



# Employment Court of New Zealand

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## Jasmine Catering Limited v Wang [2024] NZEmpC 173 (16 September 2024)

Last Updated: 19 September 2024

IN THE EMPLOYMENT COURT OF NEW ZEALAND AUCKLAND

I TE KŌTI TAKE MAHI O AOTEAROA TĀMAKI MAKĀURĀU

[\[2024\] NZEmpC 173](#)

EMPC 215/2023 EMPC 216/2023

IN THE MATTER OF	challenges to determinations of the Employment Relations Authority
AND IN THE MATTER OF	an application for substituted service
BETWEEN	JASMINE CATERING LIMITED Plaintiff
AND	ZHENG WANG Defendant

Hearing: On the papers

Appearances: M Lyttelton, advocate for plaintiff  
No appearance for defendant

Judgment: 16 September 2024

INTERLOCUTORY JUDGMENT OF JUDGE B A CORKILL

(Application for substituted service)

[1] Jasmine Catering Ltd (JCL) has brought challenges to three determinations of the Employment Relations Authority.

[2] As a former employee, Zheng Wang was successful in respect of the claims he brought against his former employer, JCL,<sup>1</sup> and in successfully defending JCL's counterclaim against him.<sup>2</sup> Subsequently, he was awarded costs.<sup>3</sup>

1 *Wang v Jasmine Catering Ltd* [2023] NZERA 263 (Member Larmer).

2 *Jasmine Catering Ltd v Wang* [2023] NZERA 264 (Member Larmer).

3 *Wang v Jasmine Catering Ltd* [2023] NZERA 333 (Member Larmer).

JASMINE CATERING LIMITED v ZHENG WANG [2024] NZEmpC 173 [16 September 2024]

[3] JCL challenged all three determinations and filed an application for stay of the Authority's orders against it. However, service of the relevant documents on Mr Wang has proved difficult.

[4] Judge King considered some of the initial difficulties and, in a minute dated 13 October 2023, directed personal service of the documents on Mr Wang.

[5] Now, an application has been made for substituted service on Mr Wang by way of public notice in the New Zealand Herald and in the Chinese NZ Herald. The grounds relied on are that Mr Wang has actively avoided service, that his former advocate does not have authority to accept service on his behalf, that a process server has attempted to locate Mr

Wang at various addresses and via other means, and that, notwithstanding these efforts, personal service has not proved possible.

[6] The application is supported by an affidavit from Mr Lyttelton, the advocate who appeared for JCL in the investigation meeting before the Authority. His affidavit describes attempts to mail the subject documents to Mr Wang at his last known residential address on a tracked basis in July 2023 and, in respect of the stay application, in September 2023. Mr Lyttelton also described a communication sent to the parties by the Authority, confirming that an application made for a compliance order in the Authority would not be advanced in the meantime given the fact that an application for stay had been made in the Employment Court.

[7] Mr Lyttelton said he then attempted to serve Mr Wang at his last known residential address on 10 December 2023, but was unable to communicate with the householders since he has no skills in Mandarin. He also left a message on Mr Wang's cell phone to which he received no reply.

[8] Then a process server was retained. In April 2024, further attempts were made to serve Mr Wang at his previous residential address. It was established that he no longer resided at that address but a possible new address was identified. Two phone calls were placed to a cell phone number believed to be Mr Wang's. Texts were sent on two occasions, but there was no response.

[9] In May 2024, attempts to serve Mr Wang were made at the alternate address, but in time it was established that he no longer resided there.

[10] In June 2024, a different address was obtained, but attempted service at that address also proved unsuccessful. Inquiries made of immediate neighbours did not provide any further information. It was established, however, that Mr Wang had a Facebook profile and what appeared to be multiple LinkedIn profiles.

[11] The Employment Court is empowered to order substituted service pursuant to reg 28(2)(a)(iv) of the [Employment Court Regulations 2000](#) (the Regulations). Rule

6.8 of the [High Court Rules 2016](#) may also assist, by virtue of reg 6 of the Regulations. That rule provides:

#### **6.8 Substituted service**

(1) If reasonable efforts have been made to serve a document by a method permitted or required under these rules, and either the document has come to the knowledge of the person to be served or it cannot be promptly served, the court may—

...

(b) when steps have been taken for the purpose of bringing, or which have a tendency to bring, the document to the notice of the person on whom it is required to be served, direct that the document be treated as served on that person on a specified date:

...

[12] I am satisfied that reasonable efforts have been made to effect personal service as permitted under the Regulations, and that it is appropriate to make a substituted service order, particularly in light of the attempts of the process server.

[13] I am also satisfied that the appropriate means of effecting substituted service is by way of a public notice. I direct that an approved notice be placed on two occasions, one week apart, in the Auckland version of the New Zealand Herald newspaper, and on two occasions, one week apart, in the local Chinese newspaper, the Chinese NZ Herald.

[14] I direct that, when placing these advertisements, the plaintiff is to ensure that they will be brought to the attention of Mr Wang by way of messages to his Facebook

profile and to his LinkedIn profiles, as well as by message to the cell phone number which was provided to the process server on or about 17 April 2024.

[15] The Registrar is directed to settle the form of the notice, which is to refer to a date of hearing for the making of further directions in open court and to the availability of the relevant documents at the office of the Registrar.

[16] The plaintiff is to ensure that a suitable Chinese translation of the notice is available for the purposes of publication in the Chinese NZ Herald.

[17] Publication of the above notice is to be completed at least 21 days before the date of hearing identified in the notice.

[18] An affidavit of service is then to be filed promptly by the plaintiff.

[19] Costs are reserved.

B A Corkill Judge

Judgment signed at 2.45 pm on 16 September 2024

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