

BETWEEN                      LICHEN WANG  
                                         Applicant  
  
AND                                NEW WORLD MARKET  
                                         LIMITED  
                                         Respondent

Member of Authority:        Eleanor Robinson  
  
Representatives:             Daniel Zhang, Counsel for Applicant  
                                         Jennifer Wickes, Counsel for Respondent  
  
Investigation Meeting:        13 April 2016 at Auckland  
  
Submissions received:        1 & 13 April 2016 from Applicant  
                                         5 & 13 April 2016 from Respondent  
  
Determination:                26 April 2016

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]     The Applicant, Mr Lichen Wang, claims that he was unjustifiably dismissed by the Respondent, New World Market Limited (NWML) on 15 January 2015.

[2]     Mr Wang also claims that he was discriminated against by NWML on the prohibited grounds of age and disability.

[3]     NWML denies that it unjustifiably dismissed Mr Wang and claims that he was employed as a casual employee to cover the Christmas period 2014.

[4]     NWML further claims that Mr Wang was employed subject to either a trial period or on a fixed term basis.

[5]     NWML also denies that it unjustifiably dismissed Mr Wang, whom it claims resigned voluntarily.

[6] NWML also denies that it discriminated against Mr Wang.

### **Issues**

[7] The issues for determination are whether or not Mr Wang :

- was a casual or a permanent employee during the period of his employment with NWML.

If Mr Wang is deemed to be a permanent employee:

- was his employment subject to a trial period;
- was his employment subject to a fixed term agreement;
- did Mr Wang voluntarily resign from his employment with NWML or was he unjustifiably dismissed;
- was Mr Wang discriminated against in his employment with NWML

### **Background Facts**

[8] NWML is a family business operated by Mr Zehao Guan, and his wife, Ms Tracey Ye. Mr Guan works in the business as Warehouse Manager, and Ms Ye maintains business records for NWML and also works in the warehouse.

[9] Retailer customers telephone NWML to place their orders which are compiled and either delivered to the customer or from time to time customers would come into the warehouse to collect their orders.

[10] Until 2014 Mr Guan and Ms Ye operated the business alone, with occasional help from family members. However during 2014 Mr Guan was having difficulty lifting heavy items due to worsening arthritis, and he and Ms Ye decided to recruit assistance.

[11] A family friend, Mr Zhongwen Huang, was able to help in the warehouse on a voluntary basis, but in October 2014 NWML decided to recruit a warehouse worker. It placed an advertisement on a Chinese website. The advertisement stated: “*East Auckland New World Market Ltd is hiring full time part time Warehouse Worker*”. The position required stated it was a full time warehouse worker.

[12] As the advertisement produced no suitable applicant, there was a subsequent advertisement posted on 19 December 2014 to which Mr Wang responded. It stated: “*Warehouse Worker, ... (best if have working experience in a farm) 50 years and below, salary negotiable at interview, 8 hours per day, 6 days per week, if good performance can apply for work permit, ...*”.

[13] Mr Wang telephoned NWML on 19 December 2014 and was invited to attend for an interview on 20 December 2014. At the interview he said Mr Guan told him there would be a trial period of two weeks during which he would be paid \$90.00 and once he had passed that period, his rate of remuneration would increase to \$100.00 per week. The hours of work were to be those stated in the advertisement, 10.00 a.m. to 6.30 p.m. working 6 days a week.

[14] Mr Wang commenced employment on 22 December 2014. He did not receive a written employment agreement from NWML, nor had the details of his employment been confirmed in writing, either at the date of appointment or thereafter.

[15] He said he told Mr Guan he had not received any formal training, but had been advised by Mr Guan to follow the instructions given to him by Mr Huang.

[16] Mr Guan said that after Mr Wang had been employed for a week, Mr Huang told him that Mr Wang was not a suitable employee for warehouse work and advised him to terminate his employment. He had spoken to Mr Wang after receiving this feedback from Mr Huang and had agreed after discussion with Mr Wang to give him a last opportunity. He said that he had advised Mr Wang that if there was no improvement in his work efficiency, he would have no choice but to dismiss him.

[17] Mr Wang said Mr Huang had not made any criticisms of his performance to him; however he had suggested ways in which he could improve his efficiency.

[18] Mr Wang said he had not been allowed to take breaks, during his working day.

[19] Mr Guan and Ms Ye said that all employees took a 30 minute lunch break and could make themselves drinks throughout the day. Ms Ye also said that sometimes Mr Wang would take longer than the permitted lunch break.

[20] Mr Wang agreed when questioned at the Investigation Meeting that there was a 30 minute lunch break, however he had sometimes been asked to shorten the time period. He denied that he had taken more than the permitted time for a lunch break.

[21] Mr Wang said that when he had commenced work he had asked Mr Guan where he could leave his personal belongings as he had not considered them safe on his person whilst carrying out his duties in the warehouse.

[22] He said Mr Guan had told him he could leave them in the kitchen and assured him they would be safe.

[23] On 13 January 2015 Mr Wang discovered that his personal belongings which included a mobile phone valued at \$900.00, his wallet and his car keys were missing. He had been very distressed when he discovered their loss.

[24] Mr Guan confirmed that Mr Wang had been extremely upset and said that most of the afternoon had been spent viewing video camera footage of the two exit areas of the warehouse to see if the footage was of any assistance in discovering how the loss had occurred.

[25] Mr Guan had also enlisted the assistance of his son-in-law who had taken Mr Wang to a place where a replacement key could be made and drove him home afterwards. He also arranged for the AA to send a tow truck to deal with Mr Wang's car.

[26] Mr Wang said that Mr Guan had told him to take the following two days off work because of his distress. His car key had been replaced on 15 January 2015 and he went to see Mr Guan at NWML to ask if he should return to work.

[27] He said Mr Wang had told him his employment was terminated as he required someone in the 40s age bracket who would be more stable.

[28] Mr Guan said that Mr Wang had been extremely upset after he discovered the loss of his personal property, and he had been totally shocked by Mr Wang's reaction to the loss. He said Mr Wang had told him on 13 January 2015 that he no longer wanted the job with NWML.

[29] Mr Guan said he had not told Mr Wang to take two days off work, nor had Mr Wang asked him for two days' leave. He had been surprised to see Mr Wang on 15 January 2015 as he believed Mr Wang had: "*Quit his job*".

[30] He explained that on 15 January 2015 he and Mr Wang had discussed his employment and he had explained to Mr Wang that they had an oral agreement that the job was temporary only and if he did not feel that Mr Wang was suitable for the job he could ask

him to leave. Mr Wang had tried to elicit his sympathy, talking about his personal circumstances and the fact that he suffered from Asperger Syndrome.

[31] Mr Guan also said Mr Wang had told him he received a benefit from WINZ and he was willing to continue the job at a lower rate of pay to cover his car loan repayments. Mr Guan had been very concerned about this information as he understood it was against the law to employ a person and pay him cash whilst he was receiving a WINZ benefit.

[32] Mr Wang denied when questioned at the Investigation Meeting that he had told Mr Guan he was receiving a WINZ benefit and needed to make repayments on a car loan.

[33] Mr Guan said at the Investigation Meeting that there were four reasons why he had decided to dismiss Mr Wang on 15 January 2015:

- i. His poor performance;
- ii. The temporary nature of the employment to cover the Christmas period;
- iii. His reaction to the loss of his personal property; and
- iv. The WINZ benefit claim issue

[34] A Statement of Problem was filed with the Authority on 6 June 2015, the claims included the unjustifiable dismissal claim and also wage related claims which have since been resolved between the parties.

## **Determination**

### **Was Mr Wang a Casual Employee or a permanent part-time employee when employed by NWML during the period 22 December 2014 to 15 January 2015?**

#### *Intention of the parties*

[35] In deciding whether a person is employed under a contract of service the Authority must consider all relevant matters which include the intention of the parties.<sup>1</sup>

[36] The parties do not dispute that Mr Wang was employed as a warehouse worker, initially on a salary of \$90.00 per day for the first two weeks of employment, thereafter he was paid \$100.00 per day. I note that the daily rates for 8 working hours per day do not comply with the requirements of the Minimum Wages Act 1983 and that such shortfall has been corrected.

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<sup>1</sup> S6 Employment Relations Act 2000

[37] Mr Wang was not provided with a written employment agreement or a letter confirming the basis of employment. I find the Employment Agreement alone, albeit an oral one as in this case is not determinative of the real nature of the employment relationship between the parties, and I need to examine that pattern of working and the expectations of the parties.

[38] As His Honour Judge Couch said in *Jinkinson v Oceania Gold (NZ)*<sup>2</sup> in respect of the matter of determining the real nature of an employment relationship:

*All relevant matters must be taken into account in making that decision and the parties' description of their relationship is not to be treated as determinative.*

*Analysis of the distinction between casual and on-going employment*

[39] The Employment Court judgment of *Jinkinson v Oceania Gold (NZ)*<sup>3</sup> contains a helpful examination and analysis of the distinction between casual employment and ongoing employment.

[40] In this judgment, His Honour Judge Couch analysed in detail the lines of authority derived from other jurisdictions, these being English, Australian and Canadian, in addition to that of New Zealand. These common law principles are complemented by the statutory framework in New Zealand, in particular that of the Employment Relations Act 2000.

[41] The judgment highlights that a major determinant of the distinction between casual and ongoing employment is the extent to which there exists between the parties “*mutual employment related obligations between periods of work*”<sup>4</sup> The essence of casual work lies in a series of engagements which are complete in themselves, whilst ongoing employment contemplates a continuing pattern of regular and continuous work.

[42] Judge Couch quoted with approval a decision of the Canada Labour Relations Board in which the Board said<sup>5</sup>

*In the notion of casual work, there is an element of chance or a chance factor which requires that the voluntary and immediate*

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<sup>2</sup> CC/09, 13 August 2009 at para [37]

<sup>3</sup> *Jinkinson v Oceania Gold (NZ)* CC/09, 13 August 2009

<sup>4</sup> *Ibid* at para [40]

<sup>5</sup> *Bank of Montreal v United Steelworkers of America* 87 CLLC 16,044

*availability of a potential employee coincide with the unforeseen need of an employer to have work done. Conversely, as soon as the need is foreseeable only part-time work is automatically created: the employee is not a casual worker but a part-time one.*

[43] A list of factors designed to assist in the analysis of an employment relationship originated from the Australian authorities to which Judge Couch referred and these are outlined in the judgment. These include:

- The numbers of hours worked each week
- Whether work is allocated in advance by a roster
- Whether there is a regular pattern of work
- Whether there is a mutual expectation of continuity of employment
- Whether the employer requires notice before an employee is absent or on leave
- Whether the employee works to consistent starting and finishing times.

[44] I have therefore proceeded to analyse the employment relationship between Mr Wang and NWML against those factors.

*i. The number of hours worked each week*

[45] Mr Wang worked 8 hours per day during the 12 day period of his employment. The start and finish work times were consistent being 10.00 a.m. to 6.30 p.m. with a 30 minute lunch break.

*ii. Whether work was allocated in advance by a roster*

[46] NWML did not operate a roster system, however in the absence of a written employment agreement which would have stated the hours of work., I note that in the advertisement to which Mr Wang replied the hours of work were stated to be 8 hours per day, 6 days per week.

*iii. Whether there was a regular pattern of work*

[47] Mr Wang worked full time on each of the 12 working days he was employed

[48] I find there was a regular pattern of working.

v. *Whether there was a mutual expectation of continuity of employment*

[49] It is clear that at the time of the job interview Mr Wang had an expectation of continuous employment. I note that the advertisement stated: “*if good performance can apply for a work permit*” which I find indicates that NWML also envisaged an ongoing working relationship.

[50] I find a mutual expectation of continuity of employment.

v. *Whether the employer requires notice before an employee is absent or on leave*

[51] In the absence of a written employment agreement which would have stated details relating to holidays, I note that Mr Guan stated that on 14 January 2015 Mr Wang did not attend for work, he had not asked for leave and he had not given Mr Wang permission to take the day off. I find that this indicates that Mr Guan required notice before Mr Wang could be absent from his place of work.

vi. *Whether the employee works to consistent start or finish times*

[52] The ‘*Employee working register*’ submitted by NWML presents a clear indication of daily consistent start -10.00am and finish - 6.30pm times.

[53] I find that Mr Wang worked to consistent start and finish times.

[54] I have analysed the employment relationship between Mr Wang and Mr Guan, and have not taken their own description of the employment relationship to be determinative. I find that there are several indicators that the employment of Mr Wang was more consistent with a continuous or permanent employment arrangement than with a casual arrangement.

[55] In light of these indicia, I find that Mr Wang was a permanent employee with NWML.

**Was Mr Wang employed subject to a valid trial period?**

[56] The Employment Relations Act 2000 (the Act) makes provision for trial periods and at ss 67A and 67B states:

*S 67A(2) Trial provision means a written provision in an employment agreement that states, or is to the effect, that –*

*(a) For a specified period (not exceeding 90 days), starting at the beginning of the employee's employment, the employee is to serve a trial period*

[57] Mr Wang was not issued with a written employment agreement and I find on that basis that his employment was not subject to a trial period pursuant to s 67A (2) of the Act since the trial period provision was not in writing.

[58] I determine that Mr Wang was not employed subject to a valid trial period.

**Was Mr Wang employed subject to a fixed term agreement?**

[59] NWML claims that Mr Wang was only employed for the duration of the Christmas period 2014. I have found there was no valid trial period and now examine whether or not there was a valid fixed term agreement between Mr Wang and NWML.

[60] To be valid, a fixed term employment agreement must comply with section 66 of the Act which states:

**66 Fixed Term Employment**

1. *An employee and an employer may agree that the employment of the employee will end –*
  - a. *At the close of a specified date or period; or*
  - b. *On the occurrence of a specified event; or*
  - c. *At the conclusion of a specified project.*
2. *Before an employee and employer agree that the employment of the employee will end in a way specified in subsection (1), the employer must –*
  - a. *Have genuine reasons based on reasonable grounds for specifying that the employment of the employee is to end in that way; and*
  - b. *Advise the employee of when and how his or her employment will end and the reasons for his and her employment ending in that way*

[61] Section 66(2)(a) provides that an employer must have genuine reasons based on reasonable grounds before the employer and employee can agree on the employment ending in a specific way.

[62] Moreover s 66 (4) of the Act states that if the employment of the employee is to end in accordance with the grounds set out in S 66(1) of the Act, this must be stated in writing:

*(4) If an employee and an employer agree that the employment of the employee will end in a way specified in subsection (1), the employer's employment must state in writing-*

*(a) the way in which the employment will end; and*

*(b) the reasons for ending the employment in that way.*

[63] There was no written employment agreement between Mr Wang and NWML and on that basis I find that there was no valid fixed term agreement in place.

[64] I determine that Mr Wang was not employed subject to a valid fixed term agreement.

### **Was Mr Wang unjustifiably dismissed?**

[65] Mr Wang was dismissed from his position as warehouse worker during the meeting with Mr Guan on 15 January 2015. The test of justification in s103A Employment Relations Act 2000 (the Act) states:

#### ***S103A Test of Justification***

- i. For the purposes of section 103(1) (a) and (b), the question of whether a dismissal or an action was justifiable must be determined, on an objective basis, by applying the test in subsection (2).*
- ii. The test is whether the employer's actions, and how the employer acted, were what a fair and reasonable employer could have done in all the circumstances at the time the dismissal or action occurred.*

[66] The Test of Justification requires that the employer acted in a manner that was substantively and procedurally fair. NWML must establish that the dismissal was a decision that a fair and reasonable employer could have made in all the circumstances at the relevant time.

[67] There were four reasons given by Mr Guan for his decision to dismiss Mr Wang.

#### *(i) Poor Performance*

[68] Whilst Mr Guan said that he had spoken to Mr Wang about his performance and warned him that it was not satisfactory, and that unless there was an improvement his employment might be terminated, Mr Wang denies that this occurred.

[69] Mr Wang agrees that Mr Huang gave him advice on how to work more efficiently, but said Mr Huang had not criticised his performance

[70] There is no written evidence to substantiate that Mr Guan spoke to Mr Wang about his performance or advised him that it was unsatisfactory.

[71] Moreover there is no evidence of a formal disciplinary process having occurred with Mr Wang being advised of his right to have representation at such a meeting, to provide an explanation or that his employment might be in jeopardy.

[72] I find that in these circumstances NWML fell far short of what could be expected of a fair and reasonable employer terminating an employee's performance on the basis of poor performance.

(ii) *The temporary nature of the employment*

[73] The rationale for NWML recruiting a warehouse worker in December 2014 was that Mr Guan needed assistance in the warehouse given his physical condition. Whilst Mr Guan and Ms Ye explained that Christmas was NWML's busy period and a temporary employee was only sought for that period, I find that explanation to have been undermined by the nature of the advertisements placed by NWML.

[74] The first advertisement placed on 7 October 2014, some time prior to the Christmas period, referred to a full-time part time Warehouse Worker position, the second advertisement placed on 19 December 2014 referred to a Warehouse Worker position, full time part time and stated: "*if good performance can apply for a work permit*".

[75] Neither of the advertisements mentions the advertised position as being temporary in nature or for a fixed period, and Mr Wang's evidence was that he had not been advised that was the case either at the time of his interview or at any time thereafter.

[76] There is no written employment agreement and nothing in writing from NWML to Mr Wang stating that the employment was a temporary position.

[77] I find that Mr Wang's employment with NWML was permanent in nature.

(iii) *Mr Wang's reaction to the loss of his personal property*

[78] It is clear that Mr Wang was extremely distressed by the loss of his personal property which he had understood to have been placed in a safe area. Apart from the personal aspect of the loss, there was also a significant financial loss and degree of inconvenience involved.

[79] I also accept that NWML responded to Mr Wang's loss in a sympathetic manner and gave him assistance in addressing the situation.

[80] Mr Guan said that Mr Wang had resigned upon discovering the loss of his property.

[81] An employee is usually entitled to resign from their employment on a unilateral basis. The agreement of the employer to such unilateral notice is not required, the employee responsible for the unilateral act, in this case resignation, is simply telling the employer what is going to happen. As observed by Goddard CJ in *Stiffe v Wilson & Horton*:<sup>6</sup>

*Where either party to an employment agreement gives notice, it is well settled that the contract will terminate according to the tenor of that notice. It is not open to either party to withdraw or vary that notice without the consent of the other.*

[82] There is no obligation on the employer to dissuade the employee from leaving, although they may choose to do so in some cases. An employee who has resigned has not been dismissed.

[83] In this case Mr Guan's evidence is that Mr Wang resigned verbally on 13 January 2015 when he was in a very distressed state. In *Boobyer v Good Health Wanganui Ltd* the Employment Court said of that in this type of case that the employer cannot safely insist on what the employee may have said:

*This is also the position where words of resignation form part of an emotional reaction or amount to an outburst of frustration and are not meant to be taken literally and either it is obvious that this issue or it would have become obvious upon inquiry made soberly once "the heat of the moment" had passed and taken with it any "influence of anger or other passion commonly having the effect of impairing reasoning faculties".*

[84] Mr Wang clearly had an emotional outburst on 13 January 2015 and in that situation, the employer acts reasonably in allowing the employee a 'cooling down' period.

[85] I further note that in his written evidence Mr Guan refers to the fact that: "*I decided I can no longer employ him*". This does not support his assertion that Mr Wang resigned his employment on 13 January 2015.

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<sup>6</sup> 5/12/00 AC 94/100, AEC 106/00 at para 21

[86] I find that NWML was not justified in relying upon Mr Wang's alleged verbal resignation on 13 January 2015 when terminating his employment.

(iv) *WINZ benefit claim*

[87] Mr Guan's evidence was that he had relied on the fact that NWML could not employ an employee who was also claiming a benefit from WINZ as a reason for Mr Wang's dismissal.

[88] I note that Mr Wang denied that he had informed Mr Guan that he was claiming a WINZ benefit on 15 January 2015.

[89] There is no evidence that that was the case, or that NWML had taken any steps to verify either the information or the implications of it prior to terminating Mr Wang's employment.

[90] Having considered all the circumstances, I determine that Mr Wang was unjustifiably dismissed by NWML.

#### **Was Mr Wang discriminated against in his employment with NWML?**

*Age*

[91] It is prohibited to discriminate against an employee in his or her employment<sup>7</sup> on the basis of age<sup>8</sup>.

[92] The advertisement posted by NWML on a Chinese internet website on 19 December 2014, and to which Mr Wang responded, advertised for a Warehouse Worker: "*50 years or below*".

[93] This clearly indicates a discriminatory preference for recruitment based on an applicant's age which is a prohibited ground of discrimination pursuant to s 105(i) of the Act.

[94] Mr Wang's evidence is that Mr Guan during the meeting held on 15 January 2015, Mr Guan told him that he wanted to employ a person in their 40s.

[95] I find this evidence to be credible in light of the fact that Ms Ye explained the rationale for recruiting a warehouse worker was because Mr Guan's arthritis was creating

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<sup>7</sup> S1103(1)(c) Employment Relations Act 2000

<sup>8</sup> S. 1905 (i) Employment Relations Act 2000

issues for him in handling heavy items and the fact that the advertisement placed in December 2014 indicated an ignorance of age as a prohibited ground of discrimination.

[96] I find that age discrimination was a factor in the decision to dismiss Mr Wang.

#### *Disability*

[97] Mr Wang alleges that he suffers from Asperger Syndrome, a type of pervasive developmental disorder. There is no medical evidence to support this, or evidence that Mr Wang informed Mr Guan of his medical condition at the job interview, but Mr Guan confirms that this was only conveyed to him on the day of Mr Wang's dismissal, together with the fact that he was obtaining a related benefit from WINZ.

[98] It is prohibited to discriminate against an employee in his or her employment<sup>9</sup> on the basis of disability<sup>10</sup>. Disability is defined in s 21 of the Human Rights Act 1993:

#### ***21 Prohibited grounds of discrimination***

*(1) For the purposes of this Act, the **prohibited grounds of discrimination** are—*

...

*(h) disability, which means—*

*(i) physical disability or impairment:*

*(ii) physical illness:*

*(iii) psychiatric illness:*

*(iv) intellectual or psychological disability or impairment:*

*(v) any other loss or abnormality of psychological, physiological, or anatomical structure or function:*

[99] Mr Guan's evidence was that one of the reasons which led to him deciding to dismiss Mr Wang was because of his reaction to the loss of his property on 13 January 2015.

[100] Mr Wang clearly had a very emotional reaction to the loss of his property, which could have been exacerbated as a result of his disability. Whilst I fully accept that NWML was sympathetic and helpful to him in that situation, the fact that Mr Wang told Mr Guan of his disability, his reaction to the loss of his property, and that he was receiving a benefit related to his disability, influenced Mr Guan in deciding to terminate Mr Wang's employment. This is a reason based on a prohibited ground in terms of both the Act and the Human Rights Act 1993.

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<sup>9</sup> S1103(1)(c) Employment Relations Act 2000

<sup>10</sup> A 105(1)(h) Employment Relations Act 2000

[101] I find that age discrimination on the grounds of Mr Wang's disability was a factor in the decision to dismiss Mr Wang.

[102] I determine that NWML discriminated against Mr Wang on the prohibited grounds of age and disability.

### **Remedies**

[103] Mr Wang has been unjustifiably dismissed and he is entitled to remedies.

#### *Lost Wages*

[104] Mr Wang obtained alternative employment on 8 May 2015. I note Mr Wang's evidence that Mr Guan informed him during the interview held on 22 December 2014 that his terms of employment included a 6 day working week. This is corroborated by the posted advertisement on 19 December 2014.

[105] Mr Wang's working week therefore is to be taken as 6 working days at 8 paid hours per day, and the hourly rate is to be the applicable minimum wage hourly rate.

[106] I order that NWML pay to Mr Wang lost wages from 15 January 2015 to 15 April 2015 pursuant to s 128(2) of the Act., and from 16 April 2015 to 8 May 2015, the date he obtained alternative employment, pursuant to s 128(3) of the Act.

[107] NWML is also to pay Mr Wang the relevant holiday pay to which he would have been entitled had his employment continued throughout that period.

[108] I would anticipate that the parties can resolve the amount. If not, leave is reserved to return to the Authority. I note that Mr Wang has confirmed in writing that he receives benefit from WINZ, and that he has to notify WINZ when his earnings exceed \$200 per day. This is a matter for Mr Wang and I recommend that he informs WINZ by sending them a copy of this determination.

#### *Compensation for Hurt and Humiliation under s 123 (1) (c) (i).*

[109] As a result of the termination of his employment, Mr Wang said he had felt humiliated.

[110] The dismissal of Mr Wang by NWML was based in part on prohibit discriminatory grounds and I have taken this into consideration in awarding the level of compensation.

[111] I order that NWML pay to Mr Wang the sum of \$5,000.00, pursuant to s 123(1) (c) (i) of the Act.

#### *Contribution*

[112] I am required under s. 124 of the Act to consider the issue of any contribution that may influence the remedies awarded.

[113] Mr Wang did not contribute to the situation in which he found himself and there will be no reduction in the remedies awarded.

#### **Costs**

[114] Costs are reserved. The parties are encouraged to agree costs between themselves. If they are not able to do so, the Applicant may lodge and serve a memorandum as to costs within 28 days of the date of this determination. The Respondent will have 14 days from the date of service to lodge a reply memorandum. No application for costs will be considered outside this time frame without prior leave.

**Eleanor Robinson**  
**Member of the Employment Relations Authority**