

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Jihong Zhang (Applicant)  
**AND** Graham Cornwall (Respondent)  
**REPRESENTATIVES** Jihong Zhang In person  
Graham Cornwall In person  
**MEMBER OF AUTHORITY** Dzintra King  
**INVESTIGATION MEETING** 26 January 2005  
**DATE OF DETERMINATION** 26 January 2005

**DETERMINATION OF THE AUTHORITY**

The applicant, Mr Zhang, claims that he is owed wages and holiday pay. The respondent agrees that monies are owed but disputes the amount claimed. Mr Cornwall says that Mr Zhang did not work on the Sunday and believes that a half hour's lunch should be deducted each day from the amounts claimed. Mr Cornwall says Mr Zhang appears to have started and finished work when it suited him. Mr Zhang said the hours worked were dependant upon the weather.

In breach of s.65 Employment Relations Act 2000 there was no written employment contract. It is therefore not possible to establish with certainty what the agreed hours of work were. Mr Cornwall did not respond to Mr Zhang's claim until two days prior to the hearing.

I accept Mr Zhang's evidence that he did work on Saturday and Sunday. Although no agreed hours of work were established I incline to the view that it is unlikely that Mr Zhang would have worked a 7 or 8 hour day without a lunch break. With the exception of the time worked on Sunday (4 hours commencing at midday) I accept Mr Cornwall's claim that a half hour should be deducted from the hours claimed.

I find that Mr Zhang worked a total of 47.25 hours. That total includes the 2 hours claimed for 15 July. At a pay rate of \$15.00 per hour the amount owed is \$708.75. Holiday pay on the total amount earned - \$924.75 - is \$55.49. The amount owed to the applicant is \$764.24. This amount is to be paid forthwith.

Interest on the above amount calculated at the rate of 6% is also to be paid. The interest runs from 15 July 2004 until the date payment is paid.

Mr Zhang is also entitled to recoup the \$70.00 filing fee which is to be paid in addition to the above amounts.

Dzintra King  
Member of Employment Relations Authority