IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE

[2025] NZERA 409
3334260

	BETWEEN	SHAILENDRA BALI Applicant
	AND	R1i TECHNOLOGY LIMITED Respondent

Member of Authority:	Jeremy Lynch
Representatives:	Robert Morgan, advocate for the Applicant Martin Conway for the Respondent
Investigation Meeting:	9 July 2025
Submissions and Other Material Received:	At the investigation meeting from the Applicant Nothing received from the Respondent
Oral Determination:	9 July 2025
Written Record Issued:	10 July 2025

ORAL DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] R1i Technology Limited (R1i) is the New Zealand arm of Perth based IT infrastructure and solutions company R1i Proprietary Limited. Martin Conway is the director of R1i, as well as the Chief Executive Officer and director of R1i Proprietary Limited in Australia.

[2] This determination is only in respect of the New Zealand entity, R1i.

[3] Shailendra Bali was employed by R1i in the role of Business Development Manager in April 2024. He was dismissed from his employment on 7 August 2024 during a video conference meeting using the Webex platform (the Webex meeting). R1i confirmed its decision to dismiss Mr Bali in a letter to him dated 7 August 2024.

[4] Mr Bali says he was unjustifiably dismissed, and seeks personal grievance remedies including reimbursement of lost wages, compensation for humiliation, loss of dignity and injury to feelings, together with an order for costs.

The Authority's investigation

[5] Mr Conway is R1i's sole director. Mr Conway confirmed to the Authority that he would be representing R1i in this matter.

[6] Despite advising the Authority he was available to attend a case management conference by telephone to be held on 7 March 2025 (the CMC), the Authority was not able to reach Mr Conway. As Mr Conway had been advised that if the Authority was unable to reach him at the scheduled start time, the CMC would proceed in his absence, the CMC went ahead.

[7] At the CMC, the Authority made a direction that the parties were to attend mediation. The matter was set down for investigation, and timetable directions were made for the parties to lodge witness statements.

[8] A copy of the Authority's written directions (including the direction to attend mediation), together with a copy of the notice of investigation, as well as a further copy of the statement of problem were delivered by courier to R1i's registered address for service on 10 March 2025.

[9] The written directions record that R1i may provide comment on the directions, using the contact details set out in the accompanying letter. No such comment was received from R1i.

[10] R1i failed to engage with Employment Mediation Services, meaning mediation could not occur.

[11] Mr Bali lodged a witness statement in accordance with the Authority's timetable directions.

[12] R1i did not lodge any witness statements, or in any way engage in the Authority's investigation process. The last communication from R1i was an email from Mr Conway of 4 February 2025 advising that he was available to attend the CMC (which he then failed to attend).

[13] The Authority is satisfied that R1i was served with a copy of the statement of problem, notice of investigation, and was aware of the details of the investigation meeting.

[14] R1i had not arrived at the Authority's premises at the scheduled start time of the investigation meeting. The start time was delayed while the Authority attempted to make contact with R1i. Mr Conway's mobile telephone number appears to have been disconnected, or his device has been set to block certain phone numbers, as the Authority Officer was unable to make any kind of connection with Mr Conway's phone number, or access his voicemail to leave him a message. Instead, the Authority contacted the parties by email, advising that the meeting start time had been delayed in order for R1i to attend, or advise of any reason for its non-attendance. The Authority's email advised that in the absence of a response from R1i, the investigation meeting would be proceeding, regardless of whether or not R1i was in attendance.

[15] R1i did not attend the IM, or advise or any reason for its non-attendance.

[16] Being satisfied that R1i was aware of the date and time of the meeting, with no good cause provided for its non-attendance, the Authority proceeded with its investigation in R1i's absence.

[17] After hearing Mr Bali's evidence and submissions, the Authority adjourned the matter to consider its determination. During the adjournment, the Authority wrote to the parties, advising that the investigation had concluded, and that the member was intending to deliver an oral determination. The period of adjournment allowed for the time difference between New Zealand and Perth. Despite the Authority's email being sent during Perth business hours, no response was received from R1i.

[18] The Authority has carefully considered all the material provided.

[19] As permitted by s 174E of the Employment Relations Act 2000 (the Act), this determination has not recorded everything received from the parties, but has stated findings of fact and law, expressed conclusions and specified orders made as a result.

The issues

[20] The issues for investigation and determination are:

(a) whether Mr Bali was unjustifiably dismissed from his employment by R1i?

(b) If so, is Mr Bali entitled to a consideration of remedies sought, including:

(i) reimbursement of lost wages; and

(ii) compensation under s 123(1)(c)(i) of the Act, for humiliation, loss of dignity, and injury to feelings?

(c) Should any remedy awarded be reduced under s 124 of the Act for blameworthy conduct by Mr Bali, which contributed to the circumstances which gave rise to his grievance?

(d) Should either party be required to contribute to the other's costs?

Background

The commencement of Mr Bali's employment

[21] The employment agreement signed by Mr Bali appears to be dated 3 July 2024. However, during the course of the investigation meeting, Mr Bali clarified that "03/07/24" (as it is shown on the agreement) follows the American convention of listing the month before the day. Mr Bali explained that he signed the agreement on 7 March 2024 (not 3 July). This was an appropriate concession to make.

[22] Mr Bali's evidence (uncontested by R1i) is that he began work on 9 April 2024. He says he was required to attend an induction at R1i Proprietary Limited's Perth office from 9 to 11 April 2025. He was paid normal salary for this time, and continued to work (and receive regular salary payments) on his return to New Zealand.

[23] Mr Bali provided a copy of his booking for his flight to Perth which on 8 April 2024, and of his return flight back to Auckland on the evening of 11 April 2024. He also provided a copy of his Perth hotel booking.

[24] Mr Bali's bank statement shows 'Wages April' being paid by direct credit into his account by R1i Technology Limited on 14 May 2024, and continuing to be paid to him in the second week of each month after that, until he was paid 'Final Pay R1i' on 13 September 2024.

[25] The Authority is satisfied that Mr Bali's employment commenced on 9 April 2024.

The employment agreement

[26] The following clauses of the employment agreement are relevant:

> 3.1 Your employment is on a trial basis for the first 90 days of employment.
>
> 3.2 During the trial period, your employment may be terminated with one week's or payment in lieu of such notice (sic).
>
> …
>
> 3.4 If dismissed during the trial period, the employee cannot bring a personal grievance or other legal proceedings about the dismissal. They may still bring a personal grievance if they feel the employer has treated them unfairly for other reasons, eg discrimination, harassment or unjustified disadvantage.
>
> 3.5 If agreed by the employee and the employer, the trial period may be extended to give both parties more time to evaluate the employee.
>
> …
>
> 25 The terms of the Contract may be varied from time to time by mutual agreement in writing between the parties.
>
> …
>
> 27 The contents of the Contract constitute the entire agreement between you and the Employer. Any previous agreements, understandings, negotiations on this subject matter cease to have effect.

90-day trial provisions

[27] Section 67A of the Act provides:

> **67A Employment agreement may contain provision for trial period of 90 days or less**
>
> (1) An employment agreement containing a trial version may be entered into by an employer and an employee who has not previously been employed by that employer.
>
> (2) For the purposes of this section and section 67B, **trial provision** means a written provision in an employment agreement that states, or is to the effect, that–
>
> (a) for a specified period (not exceeding 90 days), starting at the beginning of the employee's employment, the employee is to serve a trial period; and
>
> (b) during that period, the employer may dismiss the employee; and
>
> (c) if the employer does so, the employee is not entitled to bring a personal grievance or other legal proceedings in respect of the dismissal.

[28] Section 67B of the Act provides:

> **67B Effect of trial provision under section 67A**
>
> (1) this section applies if an employer terminates an employment agreement containing a trial provision under section 67A by giving the employee notice of the termination before the end of the trial period, whether the termination takes effect before, at, or after the end of the trial period.
>
> (2) An employee whose employment is agreement is terminated in accordance with subsection (1) may not bring a personal grievance or leading or legal proceedings in respect of the dismissal…

[29] As trial periods restrict what would otherwise be an employee's right to challenge their dismissal as unjustifiable, the requirements of a 90-day provision must be strictly complied with.[1]

Mr Bali attends the Webex meeting

[30] Mr Bali's evidence is that he was R1i's sole New Zealand employee. On 6 August 2024 he said he received an email invitation to attend a Webex meeting. Mr Bali said this was not unusual, and that he had regular Webex meeting with members of the Perth team. No details were provided as to the purpose of the meeting, and there was no indication that his employment may be at risk. He says that he:

> … was never made aware that what I was doing and how I was doing it was not what was required in my role. Until the [Webex] meeting of 7 August, R1i appeared to be happy with my work.

[31] Mr Bali said that at the Webex meeting he was told he "…had not passed [his] trial period, and that was the reason I was being dismissed".

[32] Mr Bali then received a letter from R1i dated 7 August 2024 (the dismissal letter), which sets out that his "… probation period with R1i Technology has been unsuccessful", and confirmed his employment would terminate four weeks later, on 4 September 2024.

Mr Bali's dismissal

[33] Due to its lack of engagement in the Authority's investigation, the exact basis for R1i's decision to dismiss Mr Bali is unclear.

[34] The lack of clarity stems in part from R1i's use of the words 'probation period' in the dismissal letter. The employment agreement is silent as to any probationary

[1] *Smith v Stokes Valley Pharmacy (2009) Limited* [2010] NZEmpC 111 at [48].

period, so it is unclear why R1i would dismiss in reliance on a non-existent probationary clause.

[35] It is possible that in the dismissal letter, R1i said ‘probation period’ but in fact meant ‘90-day trial period’.

[36] A significant difficulty arises for R1i if this is the case.

[37] R1i gave Mr Bali notice of his dismissal on 7 August 2025, which is 121 days after the commencement of his employment. This is well in excess of the “trial basis for the first 90 days of employment” set out at cl 3.1 of the parties’ employment agreement.

[38] There is no evidence of the parties agreeing to any variation to terms of the agreement (such as to the trial period provision, or by adding in a probationary period clause) as is required by cl 26 of the parties’ agreement.[2]

[39] The Authority observes that despite cl 3.5 of the agreement providing that the parties could agree to extend the duration of the trial period, any agreement to extend a trial provision beyond 90 days’ duration would be inconsistent with the provision of s 67A(2)(a) of the Act. Under s 65(2)(b) of the Act, an employment agreement must not contain anything contrary to law, or inconsistent with the Act. Extending a trial period beyond the statutory maximum period of 90 days (on a unilateral basis) is both contrary to law and inconsistent with the objects of Act.

[40] Mr Bali is therefore not prevented from bringing a personal grievance in respect of his dismissal due to R1i’s failure to comply with the provisions of s 67A of the Act.

Was Mr Bali’s dismissal unjustified?

[41] Given the above finding, the Authority now considers whether Mr Bali’s dismissal was unjustified.

[42] The Authority accepts Mr Bali’s unchallenged evidence in relation to the circumstances of his dismissal.

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[2] Any such probationary clause would be subject to the provisions of s 67(1)(b) of the Employment Relations Act 2000.

[43] As set out above, Mr Bali attended the Webex meeting on 7 August 2024, at which he was dismissed. This was confirmed in R1i's dismissal letter of the same date.

[44] The test in s 103A(2) of the Act is whether the employer's actions, and how it acted, were what a fair and reasonable employer could have done in all the circumstances at the time the dismissal occurred. Section 103A(3) of the Act requires the Authority to consider a number of factors, including whether concerns were raised by the employer with the employee prior to the dismissal occurring, whether a reasonable opportunity to respond to those concerns was provided, and whether the employer genuinely considered the employee's explanations (if any) before the dismissal.

[45] R1i, as a fair and reasonable employer, could also be expected to comply with the good faith obligations set out in s 4(1A)(c) of the Act, and in particular the obligation to provide access to information relevant to the continuation of an employee's employment, and an opportunity to comment on the information.

[46] Mr Bali's employment was terminated without warning during the Webex meeting of 7 August 2024. R1i failed to comply with any of the minimum procedural fairness tests under the Act. The manner of Mr Bali's dismissal was abrupt, and there was no practical opportunity for him to obtain representation, or have any input into the process prior to the decision to dismiss him. There was no evidence R1i sufficiently investigated its concerns, in breach of s 103A(3)(a) of the Act. R1i failed to raise its concerns with Mr Bali in breach of s 103A(3)(b) of the Act. R1i failed to give Mr Bali any opportunity, much less a reasonable opportunity, to respond to its concerns in breach of s 103A(3)(c) of the Act.

[47] Instead, he was simply informed of his dismissal, after R1i had made its decision. Because of this, Mr Bali was deprived of any opportunity to respond to R1i's concerns in breach of s 103A(3)(d) of the Act. The concerns R1i had (if any) were not put to Mr Bali.

[48] R1i's failure to meet any of the minimum procedural fairness tests in s 103A(3), or comply with the obligations under s 4(1A)(c) of the Act renders Mr Bali's dismissal unjustifiable.

[49] R1i's actions, and how it acted, were not consistent with what a fair and reasonable employer could have done in all the circumstances at the time of Mr Bali's dismissal.

What remedies (if any) should Mr Bali receive?

[50] Mr Bali has established a personal grievance for unjustified dismissal. He is therefore entitled to a consideration of the remedies sought.

Lost wages

[51] Upon establishing a personal grievance for unjustified dismissal, an employee is entitled to a consideration of reimbursement of the remuneration he or she would otherwise have received but for the unjustified dismissal.[3]

[52] The Authority is satisfied that Mr Bali acted to mitigate his losses. His evidence is that he promptly applied for 14 new roles and obtained a new position on 26 September 2024, three weeks after the end of his notice period.

[53] Mr Bali's evidence is that he received 4 weeks' notice of his dismissal (which the Authority observes, is greater than the one week notice period provided for under the employment agreement for a dismissal during the trial period. This further adds to the uncertainty set out above at [34] and [35]).

[54] Under s 128(2) of the Act, if the Authority determines that an employee has lost remuneration as a result of a personal grievance, it has a statutory obligation to order the employer to pay to the employee the lesser of a sum equal to the lost remuneration, or to three months' lost remuneration.[4]

[55] Mr Bali lost three full weeks' pay as a result of his unjustified dismissal. After reviewing the evidence, and Mr Bali's efforts to secure further employment, the Authority is satisfied that he is entitled to an award of three full weeks' lost remuneration, or in other words the sum of $10,096.15 (gross).

[56] Although Mr Bali was able to obtain a new role relatively quickly, his evidence (unchallenged by R1i) is that this was at a lower rate of pay. Mr Bali received a salary

[3] Section 123(1)(b).
[4] Section 128(2).

of $175,000 per annum for his role with R1i. The role he commenced on 26 September was at a lower salary of $150,000 per annum.

[57] Mr Bali also claims reimbursement of the differential between the remuneration lost as a result of his unjustified dismissal from his role with R1i, and the reduced salary he received from his new position, for a period of a further eight weeks. Mr Bali calculates this to be an amount of $4,166.66 (gross). The amount claimed is less than three full months' lost remuneration available under s 128(2). It is appropriate that the Authority orders the amount of lost pay sought by Mr Bali. An additional sum of $4,166.66 (gross) of lost remuneration is awarded.

[58] In addition, holiday pay is ordered, calculated at eight per cent (gross) of the lost wages ordered above at [55] and [57]. R1i is to ensure the appropriate KiwiSaver obligations are met on both these sums.

Compensation for humiliation, loss of dignity and injury to feelings

[59] Mr Bali's evidence is that he was confused and disappointed at his dismissal. His evidence was that the circumstances of his dismissal were embarrassing for him. He said he was humiliated, stressed, experienced considerable anxiety as to his financial situation, and was concerned that he would struggle to meet his expenses. He said that as a result of his dismissal, he had to make changes to his insurance cover in order to reduces his outgoings.

[60] He said he was shocked at the abruptness of his dismissal, and the circumstances. He said he felt as if 'the rug had been pulled from underneath him'. He said that suddenly having no job meant that it was difficult to provide for his three children, and that he could no longer afford to pay for certain of their extracurricular activities.

[61] Mr Bali's evidence establishes that he has experienced harm under each of the heads in s 123(1)(c)(i) of the Act.

[62] In *Wikaira v Chief Executive of the Department of Corrections,* the Employment Court confirmed that it was desirable that awards of compensation pursuant to

s 123(1)(c)(i) of the Act " … should be, although not over-generous, nevertheless fair, realistic and not miserly".[5]

[63] Having regard to the particular circumstances of this case, and in light of awards of compensation in comparable matters, an award of $17,500.00 under s 123(1)(c)(i) of the Act is appropriate to compensate Mr Bali for the humiliation, loss of dignity and injury to feelings he experienced as a result of his unjustified dismissal.

Contribution

[64] Where the Authority determines an employee has a personal grievance, it is required under s 124 of the Act to consider the extent to which the employee's actions contributed towards the situation that gave rise to the personal grievance and if the actions so require, reduce the remedies that would otherwise have been awarded.

[65] No deduction from remedies awarded is to be made under s 124 of the Act. The unjustifiability of Mr Bali's dismissal from his employment has been established in R1i's failure to follow statutory requirements. These obligations were not Mr Bali's and there is to be no deduction from the monetary remedies for reason of contribution.

Summary of orders

[66] Within 28 days of the date of this determination, R1i Technology Limited must pay to Shailendra Bali the following amounts:

(a) lost wages in the sum of $10,096.15 (gross), and a further payment in the sum of $4,166.66 (gross) under s 123(1)(b) of the Act. Holiday pay and KiwiSaver obligations are to be calculated and paid on these sums.

(b) Compensation in the sum of $17,500.00 (without deduction) under s 123(1)(c)(i) of the Act.

Costs

[67] Mr Bali has incurred costs in bringing his claims before the Authority. He is the successful party, and as such is entitled to a contribution towards his representation costs.

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[5] *Wikaira v Chief Executive of the Department of Corrections* [2016] NZEmpC 175 at [237].

[68] When the Authority considers costs, it exercises a discretion. In exercising that discretion, it does so in a principled way.[6] Costs are not to be used as a punishment or an expression of disapproval of the unsuccessful party's conduct. Costs in the Authority are usually awarded on the basis of a daily tariff, which is currently $4500 for the first day.[7] This matter was able to be investigated in half a day.

[69] Mr Bali claims the total sum of $1200.00 as a contribution towards his costs. This is less than half the daily tariff.

[70] Given Mr Bali was required to lodge a statement of problem, a witness statement, as well as attend the investigation meeting, and to correspond with the Authority during the course of this matter, I am satisfied that $1200.00 is a fair and reasonable contribution towards his representation costs. In addition, it is reasonable that Mr Bali is reimbursed for the cost of the filing fee of $71.55 he paid to commence this proceeding.

[71] Within 28 days of the date of this determination, R1i Technology Limited is ordered to pay to Shailendra Bali the sum of $1200.00 (gross) as a contribution towards his representation costs, together with an additional sum of $71.55 (gross) being reimbursement of the filing fee paid to commence this proceeding.

Jeremy Lynch
Member of the Employment Relations Authority

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[6] *PBO Limited (formerly Rush Security Limited) v Da Cruz* [2005] 1 ERNZ 808, and *Fagotti v Acme and Co Limited* [2015] NZEmpC 135.

[7] Employment Relations Authority Te Ratonga Ahumana Taimahi *Practice Direction* https://www.era.govt.nz/assets/Uploads/practice-direction-of-the-employment-relations-authority.pdf.