



# New Zealand Employment Relations Authority Decisions

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## Smith v Air2there.com (2008) Limited (Wellington) [2011] NZERA 545; [2011] NZERA Wellington 124 (28 July 2011)

Last Updated: 24 August 2011

IN THE EMPLOYMENT RELATIONS AUTHORITY WELLINGTON

[2011] NZERA Wellington 124 5320148

BETWEEN

DAVID SMITH Applicant

AND

[AIR2THERE.COM](#) (2008)

LIMITED

Respondent

Member of Authority:

Eleanor Robinson

Determination:

28 July 2011

### SUPPLEMENTARY DETERMINATION OF THE AUTHORITY

[5] The dictionary definition of 'remuneration' is: "*Payment for services. Can include reasonable allowances in respect of expenses properly incurred in the pursuance of the duties of any office*".<sup>[1]</sup>

[6] The Applicant has advised that the tax-free payment of \$169.23 a fortnight was made to recompense for expenses incurred during his employment, including mobile telephone usage.

[7] The Applicant was suspended from 16 August 2010 until his employment was terminated by letter dated 25 September 2010. During the period of the Applicant's suspension, he was not required to carry out any duties, and consequently I find that there were no properly incurred expenses in pursuance of his duties during the period for which lost wages were awarded.

[8] I determine that the tax free payment of \$169.23 a fortnight is not to be included as part of the award for lost wages pursuant to s 128 (2) of the Act.

**Eleanor Robinson**

1 Mozley & Whiteley's *Law Dictionary* Eleventh Edition

**Member of the Employment Relations Authority**

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[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. A Supplementary determination [2011] NZERA Wellington 115 regarding remedies and costs was issued on 24 June 2011.

[3] The Applicant is now seeking clarification on whether a tax-free payment of \$169.23 a fortnight should be included as part of the award for lost wages pursuant to [s 128](#) (2) of the [Employment Relations Act 2000](#) ("the [Act](#)").

#### **Determination**

#### **Reimbursement of Lost Income**

[4] [Section 128](#) (2) of the [Act](#) states:

*If this section applies then, subject to subsection (3) and [section 124](#), the Authority must, whether or not it provides for any of the other remedies provided for in [section 123](#), order the employer to pay to the employee the lesser of a sum equal to that lost remuneration or to 3 months' ordinary time remuneration.*

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