

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-A-TARA ROHE**

[2026] NZERA 264
3330280

BETWEEN

PHIL JACKLIN
Applicant

AND

PLANIT SOFTWARE TESTING
LIMITED
Respondent

Member of Authority: Geoff O'Sullivan

Representatives: Rachel Burt, counsel for the Applicant
Peter Kiely & Anthony Kamphorst, counsel for the
Respondent

Investigation Meeting: 18 & 19 November 2025 at Wellington

Submissions Received: Up to and including 15 April 2026

Determination: 1 May 2026

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Phil Jacklin was employed by Planit Software Testing Limited (Planit) in November 2023 as General Manager Central. This entailed managing Planit's Wellington office. His first day of employment was 22 January 2024. Mr Jacklin's Employment Agreement provided that he was eligible to receive a short-term incentive bonus of up to 25% of its annual salary.

[2] At the commencement of Mr Jacklin's employment, key performance indicators (KPIs) and the eligible amounts on which any bonus would be paid, had not been set because Planit was undergoing an international restructure. Mr Jacklin says delays in setting the KPIs and the eligible amounts on which bonuses would be based, frustrated him to the extent in August 2024 he escalated the issue, not for the first time, saying he

needed the issue resolved and that Planit was not honouring his contractual terms. He says he was entitled to a bonus which should have been paid quarterly and the first quarter payment was overdue.

[3] In September 2024 Mr Jacklin went on a preplanned holiday. When he returned to work on 24 September 2024 he noted there had been no response from Planit regarding his concerns. He says that because he was tired of being continually fobbed off with different excuses over a six month period, his trust and confidence in Planit was damaged beyond repair.

[4] Planit had not met its obligations, was in breach of the express terms of his Agreement, namely his remuneration (payment of bonus) and KPIs. He saw his position as untenable and on 26 September 2024 he resigned effective immediately by email.

[5] Mr Jacklin says he resigned because of Planit's material breaches of his Employment Agreement. He seeks:

- (a) Reimbursement of lost wages from the date of his constructive dismissal to the date of the Authority's Determination.
- (b) Damages of \$25,000 for humiliation, loss of dignity, and injury to feelings caused by Planit's unjustified actions.
- (c) A sum of \$50,000 for humiliation, loss of dignity, and injury to feelings as a result of his unjustified dismissal.
- (d) A bonus payment of \$19,720 being the sum Mr Jacklin says he was entitled to for his performance over April to June 2024, being one quarter of 25% of his base salary.
- (e) A penalty of \$5,000 to be paid to him recognising Planit's breaches.
- (f) A penalty of \$5,000 to be paid to him recognising a breach of the duty of good faith which was deliberate, serious, and sustained.

[6] Planit says that Mr Jacklin was not constructively or unjustifiably dismissed. It says it did not breach Mr Jacklin's Employment Agreement and nor did it cause any unjustified disadvantage and therefore denies that Mr Jacklin is entitled to any of the remedies he seeks.

The Authority's investigation

[7] During the investigation meeting the Authority received evidence from Mr Jacklin, his wife Felicity Jacklin, and Mr Reg Prasad. For the Respondent evidence was given by Ramandeep Singh Sethi, Emma Lucinda Brbich, and Jason Bargent. All evidence was given on oath or affirmation.

[8] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

The issues

[9] The following issues were identified for investigation and determination:

- (a) What is the plain meaning of clause 6.2 of Mr Jacklin's Employment Agreement?
- (b) Did Planit breach its contractual obligations to Mr Jacklin, and if so, how?
- (c) If there was a breach of the Employment Agreement, was the breach serious enough that it was foreseeable that he would resign in circumstances which would constitute an unjustified constructive dismissal?
- (d) If Mr Jacklin was not constructively dismissed, was he disadvantaged in his employment?
- (e) If Mr Jacklin was unjustifiably constructively dismissed or disadvantaged in his employment, is he entitled to the remedies he seeks?
- (f) Is there a basis on which the Authority should order penalties against Planit?
- (g) Should any remedy awarded, be reduced (under s 124 of the Act) for blameworthy conduct by Mr Jacklin which contributed to the circumstances which gave rise to his personal grievance(s)?
- (h) Is either party entitled to an award of costs?

Background

The Parties Employment Agreement

[10] An important part of Mr Jacklin's claim revolves around the meaning of clause 6.2 in his Employment Agreement insofar as it related to bonuses. The Agreement provided:

6.2 In addition, you are eligible to receive an annual short term incentive bonus of up to 25% of your annual salary. KPIs and eligible amounts will be set for you at the beginning of each Financial Year. All bonuses and incentives are at the absolute discretion of the Chief Operating Officer or Chief Executive Officer.

Mr Jacklin's Evidence

[11] Mr Jacklin says that during interviews he had with the recruiter and with Planit, his expectation was the salary was set at a minimum of \$306,000 with an additional 25% short term incentive plan (STI). He says he was asked during his interview whether he would accept the position if Planit matched his previous remuneration. He says although the timing of when any STI plan payments would be paid out was not discussed, his expectation was that it would be paid quarterly as this was an industry norm and had been the case in previous roles he was engaged in involving STI plan payments.

[12] On 7 November 2023 Mr Jacklin was provided with a letter of offer and the Employment Agreement terms¹. In referring to clause 6.2 of the Agreement, Mr Jacklin stated that there was a clear and unambiguous contractual obligation to provide KPIs and eligible amounts at the beginning of each financial year. The start of the financial year was 1 April. He says he trusted Planit to honour the commitment that it had made.

[13] After signing his Employment Agreement on 9 November 2023, Mr Jacklin commenced his employment. The KPIs and eligible amounts on which any bonus would be calculated were not available at the commencement of Mr Jacklin's employment. Mr Jacklin held the view that provided he met any KPIs, a bonus would be paid quarterly. He wanted the KPIs and eligible amounts to be in place by 1 April 2024. On 8 April 2024 he emailed the Executive General Manager Ramandeep Singh

¹ Document PJ6

Sethi advising that he had fielded a number of questions regarding incentive plans and asked whether Planit had incentive plans for GMs “FY25”. Mr Jacklin received no reply to the email until he received a verbal response on 25 April when he met with Mr Sethi who advised him he was still waiting on the Chief Revenue Officer, Jason Bargent, for an update.

[14] On 24 May 2024, Mr Jacklin emailed Mr Bargent and Mr Sethi regarding the STI plan. He stated: ²

Let’s talk comms plans. I’m miffed that we don’t have comms plans yet. Given we are two thirds through the first quarter, and I’m on budget, I’m assuming that I’m going to get 100% of this quarter’s attainment, if not more. ...

And then further:

Until a comms plan comes, I’m assuming that achieving 100% of my budget earns 100% of my comms plan, calculated and paid quarterly. If that’s not the case, to be frank, it should have been dealt with before now. I have never started a commission period without a written and signed comms plan in place. That’s what I expect.

[15] Mr Jacklin states in his evidence (paragraph 20) that what had been agreed to at the start of its commencement was that he would be paid commission money. He viewed this as part of his contractual remuneration and said payment of the sum was a red line for him and he needed the issue resolved if he was going to continue to work at Planit. He noted that at the end of the first quarter, he had achieved 103% of his revenue target.

[16] Mr Jacklin was of the view that 25% of his salary was being unjustifiably withheld and, in his words, just brushed under the carpet as a non-issue when the commission plan and the money were important to him.

[17] When Mr Bargent explained to Mr Jacklin that STI payments were to be paid annually, he says he was surprised. He didn’t consider annual payments to be a short term incentive plan. On 9 July he emailed Mr Bargent noting that in his view his Employment Agreement expressly recorded the 25% figure when it referenced his STI commission plan.

² Document PJ9

[18] By August 2024, Mr Jacklin says he had become frustrated because he was not getting anywhere with Mr Sethi or Mr Bargent. He accordingly contacted the Head of People Australasia, Emma Brbich. He noted that on Monday 12 August 2024, Ms Brbich replied saying she would have something back to him within a week, appreciating he needed to have matters clarified.

[19] On 29 August 2024 Mr Jacklin again emailed Ms Brbich about his STI plan. In his 6 August email to Ms Brbich, he had pointed out that the only target he had been set was a revenue target. He also again reiterated that he saw the industry standard as being for quarterly payments and that as Planit had not provided any information on the short term incentive bonuses, despite his repeated requests, his expectation was for a quarterly payment in July.

[20] He also advised in that email:

Given that the industry standard is quarterly, as confirmed by Jason, given that the only target given to me in writing was a revenue target, and given that I exceeded that revenue target, I would like to see a quarter of my bonus paid to recognise Q1 achievements. If Planit's intention was to include other elements into the plan, or pay the plan annually, then Planit should have detailed that prior to the start of the financial year as defined in the contract. I do not think it is fair to retrospectively define requirements unknown to me at the time to my detriment.

[21] Mr Jacklin went on a planned holiday from 6 to 24 September 2024. His evidence was that he hoped that the matter would be addressed whilst he was away.

[22] When Mr Jacklin returned to work, he checked his emails and saw no reply from Ms Brbich. He decided he could no longer stay in such a work environment and resigned with immediate effect.

[23] Mr Jacklin acknowledged that the next day Planit wrote to him not wanting him to resign, however, as he had been trying to resolve the matter for six months, he had no confidence in Planit's ability to resolve matters.

Mr Sethi's Evidence

[24] Mr Sethi confirmed that the timing of any STI plan payment was not discussed during Mr Jacklin's recruitment. He says, however, that he recalls telling Mr Jacklin

that one of the gatekeeper requirements of meeting any incentive plan would be a revenue target. He says he also said that the plan was annual and the incentive period runs through the financial year from 1 April to 31 March.

[25] Mr Sethi emphasised that clause 6.2 of the Employment Agreement provided for a discretionary bonus. He says that Mr Jacklin overlooked three key details of clause 6.2, namely:

- (a) 6.2 makes it clear that Mr Jacklin is eligible to receive an STI of “up to” 25% of his annual salary. He says this was not a guarantee that Mr Jacklin would receive a 25% STI but rather he had an at risk incentive of up to 25%.
- (b) Secondly, he says that any payment of an STI is at Planit’s “absolute discretion”.
- (c) Thirdly, he says clause 6.2 provides that the STI was annual, not quarterly. Mr Sethi stated that Planit pays STIs annually to Executive General Managers and General Managers. Only Business Development Directors had contractual provisions for quarterly STIs.

[26] Mr Sethi denied Mr Jacklin’s evidence that he had come to him on a number of occasions in April regarding the status of his plan. In April 2024 there were changes in Planit’s executive team. The operations management moved from Mr Edwards (COO) to Mr Bargent (CRO). It took time for Mr Bargent to come up to speed with the scale of things which was one reason why Mr Jacklin’s KPIs could not be set up in April 2024.

[27] When Mr Sethi met with Mr Jacklin in April 2024, he informed him that the STI plan was with Mr Bargent to roll out as it needed to be aligned company-wide globally. He says at that point he made it clear that Planit’s incentive scheme was yearly and not quarterly. Contrary to Mr Jacklin’s evidence, he says he did not meet on 25 April 2024 which was ANZAC Day.

[28] His evidence was that Planit operated under a delegation of authority. He says Mr Jacklin would have been aware that as per the delegation of authority, the STI scheme was with the executive team in this instance with Mr Bargent. Planit was a global business and STI plans needed to be aligned globally. Mr Sethi acknowledged

receiving an email from Mr Jacklin on 24 March which included a proposed quarterly commission plan that Mr Jacklin had prepared.

[29] Mr Sethi did not agree with what Mr Jacklin had set out in his 24 May email because what he was setting out looked very different from the discretionary annual scheme outlined in Mr Jacklin's Employment Agreement. He says that although he did not respond to Mr Jacklin's email, he met with Mr Bargent on 28 May 2024 and it was agreed that Mr Bargent would look into it and respond to Mr Jacklin.

[30] Mr Sethi understood that the STI issue was important for Mr Jacklin but also believed that Mr Jacklin understood it was being worked on and needed to be considered in context. Planit was undergoing a widescale redundancy process which had meant its ability to develop KPIs during that period was compromised. His evidence was that Mr Jacklin was aware of the restructure, as would be expected bearing in mind his role.

[31] Mr Jacklin had recommended a reduction in Q1 revenue targets with a corresponding increase to Q4 targets. The result of this was that Q1 targets became lower than they otherwise would have been. However, it seems the major redundancy process Planit was undergoing meant that it had not been possible to further consider STIs until budgetary matters were settled.

[32] Mr Sethi described the restructure as challenging, however, Planit did not receive any complaints or concerns that feedback had been overlooked. None of Mr Jacklin's direct reports or team were affected by redundancies.

[33] Mr Sethi refuted any suggestion that in any discussion with Mr Jacklin had he mentioned people who had "rage quit" their jobs.

[34] Mr Sethi noted that Mr Bargent had exited the business on 15 August 2024 with Mr Edwards resuming responsibility for managing Planit's operations including the rollout of STI plans upon approval.

[35] Mr Sethi became aware that Mr Jacklin resigned when he saw the resignation email from Mr Jacklin had come through. He says that Mr Jacklin had not spoken to him about it, or given him a heads up, that he intended to resign. In Document 4.9 attached to the Statement in Reply Mr Jacklin was claiming approximately \$20,000 as a Q1 incentive payment as well as other sums. He says that at no point did Mr Jacklin

say to him, or indeed to anyone, that he was in stress or under duress. If he had, Mr Sethi says this is something that would have been taken very seriously. He also noted that prior to his resignation Mr Jacklin had sent several Teams messages to some colleagues, especially the General Manager Southern, to whom he messaged saying:

I'm v. soon on my way out though.

And further:

At least you got a heads up. Raman isn't even going to get that.

[36] From Mr Sethi's view, Mr Jacklin's resignation was premeditated and intentionally timed.

Ms Jacklin's Evidence

[37] Ms Jacklin is Mr Jacklin's wife. In giving her evidence, she stressed her husband had told her that when Planit offered him the role they agreed to match his previous earnings by including an incentive plan that added an extra 25% to his base salary if he achieved his targets. She said it was only because of this agreement that Mr Jacklin was happy to accept it. She explained that her husband had told her explicitly that had they not agreed to match his earnings, he would not have accepted the job.

[38] In respect of Mr Jacklin's resignation, Ms Jacklin's evidence³:

Phil told me that he quietly hoped that Planit would have resolved this issue while he was away, and he'd have an incentive plan waiting for him on his return. He knew it wasn't realistic, but he continued to cling to that hope. Sadly, it was not the case. When Phil returned to the office, he found that they'd continued to ignore him and his many, many attempts to resolve the issue. Phil resigned within a couple of days of returning to work, with my full support and approval. The actions of senior management were affecting his mental health and it was only a matter of time before it would significantly affect his physical health too. Phil had come to see that Planit had no intention of honouring their commitment to him.

³ Paragraph 29 of Ms Jacklin's evidence.

[39] Ms Jacklin also gave evidence that Planit did not wish Phil to resign which she says the couple found perplexing and agitating because they didn't believe that an organisation could refuse to accept a resignation.

[40] Ms Jacklin also gave evidence regarding the effect the termination of Mr Jacklin's employment had on him. She stated that when he joined Planit, he was excited and full of ideas and was animated and enthusiastic. But at the end, he was frustrated and felt let down and lied to.

Ms Brbich's Evidence

[41] Ms Brbich's evidence included statements that STIs were paid annually at Planit, after the completion of audited accounts for the year.

[42] Her evidence was that the STIs were entirely discretionary. She says that Mr Jacklin was well aware that Planit was under direction from its Board and that it needed to take swift corrective action to address budget deficits that the business was facing and had faced month-in and month-out for a sustained period of time. This was due to a number of factors including changes in the IT landscape, the rise of AI, and greater competition.

[43] Ms Brbich gave evidence that Mr Jacklin had never put her on notice that he was losing confidence in Planit. With that, following Mr Jacklin's email of 29 August 2024, she raised the matter with the rest of the executive team and made a note for resolution as soon as the Board had reviewed and reworked the budgets and targets.

[44] Ms Brbich deposes that on 26 September 2024 she received an email from Mr Jacklin advising that he was resigning⁴. He stated that Planit had breached his Employment Agreement and threatened to escalate the matter if certain payments were not made.

Mr Jacklin's Reasons for Resignation

[45] On Thursday 26 September 2024 Mr Jacklin emailed Mr Sethi and Mr Edwards under the heading:

Breach of employment contract and negotiation of settlement upon resignation.

⁴ Document 4.9 (Statement in Reply).

[46] Mr Jacklin advised he was resigning effective immediately because of a material breach of his Employment Contract. He then specified his reasons were as follows:

Failure to provide agreed-upon remuneration; clause 6.2 of my Employment Contract requires Planit to provide an incentive plan totalling 25% of my base salary by 1 April 2024. Despite my significant and repeated attempts to resolve this issue in emails and conversations with Raman from 8 April onwards, with Jason Bargant from 24 May onwards, and with Emma Brbich from 6 August onwards, Planit have failed to provide an incentive plan as detailed in my Employment Contract. This incentive plan was a key part of my expected remuneration and was specifically designed to match the incentive plan I had in place with my last employer As such, Planit has failed to provide the agreed upon remunerations.

[47] Mr Jacklin proposed that he be paid a payment of \$19,720 in lieu of the Q1 incentive payments along with three months gross salary, legal expenses, and compensatory damages. In his Statement of Problem, Mr Jacklin asked for penalties and costs as well as reiterating the claim for payment of the Q1 FY25 bonus payment:

The applicant was entitled to for his performance over April to May 2024 being one quarter of 25% of his base salary, namely \$19,720.

Discussion

[48] In *Auckland Shop Employees IUOW v Woolworths (NZ) Limited*⁵ the Court of Appeal established three categories of constructive dismissal. In Mr Jacklin's case, there is a clear focus on the third category, namely a breach of duty by Planit which has led him to resign.

[49] For Mr Jacklin it is submitted that the case is a straightforward one of an employee who had a fundamental contractual entitlement which was not met. However, in giving his evidence Mr Jacklin made it clear, as he had in his resignation, he believed fundamentally he was entitled under clause 6.2 of his Employment Agreement, to receive an incentive bonus of 25% which was to be paid quarterly.

[50] However, Mr Jacklin's Employment Agreement on a plain reading, does not say what he believed it did. It is clear from a reading of the clause that any STI payment

⁵ *Auckland Shop Employees IUOW v Woolworths (NZ) Limited* [1985] 2 NZLR 372 (CA) @ 374-375.

was entirely discretionary. Further, a potential bonus was up to 25%, not 25% and on the plain reading was payable annually not quarterly as Mr Jacklin believed.

[51] As Mr Sethi's evidence revealed, he says he explained to Mr Jacklin that the STI was annual and that there would be no incentive plan for the year ending 31 March 2024. Mr Jacklin's argument that the STI was quarterly because clause 6.2 pluralised the words "bonuses and incentives" and "eligible amounts" is unsustainable. Such an interpretation is strained and inconsistent with the plain wording of the clause.

[52] If the dismissal is caused by a breach of duty, the question is whether or not the breach of duty by the employer caused the resignation and, if yes, whether the breach was of sufficient seriousness to make it reasonably foreseeable resignation would follow. As the evidence indicates quite clearly, Mr Jacklin had a view of the contractual provision regarding bonuses which was incorrect. Further, Mr Jacklin resigned after going on a period of leave during September 2024.

[53] He resigned immediately upon returning but did not give Planit any warning of his intention to resign although he did give a "heads up" to at least one of his colleagues. His resignation email focused on Planit's failure to provide agreed upon remuneration. However, that belief was founded on a misreading of the contractual provision.

[54] Under the circumstances, Mr Jacklin has not proved that what appears to be a resignation was a dismissal. He has not made out his claim that he was constructively dismissed.

Was Mr Jacklin disadvantaged in his employment by not receiving KPIs and the eligible amounts?

[55] In his Statement of Problem, Mr Jacklin has claimed he was disadvantaged by Planit in the way it breached express and implied terms in his Employment Agreement and failed to remedy those breaches despite numerous requests. Mr Jacklin notes that his Employment Agreement (clause 6.2) specifically provided:

KPIs and eligible amounts will be set for you at the beginning of each financial year.

[56] He says KPIs were not set at the beginning of the financial year, nor was he ever made aware of what the eligible amount on which any bonus might be paid was.

[57] Mr Jacklin's evidence was that he was always aware what his revenue target was. However, he said nothing in writing was ever given to him explaining why he had not been given KPIs. On 24 May 2024, Mr Jacklin emailed the company⁶ stating that he assumed that achieving 100% of his budget would earn 100% of his comms plan calculated and paid quarterly.

[58] This is further evidence that Mr Jacklin's real complaints throughout, concerned his belief he was entitled to a bonus and it had not been paid.

[59] Mr Jacklin's evidence was mainly focused on his claim of constructive dismissal and there was no clear enunciation of the basis for an unjustified disadvantage claim based on the non-provision of KPIs. It was submitted on behalf of Mr Jacklin that by not receiving the KPI details or the eligible amounts, he remained uncertain of how the bonus would operate and that this lack of clarity was unfair and unsettled him.

[60] In respect of the claims, Planit submitted that although it did not set Mr Jacklin's KPIs and eligible amounts at the beginning of the 2024/2025 year, there was no breach of duty because clause 6.2 did not create an express deadline for the respondent to set KPIs and eligible amounts. As the STI was expressly discretionary there was flexibility in the precise timing of when Planit would set KPIs.

[61] Planit also observed that it was acting fairly and reasonably when it had to take into account relevant prevailing factors including the context of the significant challenges faced by a global organisation. It progressed Mr Jacklin's request as far as it reasonably could in that context and Mr Jacklin was always kept updated. It accepts that the global redundancy process it was undertaking took priority and says this was because that needed to be completed first so that Planit could set its overall budgets and targets from which KPIs for General Managers like Mr Jacklin would follow.

[62] I have already found that Mr Jacklin misread clause 6.2 insofar as it related to bonuses. Mr Jacklin saw them as mandatory provided he met targets. Further, he believed that the bonus needed to be paid quarterly and, as indicated earlier, this formed the basis of his motivation to resign. Mr Jacklin has brought the same interpretive method to analysing when the provision of KPIs should have occurred. Mr Jacklin seemed to take the view that the provision required Planit to provide the KPIs on the first day of the financial year. The clause states that they will be set at the beginning of

⁶ Document 9

each financial year. There was flexibility in the precise time as to when KPIs would be set.

[63] As mentioned earlier, there was a clear reason why the setting of KPIs and eligible amounts was delayed, and I find to a large extent as a General Manager, Mr Jacklin was aware of this reason. I also accept that Planit attempted to keep Mr Jacklin updated as to progress. It seems clear that if Mr Jacklin had not resigned when he had, any issue with KPIs would have been resolved.

[64] As the Court has observed, a personal grievance for unjustifiable disadvantage is one that alleges that the employee's employment or one or more conditions of the employee's employment, is or was affected to the employee's disadvantage by some unjustifiable action by the employer. The Court has recognised that in this context "disadvantage" is a broad term. There is no restriction on the type of disadvantage that may be considered⁷.

[65] Whilst Planit, in its mind at least, had good reasons not to provide Mr Jacklin with KPIs, namely because it had not finished its restructure it simply was not in a position to do so, nonetheless the contractual provision required Planit either to do so, or to ensure Mr Jacklin knew precisely why he was not being provided with those figures.

[66] I accept that as a General Manager, Mr Jacklin would have had some idea as to the reasons for delay. Further, whilst the main thrust of Mr Jacklin's dissatisfaction was the non-payment of a perceived bonus, his requests for information also included his concerns about the lack of clarification regarding KPIs and the eligible amount on which any bonus might be based. I find Planit could have done more to inform Mr Jacklin of the difficulties it faced and could, if it had wanted to, given Mr Jacklin some comfort by explaining the effect or lack of effect the late provision of information might have or not have.

[67] Whilst I accept Planit's submission that a reading of the contractual provision would not have required Planit to provide the KPIs and eligible amounts on, for instance, the 1st of April in any year, nonetheless it was required to provide that data at the beginning of the financial year and even on a liberal interpretation of the provision, it did not do so. I accept that this failure on the part of Planit did disadvantage Mr Jacklin

⁷ *Wiles v Vice-Chancellor of the University of Auckland* [2024] NZempC 123

in his employment and was a breach of an express contractual term. Having considered Mr Jacklin's evidence regarding the effect this had on him, I consider a sum of \$10,000 properly reflects the humiliation, loss of dignity and injury to feelings Mr Jacklin suffered.

[68] Planit could not provide the KPIs for reasons already mentioned. It is strongly submitted of behalf of Mr Jacklin a penalty for this breach should be imposed. It was submitted Mr Jacklin could have no understanding of how any bonus might be calculated. And the provision of KPIs and eligible amounts was a necessary first step. I accept the breach has had a negative effect on Mr Jacklin, however this is remedied already by the award made above. It is not appropriate to impose a penalty under the circumstances.

Summary of Orders

[69] Mr Jacklin was not constructively dismissed and his claim in that regard is unsuccessful.

[70] Mr Jacklin was disadvantaged in his employment, Planit Software Testing Limited is ordered to pay Mr Jacklin a sum of \$10,000 recognising the humiliation, loss of dignity and injury to feelings he suffered. Payment is to be made within 28 days from the date of this Determination.

Costs

[71] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[72] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Mr Jacklin may lodge, and then should serve, a memorandum on costs within 28 days of the date of this determination. From the date of service of that memorandum Planit Software Testing Limited will then have 14 days to lodge any reply memorandum. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[73] The parties can anticipate the Authority will determine costs, if asked to do so, on its usual “daily tariff” basis unless circumstances or factors, require an adjustment upwards or downwards.⁸

Geoff O’Sullivan
Member of the Employment Relations Authority

⁸ For further information about the factors considered in assessing costs see:
www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1