EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4105424/2020

Held remotely between 1 and 10 September 2021

Employment Judge S MacLean
Tribunal Member R Dearle
Tribunal Member P Fallow

Dr M Idowu	**Claimant** **In person**
Onorach Limited	**Respondent** **Represented by** **Mr S Leiper,** **Director**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is that (1) the respondent has failed to pay the claimant's holiday entitlement and is ordered to pay the claimant the sum of Four Hundred and Six Pounds and Eighty Nine Pence (£406.89) gross; (2) the respondent has made an unauthorised deduction from wages and is ordered to pay the claimant the sum of Three Thousand Two Hundred and Sixty Nine Pounds and Twenty Seven Pence (£3,269.27) gross; (3) the claims under sections 13, 26 and 27 of the Equality Act 2010 founded on the protected characteristic of race are dismissed; (4) the claim of breach of contract is dismissed.

REASONS

Introduction

1. In the claim form the claimant claimed that he had been unfairly dismissed by the respondent; he was due notice pay, holiday pay, arrears of pay and other payments. He also claimed that he had been unlawfully discriminated against on grounds of race and/or religion or belief. He referred to a background where he worked for the respondent on various projects and believed that he was entitled to future payments for revenues which would accrue to the respondent in future from these projects.

2. In the response the respondent denied the claims. The respondent stated that the discrimination claims were insufficiently specified to be properly responded to. With regard to the claim of unfair dismissal the respondent's position was that the claimant did not have sufficient qualifying service to bring the claim. The respondent's position was that the claimant had been summarily dismissed for gross misconduct and he was not due any notice pay. The respondent said that on termination of the claimant's employment he received all the pay and accrued holiday pay which he was due. It was denied that any further payments were due.

3. Following a preliminary hearing on 17 February 2021 Employment Judge Kemp issued a judgment that the Tribunal did not have jurisdiction to consider the claim of unfair dismissal and accordingly that claim was dismissed.

4. Following a preliminary hearing on 28 June 2021 Employment Judge Kemp issued a judgment that the claimant's claims under sections 13, 19, 26 and 27 of the Equality Act 2010 (the EqA) founded on the protected characteristic of religion or belief were struck out under rule 37 of Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 (the Tribunal Rules) as having no reasonable prospects of success. The claim as to indirect discrimination on the grounds of the protected characteristic of race under section 19 of the EqA was also struck out under rule 37 as having no reasonable prospects of success. The remainder of the application for strike out was refused.

5. On 19 August 2021 Employment Judge Kemp held a further preliminary hearing at which the respondent's application for a deposit order was refused.

6. The final hearing took place remotely using the Cloud Video Platform as the parties considered that it was just and equitable to do so.

7. The claimant gave evidence. He also led evidence from Professor Christene Leiper, the respondent's Managing Director. The respondent led two witnesses: Stephen Leiper, Chief Executive Officer and Jack Meiland, Director of Onorach Innovations Limited. The parties had prepared a joint set of productions extending to over 700 pages not all of which was referred to in evidence. The parties made submissions once all the evidence had been heard.

8. The Tribunal has set out its findings in fact. Not every fact that could be found in the documents or all evidence has been set out; the Tribunal has set out the facts as found that are essential to the Tribunal's reasons or to an understanding of the important parts of the evidence. The Tribunal carefully considered the submissions during its deliberations and has dealt with the points made in submissions while setting out the facts, law and the application of the law to those facts. It should not be taken that a point was overlooked, or facts ignored because the facts or submission is not part of the reasons in the way that it was presented to the Tribunal by a party.

9. During its deliberations the Tribunal's approach was to consider the issues that had to be determined which were as follows.

The Issues

10. Direct discrimination: Was the claimant treated less favourably because of his race (Black British) within the meaning of section 13 of the EqA? The claimant relies on the following as less favourable treatment:

    a. Isolation on the PharmaLedger project (and other projects): restricted from benefitting financially from the PharmaLedger project.

b. The removal of the claimant's name on the contact list for the PharmaLedger project with that of another employee; restricting the claimant's involvement in the project.

c. Overloading the claimant with job responsibilities without recruiting more staff?

d. Paying less employer pension contributions for the claimant.

e. Failing to invite the claimant for a salary review meeting.

f. Accusing the claimant of failing to complete a tender in August 2020.

g. Refusing to allow the claimant to work a four-day week.

h. Refusing his application for annual leave in September 2020.

i. Failing to provide HR support.

j. Delaying the salary review meeting in August 2020.

k. Blaming the claimant for an incident on 31 August 2020.

l. Subjecting the claimant to disciplinary action, terminating his employment and emailing him for recovery of company property.

11. Harassment: Did the respondent engage in unwanted conduct related to race? The unwanted conduct relied upon by the claimant is:

a. Mr Leiper's conduct at the 27 August Meeting.

(i) Accusing the claimant of failing to complete a tender in August 2020.

(ii) Saying that, "You are not a researcher."

(iii) Having no desire to keep to the agenda.

(iv) Misunderstanding about the role of the claimant and the respondent in the PharmaLedger project.

(v) Saying that the signing of the employment contract meant that the claimant was working on the PharmaLedger project for free.

(vi) Issuing the claimant with an ultimatum.

b. Termination of his employment through a personal email because his access to the office email had been revoked.

c. Summary dismissal.

d. Refusing the claimant's notice of resignation.

e. Mr Leiper and Mr Meiland visiting the claimant's home on 16 September 2020.

12. If so, did that the unwanted conduct have the purpose or effect of violating the claimant's dignity or creating an intimidating or hostile degrading humiliation or offensive environment for him?

13. Victimisation: Did the claimant carry out a protected act and/or did the respondent believe the claimant had done so or may do a protected act under section 27 of the EqA? The claimant says that at the 27 August Meeting he complained about withholding his earnings and that the claimant's comments constituted protected acts.

14. If so, did the respondent subject the claimant to a detriment because of a protected act and/or because the respondent believed that the claimant had done or may do a protected act. The claimant claims that the respondent objected at the hearing to the following detriments:

a. No email communication from all colleagues.

b. Threats of disciplinary action.

c. False allegation over the claimant's role in the Pharmaledger project.

d. Blaming the claimant for things for which he was not responsible.

e. Limited access to special office software.

f. Disapproval of annual leave.

g. Revoking access to office email.

h. Termination of employment.

i. Dismissing the claimant summarily.

j. Refusing his notice of resignation.

k. Mr Leiper and Mr Meiland visiting the claimant's home.

15. What was the claimant's notice period? Was he paid for that notice period? If not was the claimant guilty of gross misconduct or did he do something so serious that the respondent was entitled to dismiss him without notice?

16. Did the respondent fail to pay the claimant for annual leave accrued but not taken when his employment ended?

17. Did the respondent make an unauthorised deduction from the claimant's wages and if so, how much was deducted?

Findings in Fact

18. The Tribunal found the following facts, material to the issues established.

19. The respondent is Onorach Limited. It is a limited company. Stephen Leiper and Christene Leiper are its directors and shareholders. The respondent employs Mr Leiper and Professor Leiper and approximately seven employees in the United Kingdom. It operates in the field of clinical trials for medicines and equipment.

20. Mr Leiper and Professor Leiper are also directors and shareholders of a subsidiary company Onorach Innovations Limited. Jack Meiland is a director. The subsidiary company was incorporated as a digital arm of the respondent which would allow exploration into digital ideas with a view to improving clinical trials.

21. Mr Leiper and Professor Leiper also have interests in Onorach CIA a company registered in Latvia that has three employees.

22. Findlays, Chartered Accountants provide payroll services to the respondent. Elaine Leitch, a qualified lawyer and director of EWL Associates Limited provides human resource support and employment law advice to the respondent. She drafts the employment contracts, the handbook and the respondent's employment policies. The respondent has an equal opportunities, grievance and disciplinary policies.

23. The claimant has a graduate degree and is a Doctor of Philosophy. Around December 2017 he incorporated a limited company called Data2AI Limited of which he is the sole director and controlling shareholder.

24. In 2018 the claimant met Mr Leiper and Professor Leiper at a conference and discussed the possibility of working together. At that time the respondent did not have a vacant position, but it wished to utilise the claimant's skills. The respondent could not afford more than £40,000 per annum. There was a discussion about the work required of the claimant by the respondent which was broadly equivalent of at least 80% of a full-time working week of 40 hours. The claimant was not attracted by the proposal which he considered substantially below his worth. The parties agreed that there would be an initial contract whereby the claimant's services would be offered to the respondent through Data 2AI Limited at £3,500 per month on a rolling monthly contract.

25. On 7 August 2018 the respondent and the claimant concluded a confidentiality agreement in writing which protected the confidentiality of information each provided to the other.

26. Around 7 August 2018 the claimant started working at the respondent's premises as a Data Analytics Manager. He was provided with access to the respondent's facilities including its computer equipment. He was provided with access to its servers and had an email address at the respondent. He worked at the respondent's premises for a standard working week of 9am to 5pm Monday to Friday. Data2AI Limited sent invoices to the respondent for the period from and after 7 August 2018 for the services provided to the respondent by the claimant for £3,500 per month. Invoices were paid by the respondent to the bank account of Data2AI Limited.

27. The respondent was the only client of Data2AI Limited and the claimant informed the respondent that he wished to have the ability to work for the benefit of Data2AI Limited out with the standard working week.

28. The respondent's employees were paid in arrears on or around the 25th day of each month. They had benefits such as holidays, pension and paid sick leave which were not provided to the claimant in the period August 2018 to 24 April 2019.

29. On 17 August 2018 an employee notice was issued to the claimant in relation to matters arising under General Data Protection Regulation.

30. On 18 October 2018 the claimant emailed Mr Leiper and Professor Leiper about an audit that was about to take place on which he suggested that a job description be placed on a personnel file for staff. A file was created for the claimant which was not a personnel file but recorded a job description for his role. Around this time Jackie Purdie was employed by the respondent as a Clinical Research Associate. She undertook clinical work on site and project management for various trials.

31. Around 26 August 2018 Professor Leiper was approached by Dr Fahim Chowdhury, Senior Consultant, Technovative Solutions Limited enquiring whether she would be interested in joining a consortium that was preparing a proposal for an innovative medicine initiative. The deadline for the proposal was 24 October 2018. The concept was to develop a blockchain enabled health care platform. The proposal required to be made by a consortium comprising of partners from disciplines including clinical trial and drug submissions experts and IT enterprise technology and integration architects, blockchain developers, business analysts and project managers. Each partner requires an EU PIC number which is provided to partners who satisfy criteria demonstrating that they were stable and viable enterprises. Professor Leiper replied indicating that the respondent would like to join the consortium for the clinical trial section and if Dr Chowdhury required an IT expert the respondent had a data analysis–mathematician working full time in house. Professor Leiper also proposed other prospective partners who had the expertise in the required areas. Professor Leiper confirmed the respondent's EU PIC number.

32. On 29 August 2018, Professor Leiper sent an email to Dr Chowdhury in response to his clarification that there would be no direct manufacturing or clinical trials but there was a need for knowledge of manufacturing and clinical trials. Professor Leiper indicated that the claimant worked at the respondent and that she was also working on another project with an AI expert, Calum McHardy of Unicom Communications. She considered that respondent was the correct clinical research organisation (CRO) for the proposal. Professor Leiper then emailed the claimant and Mr McHardy saying that she would like them to join the respondent's team bidding to join the consortium.

33. The claimant was part of the respondent's bid team writing bid sections to join the consortium. There were two stages. The initial bid was to be submitted by 24 August 2018 and if successful would proceed to the next and final stage on 18 May 2019.

34. In preparation for an audit around 7 November 2018 the claimant and Ms Purdie signed off induction checklists and standard operating procedure reading lists.

35. Around this time the parties discussed the possibility of the claimant working as an employee of the respondent.

36. Around 10 December 2018 Professor Leiper sent to the claimant a job description for the job title Data Analytics Manager reporting to the CEO and Managing Director to provide professional services to the respondent. The operational responsibilities included: first and second level support for encryptiDATA customers; providing professional services to integrate encryptiDATA to other sources; first and second level IT support for the respondent's staff; developing the use of blockchain and related technologies for clinical trials, pharmaceutical ledger etc.

37. The respondent instructed Ms Leitch to draft a contract of employment for the claimant with a start date of 8 January 2019 being the first working day in the new year. The parties could not agree on the appropriate salary level or terms and conditions of employment.

38. Professor Leiper attached a draft contract of employment to an email sent to the claimant on 19 February 2019. The draft had the start date of 8 January 2019. The claimant responded with a list of items and conditions that he found difficult to accept with comments about how this could be resolved. There was no comment about the start date. The claimant sought to amend the terms of the draft in email correspondence. Professor Leiper discussed matters with Ms Leitch. The negotiations continued with various revisions being proposed by the claimant.

39. Around February 2019 Martin Robison was employed by the respondent as a Project Manager. On or around 20 February 2019 Mr Leiper sent to the claimant and Mr Robison introductory information of the NEST pension

scheme which all employees are auto-enrolled. They were referred to information on NEST website.

40. On 15 March 2019 Mr Leiper wrote to the claimant offering him the position of Data Analytics Manager. The start date would be "the Monday after [the claimant] signed the employment contract". The letter also referred to offering the claimant equity shares in Onorach Innovations Limited after a restructuring expected to be no later than July 2019.

41. The claimant sent a further email with additional comments on 25 March 2019. The proposed changes he suggested did not seek to amend the start date. There were discussions between the claimant and Professor Leiper during a conference call that included Ms Leitch. Ms Leitch spoke to the claimant by telephone on one or two occasions and advised him to seek independent legal advice. He did not do so.

42. Ms Leitch prepared a further draft which included many of the revisals proposed by the claimant. Professor Leiper sent this to the claimant on 9 April 2019. It had the start date of 8 January 2012 although in the period from that day to 12 April 2019 invoices from Data2AI Limited had continued to be sent by that company and paid by the respondent for the months of January, February and March 2019.

43. On 12 April 2019 the parties signed the employment contract. Professor Leiper then asked the claimant for his copy of the employment contract which she took away and returned with a new front page which had as the start date of 25 April 2019 (the Employment Contract). She explained that the Employment Contract took account of the claimant's proposed annual leave and would start on 25 April 2019: the day on which the claimant actually started working for the respondent as an employee.

44. Data2AI Limited sent an invoice to cover the period of the services provided by the claimant up to 24 April 2019 at an amount equivalent to £3,500 per month. It was paid by the respondent.

45. The claimant commenced working for the respondent on 25 April 2019 on the basis of a salary of £50,000 per annum with related benefits in accordance with the Employment Contract. He was paid under the PAYE scheme from and after that date on the basis of an annual salary of

£50,000 with payment made to his own bank account. Invoices from Data2AI Limited to the respondent ceased with the effect from 25 April 2019. The claimant did not raise any grievance of a complaint that he was not paid salary of £50,000 from 8 January 2019.

46. The Employment Contract provided that the claimant's employment as Data Analytics Manager started on 25 April 2019 and no previous employment counted as continuous employment with the respondent. The claimant agreed to undertake other duties which was reasonable for the respondent to ask him to perform. The duties were set out in a job description which may be reasonably modified. The claimant was to diligently exercise and perform such duties that were assigned to him; comply with all reasonable and lawful directions and use his best endeavours to promote, protect, develop and extend the respondent's business.

47. The Employment Contract also provided for normal working hours of 35 hours per week (9am to 5pm Monday to Friday). No further payment was to be made for additional reasonable hours worked for the proper performance of duties. Salary was to be reviewed annually, normally between January and March but there was no obligation to award an increase.

48. The respondent's holiday year runs between 1 January and 31 December. The claimant was entitled to 33 days' paid holiday in each year including public holidays in Scotland.

49. During the first two years of the claimant's employment the respondent required to give the claimant one month's written notice of termination. The claimant required to give the respondent one month notice of termination in writing.

50. The Employment Contract provided that the respondent could terminate the employment with immediate effect without notice and with no liability to make any further payment to the claimant (other than amounts accrued due at the date of termination) if the claimant was (1) guilty of any gross misconduct affecting the respondent's business; including fraud or dishonesty or any behaviour which in the respondent's opinion brings or is

likely to bring the claimant or the respondent into disrepute or is materially adverse to the respondent's interests; (2) the claimant refuses or neglects to comply with any reasonable and lawful directions of the respondent.

51. On termination of employment the Employment Contract provided that the claimant immediately deliver to the respondent all documents, books, materials, records, correspondence, papers and information relating to the respondent's business or affairs or its business contacts, any keys, credit card or any other property of the respondent in his possession or under his control; irretrievably delete any information relating to the respondent's business on any magnetic or optical disk or memory and all matter derived from such sources in the claimant's control outside of the respondent's premises.

52. The Employment Contract also included the following clauses:

"2.4(g) Not, during employment, without the prior written consent in writing of the Company (which consent shall not be unreasonably withheld) be directly or indirectly engaged or concerned or interested in any other Company, business or concern which is in competition with the Company. For the avoidance of any doubt, the Employee shall be permitted to continue to be engaged or interested in his own business, provided that such engagement or interest takes place out with his working time for the Company, does not impact on the performance of his role with the Company, and is not in conflict with that role.

11.10 At Onorach's request Designs, Drawings, Records and Software which are made by you in the course of your employment with the Company shall belong exclusively to the Company (or to any Group Company as the case may be), together with any copyright or design rights herein (whether registrable or unregistrable); the right to apply throughout the world for appropriate protection therefor, whether by treaty, convention or otherwise; and all other rights of a like nature therein which are contained under the laws of the United Kingdom and all other countries of the world, for the full term thereof and any renewals or extensions thereof. Outwith Onorach any Designs, Drawings, Records and Software which are made by you

without Onorach's request in the course of your employment with the Company shall belong exclusively to you, together with any copyright or design rights therein (whether registrable or unregistrable); the right to apply throughout the world for appropriate protection thereof, whether by virtue of any treaty, convention or otherwise; and all other rights of a like nature therein which are conferred under the laws of the United Kingdom and all other countries of the world, for the full term thereof and any renewals or extensions thereof."

53. On 24 May 2019 Mr Leiper wrote to the claimant advising that he had been auto-enrolled onto the pension scheme on 24 April 2019. The claimant was informed that he and the respondent would pay into the pension scheme every month and was provided with the starter pack of information from the pension scheme. The contribution is a percentage of pay. From April 2019 the claimant paid five percent and the respondent paid three percent of pensionable pay each period. Pensionable pay is the band of earnings that can be used to calculate contributions for auto-enrolment. The figures are reviewed every year by the government. The first £6,240 of earnings are not included in the calculation. Accordingly, earnings cannot be more than £44,030. The percentage deducted by the respondent was based on pensionable pay.

54. Around May 2019 the respondent knew that its second proposal for the bid to join the PharmaLedger project was successful.

55. Sometime after July 2019 the claimant was offered and received equity shares in Onorach Innovations Limited. The same class of shares were offered on the same potential benefit or at-risk terms as all shareholders including Mr Leiper and Professor Leiper.

56. Around November 2019 the respondent was one of 28 partners including five universities, seven specialist digital companies and pharmaceutical companies that entered into a consortium agreement for the PharmaLedger project. The respondent was the only CRO involved in the consortium. The respondent was working with digital companies not to create a digital platform but to make the business case and ensure it was fit for purpose. The respondent's input was modified from the original bid

and had more of a clinical emphasis which was where the respondent had significant expertise in conducting clinical trials and knowing what was required in practice.

57. Mr Robison project managed the respondent's involvement in the PharmaLedger project. Mr Leiper became aware of friction between the claimant and Mr Robison as the claimant did not consider that he required to take instructions from Mr Robison. Mr Leiper asked the claimant to submit his contributions through Mr Robison rather than directly to other collaborators. Mr Leiper advised the claimant that while the claimant considered that the respondent could supply digital services to the consortium the respondent was only required to provide and be paid for what was stipulated under the consortium agreement.

58. Between January and March 2020 Mr Leiper had a salary review meeting with some but not all employees. The claimant was not one of those employees.

59. The claimant approached Mr Leiper to ask if he could reduce his working week to four days to allow him time to meet his obligations as a director of Data2AI Limited. Mr Leiper looked at the projects in which the claimant was involved. Mr Leiper considered that the claimant should be spending a maximum of ten percent of his time on projects because of his other responsibilities. Mr Leiper refused the request explaining that there was not enough capacity.

60. Before the national lockdown on 23 March 2020 the claimant attended a business trip to Sheffield with Mr Meiland. During the journey the claimant expressed concern about his contractual arrangements with the respondent. Mr Meiland suggested that the claimant speak to Professor Leiper and Mr Leiper about his concerns. The claimant did not do so.

61. Following the national lockdown, the respondent's employees including the claimant worked from home. The claimant was involved in preparing tenders during July and August 2020.

62. Around August 2020 the claimant requested a salary review meeting which was scheduled for 14 August 2020. Mr Leiper postponed this because he had urgent deadlines for a clinical proposal and in line with policy, he

needed to prepare a set of objectives for the next twelve months and allow the claimant 14 days to prepare a response to be discussed at the salary review meeting. The claimant indicated that he wished to discuss successful milestones and achievements over the last couple of years and then have a separate salary review meeting about any future salary. Mr Leiper confirmed on 17 August 2020 that a full performance and salary review meeting would take place on 27 August 2020 (the 27 August Meeting) when there would be a discussion about the claimant's performance to date, current and future salary and incentives, job titles and future expectations based on the plan that had been sent.

63. On 17 August 2020 the claimant emailed Mr Leiper advising that the postponed salary review meeting was important to help him decide when to have a break from work after completing two major tender applications to avoid experiencing too much stress at work. He said that the implication of the postponement meant that he should apply for a short break for annual leave before the 27 August Meeting. The claimant reiterated his desire to have separate meetings; one to discuss past contributions and review of salary as Data Analytics Manager and a separate meeting to discuss future plans and expectations.

64. The 27 August Meeting was lengthy and became heated. There was discussion about the recent tender applications in which the claimant had been involved in July and August and their perceptions of the claimant's performance.

65. The claimant said that the respondent wanted him to work on the PharmaLedger Project for three years without pay. Mr Leiper said that the claimant was paid: his salary when he became an employee. Mr Leiper indicated that if the claimant wished to negotiate a salary increase there were two reasons why he would not receive it. Firstly the respondent could not afford it at the time; and secondly because the respondent's assessment of the claimant's performance was different to that of the claimant. Mr Leiper expressed concern that the claimant appeared to be indicating which projects he would work on as an employee and which that he would not. The claimant said that Mr Leiper was being unreasonable as he was a researcher. Mr Leiper said that the claimant was not a

researcher, he was an employee. The claimant indicated that Mr Leiper was confused and that he was wearing two hats. The claimant maintained as far as he was concerned the PharmaLedger project was not an "Onorach project", it was a research opportunity and that it was not under his Employment Contract. The claimant did not accept that his job description included working on the PharmaLedger project. Mr Leiper said that the claimant had signed an employment contract and it was reasonable for him to ask the claimant to do work under his employment contract which was within his capability and skillset. The claimant said that he needed to be paid separately in relation to PharmaLedger project. Mr Leiper said that the claimant only required to devote ten percent of his time to the PharmaLedger project as part of his employment contract. The claimant said that he was a holder of a PhD not just an employee. The claimant was reminded that all the research opportunities that the claimant was talking about including the PharmaLedger project were research opportunities that the respondent brought to him. The claimant would not have found any of these opportunities on his own. They were brought to the claimant as the respondent's employee and he was expected to perform as the respondent's employee. The 27 August Meeting was brought to a conclusion. The claimant was advised that he would be paid £50,000 for the foreseeable future and that there would be another review in 2022. In the meantime, the claimant was to write to Mr Leiper by 4 September 2020 confirming that he would work on the PharmaLedger project as part of the Employment Contract. The claimant did not do so.

66. On 31 August 2020 an issue arose regarding arrangements for a box for a laptop to be collected by DHL. There was a breakdown in communication between the claimant and an administrative colleague. The claimant considered that he was being held responsible without his side of the story being heard. Professor Leiper considered that the incident was being blown out of proportion. In the end the task was undertaken by Mr Leiper.

67. On 8 September 2020 Mr Leiper wrote to the claimant inviting him to attend a disciplinary meeting on 10 September 2020 via Microsoft Teams (the Disciplinary Invitation). The disciplinary meeting was being convened to discuss the following allegations.

a. During the 27 August Meeting the claimant refused to comply with a reasonable and lawful direction in relation to required participation in the PharmaLedger project.

b. In so refusing the claimant had breached the terms the Employment Contract.

c. The claimant stated intention during the 27 August Meeting of 'exploring' his own research opportunities in relation to the PharmaLedger project was in contravention of clause 2.4(g) of Employment Contract which obliges the claimant not to do anything which impacts on the performance of his role with the respondent and is not in conflict with that role.

d. The claimant's tone and attitude during the conversation were hostile.

e. The claimant failed to put in writing his unequivocal position on participation of the PharmaLedger project (despite having time to consider matters following the meeting and having been asked to do so) is insubordination and a further example of his failure to comply with a reasonable and lawful direction.

f. The trust and confidence which underpins the employment relationship had been seriously damaged or destroyed by his actions.

68. The Disciplinary Invitation advised that the issues were regarded by the respondent as gross misconduct and provided links or attachments to a recording of the 27 August Meeting; a copy of the respondent's disciplinary procedure; and a copy of the Employment Contract. The claimant was advised that possible consequence arising from the disciplinary meeting might be a summary dismissal. The claimant was advised of his right to be accompanied by another work colleague or trade union representative.

69. As part of the disciplinary process Mr Leiper wrote to the claimant reminding him that while the disciplinary process was ongoing there was a confidentiality clause in the Employment Contract and that for the avoidance of doubt the claimant was instructed not to disclose to any

person, company or other organisation/entity (including PharmaLedger) any information (whether in hard copy or stored on any magnetic or optical disc or memory) about the conversation on 27 August 2020 and any information relating to the disciplinary process and its outcome.

70. On 9 September 2020 the claimant indicated to Mr Leiper there was not enough time to prepare for the disciplinary meeting. Mr Leiper considered that the claimant was stressed and needed sometime away from work. The disciplinary meeting was postponed until 18 September 2020. The claimant was told that he did not need to work until the day before the disciplinary meeting. It was being treated as paid leave.

71. Around 10 September 2020 the claimant applied electronically for annual leave from 14 September to 6 October 2020. The application was not approved. Mr Leiper was unaware of this application but in any event, he had authorised paid leave for the claimant.

72. On 11 September 2020 the claimant sent an email to the respondent in the following terms (the 11 September Email):

"Please be informed that you raise extremely harsh and false allegations against me within and outside Onorach, which are completely damaging to everyone's interest and beyond discussing about confidentiality now; it's important that you/Onorach know that I am convinced and know why you raised those false allegations against me on the PharmaLedger project. Fortunately I can, will and MUST defend myself against them within and outside Onorach as a matter of basic standard rights having endured such extreme attacks from you – I'm being pragmatic here. This is not to say I will not be professional.

The challenge for me now is not about simply defending my reputation but mitigating the damages you and Onorach have caused. And I will do the needful and the necessary to refute your accusations both within and outside Onorach until you admit they are false."

73. The 11 September Email was copied to Mr Meiland who contacted the claimant enquiring why he was being copied the correspondence regarding the claimant's dispute with the respondent. Mr Meiland stated that he did not wish to become involved as he had no detailed knowledge

of the situation that had developed between the claimant and the respondent.

74. Over the weekend Mr Leiper considered the terms of the 11 September Email which he believed to be a threat to the respondent. While he had hoped that having the disciplinary meeting would have helped to have resolved matters in light of the 11 September Email Mr Leiper felt that the disciplinary process would be futile as relationships had broken down irretrievably.

75. On 12 September 2020 the claimant requested various signed documents from the respondent.

76. On 14 September 2020 at 09:36 Mr Leiper sent an email to the claimant advising that his employment was terminated and asking him to return all the company property listed on an attached asset list that afternoon. The claimant was asked to confirm an appropriate time so that measures could be taken considering the ongoing requirements during the Covid-19 pandemic. Also attached was a letter dated 14 September 2020 (the Termination Letter).

77. The Termination Letter stated that the Employment Contract was being terminated with immediate effect because of the threats in the 11 September Email. The claimant would not receive a payment in lieu of notice in accordance with the Employment Contract. It was confirmed that the claimant would receive a payment in lieu of accrued but unused holidays. The claimant was reminded of the terms of the Employment Contract about confidential information, intellectual property and the obligations on termination in respect of delivery of all company property currently in the claimant's possession or control as well as the deletion of any information relating to company business which was in the claimant's possession or under his control outside the company premises.

78. At 09:47 on 14 September 2020 the claimant emailed to Ms Leitch (copied to Mr Leiper, Professor Leiper and Mr Meiland) his resignation due the respondent "inability to produce a single document" requested on 12 September 2020.

79. The claimant was informed that his employment had already been terminated. The claimant indicated that he needed access to his work email to unlock and disconnect personal data. He would return all the respondent's assets within four weeks. The claimant was reminded that he had been dismissed for gross misconduct and had not resigned. The claimant was asked to return the items the following day and collect his own personal belongings. The claimant was advised to get legal advice.

80. Mr Leiper also emailed the claimant offering access to the office between 3 and 4pm to allow for the return of goods.

81. The claimant did not attend the office as requested. Mr Leiper therefore sent an email to the claimant advising that he had made arrangements for Mr Meiland to go to the claimant's house the following day (16 September 2020) at 4pm to collect all the respondent's assets. Mr Leiper indicated that he did not want to make matters worse but if the claimant did not return the equipment to Mr Meiland, he would have no alternative but to consider the items as stolen property which would mean that he would have to report it to the Police. The claimant was asked to reply by 9am on 16 September 2020 confirming that Mr Meiland could attend the claimant's house.

82. The claimant did not reply by this deadline. He sent an email to Ms Leitch on 16 September 2020 at 13:27 advising that ACAS had been contacted and that Mr Meiland was not to come to his house. This information was not conveyed to Mr Meiland or Mr Leiper both of whom attended the claimant's house later that afternoon.

83. When visiting the claimant's house Mr Meiland remained in the car although the window was open. The claimant came out of his house and spoke to Mr Leiper in the garden. During the discussion Mr Leiper and Mr Meiland understood that the claimant had contacted the Police. By coincidence a Police control car arrived shortly afterwards. Mr Leiper spoke to the Police who advised that they were not responding to any incident at the claimant's house. Mr Meiland and Mr Leiper left. The claimant returned the property some days later.

84. At the date of termination of employment the claimant was earning £4,166.67 gross per month. The claimant had taken six days' annual leave. He had been paid on 25 August 2020.

85. The claimant received a payslip dated 30 September 2020. It referred to holiday pay of 13.80 days at a daily rate of £192.31 under deduction of tax, national insurance and pension contributions leaving a balance of £2,212.28. The amount paid into the claimant's bank account in September 2020 was £2,862.38.

Observations on witnesses and conflict in evidence

86. The Tribunal had no doubt that the claimant genuinely believed what he said in evidence. However, this was based on his perception, understanding and recollection of events which the Tribunal felt with the passage of time had become his reality. The Tribunal formed this view because at the time the claimant's responses and behaviour appeared inconsistent with the position that he was now adopting. The Tribunal felt that the claimant did not appear to comprehend that notwithstanding his qualifications he was an employee of the respondent, a relationship that he had voluntarily entered into on mutually agreed terms. His understanding about the nature of that relationship and what was involved did not accord with the reality and contemporaneous documentation. For example, the claimant said that notwithstanding the termination of his employment on grounds of gross misconduct the respondent was unreasonable in not agreeing to accept his resignation in the circumstances.

87. The Tribunal considered that Professor Leiper endeavoured to assist the Tribunal and make appropriate concessions. The Tribunal found her to be credible and reliable witness. The Tribunal felt that her evidence in relation to the change in the start date of the contract of employment to 25 April 2019 was equivocal especially as there was no contemporaneous documentation supporting her assertion that the claimant was taking annual leave between 12 and 24 April 2019 nor was this put to the claimant in cross-examination. In any event little turned on this point as it was undisputed that the claimant knew that the Employment Contract stated

that he started on 25 April 2019 and that Data2AI Limited ceased to render invoices for his services from that date.

88. The Tribunal considered that Mr Leiper gave his evidence in a candid manner. He was credible and reliable. During the final hearing he did not display any animosity towards the claimant. If anything, the Tribunal felt that he was disappointed and frustrated that the relationship had ended in the way that it did. Mr Leiper endeavoured to assist the Tribunal and make appropriate concessions.

89. Mr Meiland gave his evidence in a candid manner. He was credible and reliable and displayed a genuine liking for the claimant and a regret for how the relationship had come to an end. The Tribunal found his evidence to be persuasive.

90. The Tribunal heard a considerable amount of evidence in relation to the PharmaLedger project. At the heart of this dispute was the claimant's belief that he was entitled to receive a payment for his contribution and work undertaken on this project. While the Tribunal did not doubt that that was the claimant's belief from the findings at an earlier preliminary hearing and indeed from the evidence before this Tribunal there was no evidence that the claimant or Data2AI Limited was entitled to receive extra payment for his work on the PharmaLedger project. There was no dispute in August 2019 when the respondent was first invited to participate in a bid to be a partner in the consortium that invitation was not subject to the claimant's involvement albeit that he contributed to the respondent's submission. The bid was in two stages and the second stage was May 2019 after the claimant signed the Employment Contract. The respondent's involvement in the PharmaLedger project was modified from the original bid. The Tribunal noted that the claimant was offered shares in a subsidiary company, Onorach Innovations Limited as part of his offer of employment. There was no evidence before the Tribunal to suggest that this was because of the PharmaLedger project but rather it appeared to be in recognition of the respondent's desire to develop this side of the business. What was clear to the Tribunal was the terms of the Employment Contract which the claimant entered freely having had a lengthy period of

negotiation in relation to his level of salary and the terms under which he was employed.

91. There was conflicting evidence in relation to pension contributions. The claimant referred to two white colleagues, female and male who the claimant said joined the respondent three and six months after him. The claimant's employment commenced on 25 April 2019 at which point these colleagues were already employed by the respondent. While the claimant worked for the respondent before 25 April 2019 his services were supplied on a sub-contractor basis and he was not eligible to participate in the pension scheme. When he became an employee, the claimant did participate in the scheme the employer contributions were based on three percent of pensionable pay.

92. The Tribunal's impression was that neither the claimant nor Mr Leiper had a clear understanding as to the basis upon which employer pension contributions were made. The basis of the claimant's claim appeared to be that the respondent's percentage contribution should be based on gross salary. Mr Leiper's position was that he was not directly involved in this but relied on accountants. However, the information in the productions from the NEST website suggested that the pension contributions were based on pensionable salary rather than gross salary. On the basis of this information the Tribunal did not consider that there was any shortfall in payment and indeed from the figures provided employees on the same salary as the claimant had equivalent contributions made by the respondent.

93. There was disputed evidence about the claimant's workload. The Tribunal had no doubt that the claimant was conscientious and hardworking. The claimant said that he was responsible for the IT projects while other colleagues' tasks were shared and managed between their teams. Mr Leiper did not dispute that the claimant was not part of an IT team. The respondent's core business and primary focus was clinical trials. It was envisaged that in time the digital aspects of the respondent's work might increase but that was not possible during the period in which the claimant was employed. The Tribunal considered that the respondent's evidence

was plausible given its size and was highly likely the explanation only the claimant had responsibility for the IT projects.

94. There was some dispute about the circumstances surrounding the claimant being asked to report to Mr Robison on the PharmaLedger project. The claimant said that this was an attempt by the respondent to remove him from the project and to report to someone who was less qualified. The claimant said that he isolated from the project, told to listen into telephone conversations but warned against making contribution directly to other collaborators. Mr Leiper explained that Mr Robison was a Project Manager and that as the PharmaLedger project involved input from various employees it was appropriate for Mr Robison to manage their time and ensure that the respondent delivered what it was required to do under the consortium agreement. The respondent was not creating a digital platform but working with digital companies to make the business case and ensure that it was fit for purpose. The Tribunal considered given the respondent's remit under the consortium agreement that Mr Leiper's explanation was plausible and it was entirely reasonable for work to be coordinated by a Project Manager albeit that those reporting to him were experts and specialists in their field.

95. There was conflicting evidence about the reason for the delay to the salary review meeting in August 2020. The claimant's position was that the review meeting should have taken place between January and March; Mr Leiper rearranged the August date and that it did not follow the format that the claimant expected. Mr Leiper referred to the terms of the Employment Contract and to a policy which was not produced. His position was that the claimant's annual salary review was not yet due as his employment started in April. The review meeting in August was rearranged because of work commitments and to allow completion of paperwork. Also, salary reviews did not necessarily result in an increase in salary and required looking at past and projecting for future performance. The Tribunal considered that the Employment Contract made no reference to the length of service before an annual normally taking place between January and March. The claimant was not the only employee who had not had salary review before for the national lockdown in March 2020. In any event when one was requested in August 2020 Mr Leiper agreed to it. While the Tribunal

appreciated that the claimant wanted a particular sequencing of the discussions the Tribunal considered that it was understandable that Mr Leiper wanted the process to be consistent with the policy which was being applied to other employees and at a time that was convenient to both parties.

96. The evidence surrounding the claimant's involved in tendering in August 2020 was confusing. The claimant asserted that at the 27 August Meeting he was accused of costing the respondent money because of a tender which he said had been the responsibility of another colleague. Mr Leiper's position was that this was discussed in the context that the claimant's perception of his own performance was not always shared by others. The transcript of the 27 August Meeting did not include this part of the discussion. The Tribunal considered that given this was a review where past performance was being discussed it was likely that this issue was being discussed in the context of significant events and how communication by all concerned could be improved.

97. There was conflicting evidence about the claimant's request for annual leave around 10 September 2020. The claimant's position was that this request was made electronically but refused. Mr Leiper appeared unaware of an annual leave request being made and/or being refused. He understood that the claimant had sought time for preparation for the disciplinary meeting to which Mr Leiper had acceded. It was not suggested that the claimant was making this request to avoid attending the disciplinary meeting. Accordingly, the Tribunal considered that there would have been no reason for Mr Leiper to refuse a request for annual leave especially as the claimant was entitled to it and Mr Leiper was in any event willing to give the claimant time off to prepare for the disciplinary meeting. The Tribunal considered that any delay in approval was not on Mr Leiper's instruction and the claimant was not expected to work as he had been given unpaid leave to prepare for the disciplinary meeting.

98. The claimant's evidence was that he did not receive HR support. Mr Leiper's position was that because of the respondent's size there was no dedicated HR support for employees. The respondent outsourced its payroll responsibilities and sought employment and HR advice as and

when required. The Tribunal considered that as a small employer with limited support the respondent's position was understandable. The claimant was in relation to pensions directed to the NEST website and in relation to negotiating his contract of employment and its termination he was advised to take independent legal advice.

99. While there was conflicting evidence in relation to the visit by Mr Leiper and Mr Meiland to the claimant's home on 16 September 2020 the findings which the Tribunal made were not disputed. While the claimant made reference in his evidence to the Police and George Floyd, the Tribunal considered that it was the claimant who involved the Police by, according to his evidence, speaking to the Police before and calling the Police during the visit. The Tribunal accepted that the claimant had intimated that he did not wish Mr Meiland to attend his home and this was communicated to Ms Leitch. The Tribunal believed that neither Mr Leiper nor Mr Meiland were aware of this when they attended.

100. There was confusion about the claimant's final payslip and the amounts paid. The claimant understood that his final payslip erroneously referred to holiday pay and actually related to wages from his August payslip until the termination of his employment. In any event he considered that there was a shortfall as he was also due holiday pay and the total was more than the amount paid into his bank account.

101. Mr Leiper was under the impression that the claim for non-payment of salary related to sums of money that the claimant alleged were due in respect of work undertaken on the PharmaLedger project. In any event he believed that the claimant had been paid all sums due to him under the Employment Contract. However, having heard the claimant's evidence and on examining the payslips Mr Leiper conceded that the final payslip related only to holiday entitlement (13.8 days) for which he said the claimant had been overpaid. Mr Leiper also accepted that the claimant was due wages for period covering his last payslip to the date of termination.

102. The Tribunal found that on termination the claimant received a payment of £2,862.38. The payslip that was issued related to what the respondent calculated as being holidays accrued but not taken termination. There was no payment in respect of final salary.

103. In relation to email communication generally, the Tribunal found it surprising that the claimant was confused about with whom he should be corresponding. Unlike his previous employer, Abertay University, the claimant was aware that the respondent was a small employer which outsourced certain HR functions such as payroll and employment advice. The claimant was aware that Mr Meiland was not an employee of the respondent but a director of a subsidiary company which the claimant was a shareholder. Ms Leitch gave employment advice to the respondent as and when requested. Mr Leiper was the person with whom the claimant primarily corresponded in relation to employment matters.

Relevant law

104. Direct discrimination is defined in section 13 of the EqA. The provision is satisfied if there is less favourable treatment because of a protected characteristic. There must be less favourable treatment than an actual or hypothetical comparator whose circumstances are not materially different from that of the claimant (section 23 of the EqA).

105. Section 26 of the EqA provides that unwanted conduct related to a protected characteristic which has the effect of creating an intimidating, hostile, degrading, humiliating or offensive environment is unlawful.

106. Section 27(1) of the EqA defines victimisation as subjecting a person to a detriment because they have done, or it is believed they will do a protected act. A protected act is bringing proceedings under the EqA; giving evidence or information in connection with the proceedings under the EqA; doing anything for the purposes or in connection with the EqA; or making an allegation that the employer or another person has contravened the EqA. Allegations need not be expressed.

107. Section 39 of the EqA provides that an employer must not discriminate against an employee by subjecting the employee to a detriment.

108. Section 136 of the EqA provides that if there are facts from which the court decides, in the absence of any other explanation that the person contravened the provisions of the EqA the court must hold the contravention occurred.

109. Section 13 of the Employment Rights Act 1996 (the ERA) provides that an employer shall not make a deduction from wages of a worker employed by him unless the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract or the worker has previously signified in writing his agreement to consent to making the deduction. Section 27(1) of the ERA defines wages as "any sum payable to a worker in connection with his employment".

Submissions and Deliberations

110. The parties gave oral submissions at the final hearing which the Tribunal considered carefully and has commented on them in its findings and deliberations.

Direct discrimination

111. For the direct discrimination claim to succeed the claimant must satisfy the Tribunal that because the claimant is Black British, he was treated less favourably than the respondent treats or would treat others. There must be no material difference between their circumstances and the claimant's circumstances.

112. The Tribunal first considered whether the respondent had done what the claimant alleged in his claim.

113. The Tribunal was not satisfied on the evidence that the claimant was restricted from benefitting financially from the PharmaLedger project; overloaded with job responsibilities without recruiting more staff; and paid less employer pension contributions. The Tribunal accepted that the claimant was not provided with HR support. What limited support there was the respondent did not have this resource in house and the claimant was directed to the relevant websites. While there was discussion at the 27 August Meeting about a tender and an email exchange about an incident on 31 August 2020 the Tribunal was not satisfied that the respondent "blamed" the claimant. As explained above the Tribunal was not satisfied that the claimant was refused annual leave in September 2020.

114. The Tribunal was satisfied that the claimant's name was removed from contact list for the PharmaLedger project with that of another employee; and the claimant's involvement in the project was restricted. The Tribunal was also satisfied that the claimant was not invited for a salary review meeting before March 2020; and the date for the review meeting in August 2020 was rearranged; the claimant was not allowed to work a four-day week; he was subjected to disciplinary action; his employment was terminated; and he was emailed for recovery of company property.

115. The Tribunal then asked whether the claimant was treated worse than someone else. The claimant either suggested actual comparators or did not name anyone in particular who he said was better treated. The Tribunal considered that there must be no material difference between the comparator's circumstances and the claimant's circumstances. In the Tribunal's view no actual employee was in the same circumstances as the claimant. The Tribunal therefore considered whether the claimant was treated worse than the respondent would have treated a white employee with less than a year's service undertaking the job of data analyst manager in the same contract of employment while being a sole director and controlling shareholder of a company providing services relating to artificial intelligence.

116. In the Tribunal's view the respondent's treatment towards the claimant in relation to the PharmaLedger project was to ensure that the work undertaken by the respondent was in line with what it was required to provide under the consortium agreement. Mr Robison required to project manage not only the claimant but other employees who were involved in the project. The respondent's involvement was modified from the original bis and had more of a clinical emphasis. The respondent was expected to work with digital companies, not do that work. The Tribunal was not satisfied that the respondent would treat the hypothetical comparator differently.

117. Turning to the claimant not being invited for a salary review meeting before March 2020. The Tribunal noted that the claimant was not the only employee who did not have a salary review before March 2020. Also, Mr Leiper understood that the claimant was not due a salary review as he

had not yet been employed for a year. The Tribunal did not consider that this treatment was because the claimant was black.

118. With regard to the rearranging of date of the 27 August Meeting, Mr Leiper explained that this was to business deadlines and to allow completion of documentation. There was no evidence to suggest that Mr Leiper did not have other deadlines at the time. The Tribunal felt that in relation to the documentation the respondent was treating the claimant in the same way as it treated its other employees. The Tribunal was not satisfied that the delay was because the claimant was black.

119. In relation to the being refused to work a four-day week the Tribunal considered that this related to volume of work. The Tribunal was not satisfied from the evidence before it that the hypothetical comparator would not have been treated any differently. The Tribunal was not satisfied that the respondent would treat the hypothetical comparator differently.

120. The Tribunal then considered the respondent's treatment of the claim regarding the disciplinary action, termination of employment and recovery of company property. The Tribunal considered that the hypothetical comparator is a white employee with less than a year's service undertaking the job of data analyst manager on the same contract of employment while being a sole director and controlling shareholder of a company providing services relating to artificial intelligence who the respondent's opinion has committed gross misconduct and sent an email in identical terms to the 11 September Email.

121. It seemed to the Tribunal that the reason for the treatment was not because the claimant was black but rather that his employment did not start until 25 April 2019; he indicated that he would not carry out an instruction given at the 27 August Meeting and then declined to reconsider his position when given an opportunity to do so. The claimant then sent the 11 September Email which was viewed by the respondent as being a threat to its business. The claimant held a position which gave him access to data and information belonging to the respondent; he delayed returning company property. The Tribunal did not consider that there was any evidence to suggest that any treatment of the claimant was because he was black.

122. The Tribunal concluded that the claim under section 13 of the EqA did not succeed and was dismissed.

Harassment related to race

123. The Tribunal then considered the claim of harassment related to race. The Tribunal considered whether the respondent had done what the claimant alleged in his claim.

124. In relation to the 27 August Meeting the Tribunal was satisfied that Mr Leiper discussed the claimant's involvement in preparing a tender in August; in the context of PharmaLedger the claimant was an employee not a researcher; the claimant was instructed to work on the PharmaLedger project as part of his contract of employment; and he was required to confirm that he accepted that by 4 September 2020.

125. The Tribunal was satisfied that Mr Leiper's conduct at the 27 August Meeting was unwanted by the claimant. However, the Tribunal was not satisfied that any of that conduct related to race.

126. The respondent's email sent on 14 September 2020 terminating the claimant's employment was sent to his personal email. The claimant said that this was because his access to his office email had been revoked. The Tribunal appreciated that receiving correspondence of this nature to a personal email address to which other people might have access might be unwanted conduct. However, the Tribunal noted that the claimant sent an email to the respondent from his personal address on 12 September 2020 requesting document because his business email had been "blocked". Any unwanted conduct was not in the Tribunal's view related to race.

127. The claimant was summary dismissed on 14 September 2020. The Tribunal accepted that it was unwanted conduct. The claimant knew that he had been invited to a disciplinary meeting to discuss allegations that the respondent considered to be gross misconduct. The claimant then sent the 11 September Email. The Tribunal was not satisfied on the evidence that the claimant's race had anything to do with what happened leading up to the termination of the claimant's employment. The example cited by the claimant that Mr Leiper said that he was not a researcher was said but the full context was that in relation to his work for the respondent at that time

the claimant was not a researcher but an employee. In any event this was not related to race.

128. The claimant also said that refusing his resignation amounted to unwanted conduct. While the Tribunal accepted that the claimant preferred to resign rather than be dismissed that conduct was related to the claimant's employment already having been terminated and not race.

129. Finally, the Tribunal considered that the visit by Mr Leiper and Mr Meiland to the claimant's home on 16 September 2020 was unwanted conduct especially as the claimant had advised Ms Leitch that he did not agree to the visit. The Tribunal did not consider this conduct was related to the race. The respondent was contractually entitled to the return of its property and had made this request; the claimant had not returned the property which was at his home and neither Mr Leiper nor Mr Meiland were aware of the claimant's email to Ms Leitch.

130. The Tribunal concluded that harassment claim should be dismissed.

Victimisation

131. The Tribunal first considered if the claimant had done a protected act or whether the respondent believed that the claimant had or might do a protected act.

132. The Tribunal considered that there was no evidence before it that the claimant done a protected act. The claimant alluded to this having occurred during the 27 August Meeting. There was no evidence from the transcript or indeed the evidence provided that the claimant was making a protected act or was threatening to do so. It appeared that the first the respondent became aware of there being any suggestion that any action was because of race was when these proceedings were raised. The Tribunal was not satisfied that the victimisation claim should succeed.

Holiday pay

133. The Tribunal then considered if the respondent had failed to pay the claimant for annual leave, he had accrued but not taken when his employment ended.

134. The holiday year is 1 January to 31 December. The claimant is entitled to 33 days holiday per year. The period 1 January 2020 to 14 September 2020 (when the claimant's employment ended) is 258 days. Accordingly, the claimant is entitled to 23 holidays to the date of dismissal.

135. The Tribunal had some difficulty following the respondent's electronic holiday calendar which stated that the claimant had, five days were compulsory leave was allocate, 17 days were "available" and the claimant taken six days. The Tribunal found it that the claimant had taken six days leave. He therefore had 17 (23 –6) days due on termination. It was not clear on the evidence before the Tribunal what, if any public holiday were taken or included in the six days taken. The daily rate is £192.31 gross. The sum due in respect of holiday pay is £3,269.27.

136. The claimant received a payment of £2,862.38 in respect of holiday pay leaving a balance due of £406.89 (gross). The respondent has failed to pay the claimant holiday pay and is ordered to pay the outstanding sum.

Unlawful deductions

137. The Tribunal then considered if the respondent had made unauthorised deductions from the claimant's wages. The respondent conceded that it had made an unauthorised deduction because it had failed to pay the claimant's final salary which amounts to £3,269.27 gross which the respondent is ordered to pay the claimant.

138. As explained above the Tribunal did not consider that the respondent had made any unauthorised deduction in respect of employer contribution to the claimant's pension based on pensionable pay subject to the final salary including the pro-rated employer pension contribution.

Notice pay and breach of contract

139. The Tribunal then turned to the wrongful dismissal claim. This would only be successful if the claimant was established that the respondent dismissed him in breach of contract.

140. The claimant was contractually entitled to one month notice of termination of employment. He did not receive any notice. The Tribunal considered

whether the claimant had done something so serious that the respondent was entitled to dismiss without notice.

141. Against the background of the claimant's position at the 27 August Meeting and failing to provide the written reassurance that was requested the Tribunal considered that the terms of the 11 September Email was in the respondent's opinion to be materially averse to its interests. Accordingly, the Tribunal was satisfied that in terms of the Employment Contract the respondent was entitled to dismiss the claimant without notice.

142. In relation to the claimant's position that he was entitled to shares and damages to reputation, the Tribunal found that the claimant had been issued with shares in Onorach Innovations Limited around July 2019. From the information before the Tribunal there was no breach of contract claim outstanding on termination of the claimant's employment in respect of his involvement in PharmaLedger project.

143. Accordingly the breach of contract claim is dismissed.

Employment Judge: **S MacLean**
Date of Judgment: **26 October 2021**
Date sent to parties: **26 October 2021**