

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
OFFICE**

[2013] NZERA Christchurch 167  
5348813

BETWEEN YUANQI YE  
Applicant

AND CHRISTCHURCH ZHONGHUA  
CHINESE SOCIETY  
INCORPORATED  
Respondent

Member of Authority: Christine Hickey

Representatives: Yuanqi Ye in person  
Fiona McMillan, Counsel for the respondent

Investigation Meeting: 3 April 2013 at Christchurch, directions conference held on  
17 May 2013, further written evidence received on 29 May  
2013 and 6 June 2013

Submissions received: No written submissions. Oral submissions made at the  
investigation meeting

Determination: 16 August 2013

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**DETERMINATION OF THE AUTHORITY**

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**A. The Christchurch Zhonghua Chinese Society Incorporated is to pay  
Yuanqi Ye \$6,960.00 in unpaid wages and holiday pay.**

**B. The Christchurch Zhonghua Chinese Society Incorporated is to pay  
Yuanqi Ye \$71.56 reimbursement for the Authority's filing fee.**

**Employment relationship problem**

[1] Mr Ye was employed by the Christchurch Zhonghua Chinese Society Incorporated (the Society) as a Community Co-ordinator from about July 2007 for a few months. There was a period in 2008 during which he was not employed but worked voluntarily in the role. He was employed again from 1 January 2009. He resigned in December 2009.

[2] The community co-ordinator role was funded by a grant of \$11,000 from the Christchurch City Council.

[3] Mr Ye claims that he is owed unpaid wages from 20 April 2009 until 8 December 2009. He also claims holiday pay for the same period.

[4] Mr Ye was paid \$12.50 per hour<sup>1</sup> for 15 hours per week.

[5] The Society claims that Mr Ye is not entitled to any further pay because he abandoned his employment.

### **Procedural Background**

[6] On 5 July 2010 a Labour Inspector, Antoinette Baker, having investigated Mr Ye's claims wrote to Dr Longyin Li, the president of the Society stating that she considered that Mr Ye was owed minimum entitlements under the Minimum Wage Act 1983, the Wages Protection Act 1983 and the Holidays Act 2003. Ms Baker requested that the Society pay the Department of Labour \$3,202 gross which she calculated Mr Ye was owed.

[7] Dr Li disagreed that the Society owed Mr Ye anything for work in 2009.

[8] Mr Ye lodged his statement of problem with the Authority on 29 June 2011. There were a number of delays in setting the matter down for an investigation meeting including difficulties in serving the Society with the statement of problem and Mr Ye being out of New Zealand for a significant period of time.

[9] The investigation meeting took place on 3 April 2013 and I was ably assisted by a Mandarin interpreter, Ms Kate Huang. I heard evidence from Mr Ye and from Vincent Chew, a member of the Society's current committee. As a result of their evidence it became clear that the parties may be able to supply further documents which could assist my investigation.

[10] After the meeting the Authority issued a direction that Mr Ye provide a copy of his 2007 employment agreement or notify the Authority if he no longer had a copy by 5 April 2013. The Authority directed the Society provide its bank statements for the relevant periods in 2007 and 2009, copies of any grant documents from the Christchurch City Council in 2007 and 2009 and a copy of Mr Ye's 2007 employment

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<sup>1</sup> The applicable minimum wage.

agreement if Mr Ye no longer had one. The Society was to provide its documents by 18 April 2013

[11] Matters are somewhat complicated by the fact that on 22 February 2011 the Society's office was destroyed in the devastating Canterbury earthquake. The Society was able to supply its bank records through its bank. However, none of the other documents have been made available to the Authority. Mr Ye has confirmed that he could not find a copy of his 2007 employment agreement. There are no wages and time records available for the periods of Mr Ye's work for the Society.

[12] The Authority held a further telephone directions conference on 17 May 2013. Ms McMillan, counsel for the Society, raised the possibility of the Authority hearing from another witness for the Society, Xiaoming He. However, later Ms McMillan advised that she did not consider that the Authority needed to reconvene to hear his evidence. I agree.

[13] As a result of the telephone conference the Authority directed the Society to provide details of its officers during 2007, 2008 and 2009 and to provide its financial statements for the same years. The Society provided its financial statements for 2011 and 2012 on 6 June 2013.

[14] The Authority now has copies of the Society's financial statements for the years ending 31 December 2008 and 31 December 2009 obtained from the on-line Incorporated Societies website. The statements are not audited accounts.

## **Determination**

*Did Mr Ye abandon his employment?*

[15] On 20 December 2008 Mr Ye and Mae Dawson (the President of the Society at that time) signed an employment agreement:

*This is a part time job with 15 hours of work per week. Hourly rate will be \$12.50, in New Zealand dollars. This position is funded by Christchurch City Council. The period of your employment is one (1) year or until the CCC funding finishes. Your starting date is the 1<sup>st</sup> January 2009, ...*

*Your responsibilities are expected to (sic):*

- *Provide general administration for the society.*

- *Help the Committee of the Society to organize festivals, sports events and settlement seminars.*
- *Answer enquiries; provide assistance to new immigrants, students and visitors with Chinese-speaking background.*
- *On behalf of the Committee, attend consultations and meetings organised by the Christchurch City Council, Community Boards and government agencies.*
- *Keep day-to-day communication and coordination with other community groups.*

*Should either party wish to terminate this contract, the other party to be noticed (sic) in writing.*

[16] The Society's bank records show the Christchurch City Council grant of \$11,000 was paid on 24 September 2008.

[17] The Society does not agree that Mr Ye is owed any unpaid wages or holiday pay. Its position is that Mr Ye was paid up to 19 April 2009 by Ms Dawson, the outgoing president. A letter to Ms Baker from Dr Li in 2010 says that he considered that:

- Mr Ye did not work because he did not attend the office every week for 15 hours per week;
- The employment contract dated 20 December 2008 signed by Ms Dawson and Mr Ye may not be genuine; and
- Mr Ye has not provided time sheets.

[18] There is no evidence that the 2009 employment agreement is anything other than genuine and I accept it as recording Mr Ye's terms of employment.

[19] Dr Li declined to give evidence on behalf of the Society in relation to Mr Ye's claims so neither the Authority nor Mr Ye was able to question him. However, Mr Chew reiterated the Society's view at the investigation meeting that it does not owe Mr Ye anything. Mr Chew also says that Mr Ye abandoned his job and that the Society engaged another community co-ordinator part-way through 2009.

[20] Under section 174 of the Employment Relations Act 2000 I do not need to set out a record of all the evidence or the findings on credibility of any evidence. Having said that, it is clear that while Mr Chew represented the Society he was not involved as a committee member in 2009 and most of his evidence consisted of reporting what Dr Li had told him and what he had discussed with Dr Li. That evidence was indirect and of limited use to me in establishing the facts.

[21] Mr Ye says that prior to Dr Li becoming the president of the Society gave him his work instructions after monthly committee meetings. He was not invited to the committee meetings or required to attend but would usually book a meeting room for them. Then the day after a meeting the president would telephone him and tell him what he was required to do over the next month. Sometimes, there was no significant work to do other than checking e-mails, forwarding the relevant e-mails to the committee members and checking and replying to messages on the Society's voicemail. Mr Ye also dealt with calls, which often came to his mobile phone, from new migrants and international students seeking assistance.

[22] Mr Ye says his work was flexible and prior to April 2009 some weeks he worked more than 15 hours but never sought pay for more than 15 hours per week. He also says that by agreement with Ms Dawson he was not required to work in the office and often worked at home.

[23] The parties agree that in April 2009 the committee membership changed and Dr Li took over as president from Ms Dawson. Mr Chew says that there was a *difficulty* between Ms Dawson and Dr Li and *a bit of a power struggle*.

[24] Mr Ye says that after the election of the new committee:

*I only received very few orders and instructions from President Li during 2-3 month from April 2009. Not even asking me to organise committee meetings.*

[25] In August 2009 Dr Li asked Mr Ye to give him the keys to the Society's office and Post Office box, which Mr Ye did. The Society considers that amounted to Dr Li dismissing Mr Ye and says that Mr Ye did not undertake any work for the Society after that date.

[26] Mr Ye says that he was not told that he had been dismissed and he did not consider himself to have been dismissed. However, he agrees that he did not undertake significant work for the Society after that. He says that he expected to have the keys returned to him but they were not. He says once he gave Dr Li his keys he could no longer access the PO Box but could access the office.

[27] He says that in September 2009 he tried to contact Dr Li and the vice-president because he considered that he should be assisting the Society to organise a celebration for China's 60<sup>th</sup> national day on 1 October 2009. However, he did not get

any instructions to organise a celebration and was told Dr Li had gone to China for the celebration. When he spoke to the vice-president she told him she had resigned from the committee.

[28] Mr Ye says that during 2009:

*I am still keep (sic) doing those day to day jobs, help new migrant and international students to resolve these problems. I am keeping check and reply [to] e-mail until one day I found email password is changed.*

*Is Mr Ye entitled to unpaid wages and holiday pay to the date of his resignation?*

[29] On 8 December 2009 Mr Ye wrote his resignation letter to the Society:

*Please accept my resignation as community coordinator at the Christchurch Zhonghua Chinese Society.*

*The decision was a difficult one for me because Christchurch Zhonghua Chinese Society is a great Community Group. You and all the current and former community members have treated me very well over the past three years. But since there is almost no challenging job was allocated to me during the last few months, I feel this job is no longer challenging and no longer right down your alley.*

*I won't forget the friendship and professional growth I have experienced as an employee here.*

[30] I consider that Mr Ye became caught up in the internal politics of the Society with the change in the committee in April 2009. Dr Li and the committee knew that Mr Ye was employed as the community coordinator but for their own reasons decided not to continue to instruct him to undertake that role on the Society's behalf.

[31] In *EN Ramsbottom Limited v Chambers*<sup>2</sup> the Court of Appeal agreed with submissions that an:

*...employer should be cautious [in drawing the inference that an employee has abandoned his employment] and must face a high threshold if contending that the employment ended on the employee's initiative in that way. There is substantial force in that submissions and clearly the need for trust and fair dealing in the employment relationship should encourage the employer to make inquiries of the employee where the employee has not clearly evinced an intention to finally end his or her employment.<sup>3</sup>*

[32] I consider that when the Society committee changed, if the new committee had formed the view that Mr Ye had abandoned his employment it would have been

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<sup>2</sup> [2000] 2 ERNZ 97

<sup>3</sup> Ibid. at 103

reasonable and fair to contact Mr Ye and ask him whether he still intended to undertake employment for the Society. It is highly likely that it did not do so because it did not wish Mr Ye to continue as community coordinator and did not wish to enter into dialogue with him that may have bound the Society to continue to employ and pay him.

[33] I do not consider that Mr Ye abandoned his employment. If anything the Society effectively 'abandoned' Mr Ye as an employee by failing to provide him with enough work to undertake for 15 hours a week, the removal of his keys to the office and the PO Box and changing the e-mail password effectively shutting him out from dealing with Society e-mails.

[34] Mr Ye says the last day of his employment was 8 December 2009 when he gave written notice. His employment agreement requires the party giving notice to terminate the agreement to do so in writing. The Society did not give Mr Ye written notice that his employment with the Society was to be terminated.

[35] Mr Ye's claim is that he was not paid at all after the payment made to him by Ms Dawson before she stepped down as President in April 2009. I asked Mr Ye why his notice letter did not mention that he was expecting to be paid for the period between 20 April and 8 December 2009. He told me that it was an aspect of Chinese culture to rely on the other party to behave honourably and he expected that once he resigned the Society would pay him the money it owed him. He was aware that the Society had received a grant to pay his wages and knew that it had to spend the grant on the community coordinator's wages.

[36] Mr Ye says that during both periods of employment he was paid irregularly and would be paid in a lump sum after a few months had passed. Therefore, although it was unusual not to have been paid for such a long period of time he trusted that the Society would do the right thing.

[37] The Society's 2009 financial statement for year ended 31 December 2009 records that \$6,013.50 was spent on community coordinator wages. For the period 1 January to 19 April 2009 Mr Ye would have been paid no more than \$2,887.50.

[38] The Society may have engaged another community coordinator during 2009 but that does not mean that its obligations as Mr Ye's employer ceased.

[39] I found Mr Ye to be a credible witness. I accept his evidence that he was ready, willing and able to undertake any tasks that the Society set for him after April and before he resigned on 8 December 2011. However, he was not directed to do any significant work by the committee. Instead he carried on with general administration, answering enquiries and offering assistance to new migrants and international students. His evidence is that he did go into the office from time to time.

[40] Mr Ye is entitled to be paid from 20 April to 8 December 2009; a period of 33 weeks and one day. At \$12.50 per hour for 15 hours per week his pay was \$37.50 per day or \$187.50 per week. Therefore, Mr Ye is entitled to be paid \$6,225 gross.

[41] Mr Ye worked for 48 weeks and 5 days during 2009. Therefore he would have received \$9,187.50 in wages. He is entitled to be paid 8% of his year's wages as holiday pay. Eight per cent of \$9,187.50 is \$735 gross.

### **Costs**

[42] Mr Ye paid \$71.56 to lodge his application with the Authority. The Society should reimburse him for that expense.

[43] The successful party is entitled to a reasonable contribution to their legal costs from the other party. Costs are usually paid for representation at the investigation meeting calculated at a nominal rate of \$3,500 per day. Mr Ye was not represented at the investigation meeting. However, if he incurred costs for legal advice in the period after mediation and before the investigation meeting he may wish to claim a contribution to those costs from the Society.

[44] He should do so directly from the Society or through Ms McMillan. I encourage the parties to agree on costs. However, if that is not possible Mr Ye may apply to the Authority for costs within 28 days of the date of this determination. That application should contain a copy of Mr Ye's legal bills. The Society will then have a further 14 days to file a memorandum on its view on costs.

Christine Hickey

Member of the Employment Relations Authority