

(b) Wage arrears in the sum of \$5482.48 gross plus interest totalling \$48.25 gross

(c) Unpaid holiday pay in the sum of \$1759.71 gross

(d) The shortfall in her hourly rate totalling \$231.90 gross

(e) Costs in the sum of \$2000 together with the filing fee of \$71.56

Non-appearance of respondent

[1] Shineton Trading Limited (Shineton) failed to file a statement in reply to the applicant, Ms Si's, statement of problem.

[2] The statement of problem was personally served at Shineton's registered office. No response has been received.

[3] A case management conference was held on 20 June 2019. The Authority directed Ms Si to file an affidavit attaching relevant documents in respect of her employment relationship problem and to arrange for it to be served on Shineton personally. A telephone conference was directed to be held on 15 July 2019 at 2pm, so that the Authority member could ask any questions of the applicant in respect of her affidavit.

[4] Ms Si's affidavit together with notification of the date of the telephone conference were served at Shineton's registered office on 2 July 2019. An affidavit of service dated 5 July 2019 was filed in the Authority.

[5] The date of the telephone conference was adjourned until 2pm on 16 July 2019. Notification of the change in the date of the telephone conference was served on Shineton at its registered office on 13 July 2019. The notification was handed to Ms Kelly Yin, sole shareholder of Shineton. An affidavit of service was filed in the Authority on 16 July 2019. There was no response by Shineton and no contact made with the Authority or participation in the telephone conference.

[6] There has been no engagement by Shineton in the Authority's process. I am satisfied that Shineton was aware of Ms Si's employment relationship problem.

Authority's investigation

[7] Ms Xiujuan Si, and another employee, Ms Yanqiu Huang both filed affidavits and answered the Authority's questions. Mr Jin Park, Counsel and Mr Gavin Van Herwaarde, process server, also filed affidavits. Each witness affirmed that their evidence in respect of the service of documents on Shineton was true and correct.

[8] The Authority was assisted by an interpreter of the Mandarin language.

[9] As permitted under s174 of the Act, this determination does not set out all the evidence and submissions received. The determination states findings of fact and law, and makes conclusions on issues necessary to dispose of the matter.

Employment relationship problem

[10] Mr Shuang Qin is the sole director of Shineton. Ms Kelly Yin is the sole shareholder. Shineton owned and operated the Knight Bridge Café in Mt Wellington until its closure in April 2019.

Employment by Shineton

[11] Ms Si was first employed by Shineton in April 2017 while on a student visa. On 15 August 2017, she was employed on a trial basis, upon the completion of which she was employed by Shineton in November 2017 in a permanent position of Chef de Pareie. Ms Si was provided with a written employment agreement dated 13 November 2017. Under the terms of her employment agreement, Ms Si was to be paid \$16 gross an hour. Hours of work were approximately 30 a week with the option to work more.

Unpaid wages and holiday pay

[12] Shineton failed to pay Ms Si the agreed hourly rate of \$16 gross, and from November 2017 until April 2018, she was paid \$15.75 gross an hour. Shineton also failed to pay Ms Si's wages on time and failed to pay wages owing. Ms Si complained to Mr Qin about it but to no avail. The situation got to a point that Ms Si felt she had no choice but to resign which she did on 13 July 2018. By that time, Ms Si says she was owed the sum of \$5482.48 gross in unpaid wages.

[13] Between August and November 2018, Ms Si made multiple demands for payment of her wages. She was suffering financially and needed the money. Mr Qin repeatedly

requested Ms Si to return to work. Ms Si did so for a period of time as she believed she was going to be paid her outstanding wages. She was not.

30 November 2018 meeting

[14] Eventually, Mr Qin agreed to a meeting with Ms Si to discuss the matter. This took place on 30 November 2018.

[15] At the meeting, Mr Qin promised to pay Ms Si the outstanding wages owing to her. A handwritten agreement was signed by both Mr Qin and Ms Si. The agreement acknowledged that as at 30 July 2018, Shineton owed Ms Si the sum of \$5482 in unpaid wages which would be paid to her on 23 January 2019. The agreement stated that if payment was not made on that date, interest of 10% per annum on the outstanding amount would be payable by Shineton. The Authority was provided with a copy of the written agreement which was signed by both parties and witnessed.

[16] Shineton failed to make the payments to Ms Si as agreed. Ms Si is owed the sum of \$5482.48 in unpaid wages.

[17] I order Shineton to pay Ms Si the sum of \$5482.48 in unpaid wages plus interest at the agreed rate totalling \$48.25 gross, within 14 days of the date of this determination.

Failure to pay correct hourly rate

[18] Shineton failed to pay Ms Si her hourly rate of \$16 gross in accordance with her employment agreement. Ms Si has calculated she was paid \$15.75 gross an hour from the start of her employment until 1 April 2018. Ms Si is owed the sum of \$231.90 gross.

[19] I order Shineton to pay Ms Si the shortfall in her hourly rate, totalling \$231.90 gross within 14 days of the date of this determination.

[20] Ms Si kept a record of her hours worked, which she has provided to the Authority, along with her Inland Revenue Department (IRD) records and her calculation of unpaid wages. Ms Si says she is owed holiday pay totalling \$1759.71 gross for the period from August 2017 to 13 July 2018. In the absence of evidence to the contrary and on the basis of the records provided to the Authority, I accept Ms Si's calculation.

[21] I order Shineton to pay Ms Si the sum of \$1759.71 gross outstanding holiday pay within 14 days of the date of this determination.

Constructive dismissal

[22] Ms Si says she suffered financial hardship as a result of Shineton's failure to pay her wages properly and on time. She made constant requests for her wages and felt she was being treated very badly. Ms Si says she felt under pressure and constantly distressed. She decided she had no option but to resign.

[23] I consider Shineton's actions in failing to pay Ms Si regularly and the proper amount in wages forced her to resign. I consider the resignation amounted to a constructive dismissal which was unjustified.

[24] I consider compensation in the sum of \$7,500 for the humiliation, loss of dignity and injury to Ms Si's feelings, an appropriate sum. I order Shineton to pay Ms Si the sum of \$7,500 compensation within 14 days of the date of this determination.

Costs

[25] I order Shineton to pay Ms Si costs in the sum of \$2000 plus the filing fee of \$71.56. These sums are to be paid within 14 days of the date of this determination

Certificate of determination

[26] I direct that pursuant to Regulation 26 of the Employment Relations Authority Regulations 2000, Ms Si be provided with a certificate of determination, sealed with the seal of the Authority, recording respectively that Shineton Trading Limited is ordered within 14 days of this determination to pay Ms Si the sums of:

- \$7500 in compensation under the Act
- \$5482.48 gross in unpaid wages plus interest of \$48.25 gross
- \$1759.71 gross in unpaid holiday pay

- \$231.90 gross being the shortfall in her hourly rate
- \$2000 in costs together with the sum of \$71.56 being the filing fee.

Anna Fitzgibbon

Member of the Employment Relations Authority