

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 457
3342480

BETWEEN CHAOYUN WANG
 Applicant

AND STEEL MASTER CO. LTD
 Respondent

Member of Authority: Helen van Druten

Representatives: Amy De-La Cruz, advocate for the Applicant
 Respondent in person

Investigation Meeting: 28 April 2025 at Auckland

Submissions received: 28 April 2025 from the Applicant
 Up to 5 May 2025 from the Respondent

Determination: 29 July 2025

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Mr Chaoyun Wang was employed by Steel Master Co. Ltd (Steel Master) on 28 September 2022 as a welder. His employment ended in May 2024 and the parties disagree on the reason the employment ended. Mr Wang says that he was dismissed and has made grievance claims for unjustified dismissal and disadvantages during his employment including bullying and harassment, unilateral shift changes and migrant exploitation. He also claims unpaid notice and leave entitlements.

[2] Throughout Mr Wang's employment, Steel Master says that there were various incidents that caused them to have concerns regarding his employment. Steel Master says that these were discussed in a meeting on 19 April 2024 then Mr Wang resigned. They dispute the wage and disadvantage claims and assert that any grievances for

disadvantage are time-barred by s 114(1) of the Employment Relations Act 2000 (the Act).

The Authority's investigation

[3] For the Authority's investigation written witness statements were lodged from Mr Chaoyun Wang, Mr Yixin Yao, Mr Andy Xu and Mr Wang Jun. All witnesses answered questions under oath or affirmation from me and the parties' representatives with the assistance of an interpreter. The representatives also gave oral closing submissions.

[4] As permitted by s 174E of the Act this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

The issues

[5] The issues requiring investigation and determination were:

- (i) Was Mr Wang dismissed from his employment? If so,
 - (a) was it justified?
 - (b) Is Mr Wang entitled to four weeks' wages and holiday pay in lieu of notice?
- (ii) Whether Mr Wang's claim for unjustified disadvantage is out of time as claimed by Steel Master. If it is in time, was Mr Wang unjustifiably disadvantaged by Steel Master?
- (iii) Did Steel Master breach its good faith, safety and/or contractual obligations to Mr Wang as an employee?
- (iv) If Steel Master's actions were not justified (by disadvantaging and/or dismissing Mr Wang), what remedies should be awarded, considering:
 - (a) Lost wages (subject to evidence of reasonable endeavours to mitigate his loss); and
 - (b) Compensation under s123(1)(c)(i) of the Act
- (v) If any remedies are awarded, should they be reduced (under s124 of the Act) for blameworthy conduct by Mr Wang that contributed to the situation giving rise to his grievance?
- (vi) Should penalties be awarded for any breaches?

- (vii) Should either party contribute to the costs of representation of the other party?

Background

[6] Steel Master manufactures steel products for its clients in the greater Auckland area and has approximately 30 employees including fitters and welders.

[7] Mr Wang was employed as a welder and began employment with Steel Master on 28 September 2022. His employment agreement provided for 40 hours per week between Monday and Saturday. When he started, all employees worked the same day shift from 7.00 am to 6.30 pm. This changed in August 2023 when two shift times were created. Employees worked either 7 am to approximately 3 pm or 3 pm to approximately midnight. According to Mr Wang's pay information, he worked the day shift except for a short period in late 2023 where he worked the evening shift.

[8] Based on evidence from both Mr Xu and Mr Jun Wang, there were performance issues with Mr Wang throughout his employment and in September 2023 he was declined a salary increase because of those performance issues.

[9] Neither party was certain of dates of key events in April 2024. They both agreed that a meeting took place between Mr Wang and Mr Xu on 19 or 20 April 2024 where Steel Master told Mr Wang the concerns about his performance. A further conversation took place regarding Mr Wang's employment on either 20 or 21 April 2024. Putting aside the date irregularities, both parties agreed that two meetings took place and at one of those meetings a list was provided to Mr Wang of the errors he was making. Fortunately, the date is not critical. In determining the issues, what was said during those two conversations is of greater importance.

Ending of employment

[10] For an unjustified dismissal grievance, the first matter to determine is whether Mr Wang's employment ended because of an action by the employer or whether Mr Wang chose to resign for other reasons.

[11] Steel Master's account of the 19/20 April 2024 meeting is that Mr Xu asked Mr Wang to meet formally to discuss serious performance concerns. According to Steel Master, Mr Xu told Mr Wang that he was costing the business and it could not continue. During that meeting, Mr Wang indicated that he wanted to resign and Mr Xu accepted that resignation. Mr Wang's employment was then due to end on 17 May 2024. Steel Master further submitted that Mr Wang had requested an employment certificate on 24 April 2024 and this was evidence of his earlier intent to resign.

[12] Mr Wang disputed that he resigned at either meeting and Steel Master maintained that he said he was going to resign and seek other opportunities. Mr Wang says that he was told of his dismissal on 20 April 2024. He was given a list of his errors, not given any opportunity to discuss the errors and told he could no longer be employed. He later said that 22 April 2024 was the "day I learnt I was fired".

[13] No documentation was provided for either meeting between Mr Xu and Mr Wang despite Steel Master saying the first meeting was a formal performance meeting to raise serious performance concerns.

[14] Other than the conflicting evidence from the parties, the written evidence between the parties to indicate what was said about Mr Wang's employment included a series of WeChat messages. Mr Wang was sick or away from 22 April 2024 working only six days in the following four weeks so no documented conversation occurred over that time until 10 May 2024.

[15] On 10 May 2024, a WeChat was sent from Mr Xu to Mr Wang and refers to arranging a handover the following week. Mr Wang made no comment on the handover and continued his discussion about leave. A further series of WeChats from Mr Xu on 17 May 2024 from 11.35 am refer to a "negotiated dismissal". The messages from Mr Xu read:

"This is a negotiated dismissal. Up to you...on 24 April you also asked me to help you issue a certificate of employment...I also gave you two options. The first is a negotiated dismissal by both parties, you find a job yourself and I will not cancel your visa. The second is that I unilaterally dismiss you...you think about it and give me a reply within today. If you don't reply I'll go with unilateral dismissal".

[16] In the next series of WeChat messages a few minutes later Mr Wang refers to Mr Xu giving him “a month to find a job” and that if Mr Wang did not find a job in a month, then it will be a “unilateral dismissal”. Mr Xu said he regrets saying this in the message exchanges. It was a moment of frustration and emotional pressure as Mr Wang was refusing to carry out any hand over duties. The conversation ended with Mr Xu confirming a “unilateral dismissal” of Mr Wang.

[17] The other written evidence was a short email from Steel Master to Immigration New Zealand soon after the WeChat messages advising them that “the last day for Chaoyun Wang work for our company is 17 May 2024 (with four weeks’ notice on 22 April 2024)”. The email then provided his personal details and visa information for reference.

Whether Mr Wang resigned or was dismissed?

[18] It now rests with the Authority to determine whether this was a resignation or a dismissal. There was no written evidence of a resignation. Mr Xu’s verbal evidence of a resignation initiated by Mr Wang that he wanted to seek out other opportunities conflicted with the wording in the WeChat messages. The WeChat messages from Steel Master gave Mr Wang the choice to find a job himself or be “unilaterally dismissed”. In other words, he was told he would be leaving the job one way or another in one month.

[19] Additionally, an intent to resign is not the same as a resignation. An employee can intend to resign but not go through with it. No evidence was presented to indicate in the alternative that Mr Wang gave notice then changed his mind or that any resignation was communicated to the company that Mr Wang had resigned.

[20] Mr Xu was understandably frustrated Mr Wang had not understood that 17 May 2024 was his last day, was not helping with any handover and that he had not resigned earlier as Mr Xu had hoped. That frustration was borne out in the WeChat messages and led to a blunt confirmation of his earlier decision to give Mr Wang notice of his termination of employment. In the absence of any documented resignation and considering the WeChat message wording from Mr Xu, I determine that Steel Master’s confirmation of its earlier decision to end Mr Wang’s employment on 17 May 2024 was made by Steel Master and not Mr Wang.

Was Mr Wang's dismissal justified?

[21] Having established that this was a termination of employment by Steel Master, it is necessary to then determine whether the process of terminating Mr Wang's employment was justifiable. This must be determined, on an objective basis, by considering 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.¹

[22] To be unjustifiable, any defects in process must also be more than minor and result in the employee being treated unfairly.²

[23] Mr Wang says that he was dismissed without clear reasons following his enquiry about taking consecutive days off rather than his usual Wednesday and Sunday. Mr Wang's employment was terminated by Steel Master but there is no evidence that the request to take consecutive days leave request was linked to the termination of his employment. The WeChat messages show that Mr Wang's request was made on the 19 April 2024 and Steel Master's decline of that request was sent on 21 April 2024. Mr Wang then requested annual leave and this was approved.

[24] It is accepted that Steel Master had legitimate concerns about Mr Wang's performance and that these concerns had existed for some time. According to Steel Master, he was costing them money and slowing down the work. Errors were causing problems and it could not continue. Accepting Steel Master's evidence of the cost of the errors in rework required, there was justification for addressing Mr Wang's performance with him, particularly since Mr Wang did not accept that the errors were made by him and attributed these errors to other employees.

[25] Applying the Act's s 103A(2) test of justification to the facts as found, a fair and reasonable employer could not have dismissed Mr Wang as Steel Master has done. There were significant substantive and procedural deficiencies that were not addressed before the decision to dismiss him was made. In particular:

¹ Employment Relations Act 2000, ss 103(1)(a) and 103A.

² Section 103A(5).

- (a) Mr Wang (rightly or wrongly) denied the errors were his. Steel Master had an obligation to investigate if this was correct or not and to discuss this with Mr Wang before deciding to terminate him based on those errors;
- (b) Mr Wang had been given the list of errors at the first April meeting and was not given a reasonable opportunity to respond to the “long” list before the decision to dismiss him was made. In good faith and as required by s 4(1A)(c)(i) and (ii) of the Act, Steel Master had a duty to give Mr Wang not only the list of errors but other relevant information relating to those errors and an opportunity to comment on them before any decision was made about his employment;
- (c) There was no record of performance meetings with opportunities for Mr Wang to improve;
- (d) There was no evidence of any current warnings given to Mr Wang;
- (e) He was not given the opportunity to have a support person attend the 19/20 April 2024 meeting with him. This was particularly important to ensure fairness to Mr Wang given his mental health issues (which Steel Master knew about) and his apparent lack of understanding of the consequences of the meeting. This was evident in his failure to apply for any jobs during the one month period; and
- (f) There was no evidence of the employer considering mitigating factors such as Mr Wang’s anxiety and depression. It was aware of these at the start of his employment and there was no evidence Mr Wang’s mental health was taken into consideration as a fair and reasonable employer could have done in the circumstances.

[26] Steel Master chose to dismiss Mr Wang with notice and was willing to make it a resignation if he found another job in that month. I accept this was well intentioned by Steel Master and it would be appropriate if the decision to dismiss him met the requirements of s 103A(2) of the Act.

[27] Steel Master’s failure to consider whether the errors were attributable to another employee or failure to document this along with procedural defects which were more than minor resulted in Mr Wang losing his job. Having regard to the test of justification at s 103A of the Act, a fair and reasonable employer could not have dismissed Mr Wang under these circumstances.

Payment for notice period dismissal

[28] Having established that Mr Wang's four-week notice period began on 22 April 2024 (using the email from Steel Master to Immigration New Zealand as the best available evidence), the next step is to consider whether Mr Wang's notice period was correctly paid.

[29] Leave records show that he took days during his notice period as either annual leave or sick leave and was paid for those days. Payroll records further show that he worked six days over the four-week notice period and was paid appropriately for those days.

[30] Mr Wang has made a separate claim regarding underpayment of his holiday and sick leave. This is considered separately from the notice-period claim and as part of his claim relating to leave entitlement calculations.

Was Mr Wang unjustifiably disadvantaged in his employment?

[31] An unjustified action causing a disadvantage personal grievance is set out in s 103(1)(b) of the Act. This provides that an employee may have a personal grievance where their employment or any condition of employment is or was affected to their disadvantage by some unjustified action by their employer.

[32] Mr Wang claimed a number of unjustifiable actions by the employer were to his disadvantage namely:

- (a) bullying and harassment;
- (b) unilateral shift changes;
- (c) failure to give him consecutive days off;
- (d) failure to keep him safe at work in breach of safety legislation;
- (e) failure to provide reasons for dismissal in breach of s 120 of the Act; and
- (f) migrant exploitation.

[33] Steel Master say that the grievances were not raised in time so each disadvantage claimed is addressed in turn beginning with whether it was raised in time and as required by s 114(1) of the Act. The applicable employee notification period is the period of 90 days beginning with the date on which the action alleged to amount to

a personal grievance occurred or came to the notice of the employee, whichever is later.³ Set out below is my analysis of each of the above disadvantage claims with respect to s 114 of the Act.

Bullying and harassment

[34] Mr Wang claimed bullying and harassment from the start of his employment, coming to a head in August 2023 with an altercation between Mr Wang and another employee. Much was made of this but it was addressed at the time and is not relevant for this determination.

[35] According to Mr Wang the bullying and harassment continued into 2024. Evidence shows Mr Wang did not raise any bullying or harassment concerns formally with Steel Master after the August 2023 incident.

[36] This particular disadvantage claim was not raised within the 90-day period and consequently the Authority lacks jurisdiction to investigate the matter further. Leave was not sought to raise the personal grievance for any exceptional circumstances outside the 90-day employee notification period.

Unilateral shift changes

[37] Mr Wang claims that he was moved from day to night shift without consultation and this caused him disadvantage as he was no longer able to spend time with his friends doing daytime activities.

[38] Steel Master payroll information shows consistent day time hours worked by Mr Wang from the start of his employment. The same records show that from 4 October 2023 to 23 December 2023, he moved to the afternoon shift with a start time around midday. Mr Wang resumed employment on 12 January 2024 at his usual morning start time.

[39] If Mr Wang had concerns regarding his start time in October 2023, he needed to speak with his employer at that time and raise any grievance within the employee notification period required under s 114(1) of the Act. As this has not occurred, this

³ Employment Relations Act, s 114(7).

claim is also time-barred and as a result, I cannot investigate it any further for want of jurisdiction.

Consecutive leave days

[40] Mr Wang said that he had Wednesday and Saturday as his days off and sought to have consecutive days off each week. No evidence was provided to support this claim. Mr Wang referred to his 19 April 2024 request but there was no employer obligation to approve the request.

[41] This grievance is also raised out of time as required by s 114(1) of the Act. Mr Wang's employment agreement was signed in October 2022 and based on his payroll history, his days off have been relatively consistent since then. The employment agreement provided for 40 hours per week to be worked across six days between Monday and Saturday.

[42] In any event, it is not for the Authority to rewrite the terms and condition of an employment agreement.⁴ There is nothing in law or his employment agreement with Steel Master that requires Mr Wang to have consecutive days off in his employment.

Breach of employer obligations

[43] Having considered Mr Wang's claims that Steel Master breached its safety and good faith obligations, there was little evidence of this other than circumstances relating to his dismissal as addressed above therefore no penalties are awarded. On the contrary, a further review of evidence suggests that Mr Xu regularly communicated with Mr Wang about his performance concerns (albeit verbally not in writing) and took action to keep parties safe following the August 2023 matter.

[44] There was no evidence that the faulty machines were a safety risk, only that they slowed down Mr Wang's work therefore any claims relating to these as a breach of employer obligations is unsuccessful. In addition, action for the recovery of a penalty was not brought within 12 months of the date when the cause of action was first known to Mr Wang as required by s 135(5) of the Act. He therefore cannot seek a penalty now.

⁴ Employment Relations Act 2000, s 161(2).

Failure to provide reasons for his dismissal

[45] The Act requires an employer to provide reasons for a dismissal to the employee where that employee requests it.⁵ Mr Wang made the request in his personal grievance letter of 23 June 2024 and did not receive any statement from Steel Master. Steel Master did not dispute this claim and therefore breached this section of the Act. Despite this breach, I do not consider it was intentional by Steel Master. They acted on the basis that Mr Wang ended his employment by resignation not a dismissal.

[46] Mr Wang knew the reason for his dismissal as he was given a list of his errors at the 19/20 April 2024 meeting. I do not consider that any penalty is appropriate for this breach in these circumstances.

Migrant exploitation

[47] There was no evidential basis for this claim of migrant exploitation. Mr Wang gave conflicting evidence that he was dismissed without any reason, Steel Master used his visa status to pressure him to resign and this was migrant exploitation. However, Mr Wang's own statement said that he was fired because of a list of work errors that Mr Xu showed him. He did not accept the work errors were valid but there was no evidence to suggest any form of migrant exploitation. Steel Master's advice they would advise Immigration New Zealand if Mr Wang left was appropriate and consistent with its obligations to the department as Mr Wang's employer.

Calculation of leave entitlements

[48] Ms De-La Cruz made a separate submission quantifying Mr Wang's claim of underpaid sick and annual leave entitlements. Despite being contracted for 40 hours per week, Mr Wang's employment agreement provided for additional hours worked to be paid at his standard hourly rate. Mr Wang claimed that he regularly worked more than eight hours per day, frequently recording weekly hours of up to 55 hours per week. He claims that his leave was calculated on his eight hours worked per day rather than as eight percent of his earnings.

[49] Steel Master provided a breakdown of leave calculations along with hours worked each day and payslips. Based on this information, each leave entitlement was

⁵ Section 120.

reviewed separately in accordance with calculation requirements in the Holidays Act 2003.

Sick leave entitlements

[50] Mr Wang's payroll information shows that he took 16 days of sick leave during his employment. The Holidays Act 2003 requires that "an employer must pay an employee an amount that is equivalent to the employee's relevant daily pay or average daily pay for each day of sick leave or bereavement leave taken by the employee that would otherwise be a working day for the employee".⁶ Mr Wang was paid 16 days of sick leave at his contracted hours per day rather than as required by the Holidays Act 2003. Based on his hours worked and an average daily pay this means he was underpaid each day by \$55.52. With a deduction of \$55.52 for 2 May 2024 where Mr Wang was paid twice for the same day of sick leave, this equates to an underpayment of sick leave of \$888.32. Steel Master is required to pay this amount to Mr Wang within 28 days of this determination.

Annual leave entitlement

[51] Both parties submitted calculations for Mr Wang's annual leave entitlement against the amount paid. These calculations differed significantly. Mr Wang worked almost twice as many hours as those submitted by Steel Master in their summary of annual leave entitlements. I have therefore considered Mr Wang's leave entitlements in two parts:

- (a) Whether he was paid correctly for annual leave taken during his employment; and
- (b) Whether he received the correct annual leave entitlement upon termination of employment.

[52] Mr Wang's employment agreement provided entitlement consistent with the provisions of the Holidays Act 2003. During his employment, he took 16 days of annual leave and was paid for eight hours per day for each of those days taken. Annual leave is calculated in weeks not days or hours. Applying the calculation provisions of s 21 of the Holidays Act 2003, payment is at the greater of the employee's ordinary weekly pay rate at the time the holiday begins or the employee's average weekly earnings over the 12 months before the holiday.

⁶ Holidays Act 2003, s 71(1).

[53] Applying this to Mr Wang for each of his leave days taken during his employment, his ordinary weekly pay rate was difficult to determine as he worked differing hours each week depending on what additional hours were available above his 40 hours. The alternative method is to use average weekly earnings, being 1/52 of his gross earnings.⁷ Using average weekly earnings and applying it to the 12 months before each holiday taken,⁸ Mr Wang was underpaid by \$1832.50 for the leave he took from 25 to 31 December 2023 and from 1 to 11 January 2024. Other leave days were calculated correctly.

[54] Turning to Mr Wang's annual leave entitlement on termination of his employment Mr Wang started employment on 28 September 2022 and his last day was 17 May 2024. Over that time period he became entitled to four weeks of annual leave and accrued 2.5 weeks of annual leave. Taking his average weekly earnings for the 12 months immediately before his termination date,⁹ and deducting amounts paid as annual leave to Mr Wang (including the \$1832.50 determined as owing above), Mr Wang was underpaid by \$1,722.79 gross in his final pay calculation.

[55] Steel Master is therefore required to pay Mr Wang a total amount of \$3,555.29 (being \$1,832.50 plus \$1,722.79) gross for unpaid annual leave entitlements within 28 days of this determination.

Remedies

[56] As a personal grievance for unjustified dismissal has been established, I now turn to consider what remedies Mr Wang is entitled to in terms of those provided for under s 123 of the Act.

Compensation

[57] Compensation is awarded pursuant to s 123(1)(c)(i) of the Act for the humiliation, loss of dignity and injury to feelings that an applicant suffers as a result of the unjustified actions (including dismissal).

⁷ As defined in s 5 of the Holidays Act 2003.

⁸ Section 22 of the Holidays Act 2003 applied for the day that Mr Wang took in advance of his 12-month leave entitlement.

⁹ As required by s 24 of the Holidays Act 2003.

[58] To determine appropriate compensation requires the Authority to quantify the harm and loss caused by any humiliation, loss of dignity and injury to feelings arising out of Steel Master's unjustified actions and the effect on Mr Wang. The starting point for compensation is that it ought to reflect the effect the grievance has had on the employee while at the same time not intending to punish the employer.

[59] Mr Wang's employment with Steel Master was rocky throughout his employment. Mr Xu said that he took on Mr Wang to give him a chance and even gave him a personal loan. There was at least one incident early in his employment where Mr Wang could have been dismissed for serious misconduct but Steel Master chose to give him a chance instead. I accept Mr Xu's evidence that there were performance issues with Mr Wang and these were costing the business.

[60] Steel Master is a small employer and does not have the resources to guide its employment matters. Even so, as required by s 103A(3) of the Act, Steel Master did have an obligation to:

- (a) properly investigate the errors it was noticing and ensure the errors were by Mr Wang not by others (as Mr Wang submitted);
- (b) explain the errors to Mr Wang, give him an opportunity to improve and ensure he understood the consequences of not improving; and
- (c) consider other factors that may have contributed to those errors.

[61] Mr Wang said that other employees treated him differently after 19 April 2024, describing them as "cold". He could not say if they knew about his dismissal but they gave him no meaningful jobs that day and he was off sick for a period after that.

[62] This was a dismissal with notice. In verbal evidence, Mr Wang said that he understood that Mr Xu had fired him on 22 April 2024 and that the 17 May 2024 would be his last day. He also said that he did not intend to leave the job so did not look for work in that four week notice period. Mr Wang was in denial that he was going to lose his job in a months' time.

[63] Taking all of this into account, the harm caused to Mr Wang and the loss suffered by him, due to Steel Master's unjustified actions, included:

- (a) Failures in process identified in [60] above; and

- (b) Lack of documentation for Mr Wang to understand his dismissal and prepare for it.

[64] This harm and loss are consistent with the lower-level harm and loss suffered by those who are subjected to unjustifiable actions by their employer. In the circumstances I quantify the compensation to be \$11,000 to compensate Mr Wang for the humiliation, loss of dignity and injury to feelings he experienced as a result of his unjustified dismissal.

Lost wages

[65] Sections 123 and 128 of the Act provide that if an employee has a personal grievance and they have lost remuneration because of that grievance then they are entitled to reimbursement of a sum equal to the whole or any part of the wages or other money lost by the employee as a result of the grievance.

[66] Mr Wang ceased work on 17 May 2024. He provided evidence of his health issues that occurred in the month before his termination, but these cannot be entirely attributed to the dismissal as evidence indicated they were occurring well before April 2024.

[67] Mr Wang also provided evidence of job searches. The outcome of these was limited by his AEWV visa status and his health rather than skill. His representative advised that he got an open visa three months after finishing at Steel Master. In determining quantum of wages, I therefore start from three months lost wages and deduct the four weeks from 22 April 2024 as Mr Wang had an opportunity in that four weeks to mitigate his loss and did not do so. Though, as a migrant worker, Mr Wang is in a category of vulnerable employee, and faced difficulties finding another job, I am not satisfied the evidence justifies exercising my discretion and awarding more than 3-months ordinary time remuneration.¹⁰

[68] On that basis, I award payment of eight weeks of lost wages at his usual hourly rate. In addition, holiday pay is ordered, calculated at eight per cent (gross) of the lost wages. Steel Master is to ensure any appropriate KiwiSaver obligations are met on both these sums.

¹⁰ Employment Relations Act 2000, s 128.

Interest

[69] Mr Wang also claimed interest on any amounts awarded. I am not satisfied that Mr Wang would have necessarily received wages for the period following his dismissal. It follows that he has not therefore lost the benefit of that money for that period, so no interest is awarded on lost wages or compensation awarded.

[70] Interest is awarded on the unpaid annual leave and sick leave entitlements totalling \$6,440.32. This interest is payable in accordance with schedule 2 of the Interest on Money Claims Act 2016 and is calculated using the calculation tool available on the Ministry of Justice website.¹¹ Interest is to be calculated from 17 May 2024.

Contribution

[71] Section 124 of the Act requires consideration of Mr Wang's actions and whether his actions in any way contributed towards the situation that gave rise to the personal grievance.

[72] I do not consider any of Mr Wang's actions or conduct established any grounds for a reduction on account of his contribution. While Steel Master had legitimate concerns regarding Mr Wang's performance that could not be ignored, those concerns were never substantiated and the way Mr Wang was dismissed did not reflect the actions of a fair and reasonable employer.

Filing fee

[73] As Mr Wang has been successful with his grievance claim, it is appropriate that he is reimbursed \$71.55 in respect of the Authority filing fee.

Summary of orders

[74] Steel Master Co. Limited is ordered, within 28 days of this determination, to make payment to Mr Wang, being:

- (a) Compensation under s 123(1)(c)(i) of the Act in the amount of \$11,000 for unjustified dismissal; and
- (b) Lost wages under s 124(1)(b) and 128 of the Act in an amount equivalent to 8 weeks wages plus 8 percent holiday entitlements on that amount.

¹¹ <https://www.justice.govt.nz/fines/civil-debt-interest-calculator/>

- (c) Unpaid sick leave entitlements of \$888.32 (gross) plus interest on that amount.
- (d) Unpaid annual leave entitlements of \$3,555.29 (gross) plus interest on that amount.
- (e) Reimbursement of the filing fee of \$71.55.

Costs

[75] Costs are reserved.

[76] The parties are encouraged to resolve any issue of costs between themselves. If the parties are unable to resolve costs, and an Authority determination on costs is needed, Mr Wang 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, Steel Master 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.

[77] 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.¹²

Helen van Druten
Member of the Employment Relations Authority

¹² For further information about the factors considered in assessing costs see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1.