

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 393/07  
5103814

BETWEEN                      CHI TSANG WONG, JUDY  
   MAY LIN NG, YAN LAN  
   WONG SHING, IVY WING  
   LONG AU, CHEUNG LUN  
   ERIK NG, EUGENE WANG,  
   PEI YING QIANG and CHNG  
   YE  
   Applicants

AND                              B'SMART CENTRE OF  
   EDUCATION LIMITED  
   Respondent

Member of Authority:      Marija Urlich

Representatives:            In person  
   No attendance for Respondent

Investigation Meeting:    13 December 2007

Determination:              13 December 2007

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]     The applicants were employed by the respondent until 22 September 2007 when the business closed. They were all employed as teachers with the exception of Ivy Wing Long Au who was employed as a receptionist. The applicant teachers taught mathematics, Chinese and/or English language to school age children at the respondent's afterschool education centre located in Highland Park. They did not have written employment agreements.

[2]     The applicants were not given notice that their employment would end at the end of the term. They were not told why the business closed. They believe the

business closed because an English language school, which was part of the respondent's business, had suffered poor enrolments since the beginning of the year.

[3] The applicants did not receive wages for August and September 2007. They wrote to the respondent on 29 September 2007 detailing their claim for unpaid wages and seeking payment of those unpaid wages. The respondent did not reply to this letter. The applicants lodged their claim for wage arrears in the Authority on 24 October 2007.

[4] On 6 November 2007 Andrew Yong, from Yong & Co Chartered Accountants (which is located at the registered office and address for service of the respondent) wrote to the Authority advising:

- (i) he had acted as the respondent's accountant;
- (ii) he had no authority to act on behalf of the respondent or authority to file a statement in reply;
- (iii) the respondent's managing director, David Tse, left NZ with no forwarding address;
- (iv) the respondent had no funds with which to pay the undisputed wage arrears;
- (v) the respondent is no longer trading, the lease of the businesses premises had expired and the school removed from those premises.

[5] Mr Yong's letter was sent to the applicants who advised they wished to proceed with their application to the Authority.

[6] On 20 November 2007 the Authority sent notice of today's investigation meeting to the registered office and address for service of the respondent. The investigation meeting notices were also sent to the listed addresses of the directors, one of whom, David Tse, acknowledged receipt of such.

[7] No representative of the respondent was in attendance at the scheduled start of today's investigation meeting. The Authority support officer assigned this application spoke with Mr Yong who advised that Mr Tse was not in New Zealand, that he did

not have a telephone number for him and that to the best of his knowledge the respondent would not be attending the investigation meeting today.

[8] Having satisfied myself that the respondent had been served with the statement of problem and notice of investigation meeting and given a fair opportunity to attend this morning I proceeded with the investigation meeting.

[9] Four of the original applicant parties were also not in attendance at the investigation meeting; Guoyan Chen, Philip Sutherland, JC Zhao and Selina Biyue Lau. They have not provided reasons as to their non attendance. Their employment relationship problems have not been investigated and the Authority will not take any further action in relation to their applications.

[10] I record that my investigation of this employment relationship problem was assisted by an interpreter of the Cantonese and Mandarin languages.

[11] The applicants claim the following sums in unpaid wages:

Chi Tsang WONG	\$1,841.73
Judy May Lin NG	\$1,220.14
Yan Lan Wong SHING	\$999.72
I Hua YANG	\$768.60
Wing Kwong WONG	\$724.17
Ivy Wing Long AU	\$627.40
Cheung Lun Erik NG	\$536.96
Eugene Wang	\$513.03
Pei Ying QIANG	\$447.29
Chang YE	\$210.80

[12] In support of their claim they have provided their payroll schedules for August and September 2007.

## Determination

[13] I am satisfied that the wages claimed by the applicants are due and owing by the respondent and make the following orders:

- (i) Pursuant to section 131 of the Employment Relations Act 2000 B'Smart Centre of Education Limited is ordered to pay the following wage arrears (nett):

<b>Chi Tsang WONG</b>	<b>\$1,841.73</b>
<b>Judy May Lin NG</b>	<b>\$1,220.14</b>
<b>Yan Lan Wong SHING</b>	<b>\$999.72</b>
<b>I Hua YANG</b>	<b>\$768.60</b>
<b>Wing Kwong WONG</b>	<b>\$724.17</b>
<b>Ivy Wing Long AU</b>	<b>\$627.40</b>
<b>Cheung Lun Erik NG</b>	<b>\$536.96</b>
<b>Eugene Wang</b>	<b>\$513.03</b>
<b>Pei Ying QIANG</b>	<b>\$447.29</b>
<b>Chang YE</b>	<b>\$210.80</b>

- (ii) Interest is to be calculated on these sums at the rate of 9% from the date it was due and owing, 22 September 2007, until date of payment.

[14] During the course of the investigation meeting the applicants advised they have never received holiday pay from the respondent. At least one of the applicants was employed by the respondent from 1996. The applicants are entitled to holiday pay<sup>1</sup>. If they wish to pursue payment of outstanding holiday pay entitlement they could refer the matter to the Labour Inspectorate for assistance with the calculation of their outstanding entitlements.

## Costs

[15] The applicants are entitled to recover the \$70 filing fee incurred in lodging their application with the Authority.

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<sup>1</sup> Section 27 Holidays Act 2003

**[16] B'Smart Centre of Education Limited is ordered to pay the applicants \$70 to reimburse the Authority filing fee.**

Marija Urlich

Member of the Employment Relations Authority