

**IN THE EMPLOYMENT COURT
AUCKLAND**

**[2011] NZEmpC 18
ARC 39/10**

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

BETWEEN PAUL AND SHERYL JOHNSTONE
TRADING AS JOHNSTONE FARMING
PARTNERSHIP
Plaintiffs

AND MICHAEL MORELAND
Defendant

Hearing: By memoranda of submissions filed on 12 August 2010 and 9
February 2011

Counsel: Monique Rush, counsel for plaintiffs
Eric Tanner, counsel for defendant

Judgment: 25 February 2011

JUDGMENT OF CHIEF JUDGE G L COLGAN

[1] The plaintiffs' challenge to the determinations¹ of the Employment Relations Authority are allowed and those determinations are set aside. That is because the parties agree that the Authority erroneously found the plaintiffs liable for an unlawful deduction from Michael Moreland's wages in respect of motorcycle repairs. In a memorandum filed with the Court on 12 August 2010, Mr Moreland's solicitor conceded that his client had not claimed before the Authority that the amount of \$1,138.52 had been deducted by the plaintiffs from his pay. At paragraph [29] of the Authority's 26 March 2010 determination it concluded that this deduction was unlawful and should be repaid. The plaintiffs seek to put the record straight and, in

¹ AA142/10, 26 March 2010; A263/10, 1 June 2010.

view of this concession by Mr Moreland, I consider they are entitled to a judgment which does so.

[2] Because s 183(2) of the Employment Relations Act 2000 operates to nullify the whole of an Authority determination once a judgment on a challenge is issued, but only one aspect of that determination is challenged, it is necessary to reiterate the Authority's other conclusions and make them the subject of this judgment.

[3] With this exception, therefore, I confirm the other determinations of the Employment Relations Authority given in its determination of 26 March 2010. I confirm the Authority's determination of 1 June 2010 that there should be no order as to costs between the parties in the Authority. I also conclude that there should be no order as to costs on this challenge.

[4] This judgment was sent in draft to the parties on 10 February 2011. There was no response from the defendant's solicitor within the period of two weeks that was allowed for such.

GL Colgan
Chief Judge

Judgment signed at 9.30 am on Friday 25 February 2011