

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

WA 20/09
5111328

BETWEEN MAREIKE HUGHES AND
ADRIAN LEE HUGHES
Applicants

AND UPPER HUTT
COSMOPOLITAN CLUB
INCORPORATED
Respondent

Member of Authority: G J Wood
Submissions Received: 20 February 2009
Determination: 27 February 2009

COSTS DETERMINATION OF THE AUTHORITY

[1] In my substantive determination I dismissed Mr and Mrs Hughes' claims against the respondent Club, because for all relevant purposes they were not employees of the Club.

[2] On behalf of the Club Mr Quigg sought a contribution of \$10,000 to its costs, despite actual costs being significantly greater, on the basis that the facts in this matter were of greater complexity than usual.

[3] In response, Mr Gould concluded that costs should lie where they fall because the law under which Mr and Mrs Hughes claims were based was relatively new and untested, as they did not engage in any sham and as they are in an impecunious financial situation. Mr Hughes works off shore on a six weeks on six weeks off basis and Mrs Hughes has not been working.

[4] In reply, Mr Quigg reiterated the complex factual and legal issues involved.

[5] I accept that there were complex legal and factual issues involved in this claim. No previous determinations or judgments had been made on the issue of whether owner/managers were protected by the transfer of undertaking sections in the Act, and because of the way the Club and Mr and Mrs Hughes' arrangements were made, a great deal of factual material had to be sifted through and analysed.

[6] In any event the matter was effectively dealt with within two days and the allowance for two days deals with the issue of factual difficulties. Similarly, this greater length of time provides for a greater amount of legal research to have been undertaken and has thus already been provided for. While the issue was novel it could not be said to be a test case and therefore the principles applying to such cases do not apply here.

[7] In all the circumstances I consider that a contribution to the Club's legal costs of \$6,000 is appropriate, despite the impecuniosity of Mr and Mrs Hughes. Clearly Mr Hughes is in employment and Mr and Mrs Hughes may be in a position to pay any costs award against them over time.

[8] I therefore order the applicants, Mareike and Adrian Lee Hughes, on a joint and severable liability basis, to pay to the Upper Hutt Cosmopolitan Club Incorporated the sum of \$6,000 in costs.

G J Wood
Member of the Employment Relations Authority