

BETWEEN DUANCHUN ZHANG
 Applicant

A N D YU WANG
 Respondent

Member of Authority: T G Tetitaha

Representatives: Duanchun Zhang, in person by telephone
 No appearance by Yu Wang
 Interpreter, for Applicant

Investigation Meeting: 5 November 2018 by telephone

Date of Determination: 7 December 2018

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] This is a wage arrears claim. Mr Zhang seeks \$425 wage arrears for painting work, “spiritual damages” of \$200, \$100 translation fees and \$71.56 filing fee.

Nonappearance of respondent

[2] Mr Zhang has filed an affidavit stating he personally served the respondent with a copy of the proceeding by the applicant on 30 August 2018. No steps have been taken by Mr Wang to defend this proceeding. I am satisfied that I may continue to determine this matter in his absence.

Hearing

[3] Mr Zhang agreed that I may hear his evidence by telephone pursuant to Regulation 21(1) Employment Relations Authority Regulations 2000. An interpreter of Mandarin was available for the taking of his evidence throughout the call.

[4] Given the hearing was held by telephone in absence of the respondent, I directed pursuant to s.173 (3) Employment Relations Act 2000 that Mr Wang be served at his last known address with a copy of a Minute detailing Mr Zhang's evidence given at the telephone hearing.

[5] Mr Wang was given until **16 November 2018 3.00pm** to provide any further information about this matter. No further information has been received.

Determination

[6] Mr Duanchun Zhang took an affirmation to tell the truth. His evidence in support of his claims is set out as follows.

[7] He was found the painting job online. There was no written employment agreement. The employment agreement was made orally.

[8] Mr Zhang believes he was employed because all of his equipment was provided by Mr Wang; Mr Wang controlled his work including checking if Mr Zhang could paint, providing him with the equipment to help paint, showing him how to do the painting and directing the times he was to work including when to arrive and when to finish each day; he reported to Mr Wang at his premises and was given keys to the premises; and every day Mr Wang would return to check on his progress.

[9] Mr Zhang worked a total of 6 days and 53 hours usually between the hours of 9.00am and 7.00pm each day.

[10] Mr Wang then (falsely) accused Mr Zhang of taking a chainsaw on 18 January 2018. He refused to pay Mr Zhang's wages. Mr Zhang showed him his car and told him to call the Police. When Mr Wang did not call the Police, he sought payment of his wages.

[11] Finally on 24 January 2018 Mr Wang paid \$900 but still owed a further \$425 in wages. Mr Zhang sought mediation but Mr Wang refused to attend. He then filed this application seeking payment of wages.

[12] Unfortunately Mr Zhang has not on his evidence raised a personal grievance with Mr Wang of unjustified dismissal. On his evidence he would have been entitled

to do so. He has only sought payment of his wages. Therefore I cannot order payment of damages.

[13] I am satisfied on the evidence I have heard today that Mr Zhang is owed wages. I am also satisfied that he has incurred expenses of \$100 for translation fees and \$71.56 for the filing fee.

[14] Accordingly I now make the following orders:

- (a) Yu Wang is ordered to pay Duanchun Zhang wages of \$425.00 by **21 December 2018**.
- (b) Yu Wang is also ordered to pay Duanchun Zhang the sum of \$171.56 being \$100 translation fees and \$71.56 filing fees by **21 December 2018**.

T G Tetitaha
Member of the Employment Relations Authority