EMPLOYMENT TRIBUNALS

BETWEEN

Claimant: **Mr Manmeet Singh Saini**

Respondent: **Tata Consultancy Services Ltd**

Heard at: Bristol (by Cloud Video Platform) On: 17,18,19 and 20 January 2022

Before: **Employment Judge Halliday**

Representation
For the Claimant: in person
For the Respondent**:** Mr Gillie of counsel

RESERVED JUDGMENT

The judgment of the tribunal is that:

1 The claimant's claim for unfair dismissal fails and is dismissed.
2 The claimant's claim for wrongful dismissal and notice pay fails and is dismissed.
3 The claimant's claim for accrued holiday pay fails and is dismissed.
4 The claimants breach of contract claim and his claim for unlawful deductions from pay fails and is dismissed.

REASONS

Introduction and Jurisdiction

1. The claimant, Mr Saini, was employed by the respondent until 27 February 2020 (following his resignation on 25 February 2020). His employment was governed by an employment contract, concluded in India, He accepted an assignment in the UK to work at Nationwide Building society with effect from 25 January 2018, the terms of which were governed by an International Assignment Agreement dated 6 December 2017 expressed as being subject to Indian law and a Deputation Letter dated 23 January 2018. The matters in dispute between the parties relate to the termination of this assignment, the claimant's repatriation to India and his resignation from his employment.

2. This has been a remote hearing which has been consented to by the parties. A face to face hearing was not held because it was not practicable and all the issues could be determined in a remote hearing. The hearing was by Cloud Video Platform.

3. At a Preliminary Hearing in this matter on 2 February 2021 the Tribunal determined the applicable law in respect of the claimant's claims to be the law of India, subject to certain non-derogable rights of English law, namely;

(i) the right not to be constructively unfairly dismissed;
(ii) the right to minimum notice; and
(iii) the right to receive payment for accrued but untaken holiday.

4. The Tribunal also directed that both parties had permission to obtain their own expert's report as to the impact and effect of Indian law on the claimant's claims.

The Claims and introduction

5. The claimant claims that he has been constructively unfairly dismissed.

6. The claimant also claims that he was constructively wrongfully dismissed and should be entitled to notice pay under UK law.

7. The respondent contends that the claimant resigned, that there was no dismissal, and in any event that its actions were fair and reasonable and not in breach of contract.

8. The claimant also brings claims for:

   8.1. accrued holiday pay, which the respondent defends on the basis that all outstanding holiday pay was paid on termination of employment in India;

   8.2. breach of contract claims in respect of the cost of return flights and maintenance funds and an unlawful deduction claim for arrears of pay. The respondent states the sums claimed are not contractually due or owing.

9. The claimant represented himself and gave sworn evidence. The respondent was represented by Mr Gillie of counsel, and I heard evidence from Mr Yuvaraj, Service Delivery Manager, Mr Srivastava UK Head of Talent Engagement and Ms Verma Separation Office for the respondent.

10. I also heard expert evidence on relevant aspects of Indian Law from Mr Singh who was instructed by the claimant, and I considered a report prepared by him and his associate Ms Arti Goel dated 30 August 2021, and from Mr Sinha who was instructed by the respondent, and I considered a report prepared by him dated 11 September 2021 and a supplemental report dated 28 September 2021. In light of differences in opinion between the experts set out in the reports, the Tribunal directed that a joint report should be agreed. Having met on 5 January 2022, Mr Singh and Mr Sinha were unable to agree a joint report and each submitted a further report setting out areas of agreement and disagreement on 12 January 2022, which I have also considered.

11. I have also reviewed the documents referred to in the witness statements and documents drawn to my attention during the course of the hearing contained in the agreed bundle (322 pages).

Preliminary Matters

12. At the beginning of the hearing, it was agreed that as the claimant's expert witness was not available on the first day of the hearing, the respondent would not proceed with its application for a decision to be reached as a preliminary issue on the relevant provisions of Indian law.

13. Likewise, after discussion it was agreed that the claimant would not make an application to amend his claim to include a claim for injury to feelings, a separate claim for breach of his non-derogable human rights or a claim for whistleblowing, given the fact that this was the final hearing of the matter, the respondent would object and if the application were successful, the respondent would likely make a successful application for a postponement of the hearing on the grounds that it had not prepared its defence on that basis and the likely delay that this would cause in concluding the hearing of this matter.

Issues for the Tribunal to decide

14. This hearing was to deal with liability only, having made any necessary findings on all relevant aspects of Indian law.

15. The issues for the Tribunal to decide were agreed as follows having reviewed the respondent's amended draft list of issues which incorporated the matters set out in the claimant's draft list of issues. The Tribunal does not have jurisdiction to consider issues pertaining to Indian taxation.

Constructive Unfair Dismissal

16. Was there an express dismissal? (i.e., was the claimant forced to resign) (section 95(1)(a)) Employment Rights Act 1996 (ERA 1996).

17. Did the claimant terminate the contract under which he was employed in circumstances in which he was entitled to terminate it without notice by reason of the respondent's conduct (section 95(1)(c) ERA 1996)? As to this:

    17.1. Did the respondent refuse to perform or disable itself from performing a contractual promise to the claimant in its entirety by an act that indicated an intention to refuse to perform its obligations under the employment contract and set the claimant free from his own obligations thereunder?

    17.2. The claimant relies on the following matters:

        17.2.1. Terminating the claimant's UK assignment in December 2019 without allegedly providing a business rationale.

        17.2.2. Raising a travel request via Ultimatix for the claimant on 20 December 2019 for a flight on 21 December 2019.

        17.2.3. Raising a travel request via Ultimatix for the claimant on 24 December 2019.

        17.2.4. In or around December 2019 changing the claimant's work location on Ultimatix from the UK to India, despite the claimant still being in the UK.

        17.2.5. In December 2019 the respondent allegedly delayed approving the claimant's financial claim request in respect of his lease breakage

        17.2.6. Allegedly failing to deal with, and respond to, the claimant's ethics concern submitted on 20 December 2019.

        17.2.7. In or around December 2019 the respondent allegedly threatened the claimant with disciplinary action.

        17.2.8. Allegedly failing to respond to the claimant's letter to Mr Ramkumar dated 6 January 2020

        17.2.9. Sending the claimant an email on 7 January 2020 which allegedly sought to threaten him if he did not return to India (GOC paragraph 15 and 16).

17.2.10. Sending a letter to the claimant's address in India, dated 28 January 2020 and referring to the claimant's unauthorised absence, when he was still in the UK.

17.2.11. Allegedly revoking the claimant's access to the respondent's IT systems on 1 February 2020.

17.2.12. The claimant also relies on the events of 25 February 2020 and claims that on 25 February 2020 he was forced to resign. The claimant alleges that he met with Ms Seema Verma on 25 February 2020 and during that meeting:

(i) He enquired about his ethics concern reported on 20 December 2019 and was told by Ms Verma that he should forget his ethics concern as it will not be progressed;

(ii) He requested reimbursement for his return travel ticket to India and was told by Ms Verma that he would not be reimbursed as the respondent's UK HR had provided him with tickets;

(iii) Ms Verma told the claimant that "stop-pay" had been applied to his account and his access revoked;

(iv) He requested to speak to Mr C Ramkumar in respect of his reported ethics concern and his request was denied by Ms Verma as she said the conversation had to be with her;

(v) He enquired about next steps and Ms Verma told him he had two options, resign or face termination;

(vi) He enquired about his notice period of 90 days to which Ms Verma told him that no notice period is applicable in disciplinary cases.

18. If proven was any such act so fundamental that it went to the very root of the employment contract making it impossible for the claimant to carry out his own obligations under the contract?

19. If so, did the claimant resign on the basis of that act?

20. If so, did the claimant do anything from which an inference may be drawn that he had acquiesced to, or waived, the respondent's repudiatory breach?

(These issues were identified as being subject to findings on the correct application of Indian Law).

Fairness

21. If the claimant was constructively dismissed, was the reason for his dismissal a potentially fair reason within s.98(1)(b) ERA 1996? The respondent shall say the reason was some other substantial reason. (*Applicable law is English Law*)

22. If so, did the respondent act reasonably in treating the reason as a sufficient reason for dismissing the claimant within s.98(4) ERA 1996? (*Applicable law is English Law*)

Wrongful Dismissal

23. Was the claimant dismissed?

24. If so, what notice period was the claimant entitled to receive following the termination of his employment?

25. Noting the claimant's assignment to the UK had ended prior to the termination of his employment the respondent says the claimant is contractually entitled to 30 days' notice pursuant to clause 10 of the contract of employment dated 4 January 2013. However, the respondent accepts the claimant has the right to the statutory minimum notice period in the UK and on this basis says the claimant is entitled to 6 weeks' notice. This is to be calculated based on the claimant's Indian salary, pursuant to his contract of employment, dated 4 January 2013, noting his UK assignment ended prior to the termination of his employment, and therefore so did his entitlement to a UK allowance.

26. The claimant says that he was entitled to 90 days'' notice calculated on the basis of his salary whilst he was in the UK.

27. Did the respondent fail to pay the claimant such sums that were due?

Unlawful deduction from wages claim

Arrears of Pay

28. Was the claimant contractually entitled to be paid 9 weeks' pay, amounting to £8532, from 23 December 2019 to the date he resigned on 21 February 2020?

29. If so, did the respondent pay the claimant those sums?

Holiday Pay

30. Was the claimant entitled to receive payment in lieu of any accrued but untaken holiday entitlement as at the date of termination?

31. If so, what was the claimant's holiday entitlement, if any, as at the date his employment terminated? The claimant says his holiday entitlement as at the date of termination was 12 days. The respondent says the claimant's holiday entitlement as at the date of termination. Was 43.3 days.

32. If the claimant was so entitled to 12 days holiday as at the termination date, did the respondent pay the claimant such an amount that was due? The respondent says the claimant received a payment in lieu of his 43.3 days holiday on termination.

Breach of contract claim

33. Was the claimant entitled to receive:

    33.1. £1,100 for return aeroplane tickets to India?

    33.2. £1,575 for maintenance funds for the Claimant and his children from 23 December 2019 to 25 February 2020?

34. If the claimant was so entitled, did the respondent fail to pay the claimant such sums that were due?

35. If so, did the respondent's failure constitute a breach of the claimant's:

    35.1. contract of employment dated 4 January 2013; or

    35.2. the International Agreement dated 6 December 2017; or

    35.3. the Overseas Deputation Letter dated 23 January 2018.

(*Applicable law is the law of India*)

Findings of fact

36. There was a degree of conflict on the evidence. I have heard the witnesses give their evidence and found the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary and after having read and listened to the factual and legal submissions made on behalf of the respective parties.

Background and contractual documentation

37. The respondent is a multinational corporation based in India and incorporated in the UK as a foreign company. It provides IT solutions and consultancy services to clients internationally and employs approximately 520,000 employees globally with approximately 18,000 employees in the UK. It has detailed processes in place to manage its global workforce including those based in the UK.

38. The claimant was employed as an IT analyst by the respondent in India from 1 April 2013 under Terms of Employment offered to the claimant by letter dated 4 January 2013 and subsequently accepted by the claimant. His appointment was confirmed by a Letter of appointment dated 1 April 2013 (together **contract of employment**).

39. The contract of employment contained the following material terms:

"4, Mobility
[Tata Consultancy Services Limited ("TCSL/TCS")] reserves the right to transfer/utilize your services at any of its offices, work sites, or associated or affiliated companies in India, or outside India, on the terms and conditions as applicable to you at the time of transfer.

8. Overseas Agreement/international Assignment Agreement:
If you are on international assignment, you will be covered by the TCSL international Assignment policy from the date of deputation.

Accordingly, you will be required to sign the applicable overseas Deputation/ International Assignment Agreement/s. In case of every international assignment that exceeds 30 days, you will be required to serve TCSL as per the Notice Period mentioned below.

This is to ensure that the knowledge and information gained by you during your assignment is shared and available to TCSL and its associates. This transfer of knowledge and information is essential for TCSL to continue to serve its clients and customers better.

10. Notice Period:
During your employment with TCSL, either you or TCSL can terminate the appointment by giving 30 calendar days written notice or 1 month's basic salary in lieu of the notice'

If you are covered under Deputation Agreement/International Assignment Agreement, either you or TCSL can terminate the appointment by giving 90 calendar days written notice as set out in the Separation Policy of TCSL.

TCSL reserves the right, if it is in the interest of the business and current assignment, to ask you to complete your notice period or decide whether your existing earned vacation or basic salary in lieu of notice period may be adjusted against the entire or partial notice period'

17. Terms and Conditions:

The above terms and conditions of employment are specific to your employment in India and there can be changes to the said terms and conditions in case of deputation on international assignments during the course of your employment."

40. Mr Srivastava conceded in cross examination that the notice period under these terms and conditions (and therefore under the claimant's contract of employment) had been increased to 90 days by February 2020.

41. The clamant was deputed to worked in the UK in 2014 and then in South Africa in January 2016 before returning to the UK to work at Nationwide Building Society (NBS) in September 2016, initially under a one-year visa.

42. In or around August/September 2017 the claimant was promoted to Assistant Consultant and returned to India to apply for a visa extension. The visa application dated 17 November 2017 referred to him being accompanied to the UK by his wife and child and stated: [TCSL] "will take care of their travel, living and medical expenses in UK"

43. The claimant was sent a letter on 6 December 2017 confirming the offer of an international assignment to the UK, enclosing an ***international assignment agreement*** and asking him to "carefully read" the agreement and sign to confirm his acceptance of the terms which he duly accepted on 6 December 2017.

44. Material terms of the international assignment agreement included;

    1.1: [The Employee] may be placed on international assignment at any time during the tenure of Employee's employment with TCS. TCS reserves the right to determine the duration, including early termination of any international assignment at any time during the assignment period, as may be required within the context of its operations and/or job assignment specifically.

    1.2: The employment relationship between TCS and the Employee during the International assignment will continue to be governed by the terms of the Offer Letter, dated 4 January 2013 and appointment Letter dated 1 April 2013. The terms and conditions of this Agreement shall not be construed in substitution to but in addition to the terms and conditions of your employment as stated in your Employment Contract as may be amended from time to time.

    4 (a) [The respondent] shall arrange to obtain a non-immigrant work visa… permit from the Consulate/Embassy of the International location(s) based on the employee's representation that while working on an international assignment [he] does not intend to change immigration status…..[His] conduct in the international location shall be consistent with the representation made by [the respondent] … while seeking the work visa/work permit. After completion of the international assignment(s) in the international location(s) the Employee shall return to India or relocate to another international location as directed by TCS.

    5.2 Employee agrees and confirms to facilitate the transfer of skills and expertise gained during the international assignment to TCS.

    5.3 The Employee agrees and confirms to continue with [his] employment with TCS as per terms of the [Employment Contract] after completing an International assignment.

    9 Termination
    9.1 TCS may at its sole discretion terminate this agreement by giving the Employee 90 days' written notice

    9.6 Upon early termination of the agreement and the Employment Contract, the Employee shall leave the international location immediately after the date of termination of this Agreement and the Employment Contract

10.1 This agreement shall be governed by and construed in accordance with the laws of India.

10.1(I) any and all controversies or claims arising out of or relating to the Employee's international assignment(s), Compensation, Terms and Conditions of Employment, this Agreement, including its validity or breach, both the parties irrevocably submit to the non-exclusive jurisdiction of the Courts of Mumbai, India,

45. The International assignment agreement also contained summary termination provisions on grounds inter alia of misconduct at clause 9.2. It did not contain details of any specific assignment.

46. By letter dated 23 January 2018 (**deputation letter**), the claimant's temporary deputation to the respondent's UK branch as a Business Analyst was confirmed (subject to various conditions) with effect from 25 January 2018 for a period of 365 days. The letter stated: "*Once your deputation in the United Kingdom is complete, whether as stated above or earlier, if required, you will return to your TCS base branch in India or such other place that TCS may deem fit*."

47. The terms of the deputation letter were stated to be in addition to and not in substitution for the international assignment agreement and the employment contract. It set out a minimum monthly salary of GBP 3791 to include India Gross Salary and UK gross allowance to be paid subject to required statutory deductions and stated that the claimant was to report to Sanjay Singh but advised that this reporting line may change.

48. The deputation letter also provided that: "*hours of work will be at the discretion of the host country's designated management team and will be informed to you in advance*". I heard no evidence on hours worked, but in his claim form the claimant stated that he worked 40 hours per week, and this was not disputed by the respondent in their response to the claim, so I find that the claimant's normal working hours whilst he was in the UK were 40 hours per week.

49. On termination, the deputation letter provided expressly that:

"If for whatever reason the respective TCS host or base country management team and/or client decide that your presence is no longer required, we reserve the right to terminate your deputation with immediate effect and without further consultation with you. Should an earlier than anticipated end to the deputation period be required for any reason, you will revert back to your original role or to any other role deemed suitable for you by TCS in your base branch of India, or in any other country as TCS may deem to be fit."

Employment in the UK from 2018

50. The claimant returned to the UK and commenced a new assignment working with NBS with effect from 25 January 2018 as a Senor Business Analyst. The claimant's assigned deputed lead was Amit Vij and in this role, Mr Vij was responsible for the day to day management of the claimant.

51. I heard evidence from Mr Yuvaraj that the NBS account is what is known as a staff-augmented contract which I understand to mean that the resourcing requirements are kept under regular review and may be changed either at the request of the client, or by agreement after discussion, to service future requirements effectively. The respondent's undisputed evidence was that throughout 2019 the NBS account grew, and additional deputed leads were appointed to manage the TCS employees. In August 2019, the claimant's deputed lead changed from Mr Vij to Ms Neetika Panwar.

52. In or around September 2018, the claimant's role was changed to that of Business Analyst. I accept Mr Yuvaraj's evidence that this change was made following a request from NBS on the basis that the claimant was "falling short" as a Senior

Business analyst as he did not have the required skill-set. No formal performance process was undertaken, and no changes were made to the claimant's remuneration.

Leave request and issues in 2019

53. At the beginning of October 2019, the claimant first discussed with and then emailed Amit Vij to request a period of three weeks' leave to visit India either over the Christmas period or in March/April 2021. Mr Vij responded to say that three weeks could not be approved but that the claimant could take two weeks over the Christmas period and another two weeks in March/April. Following further email exchanges copied into Mr Vij, Ms Panwar and Mr Yuvaraj, the claimant confirmed by email dated 9 October 2019 that he would take two weeks' holiday in March/ April 2020.

54. In the course of this being resolved, a conversation was held between Mr Yuvaraj and the claimant in the NBS Swindon office at which Mr Yuvaraj explained the reason why more than two weeks' leave could not be granted, namely due to the client's resourcing requirements and the potential impact on other staff. In that conversation, Mr Yuvaraj also queried why the claimant had not initiated an appraisal process. I heard detailed evidence in the course of the claimant's cross examination of Mr Yuvaraj, about the fact that appraisals are undertaken, and objectives set annually and accept that the claimant did not feel this was a priority. However, I find that the process of initiating an appraisal (which was the claimant's responsibility) was required to update the system to show Ms Panwar as the claimant's manager and enable her to set targets and record feedback. I am satisfied that this was a reasonable request.

55. Mr Yuvaraj responded to the claimant's email of 9 October 2019 by return, asking him to "*take care of his availability*" and referring to earlier concerns about patterns of sick leave.

56. On 14 October 2019 Mr Yuvaraj spoke to Ms Panwar and they discussed a number of management issues relating to the claimant. Ms Panwar informed Mr Yuvaraj that she was uncomfortable discussing these issues with the claimant as she felt he had spoken to her in an "*unpleasant and unfriendly*" tone and refused to listen to what she said. Mr Yuvaraj therefore sent a further email to the claimant on 14 October 2019 chasing for completion of the appraisal details, referring to the earlier conversation about the claimant's leave request, and suggesting that if the claimant had further queries about his training or timesheets that he listed his questions in an email so they could be discussed. He also asked Amit Vij and Neetika Panwar to schedule a discussion once the email had been received.

57. On 23 October 2019 Mr Yuvaraj called the claimant without prior arrangement and included both Amit Vij and Neetika Panwar on the call. The claimant had not emailed the requested list prior to this call. In the call there was a discussion of the claimant's leave request, the claimant's alleged inappropriate language to Ms Panwar, timesheets, initiation/update of the appraisal process and the claimant's T-factor score (which I understand relates to compliance with training/compliance requirements). I do not find that this conversation was made with a view to threaten the claimant or demonstrated a conspiracy against the claimant as alleged. I find that the respondent had genuine concerns and I accept Mr Yuvaraj's oral evidence that he "*facilitated the call*" "*with a view to diffusing the situation*" between the claimant and Ms Panwar.

58. The claimant then sent a detailed email dated 30 October 2019 referring to the points discussed on the call on 23 October 2019 and setting out in detail his concerns relating to:

    58.1. the refusal to allow him three consecutive weeks' leave;

58.2. the requirement to take annual leave during the furlough period. I understand the reference to a furlough period in this context to be a reference to a notified time, on this occasion over the Christmas period, during which the client has a reduced need for support and therefore when annual leave can be or must be taken unless other duties are identified, for example project work, training or knowledge transfer.

58.3. sick leave;

58.4. working with a female lead. The claimant indicated that he thought it was appropriate to address this concern by refusing to accept Ms Panwar or any other female lead as his deputed lead at NBS and asked for the deputed lead to be changed to a male associate;

58.5. minor (pertinent) concerns which the claimant articulated as comments leading to a fearful work environment and he asked Mr Yuvaraj to focus on the major issue of leave.

59. The claimant also commented on submission of timesheets and T-factor training and asked for a response to his email by 27 November 2019.

60. I am satisfied that the requirement to take leave as agreed with, or otherwise as directed by, the respondent does not constitute bullying, harassment or servitude as alleged by the claimant.

61. Mr Yuvaraj forwarded the claimant's email to Ms Panwar, Mr Vij and Ms Bhavna Ate in HR and copied the claimant in on his email. He asked the supervisors to look at the queries raised with the support of HR. The claimant cross examined Mr Yuvaraj on the appropriateness of forwarding this email to the claimant's supervisors and Ms Panwar in particular, given the issues raised. I find that it was appropriate to forward the e-mail to HR given the issues raised by the claimant about his manager, Ms Panwar, a female lead, which I accept, as stated by Mr Yuvaraj in his evidence, were as a minimum inappropriate and unprofessional. I also find that that the claimant's proposal to change his line manager was not an acceptable course of action for the respondent to take. I further accept Mr Yuvaraj's explanation that he felt Ms Panwar was entitled to know what was happening as the claimant's deputed lead. I find that all the issues raised by the claimant had been addressed previously by the respondent and note and accept as the likely explanation for the claimant's approach that "*the answers he had received were not in line with what he wanted to hear*" as suggested by Mr Yuvaraj.

62. Ms Ate responded to the claimant by email on 31 October 2019 and suggested meeting in mid-November in Swindon. The claimant responded on 1 November 2019 asking for his concerns to be responded to in writing but agreeing to meet Ms Ate to discuss well-being. The meeting was arranged for 18 November 2019

63. On 5 November 2019 Ms Panwar responded in writing to the points raised in the claimant's email of 30 October 2019 and referred the queries relating to the leave policy and the claimant's request not to report into a female lead to Ms Bhavna Ate in HR.

64. The evidence in relation to the termination of the claimant's assignment with NBS was contradictory. I find that at a deployment meeting in mid-October 2019, resource requirements had been discussed and it can be inferred from the oral evidence and the documents before the Tribunal that there were further discussions on or around this time although no details were submitted in evidence. As identified by the claimant in his submissions the respondent's explanation for the termination of the claimant's deputation has not been consistent. In the original Grounds of Resistance, it was stated to be a downsizing of the project; in the amended Grounds of Resistance dated 9 March 2021 a reference to a number of performance issues was added and in Mr Yuvaraj's

evidence he states that "*the project had wider scope in the future and the potential need for a Senior Business Analyst to help drive the work*". I conclude in part from what was said by Mr Yuvaraj and in part due to the inconsistent and evasive nature of the evidence submitted by the respondent, and having reviewed that evidence and relevant email exchanges, that the reason for the claimant's removal from the NBS account was that a decision was made that a Senior Business Analyst would better service the client and the claimant had already been removed from this role due to performance issues; and that the claimant had become difficult to manage by refusing to comply with instructions given to him by his deputed lead, and by asking not to work with a female lead in the future; and the respondent also had genuine concerns over the claimant's approach to the issues he had raised, in particular his refusal to accept the explanations given to him for the refusal of his holiday request.

65. Before speaking to the claimant, the respondent identified a replacement for the claimant who could operate at Senior Business analyst level on the NBS account.

66. The parties agree that Ms Panwar then notified the claimant verbally on 13 November 2019 that his deputation to the UK to work on the NBS account would be ending on 20 December 2019 and I accept the claimant's evidence that he was informed that a replacement resource had been identified. I also accept Mr Yuvaraj's evidence that the claimant also spoke to Mr Amit Vij on 13 November 2019 and Mr Vij explained the reason for the end of the claimant's deputation. Although I did not hear from Mr Vij, I was referred to an email sent by Mr Vij on 13 November 2019 confirming that he had passed the message on to the claimant.

67. Mr Yuvaraj also informed the respondent's NBS contacts that the claimant was being "*rolled-out*" from the project and that this was a result of "*resource shuffling*" and had been confirmed following discussions with NBS.

68. On the 14 November 2019, Mr Yuvaraj met with the claimant to discuss "knowledge transfer" this being a formal process by which the knowledge of the out-going employee can be captured and communicated internally. During this meeting Mr Yuvaraj maintains that he too explained the rationale behind the claimant's release from the NBS account. I accept that he did so, but I conclude that the explanation did not convince the claimant who did not accept it and that the claimant was correct in sensing that there were other concerns which had not been discussed in a transparent way. I find that whilst the claimant did understand that a Senior Business Analyst was taking over from him, he genuinely did not understand why he was being replaced, that he felt that this was an unfair decision and that he did not want to return to India but wished to remain in the UK.

69. The claimant then emailed Mr Yuvaraj asking him to confirm that his release date was 20 December 2019 and asking for the business rationale. Mr Yuvaraj responded by stating that Niteeka Panwar had already provided this information and referring to the need to co-operate with knowledge transfer.

70. On 14 November 2019, Ms Panwar emailed the claimant twice inviting him to a meeting to discuss knowledge transfer and attaching the knowledge transfer template

71. On 15 November 2019 Ms Panwar emailed the claimant to confirm that 20 December 2019 would be his last date on the project and asking him to complete and share a knowledge transfer plan by [*Monday*] and to raise a travel request for 21 December 2019 and to share the travel request number with her by close of business that day.

72. I accept that these requests were in line with the respondent's usual processes and the international assignment agreement and the deputation letter which provide for an immediate return of employees to their base country (or to their

next assignment) once their current assignment has concluded with appropriate knowledge transfer. I find that that the respondent's process is that a travel request then triggers a number of additional processes including access to the Resource Management Group (RMG) who then engage with the employee to find an alternative assignment, as well as enabling travel tickets to be purchased. It also triggers the transfer of management responsibility for the employee back to their base branch from the end of the assignment, in this case India, and the necessary payroll changes to reflect the fact that the claimant would cease to be entitled to a UK salary but would revert to his Indian salary from the end of the assignment. The expectation was that the claimant would leave England at the latest by Sunday 22 December 2019 given his assignment ended on 20 December 2019 so he could report to his base branch the next working day.

73. On 18 November 2019 the claimant met Ms Bhavna Ate in Swindon and the claimant's evidence, which I accept, was that he repeated his request for his concerns to be addressed including the business rationale for his release and that reference was made to the need for him to co-operate in knowledge transfer. Following the meeting Ms Ate emailed to point out that the release date had been confirmed in an email, he had been informed of the business rationale and that he needed to co-operate on the knowledge transfer.

74. On 19 November 2019 the claimant sent an email to NBS setting out his current workstreams which would need a knowledge transition to his replacement, and I accept that the claimant did comply with the knowledge transfer requirements.

75. On 21 November Ms Panwar chased the claimant for his travel request and asked him to raise it immediately. The claimant did not respond to Ms Panwar's emails of 14,15 or 21 November 2019.

76. On 25 November 2019 the claimant emailed Mr Chandrasekaran Ramkumar, UK head of HR to escalate his concerns. He repeated the issues he had previously raised and said that he had not received a response to them but instead had been informed that his deputation was to be terminated. He asked for intervention to de-escalate the situation. Mr Ramkumar did not respond to this email.

77. On the 27 November 2019 the clamant raised a travel request for 27 December 2019 which the claimant maintained had been agreed with Sanjay Singh, TCS Business Relationship Manager, together with a request for three days leave. The respondent adduced no evidence to the contrary and I find that the claimant understood that this had been agreed. However, as the claimant's last day of work was 20 December 2019 the expectation was that he would travel back to India on or before the 22 December 2019 and Mr Yuvaraj emailed the claimant back on 27 November asking him to resubmit his travel request for 22 December 2019. At this point I find that it was clear to the claimant that it had not been agreed that he could delay his return to India until 27 December 2019.

78. On 29 November 2019 the claimant emailed Chaitanya Dave, Head of the Resource Management Group, in relation to prospective work assignments in the UK referring to the travel request he had raised. There were subsequent email exchanges in relation to circulating the claimant's profile. At this point I find that the claimant intended to return to India on 27 December 2019, if he had not obtained another UK assignment.

79. On 30 November the claimant notified his landlord that he had been given notice that his work assignment was ending and that he expected to move out on 30 December 2019 (one month later) unless he obtained another UK work assignment. He was advised on 1 December 2019 that his 6-month tenancy ended in February 2020 and the claimant became aware that he would therefore be liable for rent until that date.

80. By 4 December the claimant had not resubmitted his travel request for the 21 or 22 December 2019 as requested, and the travel request for 27 December 2019

was cancelled by Mr Singh. The claimant was asked by Mr Singh on the booking system to raise a travel request for the 22 December 2019 "*as communicated*". I am satisfied that this was a reasonable request notwithstanding that the claimant had previously understood it had been agreed that he could return on 27 December 2019 as he had been aware since 29 November 2019 that he needed to return to India on or before 22 December 2019.

81. On 5 December 2019 Ms Panwar sent a further email to the claimant asking him to raise a travel request, which the claimant still had not done. Ms Panwar specified that this should be for 22 December 2019.

82. Later the same day, 5 December 2019, the claimant emailed Mr Ramkumar and asked to meet.

83. On 6 December 2019 the claimant emailed Sanjay Singh proposing two options: firstly, the respondent should settle the additional two months additional rent he would have to pay due to the end of his assignment or secondly, he could work on another assignment in the UK. He also confirmed that his TCS email was not working and sent the email from his nationwide email address.

84. Mr Ramkumar responded to the claimant's email of 5 December 2019 on 8 December 2019 to say he was not available the following week and referred the request to Mr Srivastava, UK Head of Talent Engagement. The claimant then emailed Mr Srivastava asking to meet.

85. On 9 December 2019, Mr Singh responded to the claimant's email of 6 December 2019 referring him to the HR team in relation to the lease breakage and asking him to raise the travel request as soon as possible. The claimant exchanged a number of emails with Geeta Verma in the UK HR team on 9 December 2019 as well as Ms Ate and he was advised that he should be able to claim £1700 for the period the property was unoccupied (subject to submitting supporting documents) but not for other costs such as council tax. He was advised of the details and the documents which he needed to provide and was expressly informed that he needed to raise a travel request to link the two claims.

86. Mr Srivastava arranged to speak with the claimant on the telephone and they spoke on 11 December 2019. They discussed a number of issues including the claimant's concerns with reporting to a female lead. As the claimant was due to return to India, Mr Srivastava decided that no further action was required in the UK to address this issue. They also discussed the lease breakage payment and Mr Srivastava concluded that the primary reason that the claimant was refusing to raise a travel request was that he wished to receive the lease breakage payment before he left the UK. I accept Mr Srivastava's evidence that the process was explained to the claimant, namely: (i) the UK HR helpline would help with the calculation; (ii) a claim must then be submitted using the Ultimatix system (which is the respondent's intranet), (iii) the claim then needed to be approved by a deputed lead; and (iv) once approved it would be forwarded to the finance department for final approval before it could be paid.

87. Following the call, Mr Srivastava sent an email to the claimant referring to the email exchanges that had occurred with Ms Ate about the lease breakage payment, referring the claimant to the RMG in relation to redeployment and asking him to raise a travel request for 21 December 2019.

88. On 12 December there was a further email exchange between the claimant and Mr Singh in which the claimant said that he had received confirmation that the lease breakage amount would be for £1700 and that he would raise the travel request once he had received confirmation that this payment would be made. Mr Singh responded by asking him to raise the travel request as soon as possible and referred to the fares increasing. The impasse can be summarised as the clamant insisting the lease breakage payment was confirmed before he raised the travel request and the respondent insisting that due to their processes, the

travel request had to be raised before the lease breakage claim could be processed.

89. On 13 December 2019 Mr Srivastava sent an email in the following terms: "*I am surprised to note that that you have not yet raised your travel request. As advised earlier, kindly initiate travel request immediately for 21 December 2019. Any deviation will have severe repercussions. Any other point can be discussed separately. Please note that if travel request is not raised today, you will leave us with no option but to initiate disciplinary action against you.*"

90. The claimant responded an hour later: "*I'm happy to raise travel request post obtaining confirmation on early lease termination amount from UK finance team and Sanjay, email attached. I ought to settle my financial obligation before I depart from UK. It is pre-requisite for me to be a responsible UK resident. If you believe what I ask is unjustified – I'm happy to defend disciplinary action in case the need arises*.".

91. Mr Srivastava responded stating: "*Don't mislead Manmeet. You already have an email from Bhavna confirming the amount for lease breakage. Kindly raise the travel request immediately and confirm*". I accept that Mr Srivastava felt the claimant was being untruthful by implying that he was not aware that he would receive the lease break payment. However, I also accept that the claimant had genuine concerns that if he returned to India, the lease break payment would not be made although I find that there was neither at the time, nor before the Tribunal any evidence to support the fact that this would have been the case and I conclude that his fears were therefore unjustified.

92. In light of the claimant's ongoing refusal to raise a travel request, Ms Ate sent a formal letter to the claimant on 16 December 2019 by email identifying that he was in breach of the deputation agreement and instructing him to raise a travel request by 10.00 am the next day, failing which the respondent would notify the home office that they were cancelling his sponsored visa with immediate effect.

93. The claimant did not raise a travel request as instructed but on 16 December 2019 he did submit his lease breakage claim.

94. On 17 December 2019, Ms Ate emailed the claimant to advise him that as he had still not raised a travel request, the respondent would initiate the claimant's repatriation to his base branch in India. I am satisfied that the respondent was entitled to do this under the terms of the deputation agreement which specifically provided that: "*we reserve the right to terminate your deputation with immediate effect and without further consultation with you*" and that the consequence of the termination of the deputation was for the claimant "*to revert back to [his] original role in India" (or to another role or location if one was identified*)". On this occasion the claimant had received a month's notice of the termination of his deputation and was aware that he was required to return to India on either the 21 or 22 December 2022. He chose not to comply with this request initially because he wished to take three days' leave in the UK (which was refused) and subsequently because he had decided that he would not leave until he had received his lease breakage payment.

95. On 18 December 2019 the claimant sent a lengthy email headed "Reporting Unethical Conduct" reiterating his concerns to a number of individuals and to an email address corporate.ethics@tcs.com. The claimant raised four issues:

    95.1. His perception that the request for three weeks' leave request had escalated into the termination of his deputation;
    95.2. Querying the business rationale for and the release date from NBS and raising his concerns about the early termination of his lease;
    95.3. Lack of response from RMG about alternative positions;
    95.4. The threat of disciplinary action.

96. The chronology set out in this complaint was, for the period until 18 December 2019, effectively the same as that before the Tribunal at this hearing.

97. Mr Srivastava set out in his evidence the two options available to the respondent to raise a travel request on an employee's behalf. I accept his evidence that it is not a usual occurrence for an employee to refuse to raise a travel request and therefore for the employer to need to do so. The first option is for the travel request to be raised and sent to the employee for approval. Once approved by the employee it would then be approved by the project owner. The second option is for the request to be raised and automatically appear as approved without going into either the employee or project owner's work-flow for approval.

98. The claimant had still not raised a travel request, so on 20 December 2019 the respondent raised a travel request using the first option with a return date of 21 December 2019. This request was cancelled by the claimant. On the same day Mr Singh approved the claimant's lease breakage payment for £1700 which was subsequently paid on 15 January 2020. I am satisfied that the respondent did not unreasonably delay approving the lease breakage payment.

99. On 20 December 2019, the claimant's assignment with NBS ended. At this point (or by 22 December 2019 at the latest) the claimant's contractual right to work in the UK, which was subject to the specific terms of both the deputation agreement and the framework terms set out in the international assignment agreement, (as well as UK Immigration requirements) also ended. I find that the deputation agreement had already been lawfully terminated (on notice) with effect from this date, but that the framework terms of the international assignment agreement would have continued to apply, such that if the claimant had been offered a new overseas assignment, he would have been asked to sign a further deputation letter, but not necessarily a new international assignment agreement. The contract of employment continued to have full force and effect (subject to Indian law) and from the 23 December 2019, the claimant was contractually obliged to work in India unless and until a further overseas assignment was agreed with him.

100. On 20 December 2019 the respondent sent a further formal letter to the claimant which stated that the claimant was in breach of his contract and confirmed to the claimant that the decision had been taken to terminate his international deputation agreement with TCS UK as at the date of the letter. It set out the chronology of the many requests that had been made instructing the claimant to book his travel back to India and pointed out that the fact that he had raised an ethical concern, did not give him the right to remain in the UK and that TCS did not consent to him remaining in the UK. It was further pointed out that this would be categorised as an illegal stay and the claimant was asked to make arrangements to leave the country immediately by following the company's travel request process. The claimant says he did not receive this letter as his TCS email was not working and his NBS email was no longer valid following the end of his assignment and I accept that this was the case. To the extent that the respondent's maintain that this letter constituted notice of termination of the international assignment agreement (in addition to the deputation agreement), I therefore accept that this notice was not effective. However, the claimant did still have access to the TCS system and was aware that he had been instructed to return to India and had the means to do so whether or not he received this letter and the deputation letter and his assignment had already been ended.

101. On the same day the claimant submitted an ethics concern via Ultimatix, a copy of which was not provided to the Tribunal, but which I understand to be a formal submission of the four issues referred to in the 18 December complaint previously sent by email. The claimant's evidence is that on that day he also received a call from Ms Ate on his mobile informing him that if he did not depart from the UK on the 21 December 2019, he would need to pay for his own return flights. Although the lease breakage payment had by then been approved by Mr Singh, the claimant still refused to return to India until his "*financial liabilities*" had been "*settled*".

Events after the NBS assignment ended

102. On the 24 December 2019 a further travel request was raised retrospectively for the 22 December 2019 by the respondent using the second option (whereby no approval was required). I accept the respondent's evidence that this was an internal system requirement given the claimant's assignment with NBS had terminated to ensure that the correct pay and terms and conditions were applied, and that line management of the claimant reverted to his base branch in India. I do not find as alleged by the claimant that this constituted any untoward conduct on the part of the respondent whether as a "*misrepresentation of reality*" a "*breach of trust and confidence*" or otherwise. I accept that no tickets were in fact purchased or travel arrangements made for the claimant and his family at this time, however, I find that the claimant was aware that this was the case at that time, based on his own account of his conversation with Ms Ate.

103. On 26 December 2020, the claimant emailed Ms Ate from his personal email address to inform her that he was still in the UK and had applied for "2 days' sick leave" and "5 days' earned leave" to cover the period until 6 January 2020 which had not yet been approved, but that he had resubmitted a leave request and wished to meet with Mr Ramkumar on 6 January 2020. He referred again to the outstanding ethics concerns. I note, as explained by Mr Srivastava, that Mr Ramkumar is the Head of HR for the UK and would not normally be involved in individual employee issues unless escalated to him by one of the HR team. I find the claimant was unwilling to listen to the responses provided to him by his line manager, project leader or the HRBP responsible for managing his case and was insubordinate and inappropriate in the way in which he escalated matters and imposed artificial deadlines. In this email the claimant provided a personal email address to be used due to the unresolved issues with his TCS account and the fact that he no longer had access to his NBS account.

104. On 30 December 2019, Ms Ate sent a case synopsis to Mr Srivastava setting out the background to the concerns raised by the claimant in his ethics concerns and summarising the concerns held about his compliance with the respondent's requirements. Mr Srivastava reviewed the concerns raised by the claimant and concluded that they did not raise any new issues but did not respond formally to the claimant.

105. On 2 January 2020 Ms Ate sent a further formal letter by email to both the claimant's personal and TCS email address. The claimant alleges that he did not see this email, but I note that it was sent to the correct email address by an experienced HR professional and therefore conclude on the balance of probabilities that it was received by him. The letter confirmed the claimant's overseas deputation had been terminated with effect from 22 December 2019 and instructed him to report to his base branch immediately. It also confirmed that his application for leave as a UK employee had not been approved and that he needed to speak to his base branch about the request.

106. On 3 January 2020, Ms Seema Verma, Separation Officer for the respondent based in India was asked by the HR Compliance team at the respondent's Delhi branch to contact the claimant.

107. Ms Verma gave evidence, which I accept, that she had not had any previous dealings with the claimant. She explained that as his overseas assignment had terminated on 22 December 2019, the claimant ceased to be entitled to his UK salary and should have reported to RMG at his base branch and would then have become entitled to salary pursuant to his Indian contract. I find that this is in accordance with the terms of the contract of employment, the international assignment agreement and the deputation letter.

108. Ms Verma emailed the claimant on 3 January 2020 at his TCS email address and asked him to report to RMG in Delhi by 10 January 2020 at the latest.

109. On 6 January 2019 the respondent became aware that the claimant was still in the UK as he tried to meet with Mr Ramkumar who was not available. The claimant then called another member of the UK HR team who directed him to call Mr Srivastava, which he did. The parties agree that on that call the claimant again asked about his lease breakage payment, the response to the ethical concerns raised and the claimant raised his concern that his location was incorrectly shown on the TCS system as being India. I accept Mr Srivastava's evidence that the claimant was told verbally that he should report to his base branch in India on 10 January 2020 as instructed; that Mr Srivastava confirmed he would look into the payment of the lease breakage payment if the claimant sent him the relevant details; that the respondent would not pay the claimant's council tax or home broadband costs; that Mr Srivastava would look to see if there was a home office reference number in relation to the cancellation of the claimant's visa; that the claimant asked for a return ticket to be provided and that Mr Srivastava said he would look into this if the claimant sent further details but that Mr Srivastava said that this would not have arisen had the claimant complied with the original instruction to book the flights.

110. The claimant alleges that Mr Srivastava used unprofessional language on that call and Mr Srivastava alleges that the claimant was rude and refused to listen to the advice given. Having listened to both witnesses in the Tribunal and seen the tone of email correspondence sent by both and the contemporaneous summary of the conversation sent by Mr Srivastava to Ms Ate immediately after the conversation, I accept Mr Srivastava's evidence that the claimant was intransigent and rude and unwilling to listen to the explanations provided to him. I do not find that Mr Srivastava acted in any way unprofessionally nor that he suggested anything other than it was not necessary for the lease breakage to be resolved before the claimant left the UK.

111. On 6 January 2020 the claimant emailed Mr Ramkumar to explain he had attended at the respondent's premises hoping to meet with him and asking Mr Ramkumar to provide an alternative time to meet. Mr Ramkumar initially responded the same day to confirm he was not returning from leave until 13 January 2020. The Claimant sent a further email to Mr Ramkumar setting out his concerns in more detail. Mr Ramkumar responded on 7 January 2020 to confirm that whilst the claimant's concerns would definitely be looked into, Mr Ramkumar now understood that the claimant's visa had expired, and the claimant should return to India immediately as previously advised as he could not outstay his visa validity. He stated that, "*we would have no option but to take all legal and procedural steps to ensure your return within visa timelines*".

112. On 8 January 2020 the claimant again attended the respondent's premises without prior arrangement and met with Mr Srivastava. The claimant handed a letter to Mr Srivastava addressed to Mr Ramkumar. The claimant and Mr Srivastava agree that the claimant was told that he would receive a response once he returned to India, and this was also communicated to the claimant by Mr Ramkumar by email. I do not find that this was a "*verbal threat*" as alleged by the claimant but find that was a statement of fact as management and HR responsibility for the claimant had transferred back to India following the termination of his international assignment with NBS and he had been lawfully instructed to return to India.

113. This letter was headed "Private Notice" and set out the basis of the claimant's claim for the lease breakage payments (which was subsequently paid) as well as "*early breakage"* payments for council tax and broadband to which the claimant had no entitlement and which it was not the respondent's practice to pay.

114. On 8 January 2020, Ms Verma was informed by Naresh Dash, HR Compliance lead in Delhi, that the claimant had been in contact with the UK HR team, that he was still in the UK, and that he had not been back in touch to arrange his return travel to India. Ms Verma emailed the clamant again at both his TCS and personal

email address, referring to her email of 3 January 2020 and asked him to confirm his travel plans.

115. On 9 January 2020 the claimant saw a doctor in the UK and sent a sick note to Mr Ramkumar, copied in to Delhi HR on 10 January 2020, which signed him off due to work-related stress until 5 February 2020.

116. On 14 January 2020 Ms Verma, as the claimant's HR contact, emailed the claimant again on both email addresses, asking him to send her any supporting medical evidence and on 15 January 2020 Ms Ate also emailed the claimant asking for a clearer copy of the sick note which was not legible.

117. The claimant received payment of the £1700 lease breakage payment on 15 January 2020.

118. No response to either of the emails sent on 14 and 15 January 2020 was received from the claimant so Ms Vermeer emailed the claimant again on 20 January 2020 to both his work and personal email addresses asking for further medical information and indicating that if this was not received, the respondent would consider taking further action.

119. No response was received from the clamant, so on 28 January 2020 Ms Verma sent a further letter by email and also by post to the claimant's notified Indian address stating that as the claimant had been on unauthorised absence since 23 December 2019, he should report to the office immediately, "*failing which the Company will be constrained to initiate appropriate disciplinary action*". I accept Ms Verma's evidence that this was in line with the respondent's standard practices. I note that the claimant's notified address in India was that of his parents and that they received and opened the post addressed to the claimant and accept the claimant's evidence that this caused them distress. However, given that the claimant should have returned to India, that he had not responded to any emails sent to him by Ms Verma and that this was the address for the claimant held by the respondent, I do not find the respondent's conduct in sending a hard copy of this letter to this address to be unreasonable or culpable in any way. Neither do I find that the conversation between the claimant's parents and the Delhi HR team, on which I heard no direct evidence, is relevant to the matters in dispute between the parties

120. I heard evidence from both parties that the claimant was at some point during January placed on "stop-pay". Ms Verma gave evidence that if an employee fails to comply with the offshore reporting formalities, namely submitting a travel request, reengaging with the resource management group and returning to their base office, then they cease to be entitled to their Indian salary. I accept that on or around the end of January the claimant was placed on stop-pay which mean that he ceased to receive any pay at all and that his access to the TCS system was removed.

121. On 4 February 2020 the claimant sent a clear copy of his sick note as had been requested by Ms Ate on 15 January 2020 to Mr Srivastava and Mr Ramkumar (copied to HR in India) and again asked to meet with Mr Ramkumar. Mr Ramkumar responded on 6 February 2020 re-iterating that as the claimant's UK assignment had ended, he should return to India immediately and speak to HR in India and that they could connect over a call from India if required.

122. On 6 February 2020, the claimant booked return flights to India for himself and his family flying on 22 February 2020.

123. On 11 February 2020 there was an email exchange and a telephone conversation between the claimant and Mr Naresh Dash concerning the provision of necessary documents for the claimant's son's school admission in India and subsequent emails were exchanged on this topic on 12 February 2020.

124. On 17 February 2020 the claimant emailed Mr Dash stating: "*I intend to report to Delhi/NCR office in week commencing Monday, 24th February 2020. Could you please provide reporting office, person name and suitable time (options)? Thx*". On the 18 February 2020, the claimant was instructed by Mr Dash to meet with Ms Verma.

125. The claimant's evidence, which I accept, is that he moved out of his UK property on 21 February 2020 and flew back to India on 22 February arriving in New Delhi on 23 February 2020 as evidenced by his passport stamp. No evidence was provided as to why given his sicknote had expired on 5 February 2020, he did not return before this time, or on what basis he had remained in his UK rented property notwithstanding that he had been paid a lease breakage payment by the respondent anticipating his return to India on or around 22 December 2019.

Events in India after the claimant's return on 22 February 2020

126. The claimant's account of what took place before he resigned by email at 2.03 on 25 February 2020 is disputed by the respondent. The claimant adopts as his evidence in relation to the events of 25 February 2020, the detail set out in his submission to the Tribunal dated 4 June 2021. The claimant alleges that he was subject to forced resignation. He implies in his written account, and he confirmed in his oral evidence, that he first met with Ms Verma and then submitted his resignation by email in response to Ms Verma informing him that he could resign or face termination. The claimant also asserts that they had discussed in detail a number of the claimant's on-going concerns about the failure to respond to his ethics concern, the failure to pay for the claimant's return travel tickets, the fact his pay had been stopped and about appropriate levels of notice pay.

127. Ms Verma states that her first contact with the claimant was receipt of his resignation by email at 2.03 on 25 February 2020, that she then tried to call him and then he came in to speak to her.

128. I find that the claimant submitted his resignation by email at 2.03 pm on 25 February 2020. The claimant stated in his resignation that he was resigning because, "*Due to prolonged stress at work, [my] health is impacted*." He also asked for early release from his obligation to work his notice.

129. I prefer Mr Verma's evidence over the claimant's and find that this was the first contact that she had had from the claimant and that he was not forced to resign by her. I further find that he had not in fact discussed his situation with her at all before he sent his resignation. Ms Verma's evidence as set out in her witness statement and in her oral evidence under cross-examination was credible and consistent and is supported by the contemporaneous documentary evidence. Specifically, there is no reference in the claimant's resignation email to a previous conversation; an email sent by Ms Verma after she had received the resignation timed 2.28 pm asks for contact details and refers to an attempt to telephone the claimant, but does not refer to, and is inconsistent with, her having already met with the claimant that day; and the leaver's checklist records that the resignation was not submitted on site. The claimant's submission of 4 June 2021 is not clear on the time-line of the events described and his oral evidence was not consistent.

130. I do find that the claimant and Ms Verma subsequently met that afternoon (between 2.30pm and 4.23 pm) for approximately 20 minutes to discuss the claimant's resignation as confirmed by Ms Verma in her evidence. I accept as the claimant states, that that there was some discussion of re-imbursement for the return flights; the stop on his pay and system access; and whether he would be required to work his notice (as is a normal requirement). I accept Ms Verma's evidence however, that she did not make any representations about the ethics concern; that the claimant would or would not be reimbursed for the flight costs (it not being in her area of responsibility); or whether he was entitled to 90 days' notice. I find on the balance of probabilities that the claimant did understand that had he not resigned, there would have been disciplinary proceedings against him

as he had been advised of this when he was in the UK, and I accept that Ms Verma may have made reference to the disciplinary proceedings which would otherwise have been initiated against him. I do not find however, that this contributed in any way to his decision to resign as he had already done so by the time they met.

131. Ms Verma forwarded the claimant's resignation email to Mr Chhabra and other HR colleagues at 4.23pm on 25 February after discussing the matter with him with a view to agreeing the early release requested by the claimant. This was agreed (subject to the required formal approvals) and the claimant's resignation was acknowledged and accepted in an email at 5.12pm on 25 February 2020 by Ms Verma who confirmed that the claimant could be released from his employment on 27 February 2020 and enclosed a number of forms for the clamant to complete in accordance with the required formalities to give effect to the termination. His stop pay was revoked and he was given access to the system in order to process the relevant paperwork.

132. Various internal emails were then sent which refer to the claimant's ill-health, the fact that disciplinary proceedings would have been initiated and the fact the claimant had caused a "*ruckus*" in the UK as the necessary internal approvals were obtained. The approvals required were both an agreement that the claimant did not need to work his notice, and also for the respondent to waive their right to recover notice pay for the un-worked period of notice, which an employer is entitled to do under Indian law when an employee resigns without giving proper notice.

133. The claimant's employment was terminated on 27 February 2020 and the claimant completed and signed the relevant documentation including the leaver's checklist; an undertaking in relation to a provident Fund and a Gratuity scheme form.

134. A letter was sent to the claimant on 28 February 2020 formally confirming the termination of his employment from close of office hours on 27 February 2020 and informing him that his "*release letter as well as Service Certificate will be issued to [you] subject to the Settlement of dues, if any*". The claimant was referred to the Alumni Portal for any further queries.

135. The claimant's final payslip shows "leave encashment" of 43 days (44,564.00) and "UK Recoveries of 9,832. Notice shortfall days and Notice Period Recovery Amt are both noted as 0.00.

136. Following termination of employment, the claimant was sent a Full and Final Settlement Statement. Ms Verma was not involved in preparing the claimant's Full and Final Settlement Statement as this was prepared by another department but gave oral evidence that this is a standard procedure in India and requires the employer to produce a statement reconciling payments owed to an employee on termination taking into account any deductions that need to be made. Mr Sinha confirms this is a legal requirement in his supplemental report dated 28 September 2021 (see paragraph 162 below). The claimant raised some queries about the calculation including the recovery of a sum in respect of equipment that he had not returned, which was waived, and in relation to a deduction for tax, which the respondent answered, if not to the claimant's satisfaction. On 8 June 2020 the claimant made a payment on account of the monies due to the respondent from him and the Full and Final Settlement process was concluded.

The Law

137. Having established the above facts, I now apply the law.

138. On 2 February 2021, at a preliminary hearing in this matter, the Tribunal found that the applicable law in this case is the law applicable to contracts of employment signed in new Delhi and any applicable Indian federal laws ("Indian

law"), subject to the non-derogable rights in the United Kingdom identified at paragraph 3 above, namely:

138.1. the right not to be constructively unfairly dismissed;
138.2. the right to minimum notice; and
138.3. the right to receive payment for accrued but untaken holiday.

English Law

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The non-derogable right not be constructively unfairly dismissed

139. Section 94 Employment Rights Act 1996 ("ERA") sets out relevant provisions in relation to the right not to be unfairly dismissed and section 94(1) ERA 1996 provides, "An employee has the right not be unfairly dismissed by his employer"

140. Under section 95(1)(c) ERA an employee is dismissed if he terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.

141. The question of whether there are circumstances in which the claimant is so entitled, helpfully referred to as 'the contractual entitlement question" by Mr Gillie, is a question of contract law and in this case falls to be determined under Indian law. Mr Gillie has referred me to and I have considered the case of Simpson v Intralinks UKEAT/0593/11/RN, EAT in which the Tribunal applied German contract law in analogous circumstances.

142. If the claimant's resignation can be construed to be a dismissal, then:

142.1. the reason for the dismissal relied on by the respondent is some other substantial reason which is a potentially fair reason for dismissal under section 98(1)(b) ERA. It is for the respondent to show the reason for the dismissal and that it was a potentially fair one (*Abernathy v Mott, Hay and Anderson [1974] ICR 323*).

142.2. the issue of the fairness or otherwise of that dismissal is governed by section 98 (4) ERA 1996 which provides "…. the determination of the question whether the *dismissal is fair or unfair (having regard to the reason shown by the employer) – (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and – (b) shall be determined in accordance with equity and the substantial merits of the case".

Non-derogable right to minimum notice

143. The claimant is entitled to a notice period of not less than the statutory minimum notice periods set out in section 86 ERA. For someone who has 6 years' service this is 6 weeks.

Non-derogable right to receive payment for accrued but untaken holiday

144. The Working Time Regulations 1998 (WTR Regs) provide for minimum periods of annual leave and for payment to be made in lieu of any leave accrued but untaken in the leave year in which the employment ends. The WTR Regs provide for 5.6 weeks' leave per year. There will be an unauthorised deduction from wages if an employee fails to pay the claimant on termination of employment in lieu of any accrued but untaken leave.

145. A worker is entitled to be paid a week's pay for each week of leave. A week's pay is calculated in accordance with sections 221-224 ERA, (with some

modifications). As the claimant had normal working hours holiday pay would fall to be calculated under section 221 ERA 1996 and be based on his normal remuneration at the calculation date.

Indian Law

Evidential burden

146. I accept Mr Gillie's submission that it is for the party contending that foreign law differs from English law to establish the position under foreign law. Thus, in this case, the evidential burden rests with the respondent to adduce evidence of relevant Indian law on the balance of probabilities (*Strickland v Kier UKEAT/0130/17/DM, EAT*)

147. The expert opinion differed on some questions and some issues were only covered by one expert, either in their report or when giving oral evidence. Where the opinion on Indian law was only provided by one expert, I have accepted that expert evidence as an accurate statement of relevant Indian law. Where there was a dispute, I have set out below my reasons for reaching a conclusion on the applicable law. Given the above findings of fact, some aspects of Indian law are no longer relevant, and I have identified these below. I am grateful to both experts for their assistance to the Tribunal but in the main found Mr Sinha's expert evidence to more credible and consistent and I have relied on it unless otherwise indicated as a basis for reaching the findings on the relevant areas of Indian law set out below. Mr Sinha's evidence demonstrated a greater understanding of the difference between reaching evidential findings and the appropriate remit of expert opinion and in the report of 30 August 2021, the supplemental report of 28 September 2021, the combined report of 12 January 2022 submitted by him, and in oral evidence, Mr Sinha's opinions on the relevant areas of Indian law were pertinent and were set out clearly with supporting arguments, case law and references.

Findings on Indian Law

148. I accept Mr Sinha's evidence that public policy principles or administrative law principles do not apply to private employment (*Binny Ltd & anr v V Sadasivan & ors (M/SC/0470/2005*) and as this case involves private employment, the employment relationship in this case is governed by the contractual terms and conditions of employment. Mr Singh does not dispute this evidence.

149. It is agreed that in order for an employee to have an actionable claim there has to be a legally enforceable contract between the parties and there has to be a fundamental breach of promise by the promisor [the employer].

150. It is also not disputed that the provisions of the Indian Contract Act 1872 ("ICA") apply to an employment contract.

151. The relevant provision in relation to "repudiatory" breach and the rights of the injured party following a breach (which is relevant to both the constructive dismissal and wrongful dismissal claims) is section 39 ICA which provides:

> "*When a party to a contract has refused to perform or disabled himself from performing his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by word or conduct, his acquiescence in its continuance*".

152. I accept Mr Sinha's evidence that in order to "*constitute an act of repudiation, such an act shall indicate an intention to refuse to perform the contract on the part of the party repudiating the contract and to set the other party free from performing his part*", (*Supreme Court of India: Claude-Lila Parulekar (SMT) v Sakal Papers (P) Ltd and others MANU/SC/0227/2005*). Mr Singh has not disagreed with this evidence.

153. I also accept Mr Sinha's evidence that there is no concept akin to the "final straw" doctrine which applies in the UK; any act relied on must be in itself a repudiatory breach. Mr Singh has not provided any evidence on this point.

154. Mr Sinha has set out in his report and clarified in his supplemental report that there are no terms implied into in an employment contract under Indian law except for those provided for by statute and specifically that there is no implied term which is akin to the implied term which applies in the UK not to act in a manner which is calculated or likely to destroy or seriously damage the relationship of mutual trust and confidence between the employer and the employee. Mr Singh agreed this latter point when giving oral evidence

155. The termination of the contract by the innocent party following a repudiatory breach has to be express and immediate and there must be no conduct on the part of the innocent party which evidences acquiescence to or waiver of the breach. This finding accords with Mr Sinha's evidence and was not disputed by Mr Singh.

156. I note and accept Mr Sinha's clarification that, the law does however permit a defendant to justify the repudiation on any ground which existed at the time of the repudiation "*whether or not the ground was stated in the correspondence."* (*Juggilal Kamiapat v Pratapmal Rameshwar MANU/ SC/ 0038/ 1977*).

157. Although of only limited relevance as the claimant's constructive unfair dismissal claim has been brought under the non-derogable provisions of English law, I note that Mr Singh states that the concept of constructive dismissal is still evolving but accept Mr Sinha's evidence that Indian law contains no settled concept of constructive dismissal.

158. I accept Mr Singh's evidence, which was not disputed by Mr Sinha, that a "forced" resignation" can give rise to a beach of contract claim. I was referred to the case of *Shiram Swami Shiksan Sanstha v Education officer, Zilla (1983 85 BOMLR 288*) which held: "*We feel that it is a well settled proposition of law that a forced resignation, which means a resignation not voluntarily given by the employee but is brought about by force, duress or in any other manner by the employer, is by the act of the employer. In substance the contract of service comes to an end in such case by the action on the part of the employer, It, therefore amounts to termination of service by the employer*".

159. Mr Singh has referred the Tribunal to the provisions of the Industrial Disputes Act 1947 ("IDA") and submits that if the Tribunal determines that the claimant was forced to resign then he would be protected under section 2A of this Act as a "workman". Mr Sinha comments on this submission in his report dated 12 January 2022 and argues that the claimant does not fall within the definition of workman. Counsel submits that this is irrelevant as it relates to a separate statutory cause of action under Indian law and not to one of the claims before this Tribunal. I conclude that the IDA is not relevant law on the basis firstly that I have found that the claimant was not forced to resign by Ms Verma (see paras 127 to 129 above and 166 to 172 below) so its terms would not be engaged, and secondly, the extract from the IDA quoted by Mr Singh states that the protection offered by the IDA is that," *any dispute or difference between the workman and his employer connected with or arising out of [such] discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute*". I therefore accept Mr Gillie's submission that this protection is not relevant to the claims before this Tribunal.

160. In relation to the remedy available for a breach of contract under Indian law, I accept Mr Sinha's evidence that if an employer is in breach of contract, the employee is able to follow a process by which the employee is put on notice of the breach and if not remedied the claim can be referred to a court or, as provided for in this case under both the employment contract and the deputation agreement

to an arbitrator in India, If the breach is repudiatory, the employee can resign immediately and be released from any further obligations under the contract, including the obligation to work his or her notice period but has no right to payment of notice pay. Mr Singh did not give evidence on this point.

161. If an employee resigns, then they are obliged to work their contractual notice period and if they do not, then the employer is entitled to recover from the employee basic pay for the period of the shortfall in the notice period.

162. I also accept Mr Sinha's evidence that following termination of employment whether by resignation or dismissal, Indian law provides for a "full and final settlement" ("FFS") process whereby all monies owed by each party to the other are calculated and any balance of monies due paid by the employer to the employee or recovered from the employee. Once the sums are paid and accepted without objection the FFS is perceived as "accord and satisfaction" and an employee would be estopped from bringing a claim and/or be considered as having waived any further claim against the employer.

163. In relation to contractual interpretation under Indian law, Mr Singh has referred to the case of *M.O.H Udman and others v M.O.H Aslum [AIR 1991 SC 1020*] in support of the contention that conflicting provisions "*must be read as a whole and the intention of the parties must be gathered from the language used in the Contract by adopting harmonious construction of all the clauses contained therein*" and whilst for completeness referring the Tribunal to conflicting case law has relied on this principle to support the contention that 90 days' notice should be served as otherwise clause 9.1 of the deputation letter would be redundant. Mr Sinha accepts that this is valid principle under Indian law but maintains that in this case, the provisions do not conflict as the deputation letter is a subsequent and subordinate agreement which over-rides any conflicting notice provisions set out in the International Assignment agreement. I therefore conclude that should there be a need to reconcile conflicting contractual provisions, the principle of "harmonious construction" should be applied.

164. I have however found that the deputation letter sets out the terms applicable to the specific NBS assignment within the framework of terms applicable to international assignments more generally as set out in the international assignment agreement. I have also found that the deputation letter (and the claimant's assignment), which could have been lawfully terminated without notice, was in fact terminated by over a month's written notice and that the international assignment agreement was not terminated prior to the claimant's return to India but that the claimant's employment under the contract of employment could only be terminated on 90 days' notice. I therefore accept Mr Sinha's submission that on the correct interpretation of the termination provisions in the deputation letter and the international assignment I do not need to apply the principle of "harmonious construction" in this case.

165. Both experts also comment directly on specific contractual provisions and the issues in dispute between the parties which are subject to Indian law. Where appropriate I have taken their comments into account in reaching my decision.

Decision on liability.

166. I now apply the law to the facts of this case by reference to the issues agreed at the start of the hearing.

Constructive Unfair Dismissal

167. I deal first with the issue of forced resignation, (considering the issues at par 17.2.12):

168. *The claimant [also] relies on the events of 25 February 2020 and claims that on 25 February 2020 he was forced to resign. The claimant alleges that he met with Ms Seema Verma on 25 February 2020 and during that meeting:*

   (i) *He enquired about his ethics concern reported on 20 December 2019 and was told by Ms Verma that he should forget his ethics concern as it will not be progressed;*

   (ii) *He requested reimbursement for his return travel ticket to India and was told by Ms Verma that he would not be reimbursed as the Respondent's UK HR had provided him with tickets;*

   (iii) *Ms Verma told the claimant that "stop-pay" had been applied to his account and his access revoked;*

   (iv) *He requested to speak to Mr C Ramkumar in respect of his reported ethics concern and his request was denied by Ms Verma as she said the conversation had to be with her;*

   (v) *He enquired about next steps and Ms Verma told him he had two options, resign or face termination;*

   (vi) *He enquired about his notice period of 90 days to which Ms Verma told him that no notice period is applicable in disciplinary cases*.

169. I have found that the first contact Ms Verma had with the claimant was receipt of his emailed resignation at 2/03 pm on 25 February 2020 and that she met with the claimant after receiving his resignation.

170. I have also found that Ms Verma's did not make any representations about, the ethics concern; that the claimant would or would not be reimbursed for the flight costs; or whether the claimant was entitled to 90 days' notice. These matters could therefore not have caused the claimant to resign.

171. I have found that there was some discussion of re-imbursement for the return flights; the stop on his pay and system access; and whether he would be required to work his notice (as is a normal requirement) but that these discussions took place after he had resigned so conclude that these discussions could also not have caused the claimant to resign.

172. I have found that the claimant did understand that had he not resigned, there would likely have been disciplinary proceedings as he had been advised of this when he was in the UK by email of 13 December 2019 by Mr Srivastava to which he had responded that he would be "*happy to defend disciplinary action should the need arise*", and by Ms Verma in her letter of 28 January 2020. I accept that Ms Verma may have made reference to the disciplinary proceedings which would otherwise have been initiated against him during their discussion on 25 February 2020 but again, as this conversation took place after the claimant's resignation had been submitted conclude that this could not have caused the claimant to resign. To the extent the (i) claimant had a reasonable expectation (given his insubordination) that he would face disciplinary action for his refusal to return to India when lawfully instructed to do so, and (ii) this influenced his decision to resign, I do not find that this means that his resignation was not voluntary.

173. I therefore conclude that the claimant resigned voluntarily for the reasons set out in his email, namely that he had been stressed by his work situation, and that he had a reasonable expectation that he would face disciplinary action for refusing to return to India when instructed to do so and that his resignation was therefore not brought about by force, duress or in any other manner by the employer. I therefore conclude there was not an express dismissal by way of a forced resignation (applying Indian law) for the purposes of section 95(1)(a)) ERA 1996).

174. In considering whether the claimant terminated the contract under which he was employed in circumstances in which he was entitled to terminate it without notice by reason of the respondent's conduct under section 95(1)(c) ERA 1996 I deal with each of the matters on which the claimant relies in turn by reference to the findings on Indian law set out above.

175. *In relation to the termination of the claimant's UK assignment in December 2019 without allegedly providing a business rationale*, I have found that the messaging to the claimant about the reason for the termination of the claimant's assignment was inconsistent and evasive. However, the contract of employment provided that the claimant was required to sign the applicable overseas deputation letter/ international assignment agreement; the international assignment agreement provided that "*TCS reserves the right to determine the duration, including early termination of any international assignment at any time during the assignment period, as may be required within the context of its operations and/or job assignment specifically*" and separately that "*After completion of the international assignment(s) in the international location(s)the Employee shall return to India or relocate to another international location as directed by TCS*"; and the deputation letter provided, "*If for whatever reason the respective TCS host or base country management team and/or client decide that your presence is no longer required, we reserve the right to terminate your deputation with immediate effect and without further consultation with you. Should an earlier than anticipated end to the deputation period be required for any reason, you will revert back to your original role or to any other role deemed suitable for you by TCS in your base branch of India, or in any other country as TCS may deem to be fit.*

176. I conclude that the termination of the assignment under the deputation letter and termination of the international assignment agreement are separate issues, and that the respondent was entitled pursuant to the terms of both the international assignment agreement and the deputation letter to terminate the assignment with NBS without notice and under the deputation letter to do so "*without further consultation*". In fact, the claimant was consulted with and received over one month's notice of the termination of his assignment with NBS and the termination of the deputation letter I therefore do not find, applying Indian law principles, that there was any breach of contract under this head.

177. *Raising a travel request via Ultimatix for the claimant on 20 December 2019 for a flight on 21 December 2019; raising a travel request via Ultimatix for the claimant on 24 December 2019; In or around December 2019 changing the claimant's work location on Ultimatix from the UK to India, despite the claimant still being in the UK*. I deal with these three alleged breaches together as they raise the same issues. I have found that the respondent was contractually entitled to require the claimant to return to India on or before 22 December 2019 immediately following the end of his assignment with NBS on 20 December 2019. I have also found that the claimant was instructed on a number of occasions to raise a travel request for flights for him and his family to return to India and conclude that this was a reasonable and lawful request notwithstanding that the claimant had initially understood it had been agreed that he could return on 27 December 2019. I have also found that this was an internal system requirement given the claimant's assignment with NBS had terminated to ensure that the correct pay and terms and conditions were applied, and that line management of the claimant reverted to his base branch in India. I have concluded that this did not constitute any untoward conduct on the part of the respondent whether as a "*misrepresentation of reality*" a "*breach of trust and confidence*" or otherwise, notwithstanding that no tickets were in fact purchased or travel arrangements made for the claimant and his family at this time. The claimant does not rely on a breach of any express term of his contract of employment, the international assignment agreement or the deputation letter and as no terms are implied into contracts of employment under Indian law, I do not find that there was any breach of contract in relation to these issues.

178. *In December 2019 the respondent allegedly delayed approving the claimant's financial claim request in respect of his lease breakage*. I have found that the claimant submitted his lease breakage claim for £1700 on 16 December 2019 having already been provided with details of the amount that he could claim. It was approved on 20 December 2019 and paid on 15 January 2020 whilst he still remained in the UK and potentially in the rented property. I do not find that there was any unreasonable delay in approving this claim. Further, the claimant does not rely on a breach of any express term of his contract of employment, the international assignment agreement or the deputation letter and as no terms are implied into contracts of employment under Indian law, I do not find that there could be a breach of contract in relation to these issues.

179. *Allegedly failing to deal with, and respond to, the claimant's ethics concern submitted on 20 December 2019.* The ethics concern was formally submitted on Ultimatix on 20 December 2019, and I conclude that there could have been no sensible expectation and there was certainly no contractual obligation to respond to the claimant before his return to India. Indeed, had the claimant returned on or before 22 December 2019 as instructed, it would have been impractical for this to have been done. I have found that the ethics concern was reviewed by Mr Srivastava on or around the end of December who concluded that the substance of the concerns had been addressed with the claimant previously, but the respondent agrees that no response was sent to the claimant Mr Srivastava. The claimant was subsequently informed by Mr Ramkumar by email on 7 January 2020 that his concerns would be looked at but that it was imperative he returned to India first. The claimant did not however return to his workplace in India until the day he resigned. I therefore do not find that the respondent failed to address these concerns, and although by the time of the claimant's resignation they had not sent a written response to the ethics concern raised via Ultimatix, I do not conclude that they would not have done so had the claimant returned to India as instructed. Further, the claimant does not rely on a breach of any express term of his contract of employment, the international assignment agreement or the deputation letter and as no terms are implied into contracts of employment under Indian law, I do not find that there could be a breach of contract in relation to these issues.

180. *Allegedly failing to respond to the claimant's letter to Mr Ramkumar dated 6 January 2020 and Sending the claimant an email on 7 January 2020 which allegedly sought to threaten him if he did not return to India (GOC paragraph 15 and 16).* I deal with these two allegations together. I have found that Mr Ramkumar initially responded the same day to the claimant's email of 6 January 2020 to confirm he was not returning from leave until 13 January 2020. In response to a further email from the claimant, Mr Ramkumar emailed the claimant on 7 January 2020 to confirm that whilst the claimant's concerns would definitely be looked into, Mr Ramkumar now understood that the claimant's visa had expired, and the claimant should return to India immediately as previously advised as he could not outstay his visa validity. I have found that in this e-mail Mr Ramkumar stated that, "*we would have no option but to take all legal and procedural steps to ensure your return within visa timelines*". I conclude that this is a statement of fact as the claimant was no longer entitled to be in the UK pursuant to his work visa and was acting in breach of clause 4(a) of the international assignment agreement by failing to return to India as instructed. There was therefore no failure to respond to the claimant's concerns as alleged, and the response contained an appropriate warning that if the claimant failed to do as instructed, the respondent would take further action.

181. Sending a letter to the claimant's address in India, dated 28 January 2020 and referring to the claimant's unauthorised absence, when he was still in the UK. I have found that the claimant failed to respond to emails from Ms Verma on 8 January 2020, 14 January 2020, and 20 January 2020 and to an email from Ms Ate on 15 January 2020, in each case asking him to respond. I have also found that the claimant has refused to obey a lawful request to return to India at the end of his UK assignment. I therefore conclude that it was entirely appropriate for Ms

Verma to send a letter to the correspondence address in India provided by the claimant. Further, the claimant does not rely on a breach of any express term of his contract of employment, the international assignment agreement or the deputation letter and as no terms are implied into contracts of employment under Indian law, I do not find that there could be a breach of contract in relation to these issues.

182. *Allegedly revoking the claimant's access to the respondent's IT systems on 1 February 2020.* As the claimant had failed to respond to any communication from the respondent, following the expiry of his sick note, I do not find that there was a breach of contract in the respondent removing access to their IT systems.

183. I have found that the respondent did not act in breach of contract in any of its dealings with the Claimant and I am therefore satisfied that the respondent had not as a party to the contract refused to perform or disabled [itself] from performing [its] promise in its entirety so as to act in repudiatory breach of contract (under Indian law).

184. I am further satisfied that the claimant did not in any event resign as a consequence of one of these alleged breaches. Having found that he could reasonably have anticipated some disciplinary action would be taken against him given his refusal to return to India when instructed to do so and accepting that this had caused him stress as stated in his resignation letter, I conclude that these were the reasons that he chose to resign from his employment.

185. If I am wrong and any one of the alleged breaches (which occurred before the claimant's return to India) could be considered a repudiatory breach under Indian law, I am satisfied in relation to each such breach that the claimant did not resign immediately in response to that breach but in any event acquiesced and/or waived such breach by his subsequent actions including in each case his interaction with Mr Dash in relation to the provision of necessary documents for the claimant's son's school admission in India and his assurance to Mr Dash that the claimant intended to report to Delhi/NCR office in week commencing Monday, 24th February 2020.

186. In light of these conclusions, I do need to make any findings under s 98 (1)(b) or s98(4) ERA 1996 and the claimant's claim for unfair dismissal fails and is herby dismissed.

Wrongful Dismissal

187. In relation to the claimant's claim for notice pay, I have found that the claimant was not dismissed, so the claimant's claim for notice pay fails and is dismissed.

Unlawful deduction from wages/breach of contract claim

Arrears of Pay

188. I have found that the claimant's assignment in the UK and the deputation letter were lawfully terminated in accordance with the contractual terms agreed between the parties with effect (at the latest) from 22 December 2020. Entitlement to UK salary was a term of the deputation letter and following its termination the claimant had no further entitlement to UK salary, instead he was from that date entitled to his Indian salary as provided for under the contract of employment. I conclude that the claimant was therefore not contractually entitled to be paid 9 weeks' pay, amounting to £8532 by way of UK salary from 23 December 2019 to the date he resigned on 25 February 2020. Further, I have accepted Ms Verma's evidence that the respondent was entitled to place the claimant on stop pay when he failed to return to India and report to his notified place of work. I therefore conclude that the claimant was not entitled to a lesser sum by way of Indian salary. See also comments on the effect of Full and Final Settlement at paragraph 194 below.

Holiday Pay

189. I now turn to the claim for holiday pay. It is not in dispute that the claimant was entitled to be paid for accrued but untaken holiday pay on termination of his employment. The claimant's claim is for 12 days holiday accrued whilst in the UK to be paid based on his UK salary; the respondent acknowledges that it owed the claimant (and accounted for) 43.3 days accrued but untaken holiday based on his Indian salary. The right to be paid in lieu of accrued but untaken holiday arises under UK law on termination of employment. In this case, there was no termination of employment on the termination of the UK assignment and/or the termination of the deputation letter as the claimant continued in employment under the [Indian] contract of employment. The right to be paid for accrued but untaken holiday therefore arose on 27 February 2020 when his contract of employment terminated. On this date, the claimant's normal salary was his Indian salary, and I have found that the claimant had normal working hours. so I conclude that by calculating the claimant's accrued holiday pay based on the total outstanding holiday of 43.3 days and using the claimant's Indian salary, the respondent complied with the requirements of the WTR Regs to the extent that they were applicable. I further conclude that the respondent was entitled under Indian law to off-set this payment against monies owed by the claimant to them under the Full and Final Settlement provisions (see paragraph 194 below).

Breach of contract claim

190. Lastly, I consider the claimant's breach of contract claims for £1,100 for return aeroplane tickets to India and £1,575 for maintenance funds for the claimant and his children from 23 December 2019 to 25 February 2020 to be determined under Indian law.

191. It is clear from the evidence of both parties that had the claimant raised a travel request on Ultimatix and returned to India on or before 22 December 2019, the aeroplane tickets for the claimant and his family would have been paid for by the respondent.

192. The claimant has not however referred me to an express term of the contract of employment, or the international assignment agreement, or the deputation letter, which sets out this entitlement and I am mindful of the fact that under Indian law no terms are implied into a contract of employment (other than by statute). I also note that the claimant was expressly told by Ms Ate that if he did not depart from the UK on the 21 December 2019, he would need to pay for his own return flights. To the extent that it is relied on to support this head of claim, I do not find that the statement in the visa application made in 2017 that: "[TCSL] will take care of [his family's] travel, living and medical expenses in UK" created a contractual commitment on the part of the respondent to make any such payments to the claimant. I further conclude that any entitlement that may have existed to a maintenance payment would in any event have ended when the NBS assignment finished, and the claimant was instructed to return to India.

193. I therefore do not find that the respondent had a contractual obligation to reimburse the claimant for the cost of his flights although in usual circumstances, they would undoubtedly have done so.

194. In relation to the maintenance funds claimed in respect of the additional costs incurred whilst in the UK, not only has the clamant failed to refer the tribunal to a contractual term which entitled him to these payments, during the period from 23 December 2019 to 21 February 2020 he was himself in breach of his contractual obligations to the respondent in that he had failed to return to India. I therefore find that there is no contractual obligation on the respondent to pay these costs and the claimant's claim for breach of contract fails.

195. Lastly, if I were to be wrong on any of the monetary breach of contract claims, I conclude that the full and final settlement process entered into between the claimant and the respondent in India by which the respondent agreed to waive recovery of payment for the period of unpaid notice and compensation for failure to return equipment and as a consequence of which the claimant made a balancing payment to the respondent for overpayments made to him, constituted an "accord and satisfaction" of any claims that the claimant may have had against the respondent and that the claimant would therefore be estopped from bringing a claim and/or be considered as having waived any further claim against the respondent.

196. For the purposes of Rule 62(5) of the Employment Tribunals Rules of Procedure 2013, the issues which the tribunal determined are at paragraphs 16 to 35 the findings of fact made in relation to those issues are at paragraphs 36 to 136; a concise identification of relevant UK law is at paragraphs 137 to 146; the findings on Indian law are at paragraphs 147 to 165 and how that law has been applied to those findings in order to decide the issues is at paragraphs 166 to 195.

Employment Judge K Halliday
Date: 14 April 2022

Judgment sent to Parties: 22 April 2022

For the Tribunal Office