

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2013] NZERA Auckland 124
5407691

BETWEEN LING LIN
 Applicant

AND SANYOU (SANDY) ZHOU
 Respondent

Member of Authority: K J Anderson

Representatives: M Moncur, Advocate for Applicant
 S Zhou, In person

Investigation: On consideration of the papers

Determination: 12 April 2013

DETERMINATION OF THE AUTHORITY

Application for compliance order

[1] On 31 January 2012, the Authority issued a determination¹ (the January 2012 determination). The findings and orders of the Authority set out in that determination apply to the parties to the current application: Ms Ling Lin and Ms Sanyou Zhou. The earlier proceedings also involved a second respondent; New Times Press Limited, but the orders made against that party are not being pursued, nor are they particularly relevant to the current proceedings, as the Authority understands that the company is no longer trading.

[2] Relevant to the current application for a compliance order, in the January 2012 determination, the Authority made the following orders:²

¹ [2012] NZERA Auckland 43

² At para [92]

3. Pursuant to s.12(2) of the Wages Protection Act 1983, Ms Sanyou Zhou is ordered to repay the sum of \$5,000.00 to Ms Ling Lin. And pursuant to s.13(b) of the Wages Protection Act 1983 and s.135 of the Employment Relations Act 2000, Ms Sanyou Zhou is ordered to pay a penalty of \$7,000.00; with \$4,000 of this amount to be paid into the Authority for subsequent payment into the Crown Bank Account. The remaining \$3,000 shall be paid by Ms Zhou to Ms Ling Lin.

[3] While Ms Zhou has entered into an arrangement with the previous Department of Labour to pay the penalty amount of \$4,000 to the Crown, on a time payment basis, it is commonly accepted that Ms Zhou has not paid Ms Lin any of the total sum of \$8,000 due to her, pursuant to the orders of the Authority. Ms Lin now asks the Authority to issue a compliance order under s.137 of the Employment Relations Act 2000. Also sought is an order that a penalty in the sum of \$10,000 be paid to the Crown for a breach of the orders of the Authority.

[4] Following the receipt of a statement in reply from Ms Zhou, on 12 February 2013, the parties participated in a conference call with the Authority. The outcome was that Ms Zhou confirmed that she had not paid Ms Lin the monies due to her. Ms Zhou told the Authority that the failure to make the payment due was because: “*I have no money.*”

[5] Ms Zhou was subsequently directed to provide to the Authority the details of her current financial position, including a current bank statement, property owned and liquid assets such as investments and shares. Ms Zhou duly forwarded a bank statement for the period 5 February 2013 to 1 March 2013. This shows a balance of \$112.12. In an extremely brief covering letter dated 4 March 2013, Ms Zhou informs that she does not have any property or liquid assets.

[6] A further conference call with the parties was convened by the Authority on 5 April 2013. Ms Moncur, for the applicant, is critical (perhaps with some justification) of the information provided by Ms Zhou but has not produced any evidence that contradicts the (limited) information that Ms Zhou has provided. The Authority explored with the parties the possibility of issuing a compliance order that would be conditional on Ms Zhou making payments on the basis of an agreed schedule over a period of time; but this discussion was not fruitful, largely due to Ms Zhou asserting that she is not able to pay anything as she has no money and is currently not working.

Determination

[7] There is no doubt that Ms Zhou has an obligation to make a payment of \$8,000 to Ms Lin as ordered by the Authority in the determination dated 31 January 2012. Ms Zhou says that she is impecunious or in simple terms, she has no money. However, I make the observation that throughout all of her involvement with the Authority, Ms Zhou has been less than totally forthcoming in regard to providing tangible evidence pertaining to a variety of matters before the Authority. This now includes her ability or otherwise, to pay Ms Lin what is due to her. It may be that what Ms Zhou says about her current financial position is, eventually, shown to be correct, but at the moment there is insufficient evidence before the Authority to identify with any certainty Ms Zhou's financial viability; hence it is appropriate to make the compliance order sought by the applicant.

[8] Pursuant to s.137 of the Employment Relations Act 2000, Ms Sanyou Zhou is ordered to pay to Ms Ling Lin the sum of \$8,000.00 within 30 days of the date of this determination. Given the circumstances surrounding this matter it is not appropriate to award a penalty as sought by the applicant.

Costs

[9] The applicant is entitled to be paid the application fee paid to the Authority relating to these proceedings and also to some contribution to her general costs. Ms Zhou shall pay to Ms Lin the sum of \$71.56 being the application fee; and a further \$200 towards the general costs incurred relating to these proceedings.

Note: Pursuant to Reg 26 of the Employment Relations Authority Regulations 2000, the applicant is to be provided with a certificate of determination, sealed with the seal of the Authority recording that the respondent is ordered to pay the sums, including costs, as set out in this determination, that is, the total sum of \$8,271.56.

K J Anderson
Member of the Employment Relations Authority