

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2023] NZERA 273  
3188719

BETWEEN

CHUAN WANG  
Applicant

AND

SONIA YANGYANG GILL  
Respondent

Member of Authority: Rachel Larmer

Representatives: May Moncur, advocate for the Applicant  
No appearance by Respondent

Investigation Meeting: On the papers

Date of Determination: 26 May 2023

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

*Applicant's claim*

[1] Mr Wang seeks that a compliance order be issued to compel Ms Gill to pay him the money he was awarded by the Authority in the substantive determination it issued on 14 April 2022 in the *Wang v Gill* matter.<sup>1</sup>

[2] Ms Gill has not participated in the Authority's investigation.

*Authority's substantive determination*

[3] In early May 2020 Mr Wang was employed by New Zealand Qiang Sheng Trading Limited ("NZQSTL"), which went into liquidation on 27 November 2020 (the day after Mr Wang had raised his personal grievance claim with it). NZQSTL was removed from the

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<sup>1</sup> [2022] NZERA 144.

Companies Register before the Authority conducted its substantive investigation into Mr Wang's claims on 20 January 2022.

[4] Ms Sonia Yangyang Gill was the sole director and shareholder of NZQSTL (in Liquidation) which has been removed from the Companies Register, and she was solely responsible for the day to day operations of its business.

[5] Mr Wang successfully claimed that Ms Gill had required him to pay NZ\$90,000 for his job with NZQSTL, which was an unlawful employment premium that breached s 12 A of the Wages Protection Act 1983 ("*the WPA*").

[6] The Authority held that Ms Gill was "*a person involved in a breach within the meaning of s 142W*" of the Employment Relations Act 2000 ("*the Act*") and "*a person involved in the non-compliance*" of the WPA, as per s 11A(1)(c) of the WPA.

[7] Section 11A(3) of the WPA enables a worker to recover an unlawful employment premium personally from a person involved in non-compliance with s 12A of the WPA, with the prior leave of the Authority if the employer is unable to repay the premium.

[8] Because NZQSTL had been liquidated and removed from the Companies Register it was unable to repay Mr Wang any of the employment premium Ms Gill had requested, and received, from him. The Authority therefore granted Mr Wang leave under s 11A(4) of the WPA to recover the full amount of the employment premium he had paid Ms Gill, from her personally.

#### *Orders made against Ms Gill*

[9] The Authority ordered Ms Gill, within 28 days of the date of the substantive determination dated 14 April 2022, to pay Mr Wang directly into his New Zealand bank account:

- (a) The NZ\$90,000 employment premium she had received from him;
- (b) Interest on the NZ\$90,000 to run from 4 August 2020 until it had been repaid in full. Interest was to be calculated in accordance with the civil debt interest calculator on the Ministry of Justice website; and
- (c) Legal costs and disbursements of \$5,321.56.

[10] None of this money has been paid.

### **Service issues**

[11] There have been issues in serving the Statement of Problem for this compliance order application on Ms Gill personally.

[12] Ms Gill has not answered the Authority Officer's phone calls to the mobile phone number Ms Moncur provided. Voicemail messages to that mobile number have also not been responded to.

[13] The Authority's emails to Ms Gill at the email address that Ms Moncur said Ms Gill's former lawyer had given her (Ms Moncur) have not been responded to.

[14] The Authority's usual method of serving the Statement of Problem, by track and trace courier post was unsuccessful. The documents were left at the Flagstaff, Hamilton, address that Ms Moncur said Ms Gill resided at, but because there was an Authority to Leave ("ATL") for the courier at that address the documents were not signed for.

[15] That address Ms Moncur had given the Authority for Ms Gill was different from the address that Ms Gill had recorded on the Company Office Register as her residential address, when she was a director of the (now liquidated and removed) NZQSTL.

[16] The Authority attempted service by track and trace courier to the Rototuna, Hamilton, address that was on the Company Office Register for Ms Gill, as a registered director of New Zealand Little Pumpkin Group ("NZLPG"). However, that was returned as undelivered.

[17] The Authority then engaged a process server via "*The Investigators*" to effect personal service on Ms Gill, but they were also unsuccessful in making personal contact with her.

### *Process server's attempts to personally serve Ms Gill*

[18] The Investigators reported to the Authority that the following attempts to personally serve Ms Gill had occurred:

- (a) A process server had visited [redacted] Cumberland Drive, Flagstaff, Hamilton at 14:30 hours on 16 January 2023. An elderly Asian female came to the door but would not open it, so spoke to the process server through the entry glass.

That individual said she did not speak English, and was unable to assist. There were no vehicles in the driveway, the garage door was closed, and the process server could not see inside the house.

- (b) At 17:35 hours on 17 January 2023, the process server returned to the address. The same elderly Asian female came to the door but would not open it. She again spoke to the process server through the entry glass and again communicated that she did not speak English. The process server could see young children running around inside the house but the female he was speaking to would not get any other person from inside the house to come to the door.
- (c) At 11:10 hours on Saturday 21 January 2023, the process server visited the home. The door was answered by the same elderly Asian female who could not speak English. She would not open the door and no vehicle was sighted.
- (d) Another visit occurred to the same address at 18:59 hours on 23 January 2023 with the same outcome as above. Again, a vehicle was not sighted.
- (e) In terms of the [redacted] Hukanui Road, Rototuna, Hamilton address, the process server visited that property at 14:43 hours on 16 January 2023. No-one was home so a business card was left in the front door.
- (f) Another visit occurred at 17:25 hours on 17 January 2023. Again there was no-one home, but the process server reported that the card had gone from the front door.
- (g) The process server tried to contact Ms Gill on (027) [redacted], but that was not a current number.
- (h) The process server also attempted to contact Ms Gill on (027) [different redacted mobile number]. A call was made at 14:31 hours on 16 January 2023. It was not answered, so a message was left.
- (i) Another call was made to the above number at 11:53 hours on 17 January 2023. The call was again unanswered, a message was left. The process server also sent a text message, but no response was received.
- (j) Another call was made to the same number at 17:37 hours on 17 January 2023, that was also unanswered.

*Addresses associated with Ms Gill*

[19] In order to be able to move this matter forward, the Authority then instructed the process server to leave the service documents in an envelope that was taped to the door of the following two of Ms Gill's previously known addresses, namely:

- (a) [Redacted] Cumberland Drive, Flagstaff, Hamilton, which was an address provided by Mr Wang's advocate; and
- (b) [Redacted] Hukanui Road, Rototuna, Hamilton, 3210.

[20] The Rototuna, Hamilton, address was a residential address that was recorded for Ms Gill, in her capacity as the sole director of NZLPG, which is a company listed on the New Zealand Companies Office Register. The latest annual return for that entity was lodged in November 2022 by an accountant (discussed later).

[21] The Investigators have provided the Authority with photos of the sealed envelopes they taped to the front doors of the above addresses with Ms Gill's name on them. The envelopes contained the Statement of Problem and attachments and the Statement in Reply template (Form 3) for Ms Gill to complete and return to the Authority.

[22] Ms Gill did not respond.

**Order for substituted service**

[23] The amounts in issue are substantial. Once a compliance order is issued by the Authority, then if it is breached, the next step is an application to the Employment Court, which has stronger powers than the Authority to enforce compliance.

[24] The Authority therefore considered it necessary to take additional steps to ensure that this compliance order application had been appropriately drawn to Ms Gill's attention. The Authority therefore issued an order for substituted service.

[25] The Authority directed that substituted service on Ms Gill could occur at the registered address for service of the registered company NZLPG, of which Ms Gill is the sole director.

[26] The last activity recorded on the Companies Office Register for NZLPG was the filing of an annual return on 7 November 2022 by the company's accountant, Tony Wei of

Accounting Plus Solutions Limited (“APSL”). Mr Wei is the sole director and shareholder of APSL.

[27] Because Ms Gill did not appear to be present at the address that is recorded for her as a director of NZPGL on the Companies Register (namely the Hukanui Road, Rototuna, Hamilton, 3210 address), the Authority directed that the service documents were to be served on:

- (a) The registered office of NZLPG, being recorded on the Companies Office as [redacted] Kingsford Smith Place, Mangere, Auckland, 2022; and/or
- (b) Tony Wei of APSL, at PO Box [redacted], Royal Oak, Auckland, 1345 which is the addressed used when the NZLPG annual return was filed with the Companies Office.

[28] The documents were served on Ms Gill at NZLPG’s registered office by track and trace courier on 21 April 2023, when they were signed for at 12.44pm that day

[29] The documents were served on Ms Gill when they were collected and signed for from the APSL PO Box on 19 May 2023.

[30] The documents were served on Ms Gill at the Cumberland St address Ms Moncur had provided on 21 April 2023, when they were signed for at 9.55am that day.

[31] The documents sent to the Hukanui Road, Rototuna, Hamilton address are still showing as “*ready to collect*”.

### **Non-engagement of Ms Gill**

[32] The Authority was satisfied that personal service on Ms Gill and/or substituted service on her had occurred.

[33] Ms Gill has been sent a copy of the Statement of Problem, the Directions of the Authority dated 24 March 2023, a Form 3 Statement in Reply template and Mr Wang’s affidavit that was affirmed by him on 13 April 2023 and which was lodged with the Authority on 15 April 2023.

[34] No Statement in Reply has been filed by Ms Gill. No application for leave to file a Statement in Reply out of time has been filed. Ms Gill has not engaged with the Authority at all.

### **The Authority's investigation**

[35] The Authority determined this matter on the papers, based on Mr Wang's uncontested affidavit evidence.

[36] Mr Wang's affidavit affirmed that one of his advocate's colleagues ("*the Colleague*") had visited Ms Gill at her Flagstaff address to hand over the Certificate of Determination and to demand payment of the amount owing to Mr Wang.

[37] The Colleague reported that Ms Gill's husband answered the door, and when he was told what the document was, the husband threw it on the ground. The Colleague reportedly picked the document up and put it in the letterbox before he left the property.

### **The law**

[38] Section 137 of the Employment Relations Act 2000 ("*the Act*") gives the Authority the discretion to make a compliance order in a range of different situations, including regarding any determination it has issued.<sup>2</sup>

[39] Section 137(3) requires the Authority to specify a time within which the compliance order is to be obeyed.

### **Issues**

[40] The following issues are to be determined:

- (a) Has Mr Wang been paid any of the money he was awarded?
- (b) If not, should a compliance order be issued?
- (c) If so, what are the terms of the compliance order?
- (d) What costs and disbursements should be awarded?

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<sup>2</sup> Section 137(1)(b) of the Act.

**Has Mr Wang been paid any of the money he was awarded?**

[41] Mr Wang has not been paid anything by Ms Gill. The full amount he was awarded by the Authority remains outstanding.

**Should a compliance order be issued?**

[42] Mr Wang's attempts to get paid by delivering the Certificate of Determination to Ms Gill at her home was unsuccessful. Mr Wang in his affidavit said that Ms Gill refused to communicate with his advocate (Ms Moncur).

[43] Ms Gill has not engaged with the Authority. It is therefore unlikely she will voluntarily pay Mr Wang the money he is owed, so a compliance order is appropriate and necessary.

**What are the terms of the compliance order?**

[44] Within 14 days of the date of this determination, Ms Gill is ordered to comply with paragraph [95] of the Authority's substantive determination dated 14 April 2022.<sup>3</sup>

[45] That requires Ms Gill to pay Mr Wang \$95,321.56 plus the interest he was awarded on NZ\$90,000 of that amount from 4 August 2020 until the full NZ\$90,000 had been repaid to him.

[46] There was no information put before the Authority that suggested conditions for the compliance order were necessary.

**Warning about breaches of this compliance order**

[47] If Ms Gill fails to comply with this compliance order, Mr Wang may apply under s 138(6) of the Act to the Employment Court for the exercise of its powers under s 140(6) of the Act.

[48] The Employment Court's powers under s 140(6) of the Act include the power to order (among other things) imprisonment for a period not exceeding three months, impose a fine up to a maximum of \$4,000, or order that property be sequestered.

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<sup>3</sup> Above n1.

[49] Any breach of the Authority's compliance order must therefore be pursued by Mr Wang in the Employment Court.

**What costs and disbursements should be awarded?**

[50] Mr Wang, as the successful party, is entitled to a contribution towards his actual legal costs.

[51] Accordingly, within 14 days of the date of this determination, Ms Gill is ordered to pay Mr Wang costs and disbursements of \$821.56, being \$750 towards his actual legal costs plus \$71.56 to reimburse his filing fee.

**Outcome**

[52] Within 14 days of the date of this determination Ms Gill must pay Mr Wang \$96,146.13, being \$95,321.56 in accordance with the substantive determination plus \$821.56 in accordance with this compliance determination.

[53] Interest continues to run on NZ\$90,000 of the amount Mr Wang has been awarded. Interest must be calculated using the civil debt calculator on the Ministry of Justice website, from 4 August 2020 until the full NZ\$90,000 plus all of the interest that is payable has been fully paid.

**Rachel Larmer**  
**Member of the Employment Relations Authority**