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Lowes v Hall's Group Ltd (Christchurch) [2016] NZERA 735 (3 February 2016)

Last Updated: 17 December 2021

| IN THE EMPLOYMENT RELATIONS AUTHORITY CHRISTCHURCH | | |
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| | | [2016] NZERA Christchurch 10 5561916 |
| | BETWEEN | ASHA LOWES Applicant |
| | A N D | HALL'S GROUP LIMITED Respondent |
| Member of Authority: | David Appleton | |
| Representatives: | R Danielle Mills-Godinet, Counsel for the Applicant Richard Upton, Counsel for the Respondent | |
| Investigation Meeting: | 12 November 2015 at Christchurch. Additional evidence presented on 30 November and 7 December 2015. | |
| Submissions Received: | 18 December 2015 on behalf of the Applicant 22 January 2016 on behalf of the Respondent | |
| Date of Determination: | 3 February 2016 | |
| DETERMINATION OF THE AUTHORITY ON A PRELIMINARY ISSUE | | |

Ms Lowes was not an employee of the respondent, and so the Authority has no jurisdiction to investigate her claims of personal grievance.

Employment relationship problem

[1] Ms Lowes claims that she was unjustifiably dismissed from employment with the respondent company and unjustifiably disadvantaged in her employment by the respondent failing or refusing to issue her with an employment agreement. Ms Lowes also claims that she suffered discrimination on the grounds of family status by being dismissed from her employment.

[2] The respondent denies that Ms Lowes was ever an employee of the company and therefore denies that the Authority has the jurisdiction to consider Ms Lowes's claims. Accordingly, this determination relates to the preliminary issue of whether Ms Lowes was employed by the respondent company at the material time, or whether she was an independent contractor.

Background and relevant evidence

[3] The respondent company is a nationwide business focused primarily in the transportation of refrigerated goods throughout the country. It employs approximately 500 employees throughout New Zealand. Ms Lowes worked for the respondent between August 2014 and March 2015 cleaning its trucks and trailers.

[4] Evidence was given on behalf of the respondent by Nigel Burkhart, the Operations Manager of Hall's QFR, which is a division of Hall's Group Limited. At the material time, Mr Burkhart had the role of acting South Island Operations Manager.

[5] The Authority also heard evidence from Ms Lowes, and from her partner, Reece Etwell, who used to be a truck driver working at the Respondent's Christchurch site until he resigned very shortly before Ms Lowes was told by the company that her services were no longer required.

[6] It was the evidence of Mr Burkhart that their vehicles travel long distances in all sorts of conditions, and that it was important that they were kept looking clean and tidy. In addition, some of the trucks which transport food and other fresh produce needed to be cleaned internally in accordance with certain requirements imposed by their customers, and by the Ministry of Primary Industry.

[7] The arrangement that was in place prior to Ms Lowes becoming involved was that the drivers would be responsible for cleaning their own vehicles. However, Mr Burkhart came to the conclusion that this arrangement was not working well and so looked for an alternative solution. He was aware that the Auckland site had faced a similar issue and that one of the employee's church youth groups had been subsequently engaged to clean the trucks, and that the group invoiced the company for the work. Mr Burkhart believed that a similar arrangement could work in Christchurch.

[8] A church group was approached in Christchurch, but they declined. There was a conflict of evidence over who approached whom about Ms Lowes carrying out the work, but it was agreed that she would do so. I will say more about what was discussed regarding the arrangement below.

[9] At that time, Ms Lowes was employed in a local bar on a part time and irregular basis and so she wanted to supplement her earnings by doing something that could fit around her pub work. Mr Burkhart's evidence was that he believed that the arrangement could work well, as he did not care when the trucks were cleaned; only that they were cleaned on a regular basis.

[10] All of the negotiations were carried out by Mr Etwell on behalf of Ms Lowes and Mr Burkhart on behalf of the respondent. Mr Etwell and Ms Lowes say that there was no express mention of whether Ms Lowes would be an employee or contractor, whereas Mr Burkhart says that he made it clear at the beginning that it was to be a *contractual arrangement*. It does not appear, however, that Mr Burkhart spelled out that Ms Lowes was not to be an employee but that she was to be an independent contractor. The term *contractual arrangement* could obviously be construed as meaning an arrangement governed by a contract, which could encompass either a contract of service (employment) or a contract for services (independent contractor).

[11] Mr Burkhart and Mr Etwell discussed what equipment would be needed and it was agreed that much of the equipment was already on site, such as a water blaster (which was a fixed item), cleaning products (which were used in the water blaster), hoses, and brooms and brushes, although Ms Lowes eventually bought her own brooms and brushes because she found the company's ones inadequate.

[12] Mr Burkhart also says that it was agreed with Mr Etwell that personal protective equipment (PPE) would need to be provided by Ms Lowes. In effect, for this job, this PPE appears to have comprised safety boots and a hi-vis vest. Ms Lowes says that she was told around Christmas that she would get a warning if she did not wear safety boots, so she bought a pair the next day, but that she was issued with a hi-vis vest by the respondent company which she kept until she was dismissed. Mr Burkhart said that the respondent provides safety boots for their employees, and that hi-vis vests are issued to all contractors who come on site, which they return when they leave the site.

[13] Mr Etwell and Mr Burkhart also agreed what rate would be paid for the job. Different rates were to be paid depending on the type of unit that was cleaned. The rates ranged from \$30 for cleaning a tractor unit to \$60 for cleaning what is called a *B train*. There were six different sorts of unit that could be cleaned.

[14] Mr Burkhart said that he also met briefly with Ms Lowes and told her that she needed to obtain an invoicing book from a stationery shop which had duplicates or triplicates of the invoices so that she could keep a copy and

the respondent could have the other.

[15] Mr Burkhardt said that he told Mr Etwell that Ms Lowes would need to do the company's normal induction process for contractors and that he left that to Mr Etwell to carry out. The evidence of Ms Lowes and Mr Etwell was that the induction was done by the driver trainer, Gary Shirley, and that Mr Etwell had nothing to do with it. The Authority saw a copy of the *Hall's Safety System Contractor – Task/Site Hazard Identification* form which had been completed for the activity of *cleaning trailers*, and which had been signed by Ms Lowes on 20 August 2014, and countersigned by Mr Etwell in the box marked *supervisor*. However, I accept the evidence of Ms Lowes that Mr Etwell was asked to sign the document by Mr Shirley, and that Mr Etwell was not her supervisor, and that she was effectively left to her own devices once she had become familiar with the tasks she had to carry out, although Mr Burkhardt occasionally directed her as to which units to clean.

[16] Mr Etwell's evidence was that he organised for a truck driver to teach Ms Lowes how to clean the trucks and trailers and that the yardie employed by the respondent moved the trailers on and off the wash pad for her when needed. This is because she could not drive the units herself.

[17] It was common ground that, when Mr Etwell was not driving trucks, he would assist Ms Lowes in the cleaning of the units. He said that the arrangement suited them, as he had lots of free time and they could spend time together.

[18] It was Mr Burkhardt's evidence that the induction process for employees was quite different from the one for contractors, being much more involved. It was common ground that the induction that Ms Lowes was obliged to carry out lasted around three hours. Mr Burkhardt said that an employee's induction can last up to a day, or a day and a half in some cases.

[19] The Authority saw a copy of documents that had been completed by Mr Etwell (who was an employee) which involved a number of pre-employment stages such as reference checks, a criminal check, the completion of a pre-employment medical questionnaire and a drug test, together with the issuing of an offer of employment letter and employment agreement. There were additional stages involved for the employment of drivers. It seems that there is little documentation in place for the induction of a contractor, save the *Safety System Contractor – Task/Site Hazard Identification* form referred to above.

[20] It was common ground that, when she first started, Ms Lowes was obliged to sign the contractor's register when entering the site, but that she was issued with an entry tag which let her swipe in and out to gain access to the yard.

[21] Mr Burkhardt said that, each day, Ms Lowes would present him or the Acting Christchurch Operations Manager, Wayne Holland, with the top copy of her invoice relating to the work she had undertaken on the day in question. The company also required a statement of account before the invoice would be paid, and this would be presented at the end of each week, together with a second copy of the invoice. The company would then reconcile what they had been given, comparing the statement of account and second invoice with the daily first invoices and then send them on to the bill payment administrators by the respondent. This evidence was not contested by Ms Lowes.

[22] The Authority saw copies of two sample invoices, and a statement of account. The invoices were pro forma, and completed in hand, with the words *R/A Fleet Services* written on them, together with the date, the description of the units cleaned, the quantity of units cleaned, the rate for each unit and the total amount billed. The statement of account that the Authority saw was typed and headed up *Statement of Account with R&A Fleetclean*. This showed a running total of the amounts invoiced over the period of 20th to 29th August 2014. It also quoted a BNZ account number, and stated that the rates excluded GST. The statement of account also set out the applicable rates charged for each of the six different units. Mr Lowes said that the bank account number referred to a joint bank account held by her and Mr Etwell.

[23] It was the evidence of Ms Lowes that Mr Etwell adopted the names *R&A Fleetclean*, and *R&A Fleet Services* because they were told that they needed to have a name for their invoices, but that they did not have a registered company. The *R* stood

for Reece, Mr Etwell's first name, and the *A* for Asha, Ms Lowes' first name. They were also not registered for GST and did not provide services to any other entity, except for occasionally cleaning an owner driver's truck for cash.

[24] Ms Lowes said that she did not understand about tax, and had been advised by her grandfather to put some

money aside in case she had to pay tax on the income. Her oral evidence was that she did not know what she had to do about tax because she had not been told what her status was.

[25] It was the evidence of Mr Burkhardt that, after some time, Ms Lowes and Mr Etwell approached him asking if their invoices could be paid weekly instead of monthly, and that this was agreed to by the company. Ms Lowes disagrees, and says that this was the company's idea. Which position is correct is not material for determining whether Ms Lowes was an employee or contractor.

[26] Ms Lowes says in her evidence that she asked for a *contract* several times but was never given one. Mr Burkhardt agrees that she asked him for a contract but says that he advised her that he was not able to give her one because it was not appropriate for the job she was doing.

[27] It is Mr Burkhardt's evidence that Ms Lowes and Mr Etwell came to see him with a suggestion that they could start cleaning units in Auckland; in particular intermodal units known as *TRCs*, that are moved between centres via the rail network. Mr Burkhardt said that Ms Lowes and Mr Etwell said that they wanted to continue cleaning in Christchurch and that they were effectively looking at expanding their operation. This was denied by Mr Etwell, who said that he had been looking to go travelling around New Zealand with Ms Lowes in their house bus, and wanted to *live a bit of a gypsy life* for a while. Cleaning the Auckland units would have been part of that plan. There was no intention to expand the business he said, or to clean buses in Christchurch and Auckland. He said that the intention had been for Asha to clean the trucks and for him to do some truck driving. They did not do this trip in the end. I accept Mr Etwell's evidence on that matter.

[28] In addition, Mr Burkhardt said that Ms Lowes and Mr Etwell became aware that the company was seeking to have its refrigerated containers cleaned, which were containers which were transported by truck and train, and which became extremely dirty due to the diesel from the trains. The company had been talking to a third party

contractor called Chemetall NZ Limited about undertaking the work, but Mr Etwell and Ms Lowes approached him and said that they could do the same job, but at a lower rate. Mr Burkhardt said that Ms Lowes and Mr Etwell actually came in one day and cleaned one of the containers using Chemetall's products.

[29] Mr Etwell also produced a written proposal regarding the cleaning of the refrigerated containers for the respondent to consider, which the Authority saw. This type written document bore the mobile phone numbers of both Ms Lowes and Mr Etwell, and was signed off by the words *The team at R/A FLEET SERVICES*.

[30] The proposal stated that he and Ms Lowes had purchased some chemicals and a 24 hour chemical handling certificate for hydrofluoric acid. The proposal set out the handling requirements for the chemicals, which were hazardous, and stated that they would be required to *purchase and wear the correct ppe, put one staff member through a one day course to get dangerous goods and handling certificate at a cost of*

\$380 dollars and finally carry a suitable first aid kit with appropriate chemical burn treatment solutions.

[31] The proposal stated that they were prepared to *cover and abide by* the above costs themselves and to keep their certificates up to date on a yearly basis. They suggested rates for different types of container. There was also uncontested oral evidence given that Mr Etwell and Ms Lowes also proposed that the respondent company bear the cost of buying the chemicals. The proposal ended with the words *Please feel free to contact either of us on the above contact numbers if you have any questions.*

[32] Mr Burkhardt's evidence was that the company pays for the cost of driving courses that employees undertake and then bond them to the company for a period of time of up to two years. That arrangement was not discussed in relation to Ms Lowes undertaking the dangerous goods training course.

[33] It is common ground between the parties that, on one occasion, Ms Lowes went on leave for a week and organised for the wife of one of the truck drivers to clean the trailers in her absence. Ms Lowes invoiced the company for that work and Ms Lowes in turn paid the wife. It appears that the company had no objection to that. Mr Burkhardt said he met the wife and would have vetoed her if he had not approved of her being used as a substitute.

[34] Ms Lowes said that she invoiced the respondent in the name of *R&A Fleet Services* for the work that the substitute had carried out and that Ms Lowes had passed on the entirety of the earnings to the substitute.

[35] Ms Lowes says that the relationship between her and the respondent company came to an end very shortly after Mr Etwell had resigned from the company. She says that Mr Burkhart told her initially that he was terminating the arrangement with Ms Lowes because she cost too much. She said that she offered to reduce her hours but Mr Burkhart refused. Ms Lowes asked Mr Burkhart if it had anything to do with Mr Etwell's resignation and she says Mr Burkhart agreed that it did, but that he had also had complaints from other truck drivers about the lack of access to the wash bay.

[36] It is Mr Burkhart's evidence that he decided to terminate the arrangement because other drivers wished to clean their own vehicles but Ms Lowes would tell them not to because *she was contracted to wash the vehicles* and had work to do. Mr Burkhart says that she was placing her own interests ahead of that of the company. In addition, Mr Burkhart says that the arrangement was costing too much and questioned whether Ms Lowes was cleaning vehicles that did not need cleaning. In his oral evidence, he agreed that he had been concerned that, as Ms Lowes had access to the site, Mr Etwell could also have gained access after his employment had ceased as he and the company had not parted on good terms.

[37] The arrangement with Ms Lowes was terminated by Mr Burkhart on 18 March 2015 on four days' notice.

The issues

[38] The Authority must determine as a preliminary matter whether it has jurisdiction to consider Ms Lowes' personal grievances by, in turn, determining whether her arrangement with the respondent company was that of an employee or an independent contractor.

[39] The concept of *employee* is defined in [s.6](#) of the [Employment Relations Act 2000](#) (the Act) as follows:

6. Meaning of employee

(1) In this Act, unless the context otherwise requires, **employee** –

(a) means any person of any age employed by an employer to do any work for hire or reward under a contract of service;

...

(2) In deciding for the purposes of subsection (1)(a) whether a person is employed by another person under a contract of service, the court or the Authority (as the case may be) must determine the real nature of the relationship between them.

(3) For the purposes of subsection (2), the court or the Authority-

- (a) must consider all relevant matters, including any matters that indicate the intention of the persons; and
- (b) is not to treat as a determining matter any statement by the persons that describes the nature of the relationship.

[40] In deciding for the purposes of [s.6\(1\)\(a\)](#) of the Act whether Ms Lowes was employed by the respondent company on a contract of service, it is helpful to take into account the factors identified by the Supreme Court in *Bryson v. Three Foot Six Ltd (No 2)*¹, namely:

- (a) The written and oral terms of the contract which will usually contain indications of the common intention concerning the state of the relationship;
- (b) Any divergence from those terms and conditions in practice;
- (c) The way the parties have actually behaved in implementing their contract;
- (d) Features of control and integration and whether the contracted person has been effectively working on his or her own account (known respectively as a control, integration and fundamental test).

The written and oral terms of the contract

[41] There were no written terms of the contract between Ms Lowes and the respondent company.

[42] It is the evidence of Mr Burkhart that there was oral agreement between them as follows:

1 [\[2005\] NZSC 34](#)

- (a) Ms Lowes would invoice the respondent for the work that she did;
- (b) Ms Lowes would charge a set amount based on the type of truck that she cleaned;
- (c) The hours that Ms Lowes completed for the company would vary depending on how much work was required;
- (d) When Ms Lowes completed the work was largely up to her;
- (e) Ms Lowes would be responsible for arranging for someone else to do the work if she was going to take leave of some sort;
- (f) Ms Lowes would not be paid any holiday pay;
- (g) The respondent would not be responsible for paying any taxes associated with Ms Lowes' engagement; and
- (h) The respondent would pay Ms Lowes' invoices on the 20th of the month following it being issued.

[43] This evidence is largely agreed by Ms Lowes and Mr Etwell, although they do not agree that there was any express mention of holiday pay, or that there was any mention of tax.

[44] It is also clear that there was agreement between Ms Lowes and the respondent regarding the provision of equipment, as described above.

Any divergence from those terms and conditions in practice

[45] It would appear that the only divergence from those terms was that Ms Lowes decided to buy her own brooms and brushes and that the payment of the invoices would occur on a weekly basis, after an express agreement was reached between Ms Lowes and Mr Burkhart.

Industry practice

[46] As Ms Mills-Godinet submits, industry practice can be a relevant consideration in determining status. However, no material evidence was heard about the practice across the industry of fleet cleaning, so I cannot take this factor very far.

I do note, though, that the respondent used to have its own employed drivers carry out the cleaning, and then ceased that practice as it did not work effectively. It then engaged a youth group in Auckland to do the cleaning and tried to do the same in Christchurch. This suggests that the arrangement was not one of employment.

How the parties actually behaved in implementing the contract

[47] Although terms were clearly agreed between Ms Lowes (via the agency of Mr Etwell) and the respondent, there was no express agreement as to what the status of Ms Lowes' involvement would be. Whilst I accept that Mr Burkhart clearly intended Ms Lowes to be an independent contractor, Ms Lowes and Mr Etwell never turned their minds to the issue. Ms Lowes was aged 18 at the time and was understandably very inexperienced about such matters. Mr Etwell, whilst a little older, also had little knowledge of the difference between being an employee and being a contractor.

[48] This means that there was no common intention between the parties as to Ms Lowes' status. For this reason, I cannot agree with Ms Mills-Godinet's submission that intention is a significant factor in this case. Therefore, it is necessary to examine the day to day reality of the arrangement and ascertain, by reference to the control, integration and fundamental tests, what the legal nature of the arrangement was.

The control test

[49] This test effectively examines the extent to which the activities of Ms Lowes were controlled by the respondent. There is evidence that, at the beginning, Mr Burkhart advised Ms Lowes how to carry out her job and checked her work. However, this practice stopped after Ms Lowes became more proficient and familiar with the requirements of the work. Thereafter, Mr Burkhart occasionally told Ms Lowes which units to clean although, normally, she organised her cleaning by reference to how dirty each unit was.

[50] However, Mr Burkhart's occasionally directing Ms Lowes as to which unit to clean is no strong indicator of an employment relationship, as the same situation would occur if a plumber came on site to fix a leak; someone within the company would have to point out what work needed doing. Just as the respondent would then leave the plumber to get on with the job of fixing the leak, Mr Burkhart left Ms Lowes to clean the unit he had pointed out to her. After she had been trained, she was not directed as to how to carry out the cleaning.

[51] When weighing up all the evidence, it would appear that there was little or no day to day control of Ms Lowes' activities once she had learned the job. It does not appear that Ms Lowes was supervised and she was able to work whatever days and hours she wanted, although she ended up working most days because trucks needed cleaning each day. She worked during the mornings because it would be less disruptive for the yard but also because her work in the bar was afternoon and evening work.

[52] The one occasion where she was threatened with a warning was because she was not wearing safety boots. Although the person who made the threat of a warning, Mr Shirley, was not present to give evidence, Mr Burkhart said that any contractor not wearing safety boots would be asked to leave site if they had been told to do so once before. Therefore, although the threat of a warning could appear to be evidence of the respondent attempting to impose a disciplinary regime on Ms Lowes as if she were an employee, I am satisfied that the threat of a warning was likely to have been made within the context of an erring contractor.

[53] Overall, I am satisfied that the control test suggests that Ms Lowes was not an employee.

The integration test

[54] This test examines the extent to which Ms Lowes was integrated into the respondent's business. Ms Lowes did use equipment supplied by the respondent, although the water blaster was fixed, and already in place prior to her commencing work. The cleaning chemicals were supplied to be used in the water blaster.

[55] Ms Lowes wore a t-shirt bearing the company's logo, although this belonged to Mr Etwell. The respondent says it did not require Ms Lowes to wear this company t-shirt. Ms Lowes supplied her own safety boots, and her own brushes and brooms. She also was willing to pay for her own attendance at the dangerous goods handling course, whereas the company paid for its employees to attend necessary training.

[56] Ms Lowes was given a company tag to allow her to gain access to the yard, although it appears that other regular contractors, such as the refrigerator repair contractor, also had such an access tag.

[57] Ms Lowes did not take any fixed rest breaks and did not take lunch breaks as her work was generally finished before lunchtime.

[58] Whilst the weighing of the relevant factors in arriving at the conclusion of this test is a little more finely balanced, I am again satisfied that, on balance, it suggests an independent contractor status rather than that of an employee.

The fundamental test

[59] This test, also known as the "economic reality test", examines the extent to which Ms Lowes took on financial risk herself in providing her services.

[60] There are a number of factors which are relevant in considering this test.

- a. Ms Lowes invoiced the respondent in accordance with each unit cleaned. Although this was a requirement of the respondent, she agreed to this arrangement (or Mr Etwell did, on her behalf).

- b. She submitted a monthly statement of account.
- c. Ms Lowes and Mr Etwell adopted a trading name. Whilst Ms Lowes said that this was the idea of Mr Etwell, she went along with the idea, and used it on her invoices. She could just as easily used her own name.
- d. Ms Lowes obtained assistance in her cleaning from Mr Etwell, who did not receive any additional pay from the respondent for that cleaning work, apart for that invoiced by R&A Fleet Services in accordance with the agreed terms.
- e. Ms Lowes effectively subcontracted her work to one of the truck driver's wives during her week off, and invoiced the respondent, passing on the income to the substitute.
- f. Ms Lowes and Mr Etwell sought to expand their cleaning business by trying to obtain work cleaning the company's refrigerated trucks using Chemitall's chemicals. They submitted a written proposal which referred to the R&A Fleet Services *team*.
- g. Ms Lowes was willing to pay for her own attendance at the dangerous goods handling course in order to win that work.

[61] These factors are particularly strong indications of an independent contractor. The attempt to expand their business in particular suggests that Ms Lowes and Mr Etwell were operating a business on their own account. In addition, Ms Lowes was being paid per unit cleaned, rather than per hour. This understandably acted as an incentive on her to clean as many units as she could. Whilst this, in itself, does not necessarily indicate an independent contractor relationship, it is not typical of the way in which the respondent company paid its staff.

[62] The fact that Ms Lowes was not GST registered does not preclude her being an independent contractor. Similarly, the fact that Ms Lowes did not initially understand how she should account to the Inland Revenue Department for the tax she owed, does not preclude her from being an independent contractor. That merely shows that she was embarking on an enterprise for the first time.²

[63] This test strongly indicates that the relationship was one of independent contractor.

The overall picture

[64] The three customary indicia of the control, integration and fundamental tests are not to be applied exclusively and their conclusions are not determinative of the nature of the relationship³. It is necessary, therefore, to stand back and look at the overall picture presented by the relationship.

[65] The key points that Ms Lowes made in her evidence was that she had never been given a contract, despite asking several times, and that she did not know what her status was. However, what this evidence shows is that Ms Lowes and the respondent had never reached a meeting of minds or common intention about her status. In the absence of that common intention, the Authority must ascertain objectively what the reality of the relationship was.

² The questionable relevance of how tax is handled by parties when determining the status of a worker was examined by the Employment Court in *Atkinson v Phoenix Commercial Cleaners Limited* [2015] NZEmpC 19 at [46] and [47].

³ *Bryson* at [32].

[66] It is possible that, if Ms Lowes had been told at the start of the relationship by either the respondent, or her negotiating agent, Mr Etwell, that she would not have the right to bring a personal grievance if she operated the cleaning work in the way that she did, she would have said that she did not want that, and preferred to be an employee. However, that would have entailed her being paid an hourly rate which, almost certainly, would have earned her far less than she did earn in practice, if indeed the respondent had agreed to employ her at all.

[67] What occurred in practice, though, is that Ms Lowes carried out the work in a way which gave her considerable financial advantage over being an hourly paid employee, but which made her, in law, an independent contractor.

Conclusion

[68] Having established that Ms Lowes was an independent contractor rather than an employee, the Authority cannot investigate her personal grievances as it has no jurisdiction to do so.

Costs

[69] Costs are reserved. If the parties are unable to agree to how costs are to be dealt with between them within 21 days of the date of this determination, then the respondent shall have a further 14 days within which to serve and lodge a memorandum of counsel setting out what contribution towards its costs is sought from Ms Lowes, and the basis for that contribution, and Ms Lowes shall have a further 14 days within which to serve and lodge a memorandum of counsel in response.

David Appleton

Member of the Employment Relations Authority

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