

**Attention is drawn to the order
recorded in this determination
prohibiting publication of a
document provided as evidence
in this matter**

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 258 /09
5161313

BETWEEN

LISA LING ZHANG
Applicant

AND

HOLLYWOOD BAKERY
(HOLDINGS) LIMITED
Respondent

Member of Authority: Robin Arthur

Representatives: Qiang Li for Applicant
David Liu for Respondent

Investigation Meeting: 21 July 2009 in Auckland

Determination: 31 July 2009

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The question for determination is whether Lisa Ling Zhang's employer has complied with the terms of a settlement agreement made on 9 April 2009.

[2] Ms Zhang has worked at the Hollywood bakery at the Westgate shopping centre since late 2002. In 2008 she raised some questions with her employer about whether she had received the correct pay and holiday leave entitlements. These questions were the subject of mediation on 9 April 2009 where an agreement was reached and recorded. The Department of Labour mediator certified the record of settlement under s149 of the Employment Relations Act 2000 (the Act).

[3] On 6 May 2009 Ms Zhang's representative lodged an application in the Authority alleging that the obligations of the recorded settlement had not been met.

[4] The agreement incorrectly recorded the employer's name as Hollywood Bakery Limited, a company which is no longer registered with the Companies Office. Hollywood Bakery (Holdings) Limited's general manager Ken Choi signed the record of settlement and that company, which operates the bakery, accepts liability for all obligations under the agreement and any outstanding wage and holiday entitlements owed to Ms Zhang since late 2002.

The issues

[5] The issues for investigation and determination are:

- (i) whether the company has met the obligations of the 9 April settlement agreement; and
- (ii) if so, was Ms Zhang's application unnecessary; and
- (iii) costs.

The investigation

[6] For the purposes of the investigation I have considered the statement of problem, statement in reply, attached documents and oral evidence – given under oath or affirmation – from Ms Zhang, Mr Choi, and the company's Westgate bakery manager Nick Law. Ms Zhang gave most of her evidence with the assistance of a professional interpreter of the Mandarin language arranged by the Authority. She also made some explanations and comments in English throughout the investigation meeting which indicated she had a good understanding of the language.

[7] The parties' representatives also had the opportunity to ask additional questions of the witnesses and provide oral closing submissions. Ms Zhang's representative, Mr Li, had assistance from the interpreter throughout the investigation meeting. The interpreter translated his questions and submissions from Mandarin into English for the benefit of the Authority.

Order for non-publication of certain document

[8] During the investigation meeting I made an order for the non-publication of a document provided by the company to the Inland Revenue Department, being an IR 281 form and an accountant's letter and appendices dated 22 April 2009.

[9] I made this order under clause 10 of Schedule 2 of the Employment Relations Act 2000 (the Act) to protect, at the company's request, commercially sensitive information, and Ms Zhang's request, personal information relating to her. I note that the document was addressed to IRD which now has that information and may act on its contents as appropriate.

[10] I record that I explained to Mr Li that non-publication in this context meant that he could not give a copy of the document to anyone else or tell anyone else its contents. My explanation was translated from English to Mandarin. I also wrote on the face of his copy of the document that it was subject to a non-publication order.

Whether the obligations were met

[11] The settlement agreement, which included a term that it was full and final regarding all matters discussed at mediation, included terms that:

- (i) Within seven working days of the agreement the employer would provide to Ms Zhang all of her wage and time records in its possession for the previous 6 years and 8 months; and
- (ii) Within five days of providing those records to Ms Zhang, the employer would provide any outstanding wage and leave entitlements or evidence that all leave had been paid correctly; and
- (iii) Ms Zhang's hours would remain from 8am to 6pm from Wednesday to Friday.

[12] From the evidence heard at the investigation I find the following facts:

- (i) On 22 April Mr Law provided Ms Zhang with a copy of wage and time records for the required period. While Ms Zhang and Mr Li subsequently protested that the records were not in a format that they believed was necessary, the information provided did comply

with the requirements of the agreed term. Because of the statutory public holidays and weekend days falling between the settlement date and 22 April, the information was provided within the required seven working days.

- (ii) On 29 April Mr Law provided a letter to Ms Zhang from Mr Choi. This letter attached a copy of her holiday pay records and a cheque, signed by a director of the company, for the amount of \$2361.52. This was the sum that the company calculated was due to her in outstanding holiday pay. Ms Zhang refused to accept the cheque and told Mr Law it was not what she wanted
- (iii) On 30 April Mr Choi met with Ms Zhang and tried again to give her the cheque. She would not accept it. He also gave her a written employment agreement with a term including the agreed hours set out in the settlement agreement. Ms Zhang would not accept the employment agreement because it did not have the company's logo on each page. Mr Choi arranged to have the logo printed on each page and provided her with a copy of the agreement signed by him on behalf of the company. Ms Zhang, to the date of the investigation meeting, had continued to work the agreed hours but had refused to sign the employment agreement. Ms Zhang told me that she did not accept the agreement offered was valid because it was signed by Mr Choi and not a director of the company.

[13] During the investigation meeting I also considered two additional items of evidence offered by the parties, firstly, a digital copy of extracts from security camera recordings made in the bakery on 22, 29 and 30 April, and secondly, a sound recording made secretly by Ms Zhang of her conversation with Mr Choi on 30 April.

[14] The camera pictures confirm that documents were handed over to Ms Zhang and there was conversation between her and Mr Law or Mr Choi on the relevant dates. The sound recording was of poor quality, largely indistinct and added nothing to the evidence available to me from the testimony of the witnesses.

Determination

[15] On the basis of these findings I find that the company has complied with the terms of the settlement agreement.

[16] I accept the company's submission that Ms Zhang's application to the Authority has been entirely unnecessary.

[17] The best example of this was that one of her requested remedies was an order from the Authority to require the company to pay her \$540 for sick leave and holiday pay. This application was made one week after she refused to accept a cheque for the greater amount of \$2361.52 that the company calculates she is owed.

[18] The ill-conceived nature of her claim is also demonstrated by her stated belief that the employment agreement offered to her was not valid because it was signed by Mr Choi, the general manager, and not by a company director. Mr Choi's evidence was that he was authorised to sign employment agreements on behalf of the company. Ms Zhang's own evidence was that she knew other staff had employment agreements signed by Mr Choi or a previous branch manager and not a director of the company.

[19] I am satisfied that the source of Ms Zhang's misconception is Mr Li's own misunderstanding of the relevant company and employment law applying in New Zealand.

Costs

[20] The question of costs is reserved. The company has 28 days from the date of this determination to lodge a memorandum as to costs. Ms Zhang will have 14 days from then to lodge a reply memorandum before the Authority determines costs.

Robin Arthur
Member of the Employment Relations Authority