



# New Zealand Employment Relations Authority Decisions

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## Smith v Air2There.com (2008) (Wellington) [2011] NZERA 436; [2011] NZERA Wellington 115 (24 June 2011)

Last Updated: 7 July 2011

IN THE EMPLOYMENT RELATIONS AUTHORITY WELLINGTON

[2011] NZERA Wellington 115 5320148

BETWEEN

DAVID SMITH Applicant

AND

[AIR2THERE.COM](#) (2008)

LIMITED

Respondent

Member of Authority:

Eleanor Robinson

Determination:

24 June 2011

[1] By determination [2011] NZERA Wellington 62 the Authority found that Mr Smith had been unjustifiably dismissed by the Respondent, Air2there.Com (2008) Limited ("Air2there").

[2] The costs determination [2011] NZERA Wellington 98 was issued on 9 June 2010. The parties are now seeking clarification on aspects of the remedies and costs awards made, specifically:

(i) In respect of the order to pay 3 months reimbursement of lost income, whether the notice period paid to Mr Smith following his dismissal is to be deducted from the 3 months reimbursement of lost wages, being monies earned by Mr Smith in the way of paid employment.

(ii) Verification of whether Mr Smith's bank statements confirm that he received unemployment benefit during the 3 month reimbursement of lost income

(iii) Whether [Air2there.Com](#) (2008) Limited ("Air2there") should be ordered to pay the hearing fee in the sum of \$306.66.

### SUPPLEMENTARY DETERMINATION OF THE AUTHORITY

#### Determination

#### Reimbursement of Lost Income

[3] The dictionary definition of 'earn' is: "*obtain or be entitled to as reward of labour or merit*". The payment to Mr Smith in respect of his notice period was not a reward for his labour, since he did not work during the notice period, which was paid in lieu of notice.

[4] Equally, the payment could not be asserted by Air2there to be made in recognition of Mr Smith's merit, since Air2there dismissed Mr Smith. Rather the payment is rightly to be regarded as an entitlement to recompense for Mr Smith having been derived of the opportunity to work his notice upon advice of termination of employment.

[5] I determine that the reference in the determination [2011] NZERA Wellington 62 to

*"deductions for any monies earned by Mr Smith in the way of paid employment"* was not intended to, and does not include, the notice period payment.

[6] I order that Mr Smith be paid lost earnings for a period of three months without deduction for the payment made in respect of the notice period upon termination of employment.

#### **Verification of Bank statements**

[7] I have examined the bank statements provided by Mr Smith, and can verify that there are no payments contained therein attributable to unemployment benefit during the period from 1 November 2010 to 31 January 2011.

[8] I order that Mr Smith be paid lost earnings for a period of three months without deduction for unemployment benefit.

#### **The Hearing Fee**

[9] The Notice of Investigation form at note 3 advises:

*Hearing fees may be payable. The first day is free. For the second and any subsequent day, hearing fees of \$153.33 per half day are payable by the party that started the proceedings.*

[10] Mr Smith was the party who started the proceedings. Mr Smith has been awarded costs and reimbursement of the filing fee. I make no order for Air2there to pay the hearing fee.

**Eleanor Robinson**

**Member of the Employment Relations Authority**

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