

been unjustifiably dismissed. I awarded the applicant \$12,000 compensation for humiliation and injury and 3 months lost wages.

[2] Because of the parties have not agreed on the quantum of lost wages Mr Pollock now seeks a determination from the Authority to that end.

Applicants' Position

[3] Mr Pollock says his annual pay rate was \$65,000 and accordingly he seeks \$5,416.66 per month x 3, i.e. \$16,250.

[4] The only income he received during this period was that earned from his cleaning business "*which was an income over and above the \$65,000 salary*" (letter of 3 December 2009), i.e. as was made clear in the Authority's substantive investigation, it was a business Mr Pollock was operating with his employer's consent. Seasonal work undertaken by the applicant (and referred to in the substantive determination) took place outside of the 3-months period claimed for lost wages.

Company's Position

[5] In submissions received on 18 December, the company says that – in respect of the lost wages period of 3-months – Mr Pollock owned and operated his cleaning business during that time and derived income. Requests to his advocate for relevant details of earnings have been ignored. In reliance on the wording in determination WA 117/09 and WA 117B/09, 3-month's lost wages should be discounted by Mr Pollock's cleaning business earnings.

Discussion and Findings

[6] As is made clear above, during the substantive investigation, Mr Pollock gave evidence that for some of the time he worked for the company he enjoyed its agreement that he run his own cleaning business.

[7] I agree with Mr Pollock's submission that the 3-months lost wages he seeks arising out of the unjustified termination of his employment by the company should

not be offset by earnings he enjoyed during the period of his employment and would have enjoyed for the next 3-months had he remained in the respondent's employment; to adopt the company's position would be to penalise Mr Pollock again for the respondent's unjustified conduct.

[8] Having attempted to mitigate his losses by seeking fresh employment, and finding some seasonal work after the first 3-months, the company's obligation to Mr Pollock is to pay him for the full amount of wages lost for that period, i.e. \$16,250

Determination

[9] The company is directed to pay Mr Pollock for 3-months lost remuneration, i.e. \$16250 (sixteen thousand, two hundred and fifty dollars).

Denis Asher

Member of the Employment Relations Authority