IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH

I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE

[2025] NZERA 435
3306000

	BETWEEN	BRITTANY LILIES Applicant
	AND	JONKER FARMING & CONTRACTING LIMITED Respondent

Member of Authority:	Antoinette Baker
Representatives:	Hayley Johnson, advocate, for the Applicant Alan Taylor, advocate for the Respondent
Investigation Meeting:	18 July 2025 by AVL
Submissions:	On the day
Date:	21 July 2025

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Ms Lilies was employed by the respondent (Jonker) to assist with its farm milkings from February to November 2022. She had worked for Jonker previously, there was a gap in time, she returned and sought accommodation and work on the farm where Jonker then was contract share milking. Ms Lilies started helping with milkings and this increased. The relationship between Ms Lilies and the directors of Jonker, Mr Jonker and Ms Sullivan, was informal and friendly. Mr Jonker in particular knew of Ms Lilies through a respective familial connection that I accept had a tragic context. The parties put nothing in writing about terms of Ms Lilies

employment or accommodation between February and November 2022. When Ms Lilies finished in her employment in November 2022 she and the directors were not on good terms. Jonker indicated to her through messaging by Ms Sullivan (when Ms Lilies asked for her final pay) that it was deducting $1,099.22 for 'three power bills' from the accommodation she had vacated on the farm. Ms Lilies objected to this deduction. She accepts she had messaged previously about taking money for power from a previous pay as a 'one off' when the power bill 'spiked' but not to this deduction from her final pay. Jonker made the deduction as recorded in a payslip dated 6 November 2022. Ms Lilies seeks to recover the reduction made. She can do this under s 11A of the Wages Protection Act 1983 (WPA) for breaches of ss 4 and 5 of the WPA which I explain more fully below.

[2] Jonker maintains through its directors that Ms Lilies agreed verbally to pay for power in the accommodation and that she gave previous consent (that still held) to the deduction, supported by written messaging about this. Jonker claimed in its statement in reply that Ms Lilies damaged the farm accommodation and left things unclean and that it is owed rectification money. I have not determined this 'counterclaim' or 'set off' for reasons I set out (for the sake of completion) below.

Authority's investigation

[3] I held a phone conference call with the representatives on 4 April 2025 when the claims for Ms Lilies were confirmed by her representative as only (by then) including a claim to be repaid the deduction from her final pay. I indicated I would deal with costs in the one process. I declined to deal with this matter 'on the papers' because the respondent disputed the facts about consent being given to the deduction. I considered then that I would need to hear evidence. I made it clear at the phone conference call and in further written directions that ss 4 and 5 of the Wages Protection Act 1983 applied to this matter.

[4] I held a brief investigation meeting by AVL that lasted less than an hour and a half. To the extent the parties chose to include in their written evidence wider issues or allegations I do not generally traverse these. They are not relevant to a claim of breach under the WPA.

[5] Ms Lilies for reasons unknown did not attend. Her representative was given time to contact her. I accept from Ms Johnson that there had been messages the day before that went

unanswered. Ms Johnson confirmed that she still had authority to represent having previously confirmed with Ms Lilies her attendance back in June 2025.

[6] I continued then (about 15 minutes later than scheduled) to hear from the directors of Jonker, and then any summarised positions from the representatives including what they had to say about costs. I then reserved my determination and indicated it would be provided promptly. I considered this an appropriate course to take in Ms Lilies' unexplained absence. There was not, based on material before me by then, a great amount of disputed fact about the deductions in question. Largely my questions were for the employer party. I rely on s160(1)(f) of the Employment Relations Act 2000 to have continued in these circumstances. There was also no opposition to this process by the parties represented.

[7] Accordingly, as permitted by s 174E of the Act, this determination has stated findings and expressed conclusions as necessary to dispose of the matter. It has not recorded all evidence and submissions received.

Issues

[8] The following are the issues for determination:

a. Did Jonker comply with ss 4 and 5 of the WPA to make the deduction of $1,099.22 that it made in the payslip dated period end 6 November 2022?

b. If not, is this amount to be ordered to be paid to Ms Lilies as a recovery under s 11A of the WPA?

c. What if any amount is to be paid one to the other in costs, applying the tariff approach in the Authority?

Did Jonker have consent pursuant to ss 4 and 5 of the WPA to make the deduction of $1,099.22 that it made in the payslip dated period end 6 November 2022? If not, is this amount to now be paid to Ms Lilies?

[9] The WPA is a long established legislation which includes the key concept that an employer cannot make unilateral decisions about how an employee spends their pay unless the employee agrees in certain circumstances. The consent rules under s 5 of the WPA are as follows:

5 Deductions with worker's consent

(1) An employer may, for a lawful purpose, make deductions from wages payable to a worker -

(a) with the written consent of the worker (including consent in a general deductions clause in the worker's employment agreement); or

(b) on the written request of the worker.

(1A) An employer must not make a specific deduction in accordance with a general deductions clause in a worker's employment agreement without first consulting the worker.

(2) A worker may vary or withdraw a consent given or request made by that worker for the making of deductions from that worker's wages, by giving the employer written notice to that effect; and in that case, that employer shall -

(a) within 2 weeks of receiving that notice, if practicable; and

(b) as soon as is practicable, in every other case,-cease making or vary, as the case requires, the deductions concerned.

[10] Much has been made for the parties about the context of the relationship and the manner in which it ended. I heard what I accept was plausible evidence from the directors of Jonker that they genuinely wanted to help Ms Lilies out when she turned up at their workplace looking for accommodation and employment. However, my focus is narrow. It sits within clear statutory employer obligations that since November 2022 the directors of Jonker have had time to understand.

[11] I do not find that Jonker had the requisite statutory consent from Ms Lilies to have made the deductions in question for reasons that I now set out.

[12] Both parties refer in evidence to what may or may not have been agreed between them in terms of whether power was to either be paid regularly by Ms Lilies or not, whether the accommodation was part of her employment terms and conditions or not, and what the details of payments were to be (if any) regarding who paid for the power in the accommodation. As already noted above, none of this was clearly documented. I find it implausible that the Jonker directors say that they mistakenly considered a prior Federated Farmers agreement from Ms

Lilies' prior employment still applied. Even then, to the latter, the parties dispute what they had agreed to in the previous employment about power payment obligations. In short, I find this was all likely a mess of the parties' own making by not clearly recording what was agreed in favour of a likely personal friendship history, albeit at the time likely genuine. For Jonker as an employer entity, the law particularly requires it to have documented terms and conditions of employment. The company did not do this. Informality with arrangements for onsite accommodation and employment almost certainly leads to serious uncertainty when matters do not go well. To the credit of the directors in their respective evidence they acknowledge they would do things differently in the future if employing someone.

[13] I accept I have messaging to show that Ms Lilies in brief colloquial language communicated to her employer said to 'take money' from her pay for at least one previous power bill. Ms Lilies says in her written evidence that the consent was a one off. Jonker relies on Ms Lilies' messages (and others it says exist but did not provide) to support that the consent still existed when it made the deduction from the final pay.

[14] While I accept there were messages, my review of the evidence shows me that it is not in dispute that Ms Lilies did communicate in a text that she did not give consent to the deduction from her final pay. This is clear from Mr Jonker's written evidence which includes the following:

> It is correct that [Ms Lilies] did send us a text message saying that she did not give us permission to deduct power costs from her final pay – however we relied on the agreement we had previously made, and the text messages she had previously sent, to justify the deduction made.

[15] At the core of what I understood from both directors today, they are focused on what they say was the informal agreement they had with Ms Lilies to pay for power. They are genuinely aggrieved because they say she had reneged on what they verbally agreed to. The deductions made by Jonker to recoup the three power bills occurred in November 2022. That is over two and a half years ago during which time the directors have had the opportunity to better understand the long established statutory obligations on employers under the WPA if they did somehow mistakenly make the deductions at the time. I am not persuaded that there was a timing issue here that supports Ms Lilies had not objected before the deduction was made. I

accept it must have been clear in the messaging that Ms Lilies objected to the deductions proposed. She included a screenshot of employer obligations in her message to Ms Sullivan who responded with what seemed to be a level of frustration with Ms Lilies and a focus on simply wanting her to make good for the power bills. Ms Lilies wanted her final pay. She was entitled to receive that *as an employee* and without deduction (tax obviously excluded). I am satisfied she sufficiently communicated this to Jonker in messaging *before* the deduction was made. In short there could not have been in these circumstances consent to the deduct $1,099.22 from Ms Lilies final pay. Jonker breached ss 4 and 5 of the WPA and is now to repay this money to Ms Lilies.

[16] The above is a clear statutory breach by Jonker. Even if I said that I have some sympathy for the directors of Jonker who appear to genuinely believe they were let down by Ms Lilies after what I accept was a genuine situation of wanting to help her, I am not satisfied I can appropriately set off money to be recovered due to a breach of a clear statutory obligation. This would seem to go further than the discretion that I have to consider matters on merits and without technicalities.[1] In any event I have nothing to show me what was clearly agreed to in terms of the employment relationship about what *the employer* (rather than a landlord) could pursue in terms of financial recovery from an employee for any alleged lack of clean up or damage to accommodation vacated. To be clear I have not made findings as to whether Ms Lilies did likely leave the accommodation in this way.

Costs

[17] The Authority determines costs on a 'tariff' basis unless circumstances require an adjustment upwards or downwards[2] which I do not find here. Ms Lilies has been successful. She is entitled to have costs considered in her favour. The tariff for a one day investigation meeting is $4,500.00 based on reasonable preparation (phone conference included) and meeting participation. This matter took less than a half morning.

[18] I am not persuaded I should reduce the amount from the tariff due to matters put forward by the respondent about delays it attributes to Ms Lilies and or her representatives in getting this matter resolved. I find the continued position of Jonker in the circumstances where Ms

[1] Employment Relations Act 2000, s157 (1).
[2] https://www.era.govt.nz/determinations/awarding-costs-remedies#awarding-and-paying-costs-1

Lilies did not give permission for the deduction would indicate that Jonker itself has largely contributed to a situation that remained unresolved for so long.

[19] Ms Sullivan gave an emotional and heartfelt statement that she has no idea how 'they' are going to pay *any* money. She referred to them having six children. I accept hers and Mr Jonker's evidence that they are now each employed by others. However, I have no documentary evidence to back up impecuniosity. I consider there was time for this to have been provided. While Mr Jonker says the company is not trading it remains on the New Zealand Companies Register and shows no statement of insolvency. An annual return was filed as recently as March 2025. Accordingly, a state of insolvency is not supported by any evidence[3] and I do not find I can appropriately reduce the tariff for this reason.

[20] While humanly I accept the directors of Jonker hold genuine views that they are the wronged party here and that their informal friendly relationship with Ms Lilies means it remains unfair they have to pay anything to her, it is difficult (as noted above) to accept that they continued to hold this view in relation to the deduction made when they have had a length of time to have better understood the statutory obligations of the WPA.

[21] Standing back from the above, I find a quarter day contribution at tariff of $1,125.00 is appropriate to order in costs together with the filing fee of $71.55.

Interest

[22] Interest was not included in Ms Lilies claim until Ms Johnson raised it in submissions. While I can order interest on any outstanding matter as the Authority thinks fit[4], I decline to award interest. Not awarding interest should not be taken as me condoning what has effectively been a long standing nonpayment of full wages to an employee on what seems to me to be a fairly clear lack of permission from an employee to have done so at the time. However, in the absence of Ms Lilies who took no steps to explain her absence today and in recognition of the directors doing so and giving answers to me in what I consider was their genuine straight forward evidence which included that they would not repeat this scenario again, I have not exercised my discretion to award interest.

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[3] https://app.companiesoffice.govt.nz/companies/app/ui/pages/companies/6861373/documents
[4] Employment Relations Act 2000, Schedule 2, clause 11.

Summary outcome of determination

[23] The following orders are made:

Within 28 days from the date of this determination Jonker Farming and Contracting Limited is ordered to pay in full to Brittany Lilies:

a. $1,099.22 being the amount it deducted from Brittany Lilies' final pay on 6 November 2022 in breach of section 4 and 5 of the Wages Protection Act 1983;
b. $1,125.00 for costs; and
c. $71.55 for the filing fee.

Antoinette Baker
Member of the Employment Relations Authority