

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 791
3305860

BETWEEN GUICHEN LI
 Applicant

AND FANCY FANCY
 CONSTRUCTION LIMITED
 Respondent

Member of Authority: Rachel Larmer

Representatives: Lennon Xi, advocate for the Applicant
 Aimee Choi, advocate for the Respondent

Investigation Meeting: 29 September 2025 at Auckland

Submissions and Other 3, 8 and 30 October 2025 from the Applicant
Information Received: 28 and 29 October 2025 from the Respondent

Date of Determination: 8 December 2025

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant, Mr Guichen Li, made the following claims against his former employer, the respondent Fancy Fancy Construction Limited (Fancy):

- (a) Breach of s 12A of the Wages Protection Act 1983 (the WPA) by Fancy requesting a premium for his employment;
- (b) Recovery of the employment premium from Fancy;
- (c) Penalty claim against Fancy for its breach of the WPA;
- (d) Unjustifiable disadvantage grievance by Fancy:
 - (i) Not offering him work;

(ii) Taking his money to pay back to him as his wages, from which PAYE had been deducted and remitted to Inland Revenue (IRD);

(e) Unjustified dismissal.

[2] Fancy denied all of Mr Li's claim. Fancy said Mr Li was dishonest, had not wanted to work and that he had provided fraudulent documents to the Authority. Mr Li denied that and alleged Fancy had lodged false WeChat messages with the Authority.

The Authority's investigation

[3] A one-day in-person investigation meeting was held in Auckland. The Authority was assisted by a Mandarin interpreter.

[4] Mr Li was his only witness. Jiajie (Nana) Liu who is Fancy's sole director and shareholder, attended the investigation meeting as the respondent's only witness.

[5] At the Authority's request Elise Yan, who is a Licensed Immigration Advisor (LIA), attended the investigation meeting and she brought with her documents that were relevant to Fancy's Accredited Employer application and Mr Li's Accredited Employer Work Visa (AEWV) application.

[6] Prior to the investigation meeting the Authority sought, and was provided with, information about both parties from Immigration New Zealand (INZ).

[7] Mr Xi (on Mr Li's behalf) told another Member during the case management conference for this matter that was held on 14 August 2025 that he had "an audio recording of the cash arrangement". However, Mr Xi confirmed prior to the investigation meeting that there was no such recording.

[8] The parties provided additional information after the investigation meeting and they both also lodged written submissions.

Relevant background

Accredited Employer

[9] At the material time, Fancy was an Accredited Employer under Immigration New Zealand's Accredited Employer Work Visa Scheme. That status expired on 9 December 2024. Ms Yan assisted Fancy to obtain its Accredited Employer status.

Mr Li and his AEWV

[10] Mr Li is a Chinese national. Mr Li previously worked as a carpenter on a casual basis in China for approximately two or three months in 2014. Since 2014, and prior to coming to New Zealand in August 2023, Mr Li said he had worked in China as "the director of a mobile phone shop and automobile related business." Mr Li had not previously worked as a construction worker before Fancy employed him to work in New Zealand.

[11] Mr Li applied for an AEWV on 16 March 2023. On 28 June 2023 Mr Li was granted an AEWV, which expired 24 months from his arrival in New Zealand.

[12] Mr Li's AEWV required him to be employed by Fancy as a construction worker and to work within the Auckland region. Fancy had to pay Mr Li not less than \$27.00 per hour for at least 30 hours per week.

[13] Mr Li arrived in New Zealand on 10 August 2023. Ms Jiajie Liu picked Mr Li up at the airport and drove him to his accommodation. She also helped him open a bank account and to apply for his IRD number, which he obtained in mid-October 2023.

[14] Mr Li said he had not worked for pay since he arrived in New Zealand in August 2023. In response to questions about how he had supported himself over the past two years, Mr Li said he had "sold some things at Avondale market to pay for his food" and he had done a short trial as a kitchen hand, where he had washed dishes in return for food. Mr Li said he obtained a migrant exploitation visa in April 2025, but he had not had any paid employment since Fancy dismissed him in October 2023.

IEA and job offer

[15] Mr Li received a job offer letter dated 14 March 2023 which attached an individual employment agreement (IEA) which he was asked to sign and return by 28 March 2023. The

job offer, and IEA, both said Mr Li's employment with Fancy would start seven days after he arrived in New Zealand, provided he had a valid work visa.

[16] Mr Li signed the IEA on 14 March 2023. His wages were to be paid to him into his nominated bank account on the 18th of the month.

[17] The IEA contained a trial period provision that met the requirements of s 67A of the Employment Relations Act 2000 (the Act). The trial period was to commence when Mr Li started work. During the trial period the parties could terminate the employment by giving the other party one week's notice, or Fancy could elect to pay Mr Li one week's pay in lieu of notice.

[18] The IEA contained a problem resolution clause that required Mr Li to raise personal grievances within 90 days of them arising or coming to his attention.

LIA's involvement

[19] Mr Li's AEWV application form recorded that it had been completed by a New Zealand LIA.

[20] An authorisation from Mr Li for another person to submit his application was attached to his AEWV application form. This authorisation form named "Elise Yan" of Conceptual Enterprise Limited as the person who was authorised to submit the visa application for Mr Li. His application form also recorded that Ms Yan was to receive all communications from INZ about Mr Li's AEWV application.

[21] The application form also recorded that the LIA had "checked the documents I have uploaded accurately represent the statements made in this form." The AEWV application recorded that the LIA had stated "yes" to the question that asked, "Have you provided advice to the applicant?"

[22] Evidence produced to the Authority established the LIA had no contact with Mr Li, had not checked his information was correct and had not been authorised by Mr Li personally to act for him.

[23] Ms Yan told the Authority that another LIA in her office (Airy Liu) had dealt with Fancy regarding Mr Li's AEWV application and visa. Ms Yan said although she was not

personally involved in Mr Li's AEWV application, she still took responsibility for the other LIA's errors, because she (Ms Yan) was the principal LIA on the application, and she was the business owner of Conceptual Enterprise Limited which still employed Airy Liu as a LIA.

[24] Ms Yan said her office sent Fancy the IEA template for Jiajie Liu and Mr Li to sign and return in support of his AEWV application. Ms Yan confirmed that a signed IEA for Mr Li was returned to her office by Fancy and was submitted in support of Mr Li's application. Ms Yan confirmed that all of the information the other LIA sent to INZ in support of Mr Li's AEWV application was provided by Fancy, not by Mr Li.

[25] Ms Yan told the Authority that, based on the available office records, there was no direct communications between Mr Li and the LIA who had handled his AEWV application. That was an error, as the LIA and Mr Li should have communicated directly, and not via Fancy, because it was Mr Li who was the LIAs' client for the purposes of obtaining his AEWV.

[26] Because the other LIA in Ms Yan's office applied for Mr Li's AEWV on his behalf, INZ sent his visa back to that other LIA, who forwarded it to Fancy. The other LIA did not provide a copy of the AEWV to Mr Li, which is what should have occurred (at the same time) when the LIA had sent his AEWV to Fancy.

[27] Ms Yan confirmed that her business was acting for Mr Li as the client regarding his AEWV application, they were not acting for Fancy. Ms Yan told the Authority that the LIA was obliged to check the information they sent to INZ was correct.

[28] However, the information the other LIA submitted to INZ on behalf of Mr Li was not obtained from him, because it had been passed on by Fancy to the LIA. Ms Yan accepted that in such circumstances the LIA would not know if the information provided to INZ in support of Mr Li's AEWV application was correct. Ms Yan was unable to explain why the other LIA had no contact with Mr Li, or had failed to send him a copy of his AEWV.

[29] Ms Yan told the Authority her business was not involved in making job offers to individuals and had no business in China. She also said they charged standard New Zealand market rates for the work they did for employers and employees. All fees were invoiced and paid in New Zealand dollars, not Chinese RMB. Ms Yan also said she did not know Weicheng Liu or Hongwei Yang, who are the two individuals Mr Li claimed his employment premium had been had forwarded on to.

Involvement of persons in China

[30] Mr Li said “his aunty” approached an agent in China who said they could get him work in New Zealand. When questioned about that, Mr Li clarified that “his aunty” was the aunt of his friend, Yan Li. The friend’s aunt’s name was Jie Lu.

[31] Mr Li provided a WeChat message that recorded Jie Lu’s WeChat name as “young auntie” and recorded her location as “Singapore”, but Mr Li told the Authority she lived in China. Jie Lu’s WeChat ID was also provided to the Authority, which for privacy reasons is not recorded here.

[32] Mr Li said he was not in contact with Yan Li or Jie Lu. The Authority’s inquiries with INZ established Yan Li is working on an AEWV for a car related business in Auckland. INZ did not have a record for Jie Lu who apparently lives in China.

[33] Mr Li said Jie Lu contacted an unknown agent who was in China and that agent contacted Fancy and obtained a job offer for him. Mr Li said he did not know the name of the agent in China as all communications had occurred between him and Jie Lu. Mr Li said Jie Lu told him she knew Fancy because “she used to holiday in New Zealand”. Mr Li said he had no direct contact with Fancy as “everything was arranged by aunty [Jie Lu], and I trusted her”.

[34] Mr Li said Jie Lu gave him the forms and documents he had to fill out to get the AEWV, and a copy of his IEA and job offer letter. Mr Li said Jie Lu filled out all of these documents for him.

Involvement of Yang Yan

[35] Jiajie Liu told the Authority that Yang Yan, who lived in Chian, had contacted her and said Mr Li was her (Yang Yan’s) nephew who needed work in New Zealand. Ms Yan had asked if Jiajie Liu could employ him. Jiajie Liu said she knew Yang Yan “as her sister had worked doing cleaning work on construction work sites in New Zealand during the Covid lockdown”. The sister had not worked for Fancy. Yang Yan had previously lived in New Zealand, but had returned to China and was still living there when she contacted Jiajie Lui.

[36] Jiajie Liu said she interviewed Mr Li by phone at the end of February or beginning of March 2023 with Yang Yan present. Jiajie Liu said she had called Yang Yan via WeChat and

Mr Li had sat beside Yang Yan so Jiajie Liu could speak to him. Mr Li denied that had occurred and no records of that interview exist.

[37] Jiajie Liu said she asked Yang Yan for Mr Li's WeChat details but when she tried to add him it was declined. When Jiajie Liu was asked why she did not get Mr Li's contact details and communicate directly with him she said, "I felt Yang Yan did not want me to have direct contact with him so I let it be." Jiajie Liu denied paying Yang Yan money or receiving money from her. Nor did she ask Yang Yan to get money from Mr Li (or for that matter from anyone else) in return for Fancy employing him.

[38] Jiajie Liu said she sent Yang Yan the copies of Mr Li's job offer and IEA, with the information about Mr Li that was recorded in those documents having been provided by Yang Yan.

[39] Jiajie Liu said she sent Mr Li's AEWV to Yang Yan via WeChat along with anything else the LIA had given her, so Yang Yan could pass it on to Mr Li. Jiajie Liu said she was given Mr Li's passport details by Yang Yan. Jiajie Liu said she was not aware that Yang Yan was in contact with Jie Lu who was in contact with Mr Li, and she had thought Ms Yan and Mr Li were in direct contact.

[40] Mr Li said he did not know Yang Yan and had not had any contact with her. He believed Yang Yan was a friend of Yan Li's aunt, Jie Lu. Mr Li said Jie Lu spoke to him about Yang Yan, but he did not communicate with Yang Yan directly. Mr Li said Jie Lu told him Yang Yan was "a very good friend who had made a bit of money in New Zealand".

Alleged premium

[41] Although Mr Li was represented by his current advocate when he lodged his SoP, it did not refer to the alleged unlawful premium payment, which was raised for the first time in the amended statement of problem (ASoP) that was lodged with the Authority on 5 September 2025.

[42] Mr Li said Jie Lu told him he had to pay her "a fee of RMB 100,000 to secure the job" in New Zealand. Mr Li said RMB 100,000 was the equivalent of approximately \$NZ 25,000.00.

[43] Mr Li told the Authority that Jie Lu said Jiajie Liu had phoned her to ask Mr Li to pay Jie Lu money for her (Jie Lu) to forward on other people in China whose names and bank

account details Jiajie Liu would provide. Mr Li alleged that Jie Lu told him that Jiajie Liu subsequently sent her (Jie Lu) via WeChat the names of the two people and their bank account numbers in China for where the money Mr Li paid Jie Lu was to be forwarded to.

[44] Mr Li said he had no records of his communications with Jie Lu because he had used a previous phone he had now lost to communicate with her. Mr Li also said he could not obtain copies of the messages he had with Jie Lu from his laptop because he had lost his login and had not backed up his laptop.

[45] Mr Li said he paid Jie Lu RMB 100,000 in March 2023, consisting of RMB 56,500 via internet banking and RMB 43,500 in a cash payment to her.

[46] Mr Li said Jie Li told him she had transferred RMB 77,000 to Weicheng Liu in July 2023 and RMB 20,000 to Hongwei Yang on 13 March 2023. These two individuals were in China so the payments by Jie Lu were apparently made into their bank accounts in China.

[47] Mr Li said Jie Lu gave him WeChat messages she said were from Fancy to her that provided the names and bank account numbers of Weicheng Liu and Hongwei Yang. Mr Li also provided receipts he said Jie Lu had given him to show she had paid his premium to Weicheng Lui and Hongwei Yang. Jiajie Liu said the WeChat messages supposedly between Jie Lu and her (Jiajie Liu) were fake.

[48] Jiajie Liu denied knowing Jie Lu, denied asking her to request money from Mr Li, and denied asking Jie Lu to forward the money Mr Li had paid her to Weicheng Lui and/or Hongwei Yang in China.

[49] Jiajie Liu said she did not know Hongwei Yang or Weicheng Liu and had not given their names or bank account numbers to Jie Liu or anyone else. Jiajie Liu said she had not asked for money to be paid to these individuals and she had not received any money from either of them. Jiajie Liu denied knowing Weicheng Lui and Hongwei Yang or receiving any money from them. Mr Li also denied knowing these individuals.

Payments allegedly made

[50] Mr Li admitted there was no evidence he had made any payments from his own bank account to Jie Li. Mr Li said his father-in-law, Mr Zhilong Zhou, made two online payments from his bank account in China to Jie Lu's bank account in China, namely:

- (a) RMB 6,500 on 13 March 2023; and
- (b) RMB 50,000 on 14 March 2023.

[51] Mr Li told the Authority he had logged into his father-in-law's bank account and made the payments to Jie Li from that bank account. Mr Li agreed that his name, Fancy's name and Jiajie Liu's name did not appear on these online transfers. That created an evidential problem for him because it failed to link the payments he said he had made to Jie Li to Jiajie Liu and/or Fancy.

WeChat messages about the alleged premium

[52] Mr Li produced WeChat messages between him and Jie Lu that said:

- (a) RMB 20,000 was paid by Jie Lu to Hongwei Yang's Chinese bank account on 13 March 2023;
- (b) A second payment RMB 17,000 had been paid by Jie Lu to Weicheng Liu's Chinese bank account on 29 June 2023;
- (c) A third payment of RMB 60,000 had been paid by Jie Lu to Weicheng Liu's Chinese bank account on 26 July 2023;
- (d) He had to give Fancy \$NZ 1,000.00 in cash.

The alleged \$1,000.00 payment

[53] In his witness statement Mr Li said he "gave NZD 1,000 in cash directly to Jiajie Liu" after he arrived in New Zealand. That allegation was repeated in the ASoP.

[54] During the investigation meeting Mr Li said he did not pay Fancy \$1,000.00, because Jie Lu paid it for him. Mr Li said Jie Lu had come to New Zealand for a month before he got here, and that Jie Lu said she had paid Jiajie Liu in cash while in New Zealand. However, Mr Li said there was no written record of that as "aunty said she had paid it in cash".

[55] Jiajie Liu denied knowing, seeing or receiving cash from Jie Lu. Jiajie Liu also denied receiving any cash from Mr Li. Her evidence about that was accepted, because the evidence Mr Li gave about this payment had been contradictory.

Disputed WeChat messages

[56] Mr Li gave the Authority WeChat messages he had personally exchanged with Fancy, which had a different picture associated with them (to show the messages had come from Fancy) than the WeChat messages he said Fancy had allegedly exchanged with Jie Lu. Mr Li said Fancy must have changed its WeChat picture, but he did not know when that had occurred.

[57] Jiajie Liu denied ever using the picture that was associated with the WeChat messages Mr Li claimed Fancy had sent Jie Lu. Jiajie Liu said she did not send any of the messages that Mr Li relied on. Jiajie Liu said she had only communicated with Yang Yan about Mr Li's employment, but no-one else.

[58] Jiajie Liu's direct evidence, that the WeChat messages Jie Lu gave Mr Li that were allegedly sent by Fancy had been faked, was accepted by the Authority on the balance of probabilities.

Mr Li's attendance at work

[59] Mr Li claimed Fancy failed to give him any work to do. Fancy disputed that.

[60] The IEA had the employer's work address on it. The IEA and job offer said Mr Li was to start work seven days after arriving in New Zealand. Mr Li agreed he had never gone to the work location that was recorded in his IEA.

[61] Mr Li said he thought he had to wait for Fancy to contact him before he could start work. However, that was inconsistent with the start date and work location recorded in his IEA. It would have been logical for Mr Li to have turned up to work at the address in his job offer and IEA if he had wanted to work.

[62] Mr Li said he told the person in China who had got the job with Fancy for him (Jie Lu) that Fancy had not given him any work to do and Jie Lu told him Fancy did not have much work available. However, that was hearsay evidence that was disputed by Jiajie Liu who said she had tried to get Mr Li to attend work but he did not want to work.

[63] Jiajie Liu provided a number of WeChat messages in which she asked Mr Li to attend work on particular construction sites which she had given him to address of. In some messages Mr Li was warned he would be dismissed if he continued to not show up to work. These

messages show that Mr Li had responded with excuses for why he could not attend work as requested.

[64] Mr Li said these WeChat messages had been faked to make him look bad, but that was not accepted. These messages had the photo Mr Li had been using to identify himself on WeChat at the material time, so they were more likely than not correct.

[65] Fancy said that on the one day Mr Li did turn up to work on a construction site, he did not want to do any construction work and had left work after a few hours. Mr Li was dismissed that same day.

[66] Jiajie Liu said she was aware Mr Li was to start work with Fancy within seven days of arrival in New Zealand. She said she reminded Mr Li of that a number of times, but he kept making excuses for why he could not come to work. His excuses included that he did not have a bank account or an IRD number and that he wanted to “take it slow” after arriving in New Zealand.

[67] Fancy’s evidence that Mr Li attended work on only one day (around 10am or 11am on 24 October 2023) for a few hours before he left was accepted. Jiajie Liu’s evidence that Mr Li had initiated a fight with another worker then walked off the job, saying he did not want to do construction work was also accepted, as Fancy had acted consistently with that having occurred by sending him a dismissal letter that recorded these facts that same day.

[68] This was a situation where Mr Li likely did not report to work on the due date. He also failed to report to specific construction sites to work when instructed by Fancy’s via WeChat messages to do so. On the one day Mr Li attended work he had only worked for a few hours before he walked off the job, allegedly stating that he did not want to do construction work.

[69] Because Mr Li was not ready willing and available to work even though there was work available for him to do, Fancy was not required to pay him. Mr Li’s failure to work more likely than not arose from his actions, rather than as a result of Fancy failure to provide him with work, as he had alleged. According to IRD records, Fancy had paid Mr Li for the few hours work he did on 24 October 2025.

Dismissal letter

[70] Jiajie Liu said Mr Li was dismissed by way of a dismissal letter dated 24 October 2023 that stated:

[...] your performance was unsatisfactory on the first day of work (24/10/2023). You even had an argument with the other workers at the construction site. You refuse to work here.

You were also unwilling to apologise and even threatened us. So we are no longer willing to hire you. Today it is 24/10/2023, I will give you one week's notice and your last working day will be 31 October 2023. I will pay you a week's salary. Your salary will be paid to you on 2 November 2023 [...]

[71] Jiajie Liu delivered the dismissal letter to the address she had dropped Mr Li off at after picking him up from the airport on 10 August 2023.

Alleged \$810 cash payment

[72] Mr Li claimed he paid Jiajie Lui \$810.00 cash on 2 November 2024. She denied that. Jiajie Lui said Mr Li's employment had already ended on 24 October 2023 and the IRD records proved that he had been paid his final pay on 31 October 2023.

[73] Mr Li alleged that Jiajie Lui demanded additional cash from him so it could be reimbursed to him as "wages" from which PAYE had been deducted and remitted to IRD, to create a false appearance he had been working for Fancy.

[74] Mr Li claimed Jiajie Liu told him he had to pay tax to keep his work visa active, or he would become an overstayer. She denied that. Jiajie Liu said Mr Li did not pay her any money and his WeChat messages about that were fabricated.

[75] Jiajie Liu denied that Mr Li had given her any money. She said that after Fancy had dismissed him, he had asked to use Fancy's Employer IRD number for a delivery job he wanted to do. Jiajie Liu said she refused, which made Mr Li angry because it meant he missed out on that job. Jiajie Liu alleged that "Mr Li threatened to ruin her and her business" because she would not let him use Fancy's IRD number. Mr Li denied that.

[76] Mr Li's claims about this alleged payment were not accepted. The IRD records show he was paid \$874.80 on 31 October 2023. This more closely aligned with Fancy's evidence that it paid Mr Li for the couple of hours he had worked on 24 October 2023 and had paid him

one week's pay in lieu of notice to end his employment under the trial period provision in his IEA. It was not logical that Jiajie Liu would have asked Mr Li for money immediately after she had ended his employment.

Issues

[77] The following issues are to be determined:

- (a) Did Fancy request or receive an employment premium from Mr Li for employing him?
- (b) If so, can Mr Li recover it?
- (c) Should a penalty be imposed on Fancy if it breached the WPA?
- (d) Did Mr Li raise his personal grievance claims within 90-days?
- (e) If so, did Fancy unjustifiably disadvantage Mr Li?
- (f) Was the trial period provision in Mr Li's employment agreement valid?
- (g) If not, did Fancy dismiss Mr Li?
- (h) If so, was his dismissal justified?
- (i) If personal grievance claims are established, what remedies should be awarded?
- (j) What costs and disbursements should be awarded?

Did Fancy, request or receive an employment premium from Mr Li for his employment?

Relevant law

[78] Section 12A of the WPA prevents an employer or person engaged on behalf of the employer to seek or receive any premium in respect of the employment of an employee, whether the premium is sought or received from the employee person employed or from any other person.

Available evidence

[79] Mr Li's claim about the alleged premium faced evidential problems. He was unable to prove on the balance of probabilities, meaning it was more likely than not, that Fancy (or Jiajie Liu) had sought or received any of the money he claimed to have paid Jie Lu.

[80] According to Mr Li's evidence a premium for his employment with Fancy was requested in China by Jie Lu and paid in China by him and his father-in-law to Jie Lu before the IEA was signed. This occurred when Mr Li was in China. The money Mr Li said his father-in-law paid was paid in RMB and was transferred between Chinese bank accounts.

[81] The available evidence fell short of establishing that:

- (a) Fancy and/or Jiajie Lui had sought or received a premium from Mr Li.
- (b) Mr Li had made the alleged premium payments, as the money did not come from a bank account that was in his name.
- (c) Mr Li had paid Jie Lu RMB 43,500 cash, as there was no record of that.
- (d) Jiajie Liu had asked Jie Lu to get Mr Li to pay her (Jie Lu) money. Mr Li's claim that Jiajie Liu had made the request was heresay evidence that was denied by Jiajie Liu. It was Jie Lu who had asked Mr Li to pay her the money which he said was a premium.
- (e) Jie Lu paid Jiajie Lui and/or Fancy any of the money Mr Li had paid her (Jie Lu).
- (f) Jiajie Liu knew the two people Jie Lu claimed to have paid Mr Li's father-in-laws' money to.
- (g) Hongwei Yang or Weicheng Lu (who Jie Lu claimed to have paid) had passed any of Jie Lu's money on to Jiajie Lui and/or Fancy or had received the money on their behalf or at their direction.
- (h) A credible link between Jie Lu and Jiajie Liu, who denied knowing Jie Lu. The WeChat messages which named Hongwei Yang and Weicheng Lu were not credibly linked to Jiajie Liu. There was no other evidence that linked Jie Lu and Jiajie Liu and/or Fancy together.

[82] The payments Mr Li said Jie Lu has passed on to Hongwei Yang and Weicheng Liu as premium payments added up to RMB 97,000.00.

[83] Mr Li's claim that Fancy gave Jie Lu the names and Chinese bank account numbers of Weicheng Liu and Hongwei Yang was not accepted. The WeChat messages were not

considered credible enough to establish the required evidential link between Jiajie Lui and Jie Lu and/or Hongwei Yang and/or Weicheng Liu.

[84] The alleged premium payments involved individuals Mr Li was closely aligned with. His friend Yan Li had involved his aunt Jie Lu, who Mr Li said he trusted to request and receive money from him and who had in all respects acted on his behalf. Jie Lu did not give evidence, so it was not known whether she passed the money Mr Li gave her on or kept it.

[85] It was also odd that Mr Li did not refer to the premium allegations in his original SoP when it was such as substantial claim. Such a fundamental omission undermined the credibility of his premium related claims as Mr Li was represented when he had lodged his statement of problem (SoP) and ASoP.

[86] The Authority heard evidence during a substantive investigation meeting held this month that involved other parties that Jie Lu and Yan Li had worked together to request and receive an alleged premium from the applicant, who was the employee, in that matter.¹

Findings on the premium claim

[87] Jiajie Liu's direct denials was preferred over the heresay evidence Mr Li gave about the premium. No credible links had been established between Jie Lu and Jiajie Liu or between Hongwei Yang and/or Weicheng Liu and Jiajie Liu. There was also no credible evidence that Jiajie Lui and/or Fancy had received any of the money Mr Li said he had paid Jie Lu.

[88] Mr Li was unable to establish the facts required to prove that Fancy more likely than not had sought and/or received a premium from him for his employment. Accordingly, Mr Li's premium related claims did not succeed.

Can Mr Li recover the premium?

[89] Mr Li cannot recover the money he said he paid Jie Lu from Fancy and/or Jiajie Liu. Mr Li would need to take action against Jie Lu directly to recover any premium payment from her personally, as she was the recipient of the money he claimed to have paid her.

¹ That matter is currently awaiting determination.

Did Mr Li raise his personal grievance claims within 90-days?

[90] Section 114(1) of the Act requires personal grievance claims to be raised within 90 days beginning with the date on which the alleged action amounted to a personal grievance occurred or came to the notice of the employee, whichever is later.²

[91] Mr Li's IEA contained a problem resolution clause that required him to raise personal grievance claims within 90 days, so he was on notice of that requirement.

[92] Jiajie Liu said Mr Li did not raise any personal grievance claims with her or Fancy. She said the first she knew of Mr Li's claims was when his SoP was served on Fancy by the Authority, which occurred on 3 July 2024.

[93] Mr Li's SoP, that was lodged by his advocate, recorded an unjustified disadvantage grievance but it did not refer to an unjustified dismissal grievance claim. Mr Li's ASoP, that was lodged with the Authority on 5 September 2025, referred to a constructive dismissal, which said he had resigned because Fancy had breached minimum employment standards. That was the first time a dismissal grievance had been raised.

[94] Mr Li did not provide any evidence at the investigation meeting to establish he had raised personal grievances within 90 days of them arising or coming to his attention. Nor did he provide any documents to the Authority to establish he had raised personal grievance claims with Jiajie Liu or Fancy outside of the SoP or ASoP.

[95] Mr Li's employment ended on 24 October 2023. His SoP was served on Fancy on 3 July 2024, which is well outside the 90-day period required by s 114(1) of the Act. Accordingly, the Authority did not have jurisdiction over Mr Li's personal grievance claims.

Was the trial period provision in Mr Li's employment agreement valid?

[96] From 29 October 2023 INZ prevented employers from using trial periods for workers from overseas who were working under an AEWVs. However, this ban did not apply to AEWV applications that were based on job checks had had been approved before that date. Fancy was therefore not prohibited from relying on the trial period provision in Mr Li's IEA.

² See section 114(7)(b) of the Act.

Trial period provision

[97] Mr Li arrived in New Zealand on 10 August 2023, so in accordance with his job offer and IEA his employment started on 17 August 2023. The trial period therefore started on 17 August 2023. The trial period prevented Mr Li from bringing a personal grievance or other legal proceedings in respect of his dismissal.

[98] Fancy dismissed Mr Li on 24 October 2023, with was 68 days after his employment had commenced. He was dismissed in accordance with the trial period provision in his IEA, as he was given one week's notice but told he did not have to work out his notice period. As per his IEA, Fancy paid Mr Li one week's pay in lieu of him attending work during his notice period.

Finding

[99] The trial period provision in Mr Li's IEA prevented him from pursuing a dismissal grievance. Accordingly, the Authority did not have jurisdiction over Mr Li's unjustified dismissal claim.

What costs and disbursements should be awarded?

[100] Fancy as the successful party is entitled to a contribution towards its actual legal costs. The parties should attempt to agree on costs, based on the notional daily tariff of \$4,500.00 for this one day investigation meeting.

[101] If agreement on costs cannot be not reached, Fancy has 28 days within which to lodge costs submissions. Mr Li then has 14 days within which to lodge his costs memorandum. If a costs determination is sought, then proof of the actual legal costs incurred is required, by way of a GST invoice. The parties are invited to identify any factors they say should result in the notional daily tariff of \$4,500.00 being adjusted.

Rachel Larmer
Member of the Employment Relations Authority