



# Employment Court of New Zealand

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## Zhang v Panda Restaurant Limited [2022] NZEmpC 173 (21 September 2022)

Last Updated: 27 September 2022

IN THE EMPLOYMENT COURT OF NEW ZEALAND AUCKLAND

I TE KŌTI TAKE MAHI O AOTEAROA TĀMAKI MAKĀURAU

[\[2022\] NZEmpC 173](#)

EMPC 238/2022

IN THE MATTER OF	an application for a freezing order
AND IN THE MATTER OF	an application for substituted service
BETWEEN	JIAN ZHANG Applicant
AND	PANDA RESTAURANT LIMITED First Respondent
AND	TAO ECHO FENG Second Respondent

Hearing: On the papers  
Appearances: D Fleming and S Beshay, counsel for applicant No appearance for respondents  
Judgment: 21 September 2022

### INTERLOCUTORY JUDGMENT OF JUDGE K G SMITH

#### (Application for substituted service)

[1] In the Employment Relations Authority, Jian Zhang has lodged a claim against his former employer, Panda Restaurant Ltd. He alleges that he paid a premium to secure his employment and, subsequently, was short-paid wages and holiday pay entitlements.

[2] Tao Feng is a shareholder and director of Panda Restaurant. Claims by Mr Zhang are made against her in the Authority under ss 142W and 142Y of the

JIAN ZHANG v PANDA RESTAURANT LIMITED [\[2022\] NZEmpC 173](#) [21 September 2022]

[Employment Relations Act 2000](#). The Authority has not yet conducted an investigation meeting.

[3] On 9 August 2022, Mr Zhang's application for a freezing order relating to the assets of Panda Restaurant was granted.1 Panda Restaurant and Ms Feng did not participate in the hearing, but nevertheless a direction was made that the case would be called again in the Court on 23 August 2022 so that the freezing order could be reviewed.

[4] Panda Restaurant and Ms Feng did not appear on 23 August 2022. Consequently, the orders made on 9 August 2022 continued. Following the resumed hearing a minute was issued in which directions were made so that the Court could continue to monitor the freezing order. A direction required Mr Zhang to provide a report to the Court no later than 1 November 2022 relating to the continued need for the freezing order; that was to accommodate anything relating to it arising in the Authority investigation and/or to deal with any changed circumstances that might arise. The minute was directed to be served on Panda Restaurant and Ms Feng.

[5] Efforts to serve Ms Feng have been unsuccessful and Mr Zhang has applied for substituted service. Mr Fleming, who acts for Mr Zhang, proposed that service be effected by email to an email address used by Ms Feng: [echofeng2014@gmail.com](mailto:echofeng2014@gmail.com).

[6] Regulation 28 of the [Employment Court Regulations 2000](#) prescribes methods of serving documents in proceedings. Where a party has not given an address for service documents may be left with the person to be served. If they are not accepted by that person, they may be put down in his or her presence and attention drawn to them. They may also be sent to the person to be served by registered post to his or her last known residence or place of business or relevantly, under reg 28(2)(a)(iv), in such other manner as the Registrar of the Court or a Judge directs.<sup>2</sup>

[7] The regulation applies because Panda Restaurant and Ms Feng have not provided an address (or addresses) for service.

<sup>1</sup> *Zhang v Panda Restaurant Ltd* [2022] NZEmpC 139.

<sup>2</sup> [Employment Court Regulations 2000](#), reg 28(2)(a).

[8] A process server employed by the applicant has served the minute, and other documents, at the registered office of Panda Restaurant. Service has therefore been effected on it.<sup>3</sup>

[9] Serving documents on Ms Feng has been more problematic. Efforts to deliver the minute to her at her home address have been frustrated by others at that property. That has culminated in the process server considering that he was issued with a trespass notice preventing him from returning.

[10] Mr Fleming submitted that the problems confronting the process server show Ms Feng is evading service, justifying using an alternative means of effecting service on her. The email address referred to earlier was put forward as an alternative because Ms Feng is using it to correspond with the Authority about the investigation of Mr Zhang's claims before it.

[11] I am satisfied that Mr Zhang has established that an alternative means of service under reg 28(2)(a)(iv) is appropriate.

## Outcome

[12] The application is granted. Service of the minute, and any other documents to be served on Ms Feng as part of resolving the application for freezing orders, is to be effected by email addressed to her at [echofeng2014@gmail.com](mailto:echofeng2014@gmail.com).

[13] Costs are reserved.

K G Smith Judge

Judgment signed at 12.15 pm on 21 September 2022

<sup>3</sup> [Employment Court Regulations 2000](#), reg 28(2)(a)(iii).