## 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 determinations<sup>1</sup> 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

<sup>&</sup>lt;sup>1</sup> AA142/10, 26 March 2010; A263/10, 1 June 2010.

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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