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Hall v Remuera Barber Shop (Auckland) [2011] NZERA 443; [2011] NZERA Auckland 290 (6 July 2011)

Last Updated: 14 July 2011

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

[2011] NZERA Auckland 290 5307747

BETWEEN AMY HALL

Applicant

AND REMUERA BARBER SHOP

Respondent

Member of Authority: Alastair Dumbleton

Submissions Received 5 and 17 May 2011

Determination: 6 July 2011

COSTS DETERMINATION OF THE AUTHORITY

[1] Ms Amy Hall applied to have the Authority investigate and determine her personal grievance claim of unjustifiable dismissal from employment with the Remuera Barber Shop.

[2] The Authority (Member James Wilson) in a determination dated 7 April 2011 ([2011] NZERA Auckland 142) found that Ms Hall had not been an employee of the respondent business and that she was therefore unable to raise and pursue a personal grievance. This was determined as a preliminary issue without the merits of the grievance claim being investigated. An investigation meeting of approximately V2 day duration was required for submissions and evidence to be presented by the parties' representatives.

[3] The question of costs was reserved in the determination. The parties have been unable to resolve that issue themselves and it must now be decided by the Authority.

[4] Counsel for Remuera Barber Shop, the successful party, advises that total legal costs paid by it were \$11,263. Counsel notes that in exercising its discretion toward costs the Authority will usually have regard to the basic principles that costs generally follow the event and are often fixed with reference to a notional daily rate or tariff. Also noted is the principle that in the Authority costs awards are usually modest. An award of \$4,500 is sought, being three "notional" days at \$1,500 per day.

[5] For Ms Hall her advocate submits that costs should lie where they fall.

[6] The inquiry conducted by the Authority in this case on a preliminary basis was one that is often wide ranging and will require considerable preparation by the parties. Factual circumstances surrounding the contended employment relationship need to be examined closely and there is scope for extensive submissions about the various tests that are applied in deciding the real nature of a relationship.

[7] I am satisfied in this case that Ms Hall should make a contribution to the total costs incurred by Remuera Barber Shop in this investigation.

[8] Exercising the discretion the Authority has, in the circumstances I consider that total costs of \$2,750 are appropriate for payment by Ms Hall to Remuera Barber Shop as a contribution to its much greater costs. Pursuant to clause 15 of Schedule 2

of the [Employment Relations Act 2000](#), she is therefore ordered to pay that amount.

A Dumbleton

Member of the Employment Relations Authority

(Pursuant to clause 16 of Schedule 2 of the [Employment Relations Act 2000](#).)

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