

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

<b>BETWEEN</b>	Brian Crisp
<b>AND</b>	Air New Zealand Limited
<b>REPRESENTATIVES</b>	Helen White, counsel for Brian Crisp Kevin Thompson, counsel for Air New Zealand Limited
<b>MEMBER OF AUTHORITY</b>	R A Monaghan
<b>INVESTIGATION MEETING</b>	15 August 2006
<b>SUBMISSIONS RECEIVED</b>	21 August 2006
<b>DATE OF DETERMINATION</b>	20 March 2007

**DETERMINATION OF THE AUTHORITY**

**Employment relationship problem**

[1] Air New Zealand Limited ("Air New Zealand") employed Brian Crisp as a cargo training co-ordinator. The position required him to develop, provide and co-ordinate training courses for Air New Zealand's cargo operations department, across its domestic and international cargo network. Courses would address national and international civil aviation requirements as well as legislative compliance.

[2] Air New Zealand dismissed Mr Crisp for serious misconduct because of what it said was his excessive and non business-related use of the internet on company equipment during working hours.

[3] Mr Crisp says the dismissal was unjustified. He seeks compensation for the associated injury to his feelings, and compensation for the loss of staff travel benefits to which he would have been entitled had the grievance not arisen.

**Company policies**

[4] Although Mr Crisp's employment had commenced on 19 November 1979, the parties' most recent written employment agreement was dated 16 September 2002. That agreement referred at cl 2 to the existence of company policies, and said Mr Crisp should read and ensure he understood them. Clause 3 of the agreement said Mr Crisp should read and adhere to the code of conduct set out in the human resources policy and procedures manual. Clause 17 contained an acknowledgement that Mr Crisp had been offered an opportunity to read and understand the human resources policy and procedures manual. Mr Crisp's signature was just below that provision.

[5] The version of the code of conduct applicable at the relevant time contained a section headed 'email and internet monitoring policy'. The policy began by setting out a non-exhaustive list of examples of inappropriate use of computer resources, including:

“. Using search engines to search for non-company business related topics”

[6] The remainder of the examples addressed pornography and offensive language, the playing of games, the sending of 'virtual' greeting cards and the downloading of unauthorised software. There was no express mention of restrictions on non business-related use, except as set out above and to the extent that other examples amounted to non business-related use.

[7] The policy went on to identify the 'legal issues' to which the company could be exposed as a result of inappropriate use of email and the internet. It ended by stating that the company had developed an email and internet monitoring policy in order to protect against:

“...  
 . unauthorised employee activity  
 . wastage of Company time and resources  
 ....”

[8] In another section headed 'code of conduct standards' the code of conduct provided:

“There are certain standards that the company requires employees to observe ..... The most important are:  
 . ...  
 . to exercise proper constraint when using Air New Zealand's resources – not to waste money, equipment or time”

[9] These are the policies and provisions on which the company says it relied when making the decision to dismiss. A further 'LAN and Desktop Policy' was produced, but the policy does not address non business-related email use and internet access.

### **Mr Crisp's internet use**

[10] From February 2002 at the latest Mr Crisp had the use of a laptop computer provided by Air New Zealand. From it he had full access to the internet as well as to email from his workplace, his home, or anywhere else in New Zealand or in the world.

[11] In March 2005 Mr Crisp's manager, Stephen McKeefry, was asked by his own manager to investigate Mr Crisp's use of the internet. Mr McKeefry's manager made the request because concerns had been expressed to her that Mr Crisp appeared to be spending a great deal of time on the internet while at work.

[12] In response Mr McKeefry requested details of Mr Crisp's usage from the company's IT department. The company's IT system is able to log, monitor and issue reports on individuals' internet use. Mr McKeefry selected a six-week period from the end of January 2005 to mid March 2005.

[13] The detail was provided in the form of two types of computer-based report. One was the 'User Activity Detail' ('UAD') and the other was the 'Browse Time Activity Detail' ('BTAD').

[14] The UAD contained significantly more detail than, and was much longer than, the BTAD. The UAD showed the internet activity recorded against Mr Crisp's login and password, with reference to a named website, the navigation steps (or 'activity') recorded against that website, the category of the website, and the date and time of the activity.

[15] The first UAD began:

"Site	Activity	Category	Date/Time
...findsomeone.co.nz	/convo.asp?md...	Personals and Dating	31/1/..05 11.15.28pm
	/send_message.asp..	Personals and Dating	31/1/..05 11.15.28pm
	...		
	/signout.asp	Personals and Dating	31/1/..05 11.50.46pm
...msn.com	/	Search Engines	31/1/..05 11.51.44pm
	...		
...loginnet.passport.com	/	Computing and Internet	31/1/..05 11.54.30pm
.....		Web-based email	31/1/..05 11.57.33pm
...findsomeone.co.nz	/add_favourite.asp	Personals and Dating	31/1/..05 11.58.13pm
	...		
	/signout.asp	Personals and Dating	31/1/..05 11.59.35pm

[16] In this extract the reported access happens to have occurred after working hours. Air New Zealand decided not to count Mr Crisp's after-hours usage when assessing the extent of his usage. As for the 'findsomeone' site, it is an internet dating site which Mr Crisp admitted using both after hours and at work. The company's IT system correctly applied the 'personals and dating' category to it. The activity column records the navigation step, or page accessed, within the website, while the date/time column records the date and time on which the access occurred. It is not possible to record how long a user is active on the pages in question, although some inferences can be drawn about activity on a site from the navigation steps taken and the times at which they were taken.

[17] The BTAD is a guide to the amount of time a user has spent on the internet. It shows activity recorded against a user's login and password with reference to date, time and duration. The extract set out in [15] above is reflected as follows in the BTAD:

"	Date	From	To	Duration
Monday	31/1/2005	11.15.28pm	11.55.30pm	0:40:02
Monday	31/1/2005	11.57.33pm	12.02.35pm	0:05:02
				<b>0:45:04</b>

[18] I was told that, because it is not possible to record precisely how long a user is active on a particular page, the timer runs for up to three minutes after the last recorded navigation step to take account of time taken to read the last page accessed. Thus the first line in [17] above records a stop time one minute after the corresponding access time in the UAD report. The second line picks up the next page accessed after that gap, but adds three minutes to the recorded sign out time.

[19] The BTAD for February 2005 indicated Mr Crisp had spent a total of 57:18:21 on the internet, incorporating all access time. The UAD showed extensive visits to the findsomeone site during working hours. The BTAD for March 2005, ending on 18 March 2005, indicated Mr Crisp had spent 15:37:27 on the internet. Again this incorporated all access time. The UAD showed frequent web-based email access during working hours, less frequent access to dating

sites than the previous month, and access to a variety of other sites including travel, news, sport and shopping sites.

### **Air New Zealand investigates**

[20] Mr McKeefry decided an investigation was necessary. He advised Mr Crisp of this formally in a letter dated 29 March 2005. Then he met with Mr Crisp on 31 March 2005, provided him with copies of the BTADs and UADs to which I have referred, and advised that the company had a concern about the amount of work time spent on the internet for non work-related purposes. Mr McKeefry told Mr Crisp the matter was serious. Mr Crisp would be asked at a later meeting to distinguish which of the sites were for business use and which were not. Mr McKeefry also provided Mr Crisp with a copy of the code of conduct, and said Mr Crisp acknowledged being aware of the email and internet policy.

[21] Mr Crisp said in his written statement to the Authority that he advised Mr McKeefry he intended to resign as a result of the allegations, and Mr McKeefry told him not to do that as the investigation would not result in dismissal. The statement did not specify when this conversation occurred.

[22] In oral evidence Mr Crisp said he was waiting outside the meeting room on the morning of 31 March when he informed Mr McKeefry that, if the matter was likely to end in his dismissal, he would resign instead. According to him, Mr McKeefry replied the most that would probably happen was that his internet access would be restricted. Even that is not an unqualified assurance that there would be no dismissal.

[23] However Mr McKeefry denied having such a conversation. He said Mr Crisp did ask what was likely to happen, and his response was that there would be an investigation. He also said Mr Crisp was trying to 'tease out' what would happen, with the response being Mr McKeefry did not know what the outcome would be.

[24] I consider it likely that Mr Crisp had a conversation with someone about the possibility that the outcome would be no more than restricted internet access. However I consider it unlikely that person was Mr McKeefry. Mr Crisp's union organiser Mike Loughran, for example, said in evidence that he discussed possible outcomes with Mr Crisp. He also said he did not expect Mr Crisp to be dismissed. Moreover if Mr McKeefry made the statements attributed to him, they were at odds with the tone and content of all of the rest of the evidence. This includes the correspondence associated with the disciplinary procedure, warning Mr Crisp of the possibility of dismissal.

[25] A further meeting was convened on 4 April 2005, for the purpose of working through the reports. Mr Crisp attended with Mr Loughran. According to the minutes of the meeting Mr McKeefry advised that it appeared a lot of non business-related sites were being visited during work hours. He repeated that the company was taking the matter seriously and that the outcome could be up to and including termination of employment.

[26] At that meeting Mr Crisp estimated that he spent 25 hours in February 2005 on business-related access, although no details of how he reached that estimate were provided in the Authority. Eventually he acknowledged he had made an assumption in the course of working through the sites he had visited. Indeed on 4 April 2005 he was able to and did go through the UADs and identify and explain the sites he had visited.

[27] The minutes of the meeting indicate the discussion was very detailed, with the emphasis on identifying business and non business-related activity. With minor exceptions the minutes do not disclose any difficulty on Mr Crisp's part in recognising sites or explaining his reasons for visiting them. In the course of explaining his activity he admitted to accessing a number of sites for personal reasons. As well as the dating site, these included accessing web-based email through hotmail (loginnet.passport).

[28] Further explanations were:

- (a) Mr Crisp did not know the policy about the use of approved sites, although he was aware of the prohibition on accessing pornography and did not seek to access those sites;
- (b) Mr Crisp was often interrupted while on the internet during the day – minimising his screen but not logging off when that happened - which could be why his usage seemed high;
- (c) There were personal reasons why Mr Crisp accessed the dating sites, and he also felt he had 'lost direction' at work during January and February although now he felt he had a direction.

[29] Because he understood Mr Crisp was saying his level of activity was unusual, Mr McKeefry decided to check whether that was so. He asked the IT department to provide reports for a further six months back. The department provided him with monthly UAD reports back to March 2004. These reports suggested to Mr McKeefry that Mr Crisp's pattern of high internet use was not limited to the 6-week period originally under review.

[30] The human resources consultant for airport services, Chris Mills, conducted a manual analysis of the browse time over three sample months. They were August and October 2004, and February 2005.

[31] Mr Mills' purpose was to identify from the UAD reports usage which appeared to be on working days, during working hours, and not business-related.

[32] In turn 'working days' were treated as Mondays to Fridays (inclusive), and 'working hours' were treated as 8 – 8.30 am to 5.30 – 6.00 pm. Not infrequently it was apparent from the website accessed, and the associated navigation steps, that workplace access had commenced before 8.30 am or continued after 5.30 pm. Mr Crisp was salaried but his employment agreement identified his ordinary hours of work as 40 per week, from Monday to Friday (inclusive), and from 8.30 am to 5.30 pm. There was to be an unpaid meal break of between half an hour and an hour.

[33] Regarding access to non business-related sites, Mr Mills counted access to sites such as hotmail (loginnet.passport), dating sites (which were also accessed very extensively in August 2004 and extensively in the second half of October 2004), games sites, hobbies and recreation sites, job search sites, travel sites and ebetonline.co.nz (a TAB betting site). Then, limiting his attention to activity occurring during working hours, he identified start and finish times for the access in question. He added together the resulting blocks of time to obtain total usage time during working hours.

[34] He also said he did not allocate additional minutes at the end of gaps in activity, unlike the BTAD reports. However reference to Mr Mills' annotated UAD reports showed occasional gaps in access, usually in the order of 3 – 10 minutes but sometimes up to 20 minutes, which were treated as continuous use for the purposes of Mr Mills' calculations. Cross reference with the relevant BTAD report

for February 2005, for example, showed the timer had stopped during parts of periods Mr Mills had treated as continuous, although adding a maximum of 3 minutes to the time of the last navigation step. In short, Mr Mills counted time which the BTAD report did not, and the BTAD report counted time which Mr Mills did not. Overall both methods of counting browse time had their weaknesses.

[35] Mr Mills' totals for non business-related access during working hours were: August 2004, 55 hours 49 minutes; October 2004, 35 hours 30 minutes; and February 2005, 48 hours 17 minutes.

[36] Mr McKeefry sought another meeting with Mr Crisp. It went ahead on 29 April 2005. The purpose of this meeting was to hand to Mr Crisp copies of the second set of UAD reports, which was done. It was not clear whether it was then, or later, that Mr Crisp was also given the annotated reports incorporating Mr Mills' browse time calculations. In any event Mr Crisp said he did not analyse the reports when he received them, although he noticed an anomaly relating to the December 2004 report.

[37] A fourth meeting was conducted on 3 May 2005 in order to obtain Mr Crisp's comments on the reports.

[38] When giving evidence Mr Crisp sought to challenge the browse time calculation for February 2005, saying he had calculated 41 hours and 56 minutes' use was in his own time (including 'lunch time'). He did not produce his calculations in support and did not otherwise identify what periods he considered his 'own time'. His analysis left me unconvinced of the validity of his calculations. However, bearing in mind the weaknesses in calculating the extent of user activity anyway, non business-related working hours usage had to be lower than the overall totals in the BTADs and was probably lower than Mr Mills' figures.

[39] When giving evidence Mr Crisp also sought to explain his accessing web-based email by saying he did that at lunchtimes, giving the month of August 2004 as an example and speculating that February 2005 was similar. That does not adequately explain the particularly extensive access to web-based email and dating sites during those months. Nor was that explanation given to the company during its investigation.

[40] Mr Mills could have made allowance for possible lunch time browsing, although the reports did not show a pattern of clumped navigation steps that would point to such browsing. Moreover Mr Crisp's own calculation of his usage, reached by way of an estimate allowing for 30 minutes per day of lunchtime browsing, was 44.49 hours for August 2004 and 25.3 hours for October 2004. Details of how the estimates were reached were not provided, but the estimates contain an implied acknowledgement of the extent of the access.

[41] A further explanation Mr Crisp gave the company was that someone having his login details might have borrowed and used his laptop. He pointed this out because he noticed certain access had been attributed to him at a time when he was on holiday, in December 2004. He said, correctly, that the access was not his. The error arose because no-one noticed until considerably later that the report for that month was generated in respect of another user with the surname Crisp. That error did not affect the overall extent of the access.

[42] As for the reports which were generated under Mr Crisp's user name, at the time Mr Crisp named two people who may have had access to his login details. Mr McKeefry subsequently raised the matter with both. One, a cargo operations manager at the time, said he had used Mr Crisp's login to operate data video

presentations but not to access the internet. He had not shared the password. The second, apparently now a cargo operations manager himself, said he had not shared or used Mr Crisp's password. In an undated letter subsequently provided to the Authority he, too, referred to using Mr Crisp's laptop and access codes in order to operate electronic training presentations. He made no mention of using Mr Crisp's codes to access the internet, or of anyone else doing so.

[43] There was discussion during the investigation meeting about how other managers, or students attending training courses, might obtain access to the internet using Mr Crisp's details. That discussion became increasingly speculative, and the scenarios increasingly unlikely. There was no evidence anyone actually did log on as Mr Crisp to access the internet, and in any event Mr Crisp's password changed monthly. I do not accept the assertion that it would nevertheless be easy for students to later work out what the changed password was, let alone to the extent necessary to continue to access the internet and make a material impact on Mr Crisp's usage data.

[44] More significant, though, was the nature and extent of the personal use to which Mr Crisp admitted, coupled with his recognition of the business-related sites he also accessed. Further, Mr Crisp told Mr McKeefry he had not received unusual email messages that might suggest someone else was sending messages using Mr Crisp's login details. Overall there was little scope for identifying more than relatively brief periods of possibly unauthorised access.

[45] Returning to the 3 May meeting, Mr Mills told Mr Crisp the main concern was with the amount of time spent accessing two sites in particular – the hotmail site and the dating site.

[46] Mr Crisp responded that he was now committed to work, and found the work challenging.

[47] The meeting was adjourned while Mr McKeefry considered these responses.

### **The decision to dismiss**

[48] Mr McKeefry announced his conclusions at a further meeting on 11 May 2005. He read a prepared statement, in which he detailed his findings and the reasons for them. According to the statement, he looked at four aspects of Mr Crisp's usage:

- (a) internet usage by category;
- (b) sites visited within each category should be viewed for business use;
- (c) the duration of actual usage for non business-related activity;
- (d) awareness of the code of conduct.

[49] Regarding usage by category, 19 categories were identified overall. Of those, Mr McKeefry said four in particular were of concern although others, too, were inappropriate for viewing while at work. The four of particular concern were: adult/sexually explicit; chat; personal and dating; and shopping. Air New Zealand accepted that the first of these probably appeared as 'pop-ups'. Mr Crisp was not accused of, or dismissed for, deliberately accessing sites of that kind.

[50] Of the non business-related use over all categories, Mr McKeefry referred to the detailed admissions made at the 4 April meeting.

[51] Regarding the duration of use, Mr McKeefry referred to Mr Mills' calculations of browse times for the months of August and October 2004, and February 2005. He commented that the data showed a trend in which Mr Crisp would log on first thing in the morning to check personal messages, then continue this activity during the day. He found Mr Crisp's use significantly exceeded acceptable levels of internet use for non business-related matters. Indeed he estimated that this use represented approximately 20-30% of working hours.

[52] Mr McKeefry also found Mr Crisp was aware of the internet and email monitoring policy. He also believed Mr Crisp should have known better than to act as he had, particularly in the light of his position as a long serving employee and trainer of other staff members. He concluded Mr Crisp's actions comprised a serious breach of trust and confidence and summary dismissal was appropriate.

### **The test of justification for the dismissal**

[53] Section 103A of the Employment Relations Act 2000 sets out the test of justification for a dismissal. Counsel for Air New Zealand submitted that, in the light of the application of the test as discussed in **Air New Zealand Limited v Hudson** (30 May 2006, Judge Shaw, AC 30/06) and other authorities he cited, the questions were:

- (a) was it fair and reasonable for the employer to conclude that:
  - (i) Mr Crisp's internet use during work hours for non work related matters was excessive and outside acceptable levels; and
  - (ii) Mr Crisp's use of company resources was inappropriate.
- (b) if so, was dismissal an option available to it, measured against what a fair and reasonable employer would have done.

[54] Mr Crisp's position as he and Mr Loughran put it to Air New Zealand during the company's investigation was based substantially on the notion that dismissal was not an appropriate sanction despite Mr Crisp's usage, and in any event that Mr Crisp should be permitted to resign. The inappropriateness of dismissal as a sanction was a strong focus during the Authority's investigation meeting too.

[55] Further issues associated with the fairness and reasonableness of the company's conclusions about the nature and extent of the use were also addressed in the evidence and in submissions on behalf of Mr Crisp. They concerned:

- (a) Mr Crisp's knowledge of company policies; and
- (b) whether Mr Crisp's use of the internet for non-business reasons was excessive.

### **The fairness and reasonableness of the employer's conclusions**

#### **1. Company policies**

[56] The policies and supporting materials provided to the Authority, and relied on in justifying the decision to dismiss, emphasised access to inappropriate sites with particular reference to offensive or pornographic material. Those matters were not in issue in Mr Crisp's circumstances. In other respects the company's expectations regarding staff access to email and the internet were conveyed in much less direct terms. In particular neither the email and internet monitoring policy nor the rest of the code of conduct contained a clear statement about non business-related access. References to the use of search engines (which was not

relied on in Mr Crisp's dismissal), unauthorised activity, and wastage of company time and resources, were indirect or generalised at best in that context.

[57] I do not believe such material is adequate in itself to make clear the company's position on non business-related access by staff to company-provided email and internet services.

[58] At the same time Mr Crisp admitted breaching the email and internet monitoring policy and the code of conduct, but said he did not do so deliberately and was unaware of the email and internet monitoring policy. If Mr Crisp was unaware of that policy, then he should have been aware of it and that aspect of his explanation is unsatisfactory. The existence of the policy had been pointed out to him in association with a much earlier warning which I have not detailed, he had signed an acknowledgement regarding the contents of the code of conduct, and the policy was accessible through the company's intranet.

[59] Further to the waste of company time and resources. Mr Crisp admitted he was guilty of such waste, but takes issue with the sanction imposed as a result.

## 2. The extent of Mr Crisp's internet use

[60] Two issues arise when considering the extent of Mr Crisp's internet use. They concern:

- (a) the reliability of the access data; and
- (b) whether anyone other than Mr Crisp could have engaged in the activity attributed to him.

[61] The raw data regarding Mr Crisp's internet activity was contained in the UAD. I have referred to the weakness in the data in that it is not possible to specify precisely how long a user is active on a website page, and I do not accept that Mr Mills' efforts amounted to a more accurate way of addressing that weakness. I would say, nevertheless, that the weakness no more than partially supports Mr Crisp's explanation to the company that his user time could appear high because he was minimising website windows rather than logging off to do other work. The BTAD attempts to take account of that.

[62] The weakness might be fatal to the justification for a dismissal where apparent activity was less extensive than Mr Crisp's. However even taking the weakness into account, I consider it obvious that Mr Crisp accessed non business-related sites to an extremely high degree. He has admitted to much of that usage. The difficulty lies in identifying the exact extent of it.

[63] In the Authority Mr Crisp challenged the accuracy of the company's conclusion about usage time during working hours by saying the company did not accurately identify his working hours. To the extent the challenge was to the company's estimate that Mr Crisp spent 20-30% of his working time accessing the internet on personal business, the estimate itself was not a ground for dismissal but rather an attempt to place in context and proportion the extent of that access. I treat it as no more than that.

[64] As for the meaning of 'working hours', Mr Crisp said he worked well in excess of 40 hours per week, his work and home life intermingled and he worked at weekends. While that might in general be true, Mr Crisp did not identify any activity in February and March 2005, for example, that should be excluded from the company's calculation as a result. Moreover, at times his apparently after-hours activity was also very high. Secondly Mr Mills' review indicated that Mr

Crisp had a pattern of logging on at home early in the morning, logging off shortly afterwards, travelling to work, logging on again on arrival at work, being active on the internet at intervals throughout the day, logging off at about 5 pm, then often logging on again in the evenings. This was not challenged at the time, and was admitted during the investigation meeting. Mr Crisp was saying there should be some offsetting of this workplace access against time he spent on business-related work while at home. Overall, however, his evidence on the point was too vague to give that argument any weight.

[65] I accept that lunchtimes could be said to be personal time rather than 'working hours', but not that possible lunchtime use on Mr Crisp's part is sufficient to explain his level of non business-related access or the pattern of access.

[66] Turning to whether the recorded access could be attributed to Mr Crisp or to persons unknown, regarding access in February and March 2005 it is significant that Mr Crisp was able in early April 2005 to recall most of the sites he had visited and explain the reasons for the visits. Also many of the sites he admitted visiting in February and March 2005 were visited in the earlier months for which reports were generated, and there is no reason to doubt that Mr Crisp was the visitor. Not only that, he made no attempt to explain these earlier visits to Air New Zealand during its investigation.

[67] Mr Crisp said he made others aware of his password and login details. I have already addressed the evidence on the point, and found the explanation unconvincing in the circumstances. Regarding the company's approach to the explanation, it investigated on the basis of the information Mr Crisp provided, and for good reason found the explanation wanting.

### 3. Conclusion

[68] Despite the lack of specificity in Air New Zealand's policies on non business-related email and internet use, and the weakness in the methods of calculating user time, the contents of the UADs as well as Mr Crisp's admissions and acknowledgements mean it was fair and reasonable for the company to conclude Mr Crisp's access was excessive and his use of company resources was inappropriate.

#### **Whether a fair and reasonable employer would have dismissed**

[69] Some degree of non business-related access was tolerated during working hours. Mr Crisp knew that, but he also knew his own personal access was at least very high. There was an implied acknowledgement on his part that some sanction short of dismissal could have been appropriate.

[70] Regarding dismissal as a sanction I repeat my reservations about the lack of clarity or specificity over acceptable levels of non business-related email and internet access, and the inability to be exact about the extent of Mr Crisp's non business-related access in working hours.

[71] Although Air New Zealand attempted to address the latter in part in the form of Mr Mills' manual analysis, the analysis was not sufficient to overcome the weakness and contained a further weakness of its own. The result was that the analysis on which Air New Zealand relied when making its decision probably overstated the level of Mr Crisp's access.

[72] Factors of that kind would in general weigh against dismissal being the action a fair and reasonable employer would have taken. That is even more so where, as here, summary dismissal has been imposed.

[73] For those reasons, on balance I conclude that summary dismissal was not the action a fair and reasonable employer would have taken.

[74] I therefore find that summary dismissal was unjustified and that Mr Crisp has a personal grievance.

### **Remedies**

[75] Because he obtained alternative employment almost immediately, Mr Crisp has sought remedies only under s 123(1) (c) of the Employment Relations Act 2000.

[76] Regarding compensation for injury to feelings under s 123(1) (c) (i), Mr Crisp's evidence indicated the injury amounted to shock and bewilderment that dismissal rather than some lesser sanction had been imposed. That injury flows directly from the unjustified element in his dismissal, and Mr Crisp is entitled to some compensation as a result. However I do not believe a high award is warranted. Accordingly Air New Zealand is ordered to pay to Mr Crisp the sum of \$2,000 as compensation for injury to his feelings.

[77] Regarding remedies overall, despite the inability to be exact about its level I find Mr Crisp's non business-related access was extensive to the point of being excessive. I regard his level of contribution to the circumstances of his personal grievance as sufficient to mean no further remedies are warranted.

### **Costs**

[78] Costs are reserved. The parties are invited to reach agreement on the matter. If they seek a determination from the Authority they are to file and serve memoranda on the matter within 28 days of the date of this determination.

**R A Monaghan**  
**Member of Employment Relations Authority**