

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2026] NZERA 16
3336984

BETWEEN

CHAOLIANG ZHANG
Applicant

AND

XIAOLING PENG
First Respondent

MR NOODLES QUEENSTOWN
LIMITED
Second Respondent

Member of Authority: Peter van Keulen
Representatives: Aimee Cai, advocate for the Applicant
No appearance for the Respondents
Investigation Meeting: 25 September 2025 by AVL
Further Information Received: 14 October 2025 from the Applicant
Date of Determination: 13 January 2026

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Chaoliang Zhang was employed by Mr Noodles Queenstown Limited as a Fast Food Cook.

[2] Mr Zhang says:

- (a) He paid 15,000 RMB to Mr Noodles for the work visa obtained for him; he says this was an unlawful premium charged for employment.

(b) He was not paid correctly for the work he did including payment for all of the hours he worked, holiday pay and payment for public holidays that he worked.

(c) He became increasingly stressed by the long hours he was expected to work and by not being paid correctly such that, in the end, he resigned; this amounted to a constructive dismissal.

[3] Mr Zhang lodged a statement of problem in the Authority seeking payment of the premium paid, wage arrears and remedies for unjustified dismissal.

Progress of this matter

[4] The statement of problem was served on Mr Noodles, but it did not respond to it by lodging and serving a statement in reply. Mr Noodles was then notified of the case management conference that the Authority scheduled to progress this matter, however, it did not participate in the case management conference.

[5] In the case management conference, I set this matter down for an investigation meeting and Mr Noodles was subsequently served with a notice of investigation meeting which set out the date and time for the investigation meeting. Mr Noodles did not attend the investigation meeting.

[6] I am satisfied that Mr Noodles was aware of the date and time of the investigation meeting and it should have attended but it chose not to. And, it did not contact the Authority to explain why it could not or would not attend.

[7] I note that the notice of investigation meeting advised Mr Noodles that if it chose not to participate in the investigation meeting then the claims would be determined in its absence. So, Mr Noodles was aware that I would proceed if it did not participate in the investigation meeting.

[8] Considering all the above, there was no apparent reason why the investigation meeting could not continue without Mr Noodles when it did not attend. I therefore proceeded with the investigation meeting pursuant to clause 12 of Schedule 2 of the Employment Relations Act 2000 (the Act).

The Authority's investigation

[9] In a case management conference on 15 July 2025 Ms Cai on behalf of Mr Zhang confirmed that Xiaoling Peng was the director of Mr Noodles, and she had been named as the first respondent, however, at this stage Mr Zhang did not intend to proceed with any aspect of his employment relationship problem with her.

[10] I investigated Mr Zhang's employment relationship problem with Mr Noodles by receiving written evidence and documents from him and holding an investigation meeting on 25 September 2025. In my investigation meeting, under affirmation, Mr Zhang confirmed his statement and gave oral evidence in answer to questions from myself.

[11] As permitted by s 174E of the Act I have not recorded all the evidence and submissions received, in this determination; I have set out my findings of fact and law, then based on this I have expressed conclusions on issues as necessary to dispose of the matter, and then I have specified the orders made as a result.

Unlawful premium

[12] Pursuant to s 12A Wages Protection Act 1983, no employer may seek or receive a premium for employment from any person employed them by and if this occurs then the employee may recover the amount paid, as a premium, through the Authority.

[13] To resolve Mr Zhang's claim for repayment of an alleged premium I must decide, on the evidence I received, whether Mr Noodles demanded a payment for employment with it from Mr Zhang and if so, if Mr Zhang paid this.

What happened?

[14] Mr Zhang arrived in New Zealand on 2 August 2023.

[15] Mr Zhang contacted Ms Peng shortly after he arrived; he had received Ms Peng's contact information from a friend. Mr Zhang then met Ms Peng on 6 August 2023, and they discussed possible employment with Mr Noodles in Queenstown.

[16] Mr Zhang then undertook a full interview, which included a trial of his cooking skills in Auckland.

[17] Following this Ms Peng offered Mr Zhang employment with Mr Noodles. The terms of employment included salary of 250,000 RMB paid as a wage of NZD \$29.66 per hour, 40 hours of work each week, located in Queenstown, and accommodation provided at a cost of NZD \$200 per week. Ms Peng also advised Mr Zhang that he would have to pay 10,000 – 20,000 RMB for the necessary work visa.

[18] Mr Zhang accepted the offer and moved to Queenstown on 13 August 2023 where he lived in a backpacker's hostel, paid for by Mr Noodles.

[19] On 14 August 2023 Mr Zhang signed an employment agreement with Mr Noodles.

[20] On 15 August 2023 Mr Zhang was instructed to pay 15,000 RMB (NZD \$3,730) to Ms Peng's sister, for his employment. Ms Peng gave Mr Zhang the bank account details, and he made the payment.

Analysis

[21] I am satisfied that based on Mr Zhang's evidence, Mr Noodles demanded a premium of \$3,730 for his employment and he paid this to Mr Noodles, to the account provided.

[22] This is an unlawful premium and Mr Zhang is entitled to be repaid this money.

Wage arrears claims

[23] Mr Zhang provided copies of his bank accounts showing money paid by Mr Noodles and his record of the hours he worked. In addition, Mr Zhang explained the hours worked and payments he received in both his written and oral evidence.

What happened?

[24] Mr Zhang commenced work with Mr Noodles on 18 August 2023. He initially worked in a fried chicken takeaway store in Queenstown. He then undertook some catering cooking, cooking 2 meals per day for VIP guests in Queenstown. Then on 14 October 2023 he commenced work at Mr Noodles' noodle restaurant and takeaway.

[25] Mr Zhang's evidence shows his hours of work varied from 12 hours per day to only 4 hours on some days. In general, he worked long days covering opening through to closing. On some days he would get a few hours off work in the afternoon and for a while he had one full day off per week, but this changed over time and he often worked seven days per week.

[26] Mr Zhang said he was not paid correctly for public holidays that he worked nor was he paid correctly for his accrued holiday entitlements at end of his employment. And his time and payment records support this.

Analysis

[27] I have no reason to doubt Mr Zhang's record of the hours he worked and the payments he received.

[28] Based on Mr Zhang's evidence of the hours he worked, and payments received from Mr Noodles, I assess that Mr Zhang is owed the following amounts:

- (a) Wage arrears for hours worked but not paid (accounting for the net payments received by Mr Zhang and \$200 per week for the accommodation he received) – the total amount owed is \$56,522.
- (b) Wage arrears for incorrectly paid public holidays worked. The total amount owed is \$711.
- (c) Holiday pay calculated at 8% of total earnings. The total owed is \$5,598.

[29] Overall Mr Zhang is owed wage arrears for hours worked but not paid, incorrectly paid public holidays and holiday pay totalling \$62,831 (gross).

Unjustifiable dismissal

[30] The first issue for an unjustifiable dismissal personal grievance is, was the employee dismissed?

[31] In this case Mr Zhang was not dismissed by Mr Noodles, rather, he resigned. Mr Zhang argues that because he resigned in response to breaches of duty by Mr Noodles, his resignation should be treated as a dismissal – a constructive dismissal.

[32] For a constructive dismissal I need to be satisfied that:¹

- (a) There was a breach, or breaches, of duty by Mr Noodles.
- (b) The breach of duty or the culmination of the series of breaches was sufficiently serious, i.e., repudiatory or dismissive, to warrant Mr Zhang's resignation.
- (c) It was reasonably foreseeable that Mr Zhang might resign in response to the breach or series of breaches.
- (d) Mr Zhang did resign in response to that breach of duty or the breaches of duty.

[33] If these things are established and Mr Zhang was dismissed, I must then consider the second issue; was the dismissal justified?

What happened?

[34] In the time that Mr Zhang worked for Mr Noodles he worked excessive hours, without proper breaks and often without any days off work. And during this time Mr Zhang was not paid correctly for all the work he did.

[35] Mr Zhang's evidence on these issues is very clear – he says that working excessive hours with the constant underpayment led to significant stress which increased over time; in the end he had no choice but to resign on 2 April 2024,

Analysis

[36] Based on Mr Zhang's evidence, I conclude:

- (a) Mr Noodles' failure to pay Mr Zhang correctly and to provide him with rest breaks is a breach of the duties owed to him.
- (b) These breaches of duty by Mr Noodles were sufficiently serious as to warrant Mr Zhang's resignation.

¹ *Auckland Shop Employees Union v. Woolworths (NZ) Ltd* [1985] 2 NZLR 372 (CA); *Wellington etc Clerical Workers etc IUOW v Greenwich* [1983] ACJ 965; and *Auckland Electric Power Board v. Auckland Provincial District Local Authorities Officers IUOW Inc* [1994] 2 NZLR 415 (CA).

(c) It was reasonably foreseeable that Mr Zhang might resign in response to the underpayment of his wages, particularly the culmination of this over several months.

(d) Mr Zhang did resign in response Mr Noodles' breaches of duty.

[37] Mr Zhang's resignation amounts to a dismissal by Mr Noodles. In the circumstances this dismissal was not justified.

[38] For these reasons I conclude that Mr Zhang was unjustifiably dismissed by Mr Noodles.

Remedies

[39] As Mr Zhang has been successful with his unjustified dismissal claim I must turn to consider what remedies he may be entitled to. Mr Zhang seeks compensation.

Compensation

[40] Compensation is an award for the humiliation, loss of dignity and injury to feelings that an applicant suffers. An award is made pursuant to s 123(1)(c)(i) of the Act.

[41] To establish how much I should award for compensation, I need to quantify the harm and loss caused by the humiliation, loss of dignity and injury to feelings arising out the unjustified actions of Mr Noodles.²

[42] Mr Zhang's evidence was that a result of his treatment by Mr Noodles, he suffered significant stress, endured financial problems which caused further stress and overall, he felt helpless and isolated – he described things as being hopeless.

[43] Based on this evidence I calculate Mr Zhang's compensation at \$18,000.

Contribution

² *Stormont v Peddle Thorp Aitken Ltd* [2017] NZEmpC 71, *Waikato District Health Board v Kathleen Ann Archibald* [2017] NZEmpC 132, *Richora Group Ltd v Cheng* [2018] NZEmpC 113.

[44] As I have awarded remedies to Mr Zhang, I must consider whether he contributed to the situation that gave rise to his grievance.³ This assessment requires me to determine if he behaved in a manner that was culpable or blameworthy, and this behaviour contributed to his grievance.⁴

[45] I am satisfied that Mr Zhang did not behave in a manner that contributed to his grievance and no reduction in his remedies is required.

Orders

[46] Mr Zhang paid Mr Noodles an unlawful premium of \$3,730 for his employment. Mr Noodles is to repay this premium of \$3,730 to Mr Zhang.

[47] Mr Noodles failed to pay Mr Zhang correctly for the work he undertook for it. Mr Noodles must pay Mr Zhang \$62,831 (gross) in wage arrears.

[48] Mr Noodles unjustifiably dismissed Mr Zhang. In settlement of this grievance Mr Noodles must pay Mr Zhang \$18,000.00 (without any deductions) for compensation pursuant to s 123(1)(c)(i) of the Employment Relations Act 2000.

Costs

[49] Mr Zhang seeks costs based on the daily tariff.⁵

Costs in the Authority

[50] The power of the Authority to award costs is set out at clause 15 of Schedule 2 of the Employment Relations Act 2000. The principles and approach adopted by the Authority in respect of this power are outlined in the Authority's practice note on costs.⁶

³ Section 124 of the Act.

⁴ *Xtreme Dining Ltd v Dewar* [2016] NZEmpC 136

⁵ The normal practice of the Authority when setting costs, is to apply a set amount for each day of the investigation meeting calculating quantum based on the time spent in the investigation meeting; this is applying the daily tariff. The current rate of the daily tariff is \$4,500 for the first day of the investigation meeting and \$3,500 for any subsequent days.

⁶ For further information about the factors considered in assessing costs, see:

www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1.

Costs for Mr Zhang

[51] The starting point is that costs should follow the event. As this employment relationship problem was resolved in favour of Mr Zhang he is entitled to an award of costs.

Applying the daily tariff

[52] I accept that it appropriate to apply the daily tariff to the assessment of costs in this matter.

[53] The investigation meeting for this matter took one half day. The daily tariff for one half day is \$2,250.

Adjusting the daily tariff

[54] Considering all the circumstances of this matter and the parties there is no basis that I can see for adjusting the daily tariff.

Order for costs

[55] Mr Noodles is to pay Mr Zhang \$2,250.00 as a contribution to his costs in this matter.

Peter van Keulen
Member of the Employment Relations Authority