

**IN THE EMPLOYMENT COURT OF NEW ZEALAND
AUCKLAND**

**I TE KŌTI TAKE MAHI O AOTEAROA
TĀMAKI MAKĀURAU**

**[2021] NZEmpC 168
EMPC 314/2020**

IN THE MATTER OF a challenge to a determination of the
Employment Relations Authority

BETWEEN JUYI INTERNATIONAL LIMITED
Plaintiff

AND LONG PAN
Defendant

EMPC 94/2021

IN THE MATTER OF a challenge to a determination of the
Employment Relations Authority

BETWEEN LONG PAN
Plaintiff

AND JUYI INTERNATIONAL LIMITED
Defendant

Hearing: 6 and 7 July 2021
(Heard at Auckland)

Appearances: H McDermott, counsel for Juyi International Ltd
L Pan, in person

Judgment: 5 October 2021

JUDGMENT OF JUDGE B A CORKILL

Introduction

[1] Long Pan worked as a benchtop stoneworker for Juyi International Ltd (Juyi), a manufacturer of kitchens, which specialised in stone benchtops.

[2] After Mr Pan's employment ended with Juyi, he filed a statement of problem in the Employment Relations Authority, asserting he had not been provided with all of his statutory entitlements, including breaks and holiday pay.

[3] The issues raised by Mr Pan included a claim that Juyi had failed to provide him with work for periods when he was available to work. He also claimed Juyi had not met its obligations regarding rest breaks. KiwiSaver entitlements were also sought. None of these claims succeeded.¹

[4] Mr Pan also made a claim for sick leave which did succeed. The Authority directed Juyi to pay him \$504.74 gross.²

[5] Next, the Authority considered a claim for holiday pay. It concluded that, for a period, Juyi had paid eight per cent on top of Mr Pan's wages, intending this to be for holiday pay on a pay-as-you-go basis. However, the requirements of the Holidays Act 2003 (the HA) had not been met. That was because s 28 of the HA sets out only two situations when annual holiday pay is permitted to be paid within an employee's pay. Since neither of those circumstances applied, Juyi owed Mr Pan holiday pay for the entire duration of his employment, less any paid holidays he had taken. The Authority concluded that this sum amounted to \$12,454.31 gross, which it directed Juyi to pay.³

[6] A related assertion was Juyi's claim that it had provided kitchen cabinetry and benchtops for a kitchen in a house Mr Pan purchased; and that there was an agreement that accrued holiday pay, as well as some future holiday pay, would be offset against the cost of these items. The Authority found it was more likely than not there was an agreement to offset these items against holiday pay, but, because Juyi had given Mr Pan goods in exchange for his entitlement, rather than money, Juyi had not met its statutory obligation to give Mr Pan his holiday pay. Consequently, no offset was available.

¹ *Pan v Juyi International Ltd* [2020] NZERA 369 (Member Craig).

² At [33].

³ At [50]–[58].

[7] Juyi then brought a non-de novo challenge against the Authority's determination, asserting it had erred in law because it had not considered the possibility that Mr Pan was unjustly enriched. On the one hand, the Authority had ordered Juyi to pay Mr Pan holiday pay, but on the other, it failed to acknowledge the agreement entered into between the parties that the cost of the kitchen componentry and benchtop would be offset against holiday pay entitlements.

[8] For the purposes of this challenge, Mr Pan agreed with the Authority's conclusion he was owed holiday pay, but denied Juyi had supplied kitchen items, or that there was an agreement to offset those costs against holiday pay entitlements.

[9] Mr Pan also brought a non-de novo challenge, after the Court granted leave to do so out of time.⁴ In his challenge, Mr Pan asserted the Authority had erred by not concluding that he had been requested to stay home for several weeks in March 2018 on unpaid leave despite being available and willing to work. He said he did not receive annual leave or holiday pay for the period. His second claim was that he had not received his tea break entitlements from January to March 2019 for a total of 27.5 hours. Juyi said the Authority was correct in rejecting both claims.

[10] Both challenges were brought on a non-de novo basis, which means the Court is required to consider whether the Authority erred in fact or in law.⁵

[11] At the hearing of the challenges, I received evidence from the director of Juyi, Min Yang and the general manager, Guoping Zhang, together with a third witness who was a friend with some knowledge of the circumstances, Wenbin Hua (a builder).

[12] Mr Pan represented himself when presenting his case. He was supported by his son, a competent English speaker, to prepare; his documentation was well presented, and Mr Pan had a good grasp of the issues. Mr Pan also gave evidence.

[13] A Mandarin interpreter assisted the Court with an interpretation of Mr Zhang's and Mr Pan's evidence.

⁴ *Juyi International Ltd v Pan* [2021] NZEmpC 28 at [12]–[21].

⁵ Employment Relations Act 2000, s 179(4).

[14] I deal first with Juyi’s challenge asserting unjust enrichment, and then Mr Pan’s challenge relating to a failure to pay annual leave or holiday pay when not required to work and in respect of rest break entitlements. I will summarise the evidence given to the Court, where relevant.

First issue: unjust enrichment

[15] It is necessary to elaborate on the Authority’s findings concerning the supply of kitchen elements to Mr Pan.⁶

[16] The Authority found that, when Mr Pan bought a new house in 2017, he asked the company to make a kitchen and another wash area for him. It recorded that Ms Yang said he brought her draft drawings he had prepared. She gave these to a designer, who put them through a software programme. She then gave Mr Pan a formal quotation for over \$12,000 for the manufacture of the two kitchen areas, including benchtops and cabinetry. This was based on “mate’s rates” with Mr Pan undertaking the making of the stone benchtops himself from stone ordered through Juyi. According to Ms Yang, Mr Pan decided to go ahead.⁷

[17] Mr Zhang told the Authority that he and Mr Pan then reached an agreement that Mr Pan would use two years’ holiday pay in exchange for receiving the kitchen cabinetry and benchtops. The accrued holiday pay, as well as some future holiday pay, would be offset against kitchen costs. Mr Zhang further said he installed the kitchen at Mr Pan’s house, as installation was his focus at Juyi.

[18] The Authority found that Juyi prepared a quotation in Mr Pan’s name. It had created computerised sketches of the kitchen designs and layouts. The computerised information indicated Juyi had a client file for Mr Pan. A document headed “Holiday payment form Eden Cabinets” in the form of a payslip showing the offset was provided, although Ms Yang had been upfront to the Authority that this was created after Mr Pan brought his claim to the Authority.

⁶ *Pan*, above n 1.

⁷ At [37].

[19] The Authority noted that, when Mr Pan had been asked about the kitchen claim at the investigation meeting, rather than accepting or rejecting Juyi's position, he said the company needed to provide proof. Similar answers were given to further questions. The Authority found Mr Pan's evidence regarding the kitchen somewhat evasive.

[20] Mr Pan initially disputed receiving a kitchen and denied that he asked Juyi to design a kitchen for him or had seen the drawings. Similar evidence was given under cross-examination, although he admitted that the designs looked like his kitchen. He insisted there had to be contract documentation for the supply of kitchens rather than just a quotation. He noted that the quote was not signed.

[21] Subsequently, whilst questioning Ms Yang at the investigation meeting, Mr Pan accepted a kitchen and wash area sketch lodged by Juyi reflected his kitchen. He did not accept that the designs were completed at Juyi but clarified he had drawn up the designs and put them into the computer at work to see what they looked like. When clarification was sought by Juyi's representative, Mr Pan had accepted he did not put the designs into the software himself but that Ms Yang or someone else at Juyi had done that for him.

[22] The Authority found it unlikely Mr Pan would have completely forgotten about having had his sketches put into software at work. His evidence also did not fit readily with the computer file evidence indicating that client files under his name had been worked on over a period of time.⁸

[23] Mr Hua, who also gave evidence to the Authority, had undertaken renovations on Mr Pan's house. He saw kitchen cabinetry being delivered from a Juyi van by Juyi staff members. He also remembered Mr Zhang assisting with the installation of the kitchen. The Authority accepted Mr Pan's point that Mr Hua was not entirely independent, being Mr Zhang's friend and having some connection with the Juyi business. However, the Authority found his evidence credible.

⁸ At [42].

[24] The Authority concluded that overall it was more likely than not there was an agreement to offset the benchtops and cabinetry against holiday pay. However, the Authority noted that was not the end of the matter because there had to be compliance with the HA.

[25] The Authority concluded, as already noted, that holiday pay and leave pay were to be treated as salary or wages, and that salary and wages had to be paid in money, which had not occurred.⁹

[26] I referred previously to the Authority's findings that in May 2018 Juyi started paying eight per cent pay in addition to Mr Pan's wages, on a pay-as-you-go basis, believing it was entitled to discharge its HA obligations in this way. The Authority held the company was not entitled to adopt this course of action under the HA.

[27] In the result, holiday pay was due for the entire period of Mr Pan's employment.

[28] The evidence placed before the Court was very similar to that heard by the Authority.

[29] On the one hand, the thrust of the evidence given for Juyi was to the effect that Mr Pan approached Mr Zhang in about May 2017, asking him if the company would provide cabinetry for two kitchens and a laundry room in his new house. Mr Pan asked, at that stage, if this could be done at staff rates. Mr Zhang and Ms Yang both agreed they had no difficulty in providing Mr Pan with staff rates for these refurbishments. They did this because they trusted and respected him.

[30] It was Juyi's case that Mr Pan then measured up his kitchen and created mock-ups which were introduced to Juyi's software by a member of its staff. Mr Pan was not familiar with the relevant computer functions and did not take this step.

[31] Time-stamped images of the computer files and the designs entered into the system were produced, verifying design work between May and July 2017.

⁹ At [45].

[32] Ms Yang said that Mr Pan selected the materials he would be using.

[33] In early July 2017, Mr Pan settled the purchase of his property, and commenced renovations; he was assisted by Mr Hua.

[34] Juyi generated a quotation on 24 July 2017, the contents of which were conveyed to him at the time. There is some doubt as to whether he received a physical copy of the document.

[35] Soon after, Mr Pan told Mr Zhang he would not be able to pay for the items, as he was having financial difficulties. He asked if Juyi could instead trade two years of his annual leave entitlements for these items.

[36] Mr Zhang discussed the issue with Ms Yang. Mr Zhang had known Mr Pan for many years, having originally met him in China. As a mark of respect they agreed to this request, even although such an offset would involve a yet further discount of approximately \$3,000.

[37] It was then agreed Juyi would assist Mr Pan with the installation of the kitchen. In July 2017, Mr Zhang loaded the Juyi van with the contents required for Mr Pan's kitchen and delivered them. Mr Zhang said he helped with the installation of the kitchen and also arranged for Mr Hua to assist in that exercise. Mr Hua confirmed this evidence.

[38] For his part, Mr Pan asserted that much of Juyi's evidence was "fabricated". He said the materials for his kitchens were not supplied by Juyi but by someone external to it, who was a friend of his. He said there as no paperwork with regard to the supply of the materials and that he was not required to pay for them.

[39] He said that Juyi's quotation was part of its free service for customers who might subsequently contract for the supply and installation of kitchen items. He agreed some of the computerised design work undertaken by a Juyi designer was similar to his kitchen.

[40] He denied that Juyi representatives delivered the materials or assisted in the installation of the kitchens.

[41] The essence of his case was that Juyi had not proved it supplied the kitchen cabinetry or benchtops. He said the colours of the cabinetry referred to in the quotation were different from those ultimately used in his kitchen and that the dimensions shown in that document were also different. He also believed Mr Zhang did not know what type of stone was ultimately used for his benchtops.

[42] All the difficulties to which the Authority referred in regard to Mr Pan's evidence apply to the evidence he provided to the Court.

[43] He did not call the person who he said assisted him with the installation of the kitchens. No paperwork with regard to the materials he used was produced, although he appeared to indicate that in any event there was none.

[44] There is no reason to conclude that the supporting evidence produced by the company, particularly the computerised material it developed over a period of months in 2017, is not accurate. The extent of that documentation is not consistent with the simple provision of a free quotation.

[45] The quotation was dated 24 July 2017. Significantly, it summarises the supply of materials only, and includes no sum for delivery and installation, which is consistent with the supply of materials for a member of staff on favourable terms.

[46] It may well be the case that some of the dimensions, and the colour of materials recorded on the quotation altered, a point relied on by Mr Pan; and it may also be the case that the type of stone referred to in the quotation was different to that which he ultimately selected.

[47] It is reasonable to infer that precise details of some of the kitchen elements were changed by Mr Pan.

[48] I do not consider that any of the points made by Mr Pan are persuasive. There is no material before the Court which could lead to a conclusion that the Authority erred in its conclusion to the effect that Juyi supplied the relevant materials.

[49] As mentioned, a related aspect of Juyi's case concerned the eight per cent increment that it paid Mr Pan as from May 2018. In the end, this was a credibility issue only, because it did not meet the pay-as-you-go requirements of the HA.¹⁰ Mr Pan asserted that the amount paid to him from that date, the quantum of which he did not dispute, was in fact a pay rise, and not as Ms Yang and Mr Zhang believed for holiday entitlements.

[50] There is no individual employment agreement, or correspondence which would have assisted on this issue. However, a holiday pay calculation worksheet was produced which suggests that holiday pay at eight per cent was in fact paid.

[51] It is inherently unlikely that a pay increase for as much as eight per cent would have been given. Moreover, the increment corresponds exactly with the amount which would be payable by an employer believing it was complying with the pay-as-you-go regime of the HA.

[52] On the balance of probabilities, it is more likely than not that Ms Yang is correct on this issue.

[53] Mr Pan's evidence has again been shown to be unreliable. This finding reinforces the Court's view that Juyi's evidence is to be preferred over that of Mr Pan.

[54] The central issue arising from Juyi's challenge, however, is whether, even given an acceptance of the factual circumstances as to the supply of the kitchen, its claim that Mr Pan had been unjustly enriched is an issue which the Court is able to consider.

¹⁰ Holidays Act 2003, s 28.

[55] Unjust enrichment is a restitutionary remedy the object of which is “to deprive the recipient of a gain that the law deems he or she should not keep because he or she will be unjustly enriched”.¹¹ The elements of such a claim are:¹²

- (a) Proof of the defendant’s enrichment by receipt of a benefit.
- (b) A corresponding deprivation by the plaintiff.
- (c) The absence of any juristic reason for the enrichment.

[56] A well-known New Zealand text explains the concept more broadly, in this way:¹³

Unjust enrichment refers to an event whereby a defendant is unjustly enriched at the plaintiff’s expense, the response to which is restitution of the enrichment to the plaintiff. What makes an enrichment unjust, in the sense that it requires restitution, has been the subject of much debate and disagreement. Traditionally, accepted instances of unjust enrichment include a mistake made by the plaintiff, a lack of capacity on the part of the plaintiff, compulsion of the plaintiff, and a failure of consideration for which the transfer is made. All of these grounds suggest that unjust enrichment is concerned with otherwise effective transfers that should nevertheless be reversed because the plaintiff’s consent was, although objectively manifest, in some way substantively defective or absent.

Liability for unjust enrichment does not depend on the commission of a wrong. It is not concerned with the quality of the defendant’s conscience or his conduct. The right to restitution is triggered by the receipt of an enrichment in circumstances that put it within one of the unjust categories. Liability to make restitution is therefore strict.

[57] Ms McDermott, counsel for Juyi, submitted that the Court has the ability to consider such a concept under its equity and good conscience jurisdiction, as described in s 189 of the Employment Relations Act 2000 (the Act). It relevantly states:¹⁴

189 Equity and good conscience

- (1) In all matters before it, the court has, for the purpose of supporting successful employment relationships and promoting good faith behaviour, jurisdiction to determine them in such manner and to make such decisions or orders, *not inconsistent with this or any other Act* or

¹¹ *Laws of New Zealand* (online ed) Restitution at [1].

¹² *Gillies v Keogh* [1989] 2 NZLR 327 (CA) at 351.

¹³ Andrew Butler (ed) *Equity and Trusts in New Zealand* (2nd ed, Thompson Reuters, 2009) at [42.2.2] (footnote omitted).

¹⁴ (Emphasis added).

with any applicable collective agreement or the particular individual employment agreement, as in equity and good conscience it thinks fit.

...

[58] In short, the discretion is only available if to apply the provision would not be inconsistent with any other Act. Are there other statutory provisions that bind the Court?

[59] A key authority on this point is *Kidd v Cowan*, where the scope of s 189 was discussed by the Court of Appeal.¹⁵

[60] The issue in that instance concerned whether the transfer of land by an employer to an employee could be offset against wages that it owed him.

[61] The proposed question for the Court of Appeal was whether the Employment Court could utilise its equity and good conscience jurisdiction to consider an offset when calculating wage arrears.

[62] That court referred to s 7 of the Wages Protection Act 1983 (the WPA), which states that, subject to certain exemptions, the employer shall pay the wages of every worker in money only. It noted that money was defined in s 2 of the WPA to mean New Zealand coin or New Zealand banknotes. In effect, the section required wages to be paid in cash, subject to any agreement to the contrary.

[63] Deductions from wages are specifically addressed by the WPA in several provisions.¹⁶ The Court of Appeal considered one only of these for the purposes of the case before it, observing that deductions could only be made with the written consent of a worker. Since there was no such consent, the exception did not apply.

[64] Finally, the Court noted that s 189 of the Act does not provide an “untrammelled discretion” to act in equity and good conscience, as it would be contrary to express statutory provisions. It accepted dicta of this Court to the effect

¹⁵ *Kidd v Cowan* [2020] NZCA 681, [2020] ERNZ 577.

¹⁶ Wages Protection Act 1983, ss 4–6.

that the jurisdiction does not entitle the Court to rewrite the statute or cut across other statutory provisions on the basis that it considers it appropriate to do so.¹⁷

[65] For these reasons, the Court held there was no available remedy to the former employee by reason of the equity and good conscience provision.

[66] Ms McDermott submitted that the facts in *Cowan* were wholly different, and the Court could not therefore be bound by the conclusions reached.

[67] I cannot accept this submission. What the Court must focus on are the statements of principle articulated by the Court of Appeal. Whilst it was required to consider the WPA rather than the HA, its conclusions as to s 189 are relevant to the present case, which involves not only the WPA but also the HA.

[68] The HA imposes mandatory obligations. Under s 86 of that statute, holiday pay and leave pay are to be treated as salary and salary or wages earned. As mentioned already, under the WPA wages are to be paid in money only, unless one of the statutory exemptions applies.¹⁸ None of those exemptions in fact apply. Section 8 relates to a worker employed by the Crown or local authority. Section 9 applies to limited agreements to the payment of wages in a monetary form with the written consent of a worker or on the written request of that worker. Section 10 applies for another limited variation where the worker is absent.

[69] In the result, the provisions of the HA and the WPA impose obligations which on this occasion must prevail over the equity and good conscience provisions of s 189 of the Act. Nor would it have been available to the Authority in any event, having regard to the more limited expression of that discretion in s 160(2) of the Act.

[70] On this analysis, the Court must conclude that the Authority's statement as to the legal position was correct.

¹⁷ *8I Corp v Marino* [2017] NZEmpC 69, [2017] ERNZ 315 at 16.

¹⁸ Wages Protection Act 1983, ss 8–10.

[71] That is not to say that Juyi does not have a remedy in respect of the supply of the kitchen cabinetry and benchtops. Ms McDermott accepted that, if the Court concluded that s 189 is not available for application in this case, Juyi would wish to consider bringing its claim in respect of the kitchen items in another jurisdiction.

[72] Ms McDermott indicated that, if such a step were to be taken, Juyi would also wish to be heard on the question as to when and how the sum lying in Court which it paid to satisfy the Authority's award of holiday pay should be dealt with.¹⁹ That is, the company would likely submit that the monies remain in Court to abide the outcome of its claim against Mr Pan for supply of kitchen cabinetry and benchtops.

[73] I will return to these issues below when summarising the outcome of the challenges.

Second issue: wages for March 2018

[74] I turn now to the challenge brought by Mr Pan.

[75] The first of these relates to a claim he made that he was not offered work in the period 5 to 30 March 2018; nor was he paid wages or granted annual leave for the period.

[76] The Authority, in its consideration of the issue, recorded that Mr Pan had said the factory had been short of work. Some staff, including himself, were told to stay home. During the period, he undertook work for a friend, seemingly at a lower rate than he received from Juyi.²⁰

[77] The Authority noted that Juyi said Mr Pan chose not to work for it during this period. Ms Yang had said he applied for leave in March 2018, having not taken any since he started at Juyi in 2016. His request was granted. Because of Juyi's understanding that leave was to be exchanged for the kitchen cabinetry, he was placed on unpaid leave.

¹⁹ As required by the stay order granted in *Pan*, above n 4, at [5]–[10].

²⁰ *Pan*, above n 1, at [18].

[78] Ms Yang also said that, after having no stoneworker available when Mr Pan was on leave, it hired an additional person to do this work. It noted Mr Pan had not disputed that another stoneworker was hired. The Authority found it was unlikely another worker would have been employed if Juyi had insufficient work for Mr Pan alone.

[79] On the basis of these facts, the Authority found that Mr Pan was on unpaid leave for this period.

[80] In support of his challenge, Mr Pan repeated that he was “forced” by Juyi to stay home on unpaid leave against his wishes, despite being available and willing to work; and that he was not placed on annual leave or holiday pay for the period.

[81] It is clear that, during the period when Mr Pan undertook work for a third party, it was necessary for Juyi to hire a substitute worker. Such a circumstance is consistent with the conclusion that Mr Pan requested time off for the period so that he could work.

[82] Mr Pan’s evidence on this issue was somewhat inconsistent. In the course of his evidence, he said that the eight per cent pay increase was to compensate him because he had not worked for Juyi in March 2018. Mr Pan said this arrangement came about when he raised the issue with Juyi several weeks after the time off so that the additional payment commenced in July 2018. He also said another staff member, whom he did not name or call, was also asked to take time off.²¹

[83] I have already discussed this issue, concluding that the additional sum was paid by Juyi in the belief it was entitled to make the payment to satisfy Mr Pan’s holiday entitlements.

²¹ After the evidence was closed, at which point Mr Pan confirmed he would not be calling further evidence, and, while he was presenting his final submissions, Mr Pan sought leave to call further evidence on this point. The application was strongly opposed. Given the very late stage of the application and the fact Mr Pan had long been aware of the issues, his application was declined.

[84] Putting that issue to one side, however, on the one hand Mr Pan was telling the Court that he should have been paid for the period; on the other, he was contending that he was in fact paid wages for the period by way of a pay increase.

[85] Again, Mr Pan's evidence was unreliable.

[86] I am not satisfied that there is any error in the conclusion reached by the Authority on this claim.

Third issue: claim for rest breaks

[87] The Authority recorded that Mr Pan claimed he was not allowed two 15-minute tea breaks for January to March 2019 and that he was therefore seeking payment for 11 weeks of breaks.²²

[88] The Authority recorded that from when Mr Pan started work, staff had their breaks at the same time, being two 15-minute rest breaks and a one-hour meal break, with a work-day running from 8.00 am to 5.00 pm. Juyi decided to change its breaks practice after a customer complained about being unable to contact the company.

[89] New hours were developed, with a start time of 9.00 am and finishing at 6.00 pm. Lunch would be 12 noon to 12.45 pm; and afternoon tea from 3.00 pm to 3.15 pm.

[90] The Authority noted that, for that work period, employees would be entitled to two ten-minute paid breaks and one 30-minute unpaid break per day.²³ The Authority said that there was some room for flexibility in the timing of breaks, but it was a legal requirement that the breaks were to be taken unless an exception applied.

[91] On these facts, the Authority concluded Mr Pan did not receive a morning tea break, although he was paid for a 50 per cent longer afternoon tea break than was legally required. No remedy was available because Mr Pan was paid for his time. His issue was that he was not able to take a rest. The Authority found there was no personal

²² *Pan*, above n 1, at [22].

²³ Employment Relations Act 2000, s 69ZD.

grievance claim which could potentially have led to remedies, nor a penalty claim where any consequences for the practice that was adopted could have been taken into account.

[92] The Court received no evidence to challenge any of the factual conclusions, which in any event were in Mr Pan's favour.

[93] It is not disputed that Mr Pan did not receive a morning tea break for the period. Nor is it disputed he was paid for his time.

[94] But it remains the position that there is no personal grievance claim, nor one seeking a penalty.

[95] The Authority's reasoning is correct. Mr Pan's challenge is dismissed.

Result

[96] Juyi's challenge is dismissed. This means that Juyi is liable to pay Mr Pan the sum of \$12,454.31 holiday pay, subject to such directions as the Court may make either in respect of that liability, or in respect of the monies paid into Court.

[97] The next point the Court needs to resolve is the question of payment out of the monies paid into Court. Any application in that regard is to be filed by either party 28 days after the date of this judgment; the other party may then respond within 14 days thereafter. For the purposes of that application, I expect to hear from Juyi whether it either has issued, or intends to promptly issue, a proceeding elsewhere in respect of the kitchen cabinetry and benchtops. I express no view one way or the other as to the likely outcome of any application I may be required to consider at that point.

[98] The result of the unsuccessful challenge is that Juyi must pay Mr Pan holiday pay of \$12,454.31. However, in the very unusual circumstances, that order will lie in Court – that is, it will not become operative or enforceable – for a period of 28 days. I will review the status of this direction at that point, in light of any application for stay or otherwise which may have been filed.

[99] Mr Pan's challenge is also dismissed.

[100] Pursuant to s 183(2) of the Act, the Authority's determination on the issues I have reviewed is set aside and this judgment replaces it in those respects.

[101] I reserve costs. Given the mixed outcome, it may be appropriate for costs to lie where they fall. However, if either party chooses to seek a contribution to costs incurred, they may do so within 28 days, with a response given 14 days thereafter. Any such application will be considered in light of the Court's Guideline Scale as to Costs, on a 2B basis.²⁴

B A Corkill

Judge

Judgment signed at 3.30 pm on 5 October 2021

²⁴ "Employment Court of New Zealand Practice Directions"
<<https://www.employmentcourt.govt.nz/assets/Documents/Publications/Employment-Court-Practice-Directions.pdf>> at No 16.