**IN THE EMPLOYMENT RELATIONS AUTHORITY**
**AUCKLAND**

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

[2025] NZERA 487
3346580

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| | BETWEEN | HUA WU<br>Applicant |
| | AND | HUIYAN LAN LING<br>Respondent |

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| Member of Authority: | Eleanor Robinson |
| Representatives: | Martin Aisingioro, advocate for the Applicant<br>Respondent in person |
| Investigation Meeting: | On the papers |
| Submissions and/or further evidence | 12 June 2025 from the Applicant<br>1 July 2025 from the Respondent |
| Determination: | 12 August 2025 |

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] The Applicant, Mr Hua Wu, has applied to the Authority for a reopening of an investigation pursuant to clause 4 of Schedule 2 to the Employment Relations Act 2000 (the Act).

[2] The basis for Mr Wu's application to reopen is that he was unaware of the Authority's investigation and as a result he was unable to submit any evidence for the Authority's investigation.

[3] Mr Ling opposes the reopening of the investigation.

**Issue**

[4] The issue requiring investigation is whether or not a reopening of the Authority's investigation into Mr Ling's claims against Mr Wu should be granted.

**The Authority's investigation**

[5] The parties agreed to the Authority determining this issue based on the papers currently before the Authority including the Statement of Problem and the Statement in Reply, documents submitted by the parties, and submissions from the parties.

[6] In particular, whilst I have not referred to all the submissions made by the parties, I have fully considered them.

[7] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

**Background**

[8] On 24 October 2023 the Authority issued determination [2023] NZERA 622 between Mr Ling and two respondents, SDCIC NZ Construction Limited (SDCIC) and Mr Wu. Mr Ling was the successful party in that determination and was awarded remedies including the following sums:

i. $6,023.07 gross in respect of the unpaid notice period
ii. $56.080.00 gross in respect of unpaid salary;
iii. $15,200.33 gross as unpaid annual leave
iv. $80,000.00 as a penalty of which $8,000.00 was to be paid to Mr Ling, and remainder to the Crown.

[9] The remedies were ordered to be payable by SDCIC, or if it was unable to, or failed to, pay, by Mr Wu, pursuant to s 142Y of the Employment Relations Act 2000.

[10] The determination was not challenged by either of the Respondents.

[11] SDCIC entered into liquidation on 26 July 2024.

[12] Mr Ling was not paid by either SDCIC or by Mr Wu, and he applied to the District Count for enforcement of the remedies ordered by the Authority.

[13] In October 2024 the Authority received an application for a reopening from Mr Wu.

[14] Mr Wu has submitted evidence to refute the claims made by Mr Ling which were the focus of the Authority's investigation in October 2023.

[15] It is submitted for Mr Wu that he did not receive any of the documents relating to the application to the Authority which resulted in determination [2023] NZERA 622. If he had done so, he submits he would have participated in the Authority's investigation and provided evidence that he was not liable in respect of the remedies ordered by the Authority.

[16] It is submitted by Mr Ling that Mr Wu was served with the documents at the appropriate time.

**Legal position and principles regarding a re-opening application**

[17] Pursuant to Schedule 2, clause 4 of the Act, the Authority has a statutory discretion to order the reopening of an investigation on : "such terms as it thinks reasonable." Such discretion must be exercised on a principled basis. The principles as set out in *Young v Board of Trustees of Aorere College* are*:*

> [9] … at the end of the day the overriding consideration must be the interests of justice, having regard to the likelihood of a miscarriage of justice balanced against other relevant factors such as the importance of finality in litigation. In *Ports of Auckland Limited v NZ Waterforce workers Union* a full Court of the Employment Court put it in this way:
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> > … in general the Court must look toward the possibility of a miscarriage of justice, but should not look for proof of that possibility to a high standard. For balance, it must give equal weight to the importance of certainty in litigation and the right normally enjoyed by a successful litigant, … to enjoy the fruits of a judgment in its favour.
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> [10] A mere possibility that a miscarriage of justice has occurred does not apply. [1]

[18] The rehearing jurisdiction should not be exercised for the purpose of re-arguing points already considered, nor is it a 'back door' mechanism for unsuccessful litigants to seek to re-argue his or her case following determination.

[19] The application to reopen must be based upon special or unusual circumstances in the area of:

a) Fresh or new evidence which could not with reasonable diligence have been discovered prior to the hearing, and which is of such a nature as to appear conclusive; or

[1] *Young v Board of Trustees of Aorere College* [2013] NZEmpC 111 at [9] and [10].

b) Is a relevant and significant statutory provision or authoritative decision that has been inadvertently overlooked or disregarded; or

c) Some other special or unusual circumstance particular to the case.

[20] As noted in *Young v Board of Trustees of Aorere College*, a mere possibility of a miscarriage of justice is not a sufficient ground for the Authority to grant a reopening of the case. The threshold test is whether the party seeking the reopening can establish either that there would be a natural miscarriage of justice or a real or substantial risk of a miscarriage of justice if the determination were allowed to stand.

[21] As stated by Judge Holden in *Randle v The Warehouse Limited* in respect of the reopening principles a basis of reopening*: "...* is because material evidence has been discovered since the trial that could not have reasonably have been foreseen of known before the trial."[2]

[22] An apparent misapprehension of the facts or relevant law will not provide a basis for a reopening in circumstances in which the misapprehension is attributable solely to the neglect or the fault of the party seeking the re-opening. As stated in the Australian case of *Autodesk Inc v Dyason:*

> … What must emerge, in order to enliven the exercise of the jurisdiction, is that the Court has apparently proceeded according to some misapprehension of the facts or the relevant law and that this misapprehension cannot be attributed solely to the neglect or default of the party seeking a rehearing.[3]

[23] Finally, if a party is dissatisfied by a determination made by the Authority on grounds that may be the subject of a specific process of a challenge under s 179 of the Act, the Authority should be reluctant to entertain an application for reopening on those grounds.

[24] In summary, the principles informing a reopening application note that the interests of justice must be the overriding consideration, in which the likelihood of a miscarriage of justice is balanced against other relevant factors which include the importance of finality in litigation.

**Should the application for a reopening be granted?**

[25] Mr Ling was employed by SDCIC from May 2018 until June 2020. During that period SDCIC had a number of directors, including Mr Wu who was a director and shareholder from 17 March to 18 June 2020.

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[2] *Randle v The Warehouse Limited* [2019] NZEmpC 68 at [15]

[3] *Autodesk Inc v Dyason* (No 2)(1993) HCA 6 at 302 – 303 as cited with approval in *Idea Services Limited v Barker* (2013] NZEmpC 24 at [37]

[26] All registered companies in New Zealand are required to have the name and address of the registered office, an address for service (which may be different to the registered office),and the names and addresses of directors on the application.[4] The addresses are noted on the Companies Register.

[27] SDCIC appointed a liquidator in July 2024 and is currently in liquidation. However at the date of the Authority's investigation in October 2023 it was still operative and the office address which was also the address for service, was set out on the Companies Register. Mr Wu's status as a director and shareholder, and his address, were also noted on the Companies Register.

[28] As set out in paragraphs [4] to [6] of determination [2023] NZERA 622 the Authority did experience some difficulties in serving this application on the respondent parties. However as noted at paragraphs {6} and [7] of the determination I was satisfied that service had been effected successfully in accordance with s 16 of the Employment Relations Authority Regulations 2000.

[29] In reaching that decision I had regard to the following including affidavits of the professional Process Server engaged by Focus Law, the lawyers acting for Mr Ling, in which it was confirmed that:

(i) the Authority's documents (being the Statement of Problem dated 8 July 2022, the Cover letter and supporting documents to the Statement of Problem) had been received at the registered office of SDCIC by an individual who looked similar to a photograph provided to the Process Server, and who confirmed that he was Hua Wu, the Second Respondent, when questioned as to his identity; and

(ii) the Authority's documents (including the Directions Minute dated 17 February 2023 which set out the date of the investigation meeting) had been successfully served at SDCIC's registered office on 26 April 2023.

And

(iii) the confirmation that the Notice of Investigation and the Authority's directions were couriered to the Respondents, and received and signed for by Mr Wu on 22 February 2023 at the registered office of SDCIC.

[30] I find that Mr Wu would have been aware from the served documents of the date of the Investigation Meeting.

[4] Companies Act 1993 s12(2) and s 193.

[31] Following the investigation meeting which neither SDCIC nor Mr Wu attended, a determination was issued. It was couriered to the registered address of the respondents.

[32] Even if, as Mr Wu now claims, he had been unaware that determination [2023] NZERA 622 had been issued by the Authority; he could have easily ascertained that the determination had been issued. Mr Wu would have been aware from the served documents of the date of the investigation meeting, and all determinations are published on the Authority's website, normally within three days after the determination has been issued to the parties.

[33] I note in addition that Mr Wu could have accessed the determination by searching on Google or a similar search engine since all Authority determinations are a matter of public record.

[34] Neither Mr Wu, nor SDCIC, raised a challenge to the Authority's determination within the requisite statutory time limit..

[35] I find that the evidence now provided by Mr Wu could with: "reasonable diligence have been discovered prior to the hearing".

[36] I am also not persuaded that there are other unusual or exceptional circumstances that would justify the reopening application being granted.

[37] Overall I am not persuaded that a miscarriage of justice has occurred which is a major consideration for granting a reopening application.

[38] An importance consideration is that of the importance of finality in litigation. Mr Ling presented his claims to the Authority, diligent efforts were made by the Authority and by Mr Ling's counsel to ensure these were served on the Respondents.

[39] The claims made by Mr Ling were fully investigated and determination [2023] NZERA 622 issued. Mr Ling was the successful party in the matter. He has been deprived of the fruits of that determination and he is entitled to finality in this matter.

[40] In all the circumstances, the application to reopen is dismissed.

**Costs**

[41] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[42] If they are not able to do so and an Authority determination on costs is needed Mr Ling may lodge, and then should serve, a memorandum on costs within 28 days of the date of issue of the written determination in this matter. From the date of service of that memorandum Mr Wu would then have 14 days to lodge any reply memorandum. Costs will not be considered outside this timetable unless prior leave to do so is sought and granted.

[43] All submissions must include a breakdown of how and when the costs were incurred and be accompanied by supporting evidence.

**Eleanor Robinson**
**Member of the Employment Relations Authority**