

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKĀURAU ROHE**

[2026] NZERA 353
3407284

BETWEEN TODD DORMER
 Applicant

AND RHINO-RACK NEW
 ZEALAND LIMITED
 Respondent

Member of Authority: Helen van Druten

Representatives: Mark Donovan, counsel for the Applicant
 Kate Ashcroft and Ashvini Chelliah, counsel for the
 Respondent

Investigation Meeting: 13 March 2026 at Auckland

Submissions received: 20 March 2026 from the Applicant
 27 March 2026 from the Respondent

Determination: 5 June 2026

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Todd Dormer is currently employed at Rhino-Rack New Zealand Ltd (Rhino-Rack) as Head of Sales New Zealand (previously New Zealand Country Manager). He claims that Rhino-Rack has unjustifiably disadvantaged him in his employment by its failure to pay his contractual entitlement to commission since September 2024. Mr Dormer further seeks a compliance order under s 137 of the Employment Relations Act 2000 (the Act) requiring Rhino-Rack to enforce the employment agreement and penalties for breach of that agreement.

[2] Rhino-Rack says that Mr Dormer is not entitled to commission for the quarters he has claimed at time of filing the statement of problem, and the interpretation of his contractual entitlements to commission in his employment agreement is incorrect.

Non-publication

[3] By memorandum of 11 March 2023⁶, Rhino-Rack sought a permanent non-publication order, or in the alternative, anonymisation of the names of its witnesses under s 10(1), Schedule 2 of the Act. At the investigation meeting, the parties agreed that this matter would be determined on the papers and Mr Dormer provided his response in submissions. This application was opposed.

[4] I have now had an opportunity to consider the application fully. The threshold test for considering such applications is well established by the Employment Court in *MW v Spiga Limited*.¹ In order to depart from the principles of open justice, there must be sound reasons for doing so and a risk of specific adverse consequences that could reasonably be expected to occur.²

[5] I accept the witnesses would rather their names not appear in any determination. However, based on the information before me, there is insufficient information to meet the threshold test in *Spiga*. It is unclear what specific adverse or prejudicial consequences could be expected to occur. I also considered that Laura Tolmay, Dean Smith and Andrew Marshall are based in Australia and that Mr Dormer has not requested non-publication therefore there is no risk that identification of respondent witnesses could identify him.

[6] The application for non-publication or anonymisation of witness names is declined. This decision is based on the information before me, submissions of Mr Dormer, and the absence of specifics relating to any sensitive information or ways in which name publication could impact professional relationships weighing in favour of non-publication. As he is no longer an employee, I considered Chris Radford separately, though reached the same conclusion as being an ex-employee does not of itself create any adverse consequence.

The Authority's investigation

[7] For the Authority's investigation written witness statements were lodged from Mr Dormer as the applicant; Elize Cornforth as people and capability manager, Mr Smith as financial planning and analysis manager, Ms Tolmay as head of sales ANZ,

¹ *MW v Spiga Limited* [2024] NZEmpC 147.

² Above n 1 at [114].

Mr Marshall as key account manager and Mr Radford as former New Zealand general manager. All witnesses answered questions under oath or affirmation from me and the parties' representatives. The representatives also gave written closing submissions.

[8] As permitted by s 174E of 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 primary issues for investigation and determination were:

- a. Is Mr Dormer owed commission payments for any of the quarters from September 2024?
- b. If any commission is owed, has it been calculated in accordance with the terms and conditions of his employment?
- c. Was Mr Dormer unjustifiably disadvantaged by the actions of Rhino-Rack New Zealand Ltd failing to pay commission owed to him? If so, what remedies, if any, should be awarded?
- d. If any remedies are awarded, should they be reduced (under s 124 of the Act) for blameworthy conduct by Mr Dormer that contributed to the situation giving rise to his grievance?
- e. Should a penalty be awarded under s 135 for breach of an employment agreement? If so, should any portion of that be paid to Mr Dormer?
- f. Should either party contribute to the costs of representation of the other party?

[10] In order to determine if commission is owed to Mr Dormer, the Authority must first determine whether Mr Dormer's commission entitlements should be calculated using the Rhino-Rack Sales Commission Scheme document (SCS) or another method of commission calculation.

Relevant clauses and documentation

[11] Central to Mr Dormer's claim is the meaning of commission referred to in his initial individual employment agreement (IEA). On 3 June 2024 he commenced employment as New Zealand Country Manager. The Schedule within the IEA summarises key terms of employment. This includes a heading of "Commission" with

the words “10% paid quarterly”. There is no other reference to commission, bonus or any incentive payment in the IEA or standard terms and conditions of employment.

[12] Rhino-Rack relies upon its SCS. The SCS is applied across Australia and New Zealand for qualifying sales employees and has been in place since at least early 2024. The SCS does not define “commission” specifically. It refers to “performance measured against targets set” with weighted regional and individual revenue criteria. The commission calculation starts with a base eligibility requirement with stepped percentage commission payments “with no cap”.

Legal principles and case law

[13] Issues of contractual interpretation require an objective look at the context, purpose and reasoning for the inclusion of the specific wording used in the employment agreement. As both counsel submitted, the approach requires the Authority to ascertain the meaning the parties intended their words to bear to a reasonable person having all the background knowledge reasonably available to parties in that situation at time of contract. A provisional conclusion as to meaning is to be cross-checked against the context provided by the agreement as a whole, and any relevant background.³

[14] Both counsel acknowledge the limited reliance that should be placed on pre-contractual negotiations indicating any variance of written terms, because of clause 28 of the IEA as an “entire agreement” clause and the Supreme Court’s ‘caution’ against consideration of such terms.⁴

[15] Mr Donovan draws parallels with the Authority decision in *Parker v Magnum Hire Limited* whereby the employer initially claimed 10 per cent bonus was calculated on salary. It then revised its position to interpret those percentages as a capped amount on the basis that any other interpretation lacked business common sense. The Authority rejected that approach, preferring that clear intentions in an employment agreement should be given effect to, and where there is ambiguity, the agreement should be construed against the employer who drafted it.⁵

³ *Firm PI 1 Ltd v Zurich Australian Insurance Ltd* [2014] NZSC 147 at [60] and affirmed in *Bathurst Resources Ltd v L & M Coal Holdings Ltd* [2021] NZSC 85 at [41].

⁴ *NZ Airline Pilots’ Association Inc v Air New Zealand Ltd* [2017] NZSC 111 at [85].

⁵ *Parker v Magnum Hire Limited* [2024] NZERA 85 at [104] where the Authority referenced *Stormont v Peddle Thorp Aitken* [2017] RNZ 352 at [34].

[16] Similarly, counsel for Rhino-Rack highlighted the need to consider commercial context and queried the enforceability of a contract where the parties have not “reached consensus on all essential terms; or at least upon objective means of sufficient certainty by which those terms may be determined...”⁶

Interpretation of the employment agreement

[17] Both parties accept that the wording in the IEA is ambiguous. In an email of 24 June 2025, Mr Dormer accepts that “it isn’t entirely clear on the conditions of commission”. Rhino-Rack described it as “vague”.

[18] The parties fundamentally disagree on the interpretation of “Commission 10%” in Mr Dormer’s IEA Schedule. Mr Dormer says that the plain meaning of the provision is that his commission amounts to 10 per cent of sales (or alternatively gross margin) achieved by him each quarter. Conversely, Rhino-Rack maintain that his commission is calculated based on its SCS and is based on individual and group sales targets.

[19] There is no dispute that if commission is owed it should be paid on a quarterly basis and the parties agree on the period of each quarter, with Q2 as 1 April to 30 June of each year. Mr Dormer also accepts that if he was to be covered by the SCS for his commission entitlements (which he denies and is the basis for his claims), Rhino-Rack’s calculation of commission based on the SCS is not disputed.

Mr Dormer’s interpretation

[20] Mr Dormer relied upon his recollection of the interview conversations he had with Mr Radford where he says Mr Radford described the package as competitive, including a commission component which is designed to reward high performers with uncapped earning potential. Mr Dormer further says that the HR manager described the commission portion as “10 per cent commission payment for sales you make”.

[21] Knowing that sales roles often pay commission based on percentage of total sales or gross margin of sales, he concluded it was a fair and reasonable estimate that he would earn \$80,000 to \$100,000 commission per annum. For Mr Dormer this put the role in line with other similar level positions in New Zealand and he says that he accepted the role on this basis.

⁶ *Wellington City Council v Body Corporate 51702 (Wellington)* [2002] 3 NZLR 486 (CA) at [495].

[22] Mr Dormer says that no discussions about commission or incentives occurred at a team or individual level until 9 October 2024 when Mr Radford sent an email to the team (including Mr Dormer) that “we didn’t hit our commission targets”. This was the first he heard about targets related to commission. That email made it clear at that time that there were both individual commission targets and company targets.

[23] After initialling querying this with Mr Radford, Mr Dormer says that he did not raise the concern formally again (for a variety of reasons) until 16 June 2025. At that point, Ms Tolmay referred him back to his employment agreement and Ms Cornforth asked him to put the concerns in writing. His email of 24 June 2025 included:

...I am curious about the 10% commission as stated in my employment agreement, where I never saw any summary or statement. It isn’t entirely clear on the conditions of commission. I am 1 year into employment and just wondering if this will be paid?

[24] On 24 June 2025 he received an email with a “Proposed 2025 Sales Commission Scheme” document (the SCS) attached. In a subsequent phone call, Ms Tolmay said that commissions were calculated according to the emailed document.

[25] From Mr Dormer’s perspective, he had never seen the commission document before 24 June 2025 and there was no reference to that document in his IEA. He was only provided detailed budget and sales data in March 2025 and it was not until June 2025 that he was given revenue results and commission detail.

[26] Additionally, provision of the relevant sales information did not reference sales targets as a condition for his commission and the company knew that the IEA “might need updating”.

[27] Mr Dormer says that:

- a. It is well understood what commission means in a sales context as opposed to a bonus or Key Performance Indicator (KPI) targets;
- b. In the absence of any caveats or references to limitations on the commission, a plain interpretation of the wording is appropriate and 10 per cent commission on gross margin (as opposed to gross sales) is the most reasonable objective interpretation of the text;
- c. Rhino-Rack cannot look to unilaterally impose conditions on that commission where they do not exist;

Rhino-Rack's interpretation

[28] Rhino-Rack maintains that there was never any intention or representation that that it would pay 10 per cent of gross sales (or 10 per cent of gross margin). It has paid all commission due to Mr Dormer in accordance with its SCS document. The document was clearly explained to Mr Dormer during his onboarding and is the commission scheme applied consistently across the sales team. Entitlements under the SCS rely on achievement of KPI's that are reviewed annually.

[29] On 1 August 2025, Ms Cornforth provided a written response to Mr Dormer's commission query:

...Your previous manager, Chris Radford, communicated to you about the operation of the commission scheme and that payment was subject to your achievement of targets at various times including by e-mail on 9 October 2024, which you replied to confirming you hoped you would meet those targets by Christmas 2024. Mr. Radford has also had several discussions with you on the importance of meeting your targets... to enable commission to be paid. Your IEA does not stand alone regarding commission, and it could not, given the reference to 10% commission does not explain what the commission is calculated with reference to...

[30] Mr Radford is no longer employed by Rhino-Rack though was Mr Dormer's manager in the relevant period. He disputes referring to uncapped earning potential at the interview stage. He says that the first meeting was high level and only discussed remuneration as a percentage of the base paid quarterly. He further disputes considerable portions of Mr Dormer's evidence surrounding the circumstances of that meeting.

[31] Mr Radford created the scheme and considered that Mr Dormer could earn 10 per cent of base salary as commission if both individual, regional and company targets were met. He says that he explained the commission scheme in detail to Mr Dormer in person during the first couple of weeks of his onboarding process using a 2024 version of the commission document. This was part of Mr Radford's usual process in onboarding for the team. Commission and targets were also discussed on multiple occasions in meetings by he or Ms Tolmay as they were a key incentive for the sales team. In his opinion, it was clear that Mr Dormer understood the commission structure.

[32] Rhino-Rack maintains that Mr Dormer had access to detailed monthly budget reports online through its Power BI reporting, through SharePoint and in monthly

company-wide town hall meetings that specifically covered New Zealand's performance. Mr Marshall confirmed this in his oral and written evidence.

Analysis

[33] On a plain reading, Mr Dormer's IEA entitles him to 10 per cent commission. That is unhelpful and non-specific. The reader has no context or detail to know the basis for the commission calculation – it is 10 per cent of what?

[34] With multiple ways to interpret those words and a paucity of anything to guide any interpretation, it falls to the Authority to weigh all relevant factors and the context of the agreement within established contractual interpretation principles to determine what commission entitlement should apply.

What is commission?

[35] Both parties provided the dictionary definition of commission confirming that commission is generally determined as a percentage of sales. Employment New Zealand defines it as an agreed amount (or agreed percentage) an employee earns, usually when they make a sale.⁷ It goes on to provide a number of factors and conditions to consider.⁸ What is clear from those definitions is the general expectation that i) commission is not the same as performance bonus or incentive payments where individuals receive a payment for meeting individual or company KPI's or targets and ii) it often has conditions attached to ensure clarity for the parties as the word 'sales' or 'percentage' can also be interpreted in different ways. For Rhino-Rack, the SCS document calls itself a commission scheme but is implemented like a bonus or incentive scheme.

[36] The position description for Mr Dormer emphasises sales and revenue growth, ownership of sales targets and exceeding objectives. In the absence of any information provided prior to employment about the incentive scheme, I agree that Mr Dormer could reasonably have expected a commission-based scheme, not a scheme with KPI's and weighted regional and company-based targets.

⁷ Employment New Zealand website - Employment Agreement Builder.

⁸ Such as inclusion or exclusion of GST in commission calculations, commission upon customer payment, managing returns or impact of product price changes.

[37] While Rhino-Rack's scheme is actually an incentive scheme, it was known and referred to in the company as the Sales Commission scheme.

Defining the 10 per cent

[38] There is nothing in the employment agreement or supporting employment documentation to define any measure for the 10 per cent.

[39] Mr Dormer submits that his interpretation is the most reasonable objective interpretation of the text though this too is problematic. Initially, Mr Dormer claimed the clause meant gross sales then changed that approach to interpret it as gross margin, as gross sales was not viable for Rhino-Rack. Understandably that is an interpretation that favours him, but as Rhino-Rack submitted, it should not be for Mr Dormer to interpret it as he prefers. There are other factors.

Common business sense

[40] Where contractual language, interpreted in the context of the contract as a whole, has a natural and ordinary meaning, the courts will generally give effect to that as they do not easily accept that people have made linguistic mistakes, particularly in formal documents.⁹ However, as the Supreme Court noted in that case, if a particular interpretation produces a commercially absurd result, that may be a reason to read the contract in a different way than the language might suggest.¹⁰

[41] There is a significant commission amount potentially at stake here. Mr Dormer's interpretation of the 10 per cent commission payable based on gross margin over a 12-month period, is over ten times what would be payable under the SCS. With a base salary already commensurate with the lower end of the market for such positions, it would make little business sense to have such a significant base and uncapped commission with no conditions. Additionally, Ms Tolmay confirmed that Mr Dormer's contractual interpretation would place his commission entitlement "far beyond" any leadership position within the company.

[42] Mr Dormer proposed that commercial absurdity is not, of itself, a barrier to interpretation. I agree in principle with that proposition where the natural and ordinary meaning is clear. In *Parker v Magnum Hire Ltd*, the Authority preferred the clear

⁹ *Firm PI 1 Ltd v Zurich Australian Insurance Ltd* [2014] NZSC 147 at [88].

¹⁰ Above n. 9 at [89].

intentions of the wording “annual profit before tax” even though it lacked business common sense.¹¹ I distinguish those circumstances here as ‘10 per cent’ provides no clear intention and in *Parker*, the employer’s position evolved whereby it changed its’ interpretation. Rhino-Rack’s interpretation of its’ contractual wording has not changed.

Should the ambiguity be interpreted in the employee’s favour?

[43] Case law supports the approach that ambiguity in the IEA means that the agreement should be construed in favour of the employee.¹² That cannot reasonably be construed as an absolute in this case. The contractual meaning of what constitutes commission in this IEA is so unclear that a presumption of ambiguity automatically favouring the employee’s interpretation would be inequitable, effectively providing a blank slate for Mr Dormer’s interpretation.

Surrounding documents

[44] In the absence of anything to assist in the employment agreement, I turn to other relevant material that may assist.

[45] In his oral evidence, Mr Marshall confirmed that the SCS was described at his induction. As a key account manager, he found the SCS to be “pretty generous” and motivating. His understanding aligned with the commission document. He was provided with the details in his onboarding and knew what was required to meet his targets under the scheme. He further referenced a commission calculator that was created to assist the sales team to check their progress towards those targets. There was email evidence to support the use of a commission calculator, at least by Mr Marshall, but again no information before the Authority to show that Mr Dormer received that calculator.

[46] Looking at the SCS document itself, it is a PowerPoint presentation rather than a policy or guideline document. As Mr Radford developed the commission scheme, I accept that he would be able to describe it well to new team members, but it needs that additional information and context to understand it fully. The PowerPoint document is a summary document only.

¹¹ *Parker v Magnum Hire Limited* [2024] NZERA 85 at [104].

¹² *Stormont v Peddle Thorp Aitken* [2017] ERNZ 352.

[47] In written evidence, Ms Tolmay confirmed that the SCS is central to all salespeople operating in the Australia and New Zealand Asia-Pacific region. Employees are measured individually, based on their territory with their own individual target. Mr Smith also confirmed that the SCS applies to each employee in the sales team. The SCS percentage of base salary (based on start date) and targets based on territory size vary slightly otherwise he calculates the commission based on the SCS for all sales employees.

[48] It is inherently unlikely that Mr Dormer would be placed on a gross margin percentage commission basis when other sales colleagues in similar positions in Australia were on the SCS scheme. The SCS applied across the board to all other eligible sales employees prior to Mr Dormer's employment. It follows the SCS would also apply to Mr Dormer.

What did the parties intend?

[49] It is logical to conclude the overall intent of both parties at time of entering into that agreement was to ensure that Mr Dormer received a salary commensurate with the market and that there was a component intended to reward high performers.

[50] For reasons already covered, Rhino-Rack clearly intended the SCS to apply, even if it did not put any detail in the IEA.

[51] Based on all evidence before me, I think it more likely than not that Mr Dormer did not give the specifics of his commission much thought at the point he signed the agreement.

[52] Based on his professional experience before Rhino-Rack, Mr Dormer's level of knowledge about sales and commissions was greater than the average person. He is an experienced business owner with a background in sales.

[53] Given that experience, Mr Dormer ought reasonably to have known at the time he signed his employment agreement that any commission structure in a sales-based organisation would be more specific than what was written in the IEA. Commission payments are often a fundamental motivator to drive high performance and therefore it is surprising that Mr Dormer did not seek clarification on commission conditions as he did with the redundancy provisions in the IEA and the start date. He had sufficient time to query the terms of his commission and time to seek advice both before signing the

agreement and before commencement of employment. He did not raise any query about the commission until October 2024.

Good faith obligations

[54] Employment agreements are reinforced by an overarching duty of good faith between the parties in an employment relationship. I have also considered this obligation looking at the employment relationship as a whole.

[55] If Rhino-Rack intended to limit Mr Dormer's commission or subject it to company and regional KPI's those should be referred to in the IEA or Mr Dormer advised as soon as possible once the oversight was discovered. Rhino-Rack knew that the IEA was not as detailed as it should be yet it did not take steps to change this until March 2025. It also could not provide any written evidence that it sent Mr Dormer a copy of the SCS before June 2025.

[56] Ms Tolmay disputes that Mr Dormer did not know how his entitlement to commission was made up. She refers to the induction process and Mr Radford's evidence though was unable to provide any written evidence of the SCS being discussed with Mr Dormer prior to 9 October 2024.

[57] There is no evidence of any intention to mislead or deceive by either party in the employment relationship, though Rhino-Rack must accept responsibility for this significant oversight in the employment agreement.

Summary

[58] I come back to the meaning intended for a reasonable person having all the background knowledge reasonably available to parties in that situation at time of the contract and considering the above factors.

[59] On the one hand, the commission wording "10 percent paid quarterly" is so minimal and deficient in any specifics that it is open to a multitude of interpretations. If there is ambiguity it should weigh in favour of the employee and the plain meaning of commission is generally related to sales and does not have KPI's or targets.

[60] This is balanced against the intent of the parties, relativity to others, prior existence of the SCS, and business common sense. There is no valid reason why Rhino-Rack would have intended Mr Dormer to have the potential to earn almost double his

salary with no base levels or other conditions while the SCS applied to those colleagues in equivalent sales roles in Australia. Rhino-Rack always intended its SCS to apply to Mr Dormer's employment. At the time of signing the IEA, Mr Dormer took the words to mean what he hoped they would mean.

[61] The Authority finds that a reasonable person would conclude Mr Dormer's employment agreement was intended to contain terms and conditions of employment similar to other employees in similar roles elsewhere across Australia and New Zealand.

[62] I conclude that, on balance, the only reasonable conclusion is to apply the SCS to Mr Dormer's employment as that was the consistent norm for such positions and the IEA wording was simply too inadequate to intend any compelling alternative. Mr Dormer's unjustified disadvantage claim on that basis is unsuccessful.

Unjustified disadvantage

[63] The question of whether an employer's action was justified must be determined on an objective basis by considering whether the employer's actions, and how the employer acted, were what a fair and reasonable employer could have done in all the circumstances at the time the action occurred.¹³

[64] Mr Dormer says that he did not have access to the company's financial information, including budgets until early 2025. There was sufficient evidence to rebut that claim, including access to financial information through online systems, bi-weekly individual meetings with his manager, team review meetings and company-wide briefings. I prefer Mr Radford's evidence that Mr Dormer knew how the company was achieving against its targets and was not disadvantaged by any restrictions to that information.

[65] However, I accept the second part of Mr Dormer's unjustified disadvantage claim. Rhino-Rack confirmed that others received details of the SCS. It was unable to provide written evidence Mr Dormer received that same detail and in oral evidence Mr Radford confirmed it was mainly communicated in person. While Ms Tolmay and Mr Radford maintained that Rhino-Rack provided this early on, I find it unlikely that Mr Dormer would have emailed Mr Radford with queries about it in October 2024 if that was the case. This may have been an oversight, but the failure to provide a clear written

¹³ Employment Relations Act 2000, s 103A(2).

description of the SCS disadvantaged Mr Dormer in his employment and was not the actions of a fair and reasonable employer.

[66] Rhino-Rack maintains that after initially raising the concern in October 2024, Mr Dormer did not raise it again June 2025 and impliedly accepted the SCS by doing so. He should not have needed to chase that detail. He was entitled to receive full information about the commission structure early in his employment. By failing to provide this in the IEA or immediately after commencement, Mr Dormer was not fully aware of the regional and company targets impacting his commission entitlement. He continued employment without the full details of his remuneration and potential earnings.

[67] Rhino-Rack's failure to evidence discussion of the SCS with Mr Dormer in his induction or at any time until June 2025, means that he was unjustifiably disadvantaged by that oversight and lack of information. The lack of wording about commission in the IEA or reference to the SCS document in that employment agreement made it even more important that there were written details supplied to Mr Dormer early in his employment.

Penalties and interest

[68] As no breach of the employment agreement is established, no penalties or interest are awarded.

Remedies

[69] As Mr Dormer's unjustified disadvantage claim is made out, he is also entitled to consideration of remedies pursuant to ss 123 of the Act.

Compensation for humiliation, loss of dignity and injury to feelings

[70] Mr Dormer gave evidence on the impact this process has had on him. From a work perspective, particularly given his ongoing employment with Rhino-Rack, it has been a massive distraction and impacted his professional relationships with peers who know of the dispute. Financially, Mr Dormer sold his business to accept this position so the monetary impact of Rhino-Rack's commission structure is potentially more pronounced. Mr Dormer also says that he feels excluded by the business. While Rhino-Rack satisfactorily explained the reason Mr Dormer was not included in some

discussions, his concerns also perhaps demonstrate the impact on Mr Dormer's self-confidence and his feeling judged.

[71] Rhino-Rack exacerbated the impact on Mr Dormer by not putting sufficient detail in the IEA initially and then failing to provide definitive written material and a clear explanation of the commission scheme, even after he queried it in October 2024. If it was provided, there was no written evidence of this provided to the Authority, including in the induction emails.

[72] Mr Dormer has sought \$20,000 in compensation under s 123(1)(c)(i) of the Act. This case has similarities with the very recent Authority decision in *Jacklin v Planit Software Testing Limited* where bonuses and KPI's were not set in a timely manner despite being part of his employment agreement, disadvantaging Mr Jackson in his employment.¹⁴

[73] While compensatory awards for disadvantage generally sit lower than those for dismissal, Rhino-Rack appeared largely dismissive of Mr Dormer's queries about his commission after his employment began. In line with *Planit* and other disadvantage grievance awards at that level I consider \$14,000 an appropriate award in these circumstances.

[74] I accept Mr Dormer's evidence that Rhino-Rack's failure to address Mr Dormer's concerns fully and promptly at the outset has resulted in unnecessary ongoing impact for him.

Contributory conduct

[75] I am required under s 124 of the Act to consider the issue of any contribution that may influence the remedies awarded. Mr Dormer could have clarified and ensured he understood the terms of his agreement prior to signing the agreement, but I do not consider this contribution as sufficient to award any reduction in remedy.

¹⁴ *Jacklin v Planit Software Testing Limited* [2026] NZERA 264 where a compensatory award of \$10,000 was made.

Costs

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

[77] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Mr Dormer 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, Rhino-Rack 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.

[78] 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.¹⁵

Helen van Druten
Member of the Employment Relations Authority

¹⁵ For further information about the factors considered in assessing costs see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1.