

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI  
TĀMAKI MAKĀURAU ROHE**

[2020] NZERA 382  
3091133

BETWEEN           BAO QING ZHU  
Applicant

AND                 BDIT LIMITED  
Respondent

Member of Authority:     Anna Fitzgibbon

Representatives:         Applicant in person  
No appearance by the Respondent

Investigation Meeting:    24 September 2020 at Auckland

Submissions [and further   Nothing from the Applicant  
Information] Received:     Nothing from the Respondent

Date of Determination:    24 September 2020

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**ORAL DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]     The applicant, Mr Bao Qing Zhu, claims that the respondent BDIT Limited (BDIT), failed to comply with the terms of a mediated settlement agreement dated 11 November 2019 (the Record of Settlement).

**Non-appearance by the Respondent**

[2]     The Authority has power to proceed if a party fails to attend a hearing, pursuant to clause 12 of Schedule 2 of the Employment Relations Act 2000 (the Act):

**12.     Power to proceed if any party fails to attend**

If, without good cause shown, any party to a matter before the Authority fails to attend or be represented, the Authority may act as fully in the matter before it as if that party had duly attended or been represented.

[3] The statement of problem was served on BDIT on 4 March 2020. No statement in reply was filed by BDIT. Instead, the director of BDIT, Mr Shen Yuan sent an email to the Authority on 19 April 2020 acknowledging receipt of the statement of problem and stating that "...due to the COVID.19 case in NZ, my restaurant run slowly, and shut the shop down in lockdown period..." No evidence was provided by BDIT as to its financial circumstances or its trading situation.

[4] A notice of investigation meeting to be held on 24 September 2020 was served on BDIT on 8 September 2020. An affidavit of service of the notice of investigation meeting was filed in the Authority on 14 September 2020.

[5] There was no appearance for BDIT at the investigation meeting today. I am satisfied that BDIT was aware of the investigation meeting today and was served with all relevant documentation. In the circumstances I proceeded with the investigation meeting.

### **Investigation meeting**

[6] Mr Zhu attended the investigation meeting in person and affirmed his evidence to the Authority to be true and correct. An interpreter fluent in the Mandarin language attended the investigation to assist the Authority.

[7] As permitted under s174E of the Act, this determination does not set out all the evidence received. The determination states findings of fact and law, and makes conclusions on issues necessary to dispose of the matter.

### **Application for compliance order**

[8] The record of settlement was entered into under s 149 of the Act. The record of settlement was signed on 11 November 2019 by both Mr Zhu and by Mr Yuan on behalf of BDIT. The record of settlement was also countersigned by a mediator employed by the Ministry of Business, Innovation and Employment (MBIE). Under clause 2 of the record of settlement Mr Zhu was to be paid a total sum of \$16,000 net for outstanding pay owed to him by BDIT. Payment of the total amount of \$16,000 was to be paid by weekly instalments of \$666.67 net starting on Monday 18 November 2019 and for the following six months until full payment was made.

[9] The issue which has been brought before the Authority by Mr Zhu is that BDIT has not complied fully with clause 2 of the record of settlement. It has paid a total of \$4,000.02. The remainder of \$11,999.98 has not been paid.

[10] The record of settlement was certified under s 149 of the Act by the mediator. That certification confirmed that before making the agreement, the parties were advised and accepted they understood the agreed terms:

- (a) were final, binding and enforceable;
- (b) could not be cancelled; and
- (c) could not be brought before the Authority or the Court for review or appeal, except for the purposes of enforcing those terms.

[11] Mr Zhu seeks compliance by BDIT with the record of settlement.

[12] BDIT trades as Hua's restaurant. BDIT operated two restaurants, one in Newmarket and one on the North Shore. Mr Zhu was the Head Chef and worked at both restaurants. In October 2019, BDIT's Newmarket restaurant closed. The North Shore restaurant continued trading and is still trading according to Mr Zhu. Mr Yuan's email to the Authority claims that BDIT had experienced difficulties compounded by COVID-19. However, Mr Yuan did not attend the Authority's investigation to answer questions about the difficulties he claims the business suffered.

[13] Mr Zhu says BDIT failed to pay him weekly in accordance with the record of settlement. He says he received payments of \$666.67 each on 9 and 27 November 2019 and on 6 December 2019. The next payment was for the sum of \$2000.01 made on 25 December 2019. Total payments made were \$4,000.02. The balance of \$11,999.98 was not paid and remains outstanding.

[14] The undisputed evidence before the Authority is that BDIT has not complied with the terms of the record of settlement requiring that it pay 20 weeks outstanding wages, totalling \$16,000 to Mr Zhu. A partial payment only has been made. BDIT is in breach of the record of settlement.

[15] Mr Zhu says he made attempts to recover the monies owing to him. The Authority was provided with WeChat communication between Mr Zhu and Mr Yuan confirming this to be the case.

### **Compliance order**

[16] The record of settlement refers in clause 2 to the dates when payment was to be made. I find that following payment of \$4,000.02 to Mr Zhu, BDIT has failed to pay the balance of \$11,999.98 in outstanding wages owing to him and which is due under the record of settlement. There has been a default in the agreed payments to be made by BDIT.

[17] From the evidence available, I am satisfied that BDIT has failed to comply with clause 2 of the record of settlement.

[18] In order to effect compliance with the record of settlement, I order BDIT to pay Mr Zhu, no later than 21 days from the date of this determination, the outstanding amount of \$11,999.98 pursuant to s 137(1)(iii) of the Act. No penalties were sought by Mr Zhu against BDIT.

### **Filing fee**

[19] BDIT is also ordered to pay Mr Zhu the filing fee of \$71.56 within 21 days of the date of this determination.

### **Costs**

[20] Mr Zhu represented himself and there is no issue as to costs.

**Anna Fitzgibbon**  
**Member of the Employment Relations Authority**

**Certificate of determination**

I direct that pursuant to Regulation 26 of the Employment Relations Authority Regulations 2000, Mr Zhu be provided with a certificate of determination, sealed with the seal of the Authority, recording respectively that BDIT Limited is ordered within 21 days of this determination to pay Mr Zhu the sum of \$11,999.98, plus the sum of \$71.56 being the filing fee.