to ensure it did not breach its minimum code obligations to its employees, including Ms Wang. However, that did not occur.

**Should Ms Wang be given leave to pursue Mr Li personally for the wage arrears and money she is owed if the respondent defaults on paying her?**

[34] 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.

[35] That is the case here. There has been a breach of employment standards by the Ms Wang's employer (the respondent), and Mr Li was the person who was directly involved in the multiple breaches of employment standards that have occurred.

[36] 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.

[37] Ms Wang is given leave to recover the wage arrears and other money (interest and reimbursement of her filing fee) she is owed by the respondent, from Mr Li personally, to the extent the respondent defaults on paying her.

**Can the respondent pay Ms Wang the wage arrears and other money she is owed?**

[38] Ms Wang has repeatedly asked Mr Li to take the necessary steps so the respondent paid her the wage arrears it owed. That has still not occurred, despite Ms Wang's wage arrears being more than nine months overdue.

[39] The Authority orders Ms Ying Li, as the current sole director of Cozy Life Kitchen Ltd, within 28 days of the date of this determination to:

- (a) Either take the necessary steps to ensure the respondent paid Ms Wang the wage arrears and other money she is owed;
- (b) Or advise Ms Wang in writing that the respondent is unable to pay the wage arrears and other money she has been awarded in this determination.

[40] Compliance by Ms Li with this order will make it clear whether Ms Wang should move to recover the wage arrears and other money she is owed from Mr Li personally, on the grounds the respondent was unable to pay her. A copy of this determination has been sent to Ms Lin at the address she has recorded on the Companies Register, as the respondent's current director.

### **Costs and disbursements**

[41] The applicant was self-represented, so the issues of costs did not arise. The respondent is ordered to pay the applicant \$71.55 to reimburse their filing fee.

### **Orders**

[42] Within 28 days of the date of this determination, the respondent is ordered to pay Ms Wang \$16,323.96, consisting of:

- (a) \$15,680.00 wage arrears from July to September 2024;
- (b) \$572.41 interest from 20 September 2024 up to the date of this determination;
- (c) \$71.55 to reimburse her filing fee.

[43] If by 5pm on 27 June 2025 the respondent defaults on paying Ms Wang all of the wage arrears and other money she has been awarded in his determination, then its former sole director Mr Lin (Eric) Li is ordered to pay Ms Wang the outstanding money she was owed but which the respondent was unable to pay her. In which case, Mr Li is ordered to personally pay Ms Wang what she is owed no later than 5pm on 14 July 2025.

[44] A copy of this determination has been sent to Mr Li at the address he has recorded (as the respondent's former director) on the Companies Register.

**Other**

[45] Ms Wang may apply to the Authority for a compliance order if the respondent and/or Mr Lin Li failed by the specified dates to pay her the money they have been ordered to pay her. She may also apply for a compliance order against Ms Ying Li personally, in her capacity as the respondent's current sole director, if she failed to comply with the orders in paragraph [39] of this determination.

Rachel Larmer  
Member of the Employment Relations Authority