IN THE EMPLOYMENT COURT
WELLINGTON

]2010] NZEMPC 90
WRC 41/09

IN THE MATTER OF	the referral of a question of law from the Employment Relations Authority
BETWEEN	THE NEW ZEALAND FIRE SERVICE COMMISSION Plaintiff
AND	STEVE WARNER AND OTHERS Defendant

Hearing: 1 December 2009
(Heard at Wellington)

Appearances: Geoff Davenport and Guido Ballara, Counsel for Plaintiff
Peter Cranney and Anthea Connor, Counsel for Defendants

Judgment: 19 July 2010

JUDGMENT OF CHIEF JUDGE GL COLGAN

---

[1] The question of law removed by the Employment Relations Authority under s 177 of the Employment Relations Act 2000 is whether an employer may sue an employee in the Authority for remuneration mistakenly overpaid. Some of the defendants, full-time fire fighters, assert that the Authority is not empowered to investigate and determine their employer's claims for repayment of allowances mistakenly overpaid by the New Zealand Fire Service Commission (the Commission) to a number of its employees.

[2] Although the Authority did not make findings of fact and state these for the Court on its referral of a question of law under s 177, the nature of the question is fundamentally jurisdictional and logically precedes its investigation and determination. In these circumstances I did not direct the Authority to make those factual findings in view of the parties' confidence that the question referred could be

decided on the basis of the statements of problem and in reply in the Authority together with the agreed relevant facts.

[3] Accepting the burden of persuading the Court that the Authority cannot do so, Mr Cranney for the defendants advanced the following arguments.

[4] Counsel submitted broadly that except to make orders for payment of penalties for breaches of employment agreements and in some other similar penalty actions, the Authority is not empowered to make any pecuniary awards against employees. Counsel relied on the judgment of this Court, albeit under the different statutory regime of the Employment Contracts Act 1991, in *Master Builders Association (Auckland) Inc v Doe.*[1] That was a claim said to have been brought in reliance on s 94A of the Judicature Act 1908 which, then and now, provides materially:

> **94A Recovery of payments made under mistake of law**
>
> (1) Subject to the provisions of this section, where relief in respect of any payment that has been made under mistake is sought in any Court, whether in civil proceedings or by way of defence, set off, counterclaim, or otherwise, and that relief could be granted if the mistake was wholly one of fact, that relief shall not be denied by reason only that the mistake is one of law whether or not it is in any degree also one of fact.
>
> (2) Nothing in this section shall enable relief to be given in respect of any payment made at a time when the law requires or allows, or is commonly understood to require or allow, the payment to be made or enforced, by reason only that the law is subsequently changed or shown not to have been as it was commonly understood to be at the time of the payment.

[5] The *Doe* case turned on the important test under s 104 of the Employment Contracts Act 1991 whether the proceeding was "founded on an employment contract". The Court decided it was not, following such cases as *Medic Corporation Ltd v Barrett*[2] *and Conference of the Methodist Church of NZ v Gray.*[3] The judgment in the *Doe* case records that although it was not in issue that overpayments "were in some way connected with the employment contract" between the parties,

---

[1] [1997] ERNZ 331.
[2] [1992] 3 ERNZ 523.
[3] [1996] 1 ERNZ 48; [1996] 2 NZLR 554.

the jurisdictional test under s 104 ("(f) [t]o hear and determine any question connected with any employment contract which arises in the course of any proceedings properly brought before the Court:") was not met.

[6] Mr Cranney submitted that the subsequent enactment of the Employment Relations Act 2000 has not changed the position under the previous legislation. Counsel submitted that the Authority's jurisdiction under s 162 to "make any order that the High Court or a District Court may make under any enactment or rule of law relating to contracts" does not save the position because s 94A is not an "enactment … relating to contracts" and because none of the five Acts specified in s 162 confers any jurisdiction on any court to make an order such as is sought here. Mr Cranney submitted that s 162 can only engage where the Authority otherwise is seized of a matter lawfully. Section 162 does not confer jurisdiction or expand the scope of jurisdiction.

[7] Further, Mr Cranney submitted that s 161(1)(r) does not give the Authority jurisdiction to determine this case. That extends the Authority's reach to "any other action (being an action that is not directly within the jurisdiction of the Court) arising from or related to the employment relationship or related to the interpretation of this Act (other than an action founded on tort):"

[8] Mr Cranney relied on the judgment of the High Court in *BDM Grange Ltd v Parker*[4] which interpreted s 161(1)(r) as being limited by the opening words of s161(1), "employment relationship problems generally" and the definition of "employment relationship problem" in s 5 of the Employment Relations Act 2000. Mr Cranney submitted that the judgment in *BDM Grange* was subsequently endorsed by this Court in *Axiom Rolle PRP Valuations Services Ltd v Kapadia*[5] and in particular at para [55].

[9] Thus, Mr Cranney submitted, the Employment Relations Act 2000 limits the Authority's jurisdiction to contractual causes of action only. This does not include,

[4] [2005] ERNZ 343; [2006] 1 NZLR 353.
[5] [2006] ERNZ 639.

in counsel's submission, what was described as a s 94A Judicature Act 1908 cause of action.

Relevant statutory provisions

[10] The Authority is a creature of statute. Its jurisdiction and powers are those given to it by Parliament either expressed in, or necessarily implied from, the Employment Relations Act 2000. Section 157(1) provides in relation to the "Role of the Authority":

> (1) The Authority is an investigative body that has the role of resolving employment relationship problems by establishing the facts and making a determination according to the substantial merits of the case, without regard to technicalities.
>
> …
>
> (3) The Authority must act as it thinks fit in equity and good conscience, but may not do anything that is inconsistent with this Act or with the relevant employment agreement.

[11] Section 160 sets out the Authority's express powers. They enable the Authority to do certain things once it is lawfully seized of a case. That preliminary stage is known as "jurisdiction" and is dealt with in s 161. This provides materially (by reference to my emboldened passages):

> (1) **The Authority has exclusive jurisdiction to make determinations about employment relationship problems generally, including—**
>
> (a) disputes about the interpretation, application, or operation of an employment agreement:
>
> (b) **matters related to a breach of an employment agreement**:
>
> …
>
> (f) matters about whether the good faith obligations imposed by this Act (including those that apply where a union and an employer bargain for a collective agreement) have been complied with in a particular case:
>
> (g) matters about the recovery of wages or other money under section 131:
>
> …
>
> (r) **any other action** (being an action that is not directly within the jurisdiction of the Court) **arising from or related to the employment relationship** or related to the interpretation of this Act **(other than an action founded on tort)**:

[12] The first question is whether the Commission's claim in the Authority falls within one or more of these jurisdictional categories.

The basis of the claims

[13] Although, in its use of modern language and non-technical concepts, the legislation does not refer to what lawyers call causes of action, it is nevertheless appropriate and indeed necessary to so categorise the claim to consider whether it comes within jurisdiction. Such categorisations are both general and specific. Proceedings are categorised generally as being in contract, in tort, or in equity among other traditional common law categories. Especially important in employment law now are statutory causes of action, ones created, defined and limited by the legislation. Personal grievances are probably the best known example of such statutory causes of action but there are others including disputes and indeed the 2000 Act has created possibly the broadest and, for this case, most important category of proceeding, what it calls "an employment relationship problem".

[14] Within these broad categories there are particular causes of action that are exclusive to their broad category. Within the broad category of contract, for example, there are causes of action for breach of contract, for rectification of contracts, and others. In the broad category of tort there are causes of action in negligence and defamation to exemplify two which sometimes have connections to employment.

[15] How are the Commission's claims to be categorised? They are contained in a number of paragraphs of the statement of problem, the relevant ones of which are as follows:

> **1. The problems or matters that the Applicant wishes the Authority to resolve are:**
>
> 1.1 An application to recover an overpayment of wages following each Respondent's refusal or failure to repay the overpayment received.
>
> 1.2 The overpayments were made in error, and the total sum owing is in the order of up to $400,000, which represents a substantial amount of public funds the Applicant must recover.

[16] Paragraph 2 of the statement of problem recites in detail "The facts that have given rise to the problem (or matter) …".

[17] Paragraph 3 of the statement of problem reads:

> **3. The Applicant would like the problem (or matter) to be resolved in the following way:**
>
> 3.1 The Applicant seeks a determination that the Officership Allowance was in error overpaid to each Respondent, as it was backdated to 1 January 2007 instead of to the 1 July 2007 date agreed.
>
> 3.2 The Applicant also seeks a determination that each Respondent must repay the overpayment he or she received as soon as practicable in such manner as set out in the NZFS letter of 7 April 2008 (attached), or in such manner as the Authority considers appropriate.

Cause of action in equity?

[18] The Commission categorises its claim in several ways. First, it says that it is a claim for the equitable remedy sometimes known as "for money had and received". This is a cause of action in equity or quasi-contract, as opposed to one strictly in contract or tort. Its nature is described well in the *Laws of New Zealand* chapter on Restitution and under the heading "Claims Based on Mistaken Payments". The cause of action is a part of the law of equity dealing with unjust enrichments underpinned by the essentially moral notion that "[t]he object of restitution 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." Interestingly, under a heading "Restitutionary remedies at common law" the text notes:

> Any civilised system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit, that is, to prevent a person from retaining the money of, or some benefit derived from, another that it is against conscience that he or she should keep. Such remedies in English law are generically different from remedies in contract or in tort, and are now recognised to fall within a third category of the common law, which has been called quasi-contract or restitution.
>
> For historical reasons, restitution has traditionally been treated as part of, or together with, the law of contract. Yet independently, equity has also developed principles which are aimed at providing a remedy for unjust enrichment. Restitution as an independent topic has now been accepted in New Zealand law and the governing principle is that of unjust enrichment at the expense of another.

[19] There are three principal elements of the unjust enrichment cause of action. They are, first, proof of the recipient's enrichment by receipt of a benefit. Second, there must be a corresponding deprivation to the donor. Third, there must be an absence of any juristic reason for the enrichment. Absence of juristic reason may include a mistake.

[20] As to claims based on mistaken payments, the text states generally:[6]

> An action for money had and received will lie where the plaintiff has voluntarily paid money to the defendant and the money would not have been paid but for a mistake of fact made by the plaintiff. The common law action for money had and received is based on the receipt of money by the defendant who has no right to retain it, and the cause of action is complete when the money is received. However, as the claim is personal and not proprietary, it is not necessary that the money still be held by the defendant. The action does not depend on proof of any wrongdoing or fault on the part of the recipient. The onus is on the plaintiff to prove that he or she would not have made the payment but for the mistake. This general rule is subject to certain restrictions or limitations. Money paid voluntarily with full knowledge of the facts and without fraud cannot be recovered.

[21] It is unnecessary to consider refinements of the cause of action that might be appropriate for trial because this judgment is only about determining the nature of the proceeding.

Breach of contract cause of action?

[22] The Commission also categorises its claim in the Authority as one for breach of an implied term or terms of its employment contracts with its employees. Many of the terms and conditions of these separate individual employment contracts are set by the collective agreement covering most of the fire fighters because of their membership of their union. However, terms and conditions of employment are ascertainable from a variety of sources and may include, where appropriate, ones implied by law. The categorisation of the proceeding would therefore be as one in contract and, more particularly, for breach of contract by the respondent individual employees. I assume that, in contract, the plaintiff says there is an implied term that employees will repay mistakenly overpaid remuneration on the basis that the

[6] *Laws of New Zealand* Restitution at [11].

employer's contractual obligation is to pay only such remuneration as is agreed and/or is properly payable.

Breach of statutory duty cause of action?

[23] Next, the Commission categorises its cause of action as being for breach of the statutory obligations of good faith by the relevant employees. This may be a claim for breach of contract, the contractual terms allegedly breached being those required by the statute to be included in all contracts of employment. Alternatively, the cause of action may be for breach of a statutory duty, a cause of action regarded traditionally at common law as being a tort.

[24] Finally, as I understand the plaintiff's case, it seeks an order for compliance by relevant employees of what it says was a lawful and reasonable order to repay overpaid allowances but which the employees, abetted by their union, have refused wilfully to obey.

Previous case law

[25] Although not binding on this Court, the judgment of the High Court in *BDM Grange* is persuasive. In that case the High Court had to determine whether claims by a former employer were within its jurisdiction. These included for breach of statutory fiduciary duty as a director, for breach of implied contractual duties of fidelity and to avoid conflicts of interest, and for breach of the statutory duty of good faith in s 4 of the Employment Relations Act 2000. Also at issue necessarily were whether the former employer's claims came within the exclusive jurisdiction of the Employment Relations Authority under s 161 of the Employment Relations Act 2000, or whether they were unrelated to an employment relationship problem or came within the exception to s 161(1)(r) as being founded on tort.

[26] The High Court noted in *BDM Grange*:

> [53] The Act does not expressly list the causes of action for which the authority has jurisdiction. Section 161 identifies a number of types of employment relationship problems in respect of which the authority has jurisdiction. That list is not exhaustive but does give some insight into what

> the drafter contemplated as the likely types of disputes that would be dealt with by the authority. They are clearly referable directly to the employment agreement itself or to the provisions of the Act such as union-related matters and penalties or orders made under the Act.
>
> [54] We consider that the stated objectives and specific provisions of the new legislation do not, in themselves, suggest that the phrase "relating to" in the definition of "employment relationship problem" embraces tort claims which were previously beyond its jurisdiction. Rather, the cases that are specifically provided for suggest that the objective of the ERA remains essentially *contract* focused and does not extend to a jurisdiction to determine claims in tort. Section 99 permits only a limited tort jurisdiction and para (r) of s 161(1) makes explicit the exclusion of tort jurisdiction otherwise falling within that provision.

[27] As to s 161 and whether the Authority was empowered to determine matters in tort, the High Court in *BDM Grange* wrote at para [65] and following:

> [65] But the practical implications of extending the jurisdiction of the authority to the limit of the general language of s 161(1) are relevant to its construction. Parliament has not equipped the authority with any tort equivalent to the battery of resources accorded contract claims by s 162. Had Parliament intended that it have general tort jurisdiction one could reasonably have expected that the power to deal with such matters as defamation, conversion and breach of copyright would have been given specific acknowledgment as part of the new provisions. To confer such jurisdiction would represent a significant change in the law, far beyond what would actually be required to give effect to the objectives of the ERA. We conclude that if the words "relating to" in the definition of "employment relationship problem" were construed so that any conduct touching on the relationship between employer and employee constitutes an employment relationship problem, then the net would be cast far wider than the objectives of the ERA require.
>
> [66] These various points are in our view compelling indicators that Parliament did not intend to extend the authority's existing jurisdiction so dramatically as is suggested by the first defendant. We express our essential agreement, at greater length, with the analysis of Panckhurst J that "relating to" in the definition of "employment relationship problem" must be read in a limited way to mean any cause of action, the essential character of which is to be found entirely within the employment relationship itself. This would not encompass claims arising from tortious conduct even if arising between an employer and employee, since the relationship merely provides the factual setting for the cause of action; the duty arises independently.
> …
> [68] For example, an assault by an employer on an employee is likely to include an element of infringement of the employment relationship constituting a personal grievance claim actionable within the authority and the Employment Court. Yet another element would be actionable as a tort claim for exemplary damages (*Donselaar v Donselaar* [1982] 1 NZLR 97 (CA)) in respect of which the authority and the Employment Court lack jurisdiction. By the same token deceit may be relied upon before the

> authority as an element of personal grievance. It may also found a tort claim in the District Court or the High Court.

[28] Although the foregoing remarks deal more particularly with tort claims, the following (obiter dicta) observations are also relevant from para [74] of *BDM Grange*:

> [74] We have reasoned that Parliament's purpose cannot be to shift to the authority and the Employment Court the responsibility to deal with claims in tort (outside those covered by s 99) or claims in equity (outside those covered by s 100) when it has refrained from providing tools equivalent to those furnished by s 162 for contract cases. The only way to reconcile the language of para (r) with the policies of the ERA is to treat it, as its penultimate position in the list of jurisdictions suggests, as something ancillary to the core business of the authority and the Employment Court. The exclusion of tort jurisdiction, implicit in that as a whole, is there made explicit, no doubt out of caution.

[29] *BDM Grange* was considered by the full Employment Court in *Axiom Rolle*. The question before the Court was whether it had either original or appellate power to make what was then known as an Anton Piller order, now a search and seizure order. As is noted at para [42] of the judgment, s 162 was at the heart of the *Axiom Rolle* case rather than s 161 which is in focus here. So it was a case about a power within jurisdiction rather than about jurisdiction itself. Addressing s 161(1)(r) this Court in *Axiom Rolle* agreed with the High Court in *BDM Grange* that this does not confer on the Employment Relations Authority powers to order search and seizure:

> [53] … That addresses the sorts of problems or matters the Authority is entitled to determine, not its powers exercisable within that jurisdiction or class of cases. As a matter of statutory interpretation we conclude that the phrase in s 161(1)(r) "any other action … arising from or related to the employment relationship" does not afford the Authority a power to make orders for search and seizure.

[30] Another judgment dealing with the Employment Relations Authority's powers (as opposed to its jurisdiction) is *Credit Consultants Debt Services NZ Ltd v Wilson (No 2)*.[7] The relevance of this judgment for present purposes lies in the Court's consideration of whether a former employer could sue for damages its former employees' current employer. Because of the absence of any contractual nexus between those parties or, more particularly, an employment contractual nexus,

[7] [2007] ERNZ 205.

any claim for damages against the new employer would be in tort or equity which would not be founded on the employment agreement between the previous employer and the employee. In this regard the Employment Court followed and applied the judgment of the High Court in *BDM Grange*. But ultimately these cases dealing with powers are not particularly helpful in determining the more fundamental question of whether there is jurisdiction to even enter upon the inquiry which is a necessary prerequisite to the exercise of any powers.

[31] As already noted, the defendants rely on the judgment of this Court interpreting the relevant statutory provision in the Employment Contracts Act 1991, *Doe*. That was the decision in a protest to jurisdiction of the Employment Court to deal with a claim against an employee to recover wages mistakenly overpaid. Although that was described in the judgment as a claim brought in reliance on s 94A of the Judicature Act 1908, counsel agreed that this was a mis-statement of the nature of s 94A which, in respect of what the Judicature Act 1908 describes as "Courts", modifies statutorily the common law of restitution for monies paid by mistake.

[32] At issue was s 104(1)(f) of the Employment Contracts Act 1991 which provided that the Employment Court was to have jurisdiction "to hear and determine any question connected with any employment contract which arises in the course of any proceedings properly brought before the Court."

[33] Analysed carefully, *Doe* is not authority for the proposition advanced by the defendants. Putting aside the inaccurate categorisation of a jurisdiction founded on s 94A of the Judicature Act 1908, the law has changed significantly following the enactment of the Employment Relations Act 2000 as to what sorts of employment related proceedings may be brought and where.

Decision

[34] In enacting the Employment Relations Act 2000, Parliament elected not to reiterate the former restrictive condition of jurisdiction that proceedings be "founded on an employment contract" as those words appeared in s 104(1)(g) of the

Employment Contracts Act 1991. Instead, in s 161 of the 2000 Act ("Jurisdiction"), Parliament used much broader language including, in the opening words of subs (1), "The Authority has exclusive jurisdiction to make determinations about employment relationship problems generally, …" and, in particular, in subs (1)(r), "any other action (being an action that is not directly within the jurisdiction of the Court) arising from or related to the employment relationship or related to the interpretation of this Act (other than an action founded on tort)". Employment relationship problems include, but are not limited to, matters arising from or related to the employment relationship. Employment relationship problems are defined non-exhaustively in s 5. They are not limited to contractual matters or contractual causes of action but, rather, cover "any other problem relating to or arising out of an employment relationship".

[35] I accept that the plaintiff's claim for repayment of monies allegedly overpaid mistakenly to employees falls within the definition of an employment relationship problem. It is "any other problem relating to or arising out of an employment relationship". The expansive rather than restrictive interpretation of the phrase "relates to" in this legislation has been recently reaffirmed by the Court of Appeal in *Haig v Edgewater Developers Ltd & Ors (No 2)*.[8]

[36] I conclude that s 161(1)(r) gives the Authority exclusive jurisdiction to make determinations about an employment relationship problem between these parties and, in particular, to determine any action arising from or related to their employment relationship except as may be an action founded on tort.

[37] While such of the employer's causes of action as are in contract are clearly within jurisdiction, and its claim in tort is clearly without jurisdiction, the status of the claims in equity or quasi-contract are more difficult to decide. Because of the breadth of the concept of an employment relationship problem that is justiciable, I respectfully disagree with the obiter dicta (observations) of the High Court in para [74] of *BDM Grange* set out in para [28] of this judgment. If, as here, the employment relationship problem for resolution (a claim for repayment of allowances allegedly overpaid to employees) requires a consideration and

[8] (2009) 7 NZELR 14 (CA).

application of the law of restitution of monies had and received or of unjust enrichment, then this was intended, to use the words of the High Court, to be the core business of the Authority. The jurisdictional ability to perform that core business necessarily follows.

[38] It is difficult to categorise a claim for repayment of an allowance provided for in a collective agreement which may have been overpaid to employees, and which the employees resist paying, as being anything other than an employment relationship problem as that is defined by the legislation. Each element arises solely in the context of the employment relationships. The employer's obligation to pay the allowance arises solely from the collective agreement as does the period for its payment and the identification of those employees to whom it will be paid, both of which elements are said to have been the subject of mistake by the employer. The allowances allegedly overpaid were paid to employees together with other salary and allowance payments in return for the performance by them of their work as fire fighters. The employer has taken up its requests or demands for repayment of overpaid allowances with the employees through their union which has taken up the cudgels on their behalf in resisting repayment.

[39] The plaintiff's action, being its proceeding in the Employment Relations Authority, arises from, and is related to, the employment relationship. Although, because of the closing words in parentheses of s 161(1)(r), no tortious cause of action can be pursued by the plaintiff in the Authority, this does not preclude other causes of action. To the extent that the plaintiff's present claims referred to in paragraph [23] are for breach of statutory duty in tort, these may not be pursued. As noted in that paragraph of this judgment, however, if the claim is pleaded as one of breach of an implied contractual obligation of good faith, then it is properly within the jurisdiction of the Authority. The plaintiff's cause of action for the equitable remedy of restitution/unjust enrichment is, on the foregoing analysis, also within the Authority's jurisdiction.

[40] I do not agree, however, with the plaintiff's alternative argument that it is entitled to recover the monies overpaid as a matter of compliance by an employee with an employer's lawful and reasonable instruction. Whilst, generally, employees

are expected to comply with lawful and reasonable instructions given by their employers in the course of their employment, this relates to the mutually expected and hence uncontroversial performance of the employees' duties. It does not extend, however, to the issuing of instructions to pay back money, non-compliance with which might be regarded as a breach of the employment contract in the same way as might, for example, be a wilful refusal to use a piece of fire fighting equipment in a safe and lawful manner. That conclusion is especially important in a hierarchical disciplined service such as the New Zealand Fire Service where obedience to lawful and reasonable commands can be expected as a matter of operational safety. Put shortly, the Commission cannot expect that a formal instruction to repay allowances allegedly overpaid will be able to be backed up with disciplinary sanctions in the event of non-compliance by the employees. Rather, the plaintiff's claims are matters of legal entitlement between parties to an employment relationship which should be resolved, if not by agreement, then by legal proceedings.

[41] It follows that the majority of the plaintiff's causes of action are lawfully before the Employment Relations Authority for determination on their merits. The cause of action that is in tort is really a duplication of a claim that is within jurisdiction and can be re-pleaded or deleted. If these claims within jurisdiction cannot be settled by negotiation with the employees and, in this case, collectively through their union, then it is competent for the Authority to investigate and determine them.

[42] I agree with the plaintiff's argument that it will be for the Authority to determine whether s 94A of the Judicature Act 1908 provides a defence for any particular employee to a claim for repayment of allowances overpaid by the employer.

[43] This conclusion is reinforced by the absence of any other court having the power to deal with this proceeding. That is because "exclusive" jurisdiction is bestowed on the Authority under s 161 of the Employment Relations Act 2000. None of the High Court, a district court or, at least at first instance or without the proceeding being removed to it, also the Employment Court, has the power to hear and determine this proceeding or any similar claim between parties to employment

relationships. Parliament could not have intended that no court or tribunal at all could deal with such issues. In view of the legislative scheme to channel employment related problems to the specialist institutions, the Authority must be the appropriate venue for this litigation.

[44] Although much of Mr Cranney's argument for the defendants focused on s 162 of the Employment Relations Act 2000 and whether ss 94A and 94B of the Judicature Act 1908 "relate to contracts", s 161 alone supports jurisdiction without necessary recourse to s 162. That is because this is a case about an employment relationship problem in respect of which the Authority can issue a determination and, if this is not complied with, from which may follow an order for compliance.

[45] For the foregoing reasons I answer the Authority's question of law: "Does the Employment Relations Authority have jurisdiction to order employees to pay their employer overpayments of wages and/or debt under the Judicature Act 1908 and/or s 161 and/or s 162 of the Employment Relations Act?" as follows. The Employment Relations Authority is the appropriate institution at first instance (and is empowered accordingly) in which to determine whether employees are required to repay to their employer monies overpaid mistakenly in the course of their employment relationship. If liability is established, the usual remedies for such causes of action are available to the Authority.

[46] The plaintiff seeks, and is entitled to, an order for costs on this referral of a question of law. I would prefer to deal with the amount of an award of costs after the parties have settled or otherwise finalised their substantive proceedings relating to the claims for overpayment of allowances mistakenly paid. In due course the plaintiff may apply by memorandum for an order fixing its costs in this Court, with the defendants having the period of one calendar month to file and serve any memorandum in opposition.

GL Colgan
Chief Judge

Judgment signed at 8.30am on 19 July 2010