

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2026] NZERA 750
3347240

BETWEEN	JAMES ALEXANDER WILSON Applicant
AND	ADVANCED PERSONNEL SERVICES LIMITED Respondent

Member of Authority:	Peter Fuiava
Representatives:	Ben Anderson, counsel for the Applicant Mary-Jane Thomas, counsel for the Respondent
Investigation Meeting:	26 February in Auckland and 8 April and 11 June 2026 by audio-visual link
Submissions and other information received:	12 March, 8 May, and 26 June 2026 from the Applicant 27 March, 14 April, and 8 July 2026 from the Respondent
Determination:	9 October 2026

DETERMINATION OF THE AUTHORITY

What is the employment relationship problem?

[1] The applicant, James Wilson, has raised personal grievances against his former employer, Advanced Personnel Services Limited (APSL or the company) of unjustified disadvantage and unjustified dismissal arising from a 90-day trial period and a breach of his notice period provision as set out in his individual employment agreement (IEA) with the company.

How has the Authority investigated?

[2] For its investigation, Mr Wilson provided the Authority with three written witness statements. The first is undated but the others are dated 3 September 2025 and 7 May 2026, respectively. For APSL, four written witness statements were received



from its general manager Ryan Densem (18, 21 July and 3, 26 September 2025) and two witness statements (18 July 2025 and 13 April 2026) from national operations manager, Lauren Macquet.

[3] All witnesses answered questions under oath or affirmation from me and the parties' representatives. 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.

What were the issues?

[4] Following a case management conference on 16 May 2025, I discussed with Mr Wilson, who was self-represented at the time, and counsel for the respondent, Ms Thomas, the issues for investigation which we agreed were as follows:

- (i) What were APSL's expectations around Mr Wilson's sales budget for the months of August, September and October 2024 onwards and were these reasonable and were they agreed to or at least understood by Mr Wilson?
- (ii) Was Mr Wilson unjustifiably disadvantaged with his employment by Mr Densem's behaviour in a meeting on 30 August 2024 which is claimed to have been intimidating, aggressive and the cause of unnecessary workplace stress?
- (iii) Before the meeting, was the opportunity given to Mr Wilson to become familiar with APSL's workplace systems?
- (iv) What is to be made of Mr Wilson's argument that his 90-day trial provision was unspecific and cannot be relied on?
- (v) Was Mr Wilson unjustifiably dismissed as a result or was he dismissed pursuant to a valid 90-day trial period?
- (vi) Should the remedies of lost wages and compensation for hurt and humiliation under s 123(1)(c)(i) of the Act be awarded?



(vii) Did Mr Wilson work from home and if so how many times, what were the circumstances, and was APSL made aware?

(viii) If any remedies are awarded, should this be reduced (under s 124 of the Act) for blameworthy conduct by the applicant that contributed to his own grievance?

(ix) Should either party contribute to the costs of representation of the other?

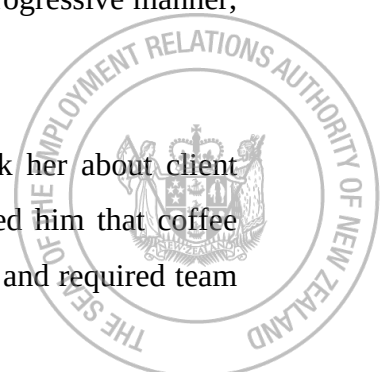
[5] Prior to the investigation meeting, Mr Wilson had re-engaged his former counsel, Mr Anderson. At the commencement of the hearing of closing oral submissions by audio-visual link on 8 April 2026, Mr Anderson sought to introduce a further issue for investigation which concerned whether the respondent had complied with the one week's notice provision in Mr Wilson's IEA. The addition of this further issue necessitated the parties filing further affidavit evidence and supplementary submissions, which have been considered.

What are the relevant facts?

[6] APSL is a nationwide recruitment agency. Although its core business is employing staff on casual or temporary agreements and placing them into temporary assignments with clients, the company also has a permanent placement division that was established in 1994. In 2024, APSL was seeking a new national manager for its permanent placement division because the previous manager had resigned.

[7] Through a recruitment consultant, Mr Wilson applied for the role and underwent two job interviews, the first of which was on 2 July 2024 with APSL's general manager, Mr Densem. The second interview on 15 July 2024 was with the company's national operations manager, Ms Macquet. During Mr Wilson's first interview with Mr Densem, whom he would report to, Mr Wilson mentioned that he had 14 years' recruitment experience in the 'white-collar' space. In his second job interview with Ms Macquet, Mr Wilson mentioned that he could expect to earn in a progressive manner, \$50,000 in his first quarter for the company.

[8] On 18 July 2024, Mr Wilson emailed Ms Macquet to ask her about client entertainment and key performance indicators (KPIs). She advised him that coffee catch ups were supported but entertaining clients was case by case and required team



lead approval. Regarding KPIs, Ms Macquet stated that while these were not rigidly policed, she advised that the harder one worked, the luckier one became and that the current expectations for the permanent team included 75 calls per week, seven candidate interviews per week, and five client meetings per week.

[9] On Thursday 1 August 2024, Mr Densem emailed Mr Wilson his written offer of employment as national permanent recruitment services manager, which included a job description and confidentiality agreement, all of which he was asked to read carefully. If there were any matters that were not clear, he could speak to either Mr Densem or Ms Macquet. He was also welcome to seek independent advice in relation to the agreement. The offer of employment would remain open until 5 pm on Friday Monday 5 August 2024.

[10] On 3 August 2024, Mr Wilson emailed Mr Densem wanting to know more about the bonus structure that was part of his remuneration package. Mr Densem's short answer was "zero" because there was no profit and loss statement to run a true sales and expenses. Mr Densem further stated that a member of Mr Wilson's permanent recruitment team was on pre-planned leave for three to four weeks and that the other member of Mr Wilson's team was working hard but had yet to get to the sales levels required.

[11] On 5 August 2024, Mr Wilson emailed Mr Densem to let him know that he was happy to sign his IEA and that he was very excited to "get cracking next week!" That same day, he emailed his signed IEA to Mr Densem who signed the agreement two days later when he had returned to Auckland.

[12] Among other things, the IEA recorded that the commencement date of Mr Wilson's employment was 12 August 2024 and that his salary was \$100,000 per annum plus commission. However, his employment was subject to a 90-day trial period which had a trial notice period of one week and stated:

Trial Period (90 days)

- 5.1 Where the Employer has not employed the Employee before, they shall employ the Employee subject to a trial period of not more than 90 days.
- 5.2 The 90 days will begin on the first day that the Employee begins their duties for the Employer.



- 5.3 If during that 90 day period the Employer finds that the Employee is not suitable for employment, they may give the Employee notice of termination. That notice period shall be one (1) week.
- 5.4 Where such notice of termination is given the Employee shall not be entitled to bring legal proceedings in respect of the dismissal (including a personal grievance action against the Employer for unjustified dismissal) except on the grounds described by the Employment Relations Act 2000.
- 5.5 Where notice is given the Employer shall have the option of paying the Employee out in lieu of them working.

...

Declaration

...

- 40.1.2 I am aware that this individual employment agreement includes a trial period of ninety (90) days, during which my employment may be terminated without a right to raise a personal grievance for unjustified dismissal;

...

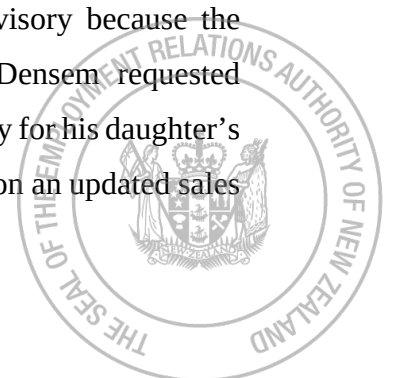
[13] Anticipating Mr Wilson's arrival, Mr Densem emailed various members of APSL an induction plan for him starting Monday 12 August 2024 which would include health and safety and a visit to APSL's office in Manukau.

[14] On 20 August 2024, Mr Densem emailed Mr Wilson a pre-onboarding link to its SharePoint platform.

[15] On 22 August 2024, Mr Densem emailed Mr Wilson with billing targets/profit and loss statements for both him and his two direct reports who each had targets of \$20,000 per month. Mr Wilson's targets were zero for August; \$10,000 for September and \$25,000 for October and for every month thereafter.

[16] On Monday 26 August, Mr Wilson stated that he felt unwell so left the office at lunchtime. As Mr Densem was not present, Mr Wilson advised him by email.

[17] On the morning of 27 August, Mr Wilson emailed Mr Densem that he would be "WFH" that day. Mr Densem replied by email a couple of hours later clarifying that working from home was considered a request rather than an advisory because the company did not have a formal WFH policy in place. Mr Densem requested confirmation from Mr Wilson whether the previous week's time away for his daughter's surgery was a half day or full day. He also requested from Mr Wilson an updated sales forecast.



[18] Later that same day, on 27 August 2024, Mr Wilson emailed his initial sales forecast to Mr Densem which recorded zero for himself for the month of September 2024 (against a target of \$10,000) and a total of \$6,180 for his two direct reports (who both had individual targets of \$20,000 each).

[19] Mr Densem stated that he was shocked and disappointed by the low forecast given Mr Wilson's stated experience and earlier claims about his sales capability.

[20] According to Mr Wilson, when Mr Densem spoke to him about the forecast, his tone was threatening and caused significant stress, which was both unfair and unreasonable because he had only been in the role for two weeks and the focus of his team was to recruit permanent positions with a focus on the white-collar space – an area of recruitment that APSL did not have a reputation for.

[21] Mr Densem denies that Mr Wilson was employed to establish or manage a new white-collar business unit. While white-collar opportunities would not have been turned away by Mr Densem, the focus of Mr Wilson's team was on blue-collar recruitment.

[22] On Friday 30 August 2024, Mr Wilson met with Mr Densem in his office. Ms Macquet was also present at the meeting. During this meeting she said to Mr Wilson that he needed to "light a fire" under his team. Ms Macquet stated that she intended her comment to be constructive and to prompt Mr Wilson to step up as a leader and to energise his two team members who appeared "flat". Mr Wilson claims that at the meeting, Mr Densem was cold, threatening, condescending, and insulting towards him.

[23] On Monday 2 September 2024, Mr Wilson met with Mr Densem and said that he felt ambushed by the previous Friday's meeting and for the first time expressed to his manager doubts about his team's capability.

[24] From Wednesday 4 to Thursday 5 September 2024, Mr Wilson stated that he woke up with a bad cold and could not go to work.

[25] Mr Wilson returned to work on Friday 6 September 2024 but texted Mr Densem if he could work from home as he was not sure how long he would last as he still felt



sick. However, by this time, Mr Densem had decided to terminate Mr Wilson's employment under APSL's 90-day trial provision on the grounds of his judgment, wrong fit with the business and his lack of leadership of his team.

[26] Sometime that same morning of 6 September 2024, Mr Densem provided Mr Wilson with a letter inviting him later to a meeting at 4.45 pm that afternoon to discuss his employment. The meeting did not proceed because Mr Wilson had returned home sick by then. Later that day, Mr Densem emailed him that the meeting was rescheduled to Monday 9 September 2024 at 7.45 am.

[27] Mr Wilson attended the meeting in which Ms Macquet handed him his termination letter. He was paid notice in lieu with his employment ending on Friday 13 September 2024.

[28] Mr Wilson was not able to find alternative employment in Auckland. He eventually found a role for a recruitment company in Brisbane, Australia where he has remained since.

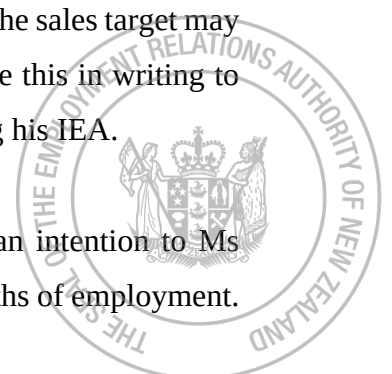
Whether Mr Wilson was unjustifiably disadvantaged

[29] The question of whether a dismissal or other action by an employer is justifiable is determined on an objective basis by applying the test at s 103A of the Act. The test is 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 dismissal or action occurred.

APSL's sales expectations for Mr Wilson were reasonable

[30] Mr Wilson's evidence with respect to his sales targets for August, September and October 2024 was that he would initially be focussing on planning, preparations and developing a strategy for his team. He would progress his focus to generating revenue in September 2024. Although this progressive approach to the sales target may have been subjectively held by Mr Wilson, he did not communicate this in writing to Mr Densem at the time of his job interview or subsequent to signing his IEA.

[31] It may be noted that, in July 2024, Mr Wilson intimated an intention to Ms Macquet that he could earn \$50,000 for APSL in his first three months of employment.



While Mr Wilson's indication was given voluntarily, he was not held to it by Mr Densem who gave him a total budget of \$35,000 for his first three months, which consisted of zero for August, \$10,000 for September and \$25,000 for October. In light of Mr Wilson's 14 years of recruitment experience, this lower target was fair and reasonable, which gave him the month of August to settle in and start a pipeline of work for revenue to be earned in September and October 2024.

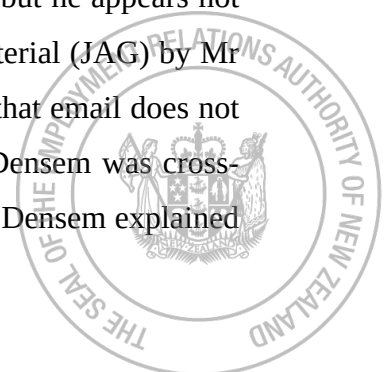
[32] Related to this issue was the forecast model used by APSL, which was relatively new and was being trialled at that time. This point would have had more force if there was a significant pipeline of work by Mr Wilson and his two-member permanent recruitment team to warrant a closer look at the formula. However, with only six leads between the three of them, there was neither the quality nor the quantity of work for the formula to have an effect, if any.

[33] Further, Mr Wilson argues that the focus of his role was to recruit into the white-collar space. However, such a view cannot reasonably be held as there is no express wording to this effect in Mr Wilson's IEA or job description. I accept Mr Densem's evidence that APSL has a separate white-collar recruitment company, Denfox, and if the intention was to recruit Mr Wilson into that area, and it was not, Mr Densem would have placed him into that company and not APSL whose focus was on blue-collar recruitment.

[34] Mr Wilson sought to muddy the waters by suggesting that there are grey areas where blue-collar and white-collar work come together. While this is certainly true and while Mr Densem would not have turned away white-collar work obtained by Mr Wilson, it remains that his employment documents indicate that the focus of the national permanent recruitment services manager role was the blue-collar space.

Whether disadvantaged from a failed induction and onboarding process

[35] Mr Wilson's employment commenced on 12 August 2024, but he appears not to have been emailed a link to APSL's pre-onboarding training material (JAG) by Mr Densem until 20 August. That Mr Wilson cannot recall receiving that email does not change the fact that it was emailed to him by APSL. When Mr Densem was cross-examined as to why the JAG-link had not been emailed earlier, Mr Densem explained



that it was not necessary for revenue-generating work especially as Mr Wilson did not need to go through JAG to get a customer list.

[36] In re-examination, Mr Densem was asked whether the KPIs that Ms Macquet had conveyed to Mr Wilson in July 2024 required access to JAG, for example, the KPI for the permanent team was to make 75 calls per week. Mr Densem's answer was "no". It is noted further that when Mr Wilson met with Mr Densem on Monday 2 September 2024, in which he expressed feeling "ambushed" about the previous Friday's meeting, he expressed, for the first time, his concern about his team's ability but there was no mention of being disadvantaged as a result of a lack of training. This unjustified disadvantage claim has not been established.

Mr Densem's tone and demeanour at 30 August 2024 meeting

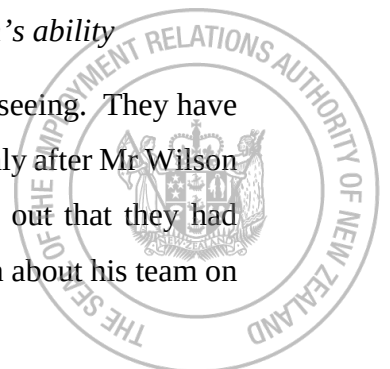
[37] Mr Wilson claims that at this meeting, Mr Densem was insulting, cold, threatening and condescending. I accept that Mr Wilson will have come away from that meeting feeling physically deflated but this was not due to bullying or intimidation by either Mr Densem or Ms Macquet, who was also present at the meeting.

[38] I have had the benefit of observing Mr Densem and Ms Macquet at the investigation meeting. My impression of Mr Densem is that he is softly spoken but firm. It is material that the text messages he sent to Mr Wilson when he was too unwell to attend work were polite, supportive, and professional. Those communications count against the image that Mr Wilson now portrays of Mr Densem.

[39] The comment made by Ms Macquet to Mr Wilson to "light a fire" under his team is not an inherently negative phrase, as submitted by Mr Anderson. It was intended to motivate, energise or spur Mr Wilson into action especially as he was the leader of the permanent recruitment division whom the two members of the team would naturally look to for guidance and to lead by example.

Whether Mr Wilson disadvantaged by misrepresentation of his team's ability

[40] Mr Wilson had two members in his team whom he was overseeing. They have not been named in this determination. It was submitted that it was only after Mr Wilson started employment and met with his two members that he found out that they had limited ability. Mr Densem accepts that Mr Wilson raised a concern about his team on



2 September 2024. However, by then, Mr Wilson had been working with his team for three weeks during which no concerns were raised by him about his two team members. The first time this concern was raised was only after Mr Densem had expressed his disappointment with Mr Wilson about his low forecast.

[41] Further, before Mr Wilson entered into his IEA, he received an email from Mr Densem on 4 August 2024 that one of his team members was on pre-planned leave for three to four weeks and that the other had been working hard but was not earning the sales to get to the levels required. Before accepting APSL's offer of employment, Mr Wilson would have accepted employment with this information in mind. There was no misrepresentation.

[42] I find force in Ms Thomas's submission that APSL makes money if Mr Wilson makes money and this being the lens with which to view the employment relationship, it would make no sense for Mr Densem to set Mr Wilson up to fail. With this in mind, the claim of unjustified disadvantage by misrepresentation is unsustainable on the facts and information before me.

WFH allegations

[43] Mr Anderson submitted that Mr Densem was frustrated with Mr Wilson's WFH requests but failed to raise this with him as a formal disciplinary or performance concern. He also took issue with some of Mr Wilson's expense claims. The expenses were reimbursed and Mr Densem clarified with Mr Wilson that APSL did not have a formal WFH policy in place. The way Mr Densem handled Mr Wilson's WFH requests was within the acceptable range of the notional fair and reasonable employer.

Whether Mr Wilson was unjustifiably dismissed

[44] Mr Anderson submitted that Mr Wilson's 90-day trial period was invalid on the grounds of unfair bargaining, unfair and internally inconsistent wording regarding the period of time the trial period would apply, and a failure to comply with the strict notice period of one week set out in the trial period.

[45] The cases cited by Mr Anderson notably *Blackmore v Honick Properties Ltd* [2011] NZEmpC 152, *Parkshit v James Richardson (NZ) Ltd* [2015] NZERA Auckland



77, and *Pact Group v Sheridan* [2023] NZEmpC 235, are either distinguishable on their facts or are ultimately not helpful.

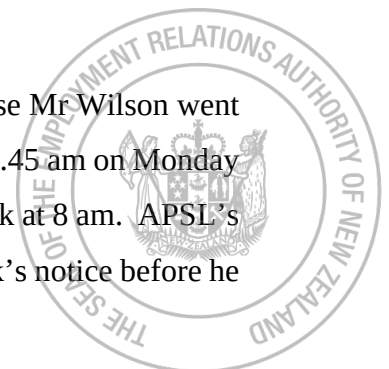
[46] I have had the benefit of having Mr Wilson appear before me. He is a highly experienced recruiter with 14 years' experience in the recruitment industry which is highly competitive and "cut throat" using Ms Thomas's vernacular. Mr Wilson is not by any means a person who is vulnerable owing to their limited life experience, education or unfamiliarity with New Zealand. He is quite the opposite: mature, confident, knowledgeable of his own industry, and an excellent verbal communicator.

[47] I consider it dubious that given Mr Wilson's background in white-collar recruitment that he was unfamiliar with how 90-day trial periods operate in practice. While he had approximately two to three working days to seek independent legal advice before accepting APSL's job offer, had he requested an extension from Mr Densem, it would have been given. Further, Mr Wilson emailed Mr Densem upon submitting his signed IEA that he was keen to "get cracking" with his new role. If Mr Wilson had elected not to obtain independent advice, that was a matter for him.

[48] As to the commencement of the 90-day trial period, the IEA considered in its entirety makes it abundantly clear that the 90 days start to run from the first day Mr Wilson commenced employment, which was 12 August 2024.

[49] Finally, with respect to an alleged breach of the one week notice period for the trial period, Mr Wilson denies not knowing what the purpose was of a meeting at 4.45 pm on a Friday afternoon was about. However, by then he would have been put on notice about Mr Densem's disappointment about his low forecast. Any reasonable person in Mr Wilson's shoes would have understood that the purpose of the meeting was to discuss his dismissal pursuant to the 90-day trial period. The letter of 6 September 2024, inviting Mr Wilson to meet that afternoon, constituted notice in my view.

[50] However, the scheduled meeting could not take place because Mr Wilson went home sick that day. The meeting was consequently rescheduled to 7.45 am on Monday 9 September 2024, which was before Mr Wilson usually started work at 8 am. APSL's intent was clear, wishing to provide Mr Wilson with a working week's notice before he



commenced work that day. Given all the circumstances, I find no breach by the company of Mr Wilson's trial notice period as set out in his IEA.

Conclusion

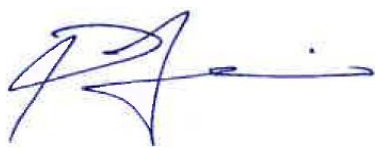
[51] For the reasons given, I find that Mr Wilson was neither unjustifiably disadvantaged nor unjustifiably dismissed by APSL. Its 90-day trial period was valid and was relied upon by Mr Densem because Mr Wilson was not the right fit and was not suitable to lead the permanent recruitment division. The application is unsuccessful and is declined.

Costs

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

[53] If the parties are unable to resolve costs, and an Authority determination on costs is needed, APSL may lodge and serve a memorandum on costs within 21 days of the date of this determination. From the date of service of that memorandum, Mr Wilson 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.

[54] 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.¹



Peter Fuiava
Member of the Employment Relations Authority

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

