

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2016] NZERA Auckland 137  
5596008

BETWEEN                      SISI YAO  
   Applicant

A N D                              E.W FORMOSA HOLDINGS  
   LIMITED  
   Respondent

Member of Authority:        Rachel Larmer

Representatives:              Applicant in person  
   Gui Rong Wen, Director of the Respondent

Investigation Meeting:        03 May 2016 at Auckland

Written Record of Oral        03 May 2016  
Determination:

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**DETERMINATION OF THE  
EMPLOYMENT RELATIONS AUTHORITY**

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**Employment relationship problem**

[1] Ms Sisi Yao was employed by E.W Formosa Holdings Limited (Formosa) from 14 December 2014 until 01 November 2015. Ms Yao says she has still not been paid for work she did for Formosa in August and September 2015.

[2] Ms Yao produced a signed employment agreement which records Formosa as her employer so I find that the correct employer has been named in these proceedings as the Respondent.

[3] Ms Yao seeks wage arrears of \$1,560.30. She also told the Authority that she was not paid the minimum statutory entitlements for working on public holidays. Ms Yao says she worked almost all of the public holidays but did not keep a record of those days or hours.

[4] At the beginning of the investigation meeting today and again during the course of the meeting I asked Ms Gui Rong Wen (who appeared for Formosa) what

connection she had with Formosa. Ms Wen was assisted by an interpreter and through the interpreter told me a number of times that she was the sole director and 75% shareholder of Formosa.

[5] Ms Wen told the Authority that she was not involved at all in or with Formosa prior to October 2015 as it was managed by two other people. Ms Wen says she did not have anything to do with Ms Yao's wages and does not know if Ms Yao was not paid or why that may have occurred. Ms Wen says she did not know if Formosa owed Ms Yao wage arrears or not.

[6] On 22 April 2016 Formosa was directed by the Authority to provide copies of Ms Yao's wage and time records and holiday and leave records. That has not occurred.

[7] Ms Wen told the Authority that a change in Formosa's management in October 2015 means employment records prior to that are not available. That is not an acceptable excuse. Every employer is required to keep wage and time records under the Act and holiday and leave records under the Holidays Act 2000. Changes of management do not resolve an employer of that legal responsibility.

[8] Section 132(2) of the Employment Relations Act 2000 (the Act) allows the Authority to accept as proven (unless proven otherwise) an employee's wage arrears claim including the wages actually paid and the hours, days and time the employee worked if an employer fails to keep or produce an employee's wage and time records under s.130 of the Act.

[9] However s.132(2) obviously requires there to be evidence given by an employee of the days, hours and times they worked. Ms Yao was not able to give that specific evidence at the investigation meeting today.

[10] I accept Ms Yao was not paid her statutory public holiday entitlements but I am unable to determine what arrears she is owed without specific evidence about the days, times and hours she worked on public holidays.

[11] Ms Yao told the Authority that Formosa's accountant has a spreadsheet that records all of the public holidays employees worked and the times and hours they worked. Ms Yao knows that because she helped fill out the spreadsheet as part of her role.

[12] Formosa is directed to obtain the spread sheets that it compiled from timecards. These spreadsheets were compiled for the purposes of recording and processing Formosa's employees' wages and therefore apparently recorded the actual days, hours and times employees worked for the period Ms Yao was employed (14 December 2015 to 01 November 2016).

[13] If Formosa does not hold this information itself then it must obtain it from its accountant. This information about the public holidays Ms Yao worked must be provided to the Authority within 7 days of the date of this determination.

[14] Ms Yao has 14 days from the date of this determination to file her evidence about the exact public holidays she says she worked, the times she says she worked and total hours she says she worked. Formosa has a further 7 days to reply to any evidence Ms Yao files with the Authority (i.e. Formosa has 21 days to reply from the date of this determination).

[15] I will determine the public holiday entitlements aspect of Ms Yao's current claim once additional evidence relating to it has been filed.

[16] In the meantime, I accept Ms Yao's uncontested evidence that she is owed \$1,560.30 wage arrears. Accordingly Formosa is ordered to pay Ms Yao that amount within 28 days of the date of this determination.

[17] After I delivered the oral determination at the investigation meeting today, Ms Wen told the Authority that:

- a. She had nothing to do with Formosa and was not a director or shareholder of Formosa;
- b. The only company she is involved with is 110 Formosa (NZ) Limited;
- c. Formosa had a lot of debts and was in liquidation.

[18] I do not accept Ms Wen's evidence about these matters. A search of the Companies Office register records Ms Wen as being one of the three Formosa directors. Her appointment date is recorded as 21 December 2014. There is no record on the Companies Office website of Formosa being in liquidation. The Authority has no interest in 101 Formosa (NZ) Limited as it is not a party to these proceedings.

[19] Even if Ms Wen is correct and she has no involvement with Formosa (which I don't accept) these proceedings were served on Formosa at its registered office.

### **Costs**

[20] Neither party was legally represented so there is no issue as to costs. Ms Yao as the successful party is entitled to be reimbursed for her filing fee. Formosa is ordered to pay Ms Yao \$71.56 for that within 28 days of the date of this determination.

**Rachel Larmer**  
**Member of the Employment Relations Authority**