EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4103778/2022 Hearing Held at Edinburgh on 18, 19, 20, 21 and 22 March and Submissions by Cloud Video Platform on 30 April 2024

Employment Judge: M A Macleod
Tribunal Member: A Matheson
Tribunal Member: T Jones

Dr A Chinnasamy	**Claimant** **In Person**
The University of Edinburgh	**Respondent** **Represented by** **Ms H Coutts** **Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The unanimous Judgment of the Employment Tribunal is that the claimant's claims all fail and are dismissed.

REASONS

1. The claimant presented a claim to the Employment Tribunal on 8 July 2022 in which he complained that he had been unfairly dismissed and discriminated against on the grounds of race by the respondent.

2. The respondent submitted an ET3 response in which they resisted the claimant's claims.

3. Following considerable case management, a Hearing was listed to take place in the Edinburgh Employment Tribunal on 18 to 22 March 2024. It proved possible to complete the evidence within that diet, and a further date was listed for submissions to be presented by Cloud Video Platform on 30 April 2024.

4. Much of the case management in this case was carried out by way of CVP Hearings, given that the claimant currently resides in Chennai, Tamil Nadu. However, following the Presidential Guidance issued jointly by the Presidents of Employment Tribunals (Scotland) and Employment Tribunals (England and Wales) on 25 July 2022, on "Taking oral evidence by video or telephone from persons located abroad", it was necessary for the full evidential hearing to be listed to take place in person, in the absence of the consent of the State of India to persons giving evidence from that country in the Scottish Employment Tribunal. The claimant accepted this and arranged to attend the Hearing in Edinburgh in person.

5. When it came to submissions, on the basis that no evidence was required of the claimant, the Tribunal directed that the Hearing on 30 April 2024 could take place by CVP in order to avoid the expense and time required for the claimant to travel again from India to Scotland.

6. The claimant appeared on his own behalf. The respondent was represented by Ms H Coutts, solicitor.

7. A joint bundle of productions, running to two substantial volumes, was presented to the Tribunal by the parties, and reference was made thereto by the parties and the Tribunal in the course of the Hearing.

8. The claimant gave evidence on his own account..

9. The respondent called as witnesses:

- Professor Andrew Baker, Head of the Centre for Cardiovascular Sciences;
- Professor Harish Nair, Professor of Paediatric Infectious Diseases and Global Health, and Head of the Centre for Global Health; and
- Professor Jamie Andrew Davies, Professor of Experimental Anatomy and Dean for Education

10. Ms Coutts, for the respondent, presented a sworn affidavit of Sara Louise Murphy, Senior HR Partner, and explained that Ms Murphy was unable to attend as a witness to the Tribunal on the basis that she was too unwell to do so. The Tribunal noted the terms of the affidavit and advised that it would not be accepted as evidence, on the basis that the claimant would have no opportunity to challenge the factual assertions made therein by the witness; however, we permitted Ms Coutts to refer to the affidavit as a basis for cross-examination.

Agreed List of Issues

11. Following a number of case management Hearings, the Tribunal established that the List of Issues in this case were agreed by the parties to be as follows:

LIST OF ISSUES

1. **Automatic Unfair Dismissal (section 103A, Employment Rights Act 1996)**

    a. **Did the respondent dismiss the claimant for the reason, or, if more than one, the principal reason that the claimant made a protected disclosure, or protected disclosures?**

    b. **The protected disclosures relied upon by the claimant are:**

        i. **On or around 13 December 2021, by email, the claimant raised a concern about the "flawed EMBASE**

search strategy" to "HN" (the claimant's line manager) and "Shanshan", a colleague;

ii. On 24 January 2022, the claimant informed HN verbally, in a face-to-face meeting, that the QA standards required by a research study were undermined, and offered to redo all the incorrectly presented values in HN's work prior to his involvement. QA, understood to mean Quality Assessment, means, according to the claimant, the set of criteria which a study should fulfil. What he believed was that a cost effectiveness tool was being used for a cost of illness study, leading inevitably to the wrong results being obtained;

iii. On 25 January 2022, he sent an email to HN and Shanshan requesting reasons why several Medline and Embase publications on cost of illness systematic review were removed despite having met the inclusion criteria for the study. The claimant's complaint is essentially that the project was funded on the basis of a grant application submitted by the respondent; that having obtained that funding, the respondent was departing from the basis of the funded project; and that that amounted to falsification. The grant was obtained for a particular purpose, to which the respondent was bound to adhere. The claimant has not seen the grant application, nor the grant award itself, and is therefore unable to point to a particular provision of the grant funding which was breached by the respondent. However, his assertion is that this project was to be a systematic review, and that the respondent was guilty of failing to carry out such a review.

iv. On 26 January 2022, the claimant raised concerns to HN by email that the Risk of Bias values of global researchers were being undermined in the project, on the basis that the incorrect tool was being used for the project.

v. On 4 February 2022, the claimant sent an email to HN outlining incorrect categorisation of studies in a table which HN had sent to him, though without pointing out all of the specific errors.

vi. On 10 February 2022, the claimant informed Sara Murphy and HN of incorrect values presented in the Quality Assessment, in person, during his probation review. This was a repetition of the concern raised on 24 January 2022.

c. Did these alleged protected disclosures amount to disclosures of information?

d. Were they made in the reasonable knowledge that they were in the public interest?

e. Were they disclosures made in terms of section 43B(1)(b), that is, tending to show that the respondent had breached a legal obligation? If so, what was that legal obligation?

2. Direct Race Discrimination (section 13, Equality Act 2010)

a. Did the respondent treat the claimant less favourably on the grounds of race than they treat or would treat others?

b. The treatment relied upon by the claimant is as follows:

i. The decision to dismiss him with effect from 10 February 2022;

ii. The decision to reject his appeal against dismissal issued on 7 June 2022

3. Harassment Related to Race (section 26, Equality Act 2010)

a. Did the respondent engage in unwanted conduct:

i. On 24 January 2022, when HN told him that the search strategy he had carried out in the project was work which "my daughter can do", and that it was at the level of a "3rd year medical student"?

ii. On 27 January 2022, when HN called him "unacademic" for suggesting the use of the Xe currency converter; and suggested that he would give the data to Johns Hopkins University (in the United States of America) in a threatening manner?

iii. On 28 January 2022, when HN telephoned the claimant 4 or 5 times, being very rude and challenging to him. He asked the claimant why he had not wished Shanshan a happy Chinese New Year; the claimant's own celebration of the Tamil New Year had passed without HN or anyone else wishing him the same?

b. Was the conduct related to the claimant's protected characteristic of race?

c. Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

d. If not, did the conduct have the effect of violating the claimant's dignity or creating such an environment for the claimant, having regard to the claimant's perception, the other circumstances of the case and whether it was reasonable for the conduct to have that effect?

e. Did the respondent take reasonable steps to prevent the alleged harassment?

4. Victimisation Relating to the Claimant's Race (section 27, Equality Act 2010)

a. Did any of the following amount to a protected act by the claimant?

i. He completed the Usher Institute equality diversity and inclusion survey for BMEG staff highlighting workplace racial discrimination on 24 and 28 January;

ii. He submitted a formal grievance on 10 February 2022 complaining of harassment, falsification and misrepresentation of information before the probation review;

iii. On 8 March 2022, he presented an appeal against his dismissal based on wilfully misrepresented, falsified and baseless allegations on performance and conduct, breach of employment contract, breach of "academic and research" and breach of the respondent's probation review policy;

iv. He completed a declaration form (apparently relating to timesheets for particular projects);

v. On 31 March and 4 April 2022, he informed the investigation officer about wrongdoing by HN, including harassment and insulting conduct.

b. Did the claimant suffer the following disadvantages as a result of doing the protected act or acts?

i. There were economic and other consequences of the claimant's dismissal;

ii. The investigation officer and appeal committee failed to review the documents he presented to the investigation;

c. **Did the respondent take reasonable steps to prevent the alleged victimisation?**

5. Remedy

a. **Should the Tribunal make a declaration that the claimant has been subjected to unlawful discrimination, or automatically unfairly dismissed?**

b. **Did the claimant suffer financial loss and/or injury to feelings as a result of any discrimination identified, or of automatic unfair dismissal?**

c. **If so, what amount of compensation does the Tribunal consider to be just and equitable in all the circumstances of the case?**

Findings in Fact

12. The Tribunal was able to find the following facts admitted or proved, based on the evidence led and information presented. We should make clear that we do not record in this Judgment every fact about which evidence was led, but have restricted ourselves to the factual evidence which was relevant to the claim and the agreed List of Issues.

13. The claimant, whose date of birth is 25 May 1975, presented a claim to the Employment Tribunal in which he complained that he had been unfairly dismissed and discriminated against on the grounds of race.

14. There was some complexity to the process by which he presented his claim. The claimant notified ACAS of his intention to present a claim to the Tribunal against the respondent, named as University of Edinburgh, on 9 May 2022, and the ACAS Early Conciliation Certificate was issued on 8 June 2022 (13). However, the initial claim was directed against Susan McNeill rather than against the named respondent. As a result, the claim was rejected by the Tribunal by letter dated 13 July 2022 on the basis that the name of the respondent did not match the name on the

Early Conciliation Certificate. That letter was not produced but is available to the Tribunal on the administrative case file.

15. The claimant applied for reconsideration of that rejection by letter dated 25 July 2022. Again no copy of that letter was produced in the joint bundle, but a copy was available to the Tribunal on the case file. On 2 August 2022, the Tribunal wrote to the claimant advising him that his application for reconsideration had been granted without a hearing, and that the claim would be treated as being accepted as at 25 July 2022.

16. The respondent is the University of Edinburgh. The Centre for Global Health (CGH) is based in the Usher Institute within the University. In 2020 and again in 2021 the respondent advertised for a Research Fellow within the CGH (683). The advertisement sought *"a Research Fellow experienced in large-scale systematic review and meta-analyses to work on Respiratory Syncytial Virus Consortium in Europe [RESCEU] project."* (583)

17. The respondent advised that the post-holder would take the lead on the work package on Systematic Reviews and Disease Burden Modelling, contributing to the introduction of an RSV vaccine. The post was to be full time (35 hours per week), and fixed term, from 1 September 2021 until 31 August 2022, with the potential of an extension for a further 18 months subject to confirmed funding. The project was due to come to an end in 2022, and 12 months' funding was available.

18. The respondent had offered the post to a previous candidate in 2020 but due to the restrictions caused by the Covid-19 pandemic the individual, based in the USA, was unable to take up the position. As a result, it was readvertised in 2021. The claimant applied, and was interviewed on 3 August 2021. Following the interview, Professor Nair, the project lead, wrote to the claimant to offer him the position (584):

"Dear Alagesan,

I am following up on my verbal offer for the above mentioned position for which you were interviewed this morning. Many congratulations for doing so well at the interview. We are pleased to offer you this position at spinal point 30, with starting salary of £33797. Although we would like you to start from 1 Sep 2021, that may not be possible given you do not have right to work in UK and would need to obtain sponsorship and visa all of which can take time. We need to agree on a realistic start date, and we will be guided on this by HR who can advise how long it would take to obtain sponsorship. Your contract in the first instance will be until 31 Aug 2022. This can be extended contingent on extension to funding for this research programme.

Please confirm that this is acceptable to you.

All the best

Harish"

19. Professor Nair is, and was at that time, Chair of Paediatric Infectious Diseases and Global Health, and Co-Director of the CGH, as well as group lead for the Respiratory Viral Epidemiology Group, and scientific co-ordinator of the RESCEU project.

20. The claimant is a dentist by qualification. He completed a Masters degree in Dental Public Health in London before moving back to India to lecture. Having worked in Libya, India and Saudi Arabia, he moved to the University of Melbourne in Australia to study for a PhD, which he secured in 2019. His PhD was in Health Economics.

21. He maintained that the advertisement at 584 was not the advertisement which he saw, as the advertisement he saw advised that a PhD was desirable but not essential for appointment to the post.

22. The process of appointment and securing a visa for the claimant took some time. On 1 October 2021, Professor Nair wrote to the claimant (586) to apologise, but observed that the respondent had a lot of staff off sick and on furlough. He went on:

"In the meantime, I wanted to get you involved in the RESCEU work. We had prepared a report for the European commission on the cost of management of pneumonia in adults based on data from systematic literature reviews. This needs to be updated and can then be submitted for publication in Journal of Infectious Diseases. However, there is a tight timescale – we need to have the submitted (sic) before Christmas 2021. Would you be willing to get started on this while you still waiting for the Visa? We would not be able to pay you (as you have no right to work in the UK) but you would definitely be an author on the paper. If you are happy with that, I can ask Julie to provide you with visitor access so that you have access to library resources in Edinburgh…"

23. The claimant was sent a contract of employment and written statement of terms and conditions by the respondent on 9 December 2021 (499ff). he signed his acceptance of the contract on 10 December 2021 (504). In the summary of conditions of employment (505ff), it was confirmed that the claimant's employment was subject to a one year probationary period from the date of his employment, which his contract confirmed was 2 December 2021.

24. The respondent also operated Interim Guidance for Managing Probation (515ff). The Interim Guidance provided a structure for dealing with issues arising in the course of probation.

25. Stage 1 (518) provided that the manager should clarify what the issues were in detail, specifying where and how the employee's performance, conduct or attendance were falling below what was acceptable, provide evidence or examples of the issues being discussed and allow the employee an opportunity to respond and raise any issues or mitigating factors.

26. Once the manager has agreed with the HR Adviser what the outcome should be, there are a number of options open to the manager: no further formal action, a final written warning or dismissal. Dismissal is said to be the outcome where the employee already has a final written warning and

standards of performance, conduct or attendance have either not improved sufficiently, or have deteriorated. Dismissal may also be the outcome, it said, where there is an act of gross misconduct, or there are serious capability, conduct or attendance issues. Where dismissal is considered appropriate, the College/Support Group Head of HR must be consulted before this is communicated to the employee (518/9).

27. He invited the claimant to a meeting via Zoom on 5 October 2021 at 9am to introduce the claimant to the researcher who led the report so he could work with her and update and complete the paper.

28. The claimant was willing to participate in this way, and attended the Zoom meeting as suggested. Professor Nair was also in attendance, with the researcher, Serena Zhang, known as Shanshan.

29. Shanshan was employed as a researcher 0.5 whole time equivalent from 2017 to 2018 on the project. Her work related to the cost of illness in children and the elderly. She returned to China in 2018 and was no longer employed by the respondent in 2021. She emailed the claimant on 6 October 2021 following the Zoom meeting (587) providing the files for the systematic review, and offering to answer any questions the claimant might have.

30. The claimant carried out some work in relation to updating the studies and emailed both Shanshan and Professor Nair on 25 November 2021 (588). He raised some issues with the work which he had been able to do. Shanshan responded on 27 November to say thank you to him for his hard work, and explained the methods she had used in defining which studies should be included within the project.

31. On 10 December 2021, Professor Nair emailed Shanshan (590) to stress that *"there is an absolute deadline to get this manuscript into the second JID supplement. As this will need resceu clearance (because there are at least minor changes to the version that was submitted to IMI) we will need a week to get this through the clearance. The initial deadline from the JID was 31 December 2021. I have now managed to get this extended to 10*

January 2022. Therefore, this will need to be submitted to Claire by 3 January 2022 so that she can initiate clearance and provide you with any comments/approvals from the rescue steering committee…

Shanshan I have spoken to Alagesan and it seems that he is finding it difficult to convert the costs to 2021 figures as he has no previous experience of doing this. Either you will need to talk through this or you will need to do this yourself (I would advise the latter because of Alagesan's lack of experience). You should also cross check to make sure that his extractions are correct (again I will cite his lack of experience)…

Alagesan has only searched Pubmed until now as he did not have access to the University systems. He has been provided with the University computer today and I think he should look at Embase and extract relevant data by the middle of next week. Does all this sound reasonable?"

32. Shanshan responded the following day (591) to advise that she would continue to work to the deadlines.

33. On 13 December 2021, Professor Nair had an "on boarding meeting" with the claimant. A note of the meeting was taken by Professor Nair and produced (592).

34. We should observe at this point that a number of such notes were produced by Professor Nair, to which he spoke. The claimant suggested, variously, during his evidence, that these notes were either wholly fabricated, or inaccurate, or at least partly fabricated. He provided no clear basis upon which he sought to make these allegations, other than to convey his clear mistrust of Professor Nair. We found these allegations to be baseless, and consider that Professor Nair was an entirely credible and reliable witness, whose notes were written shortly after these meetings and discussions and can be relied upon to be accurate. We address the general issue of credibility and reliability below, but in this matter we consider that we may rely upon the accuracy and validity of these notes as we set out our findings in fact about them.

35. Professor Nair advised the claimant to watch the systematic review lecture which he had produced, and also to view the training materials on systematic review. He referred the claimant to Sharepoint, the intranet site where documents were placed, and advised him to do the respondent's essential trainings. He advised that *"search on Pubmed not enough. Need to use MEDLINE. Alagesan feels Pubmet will cover MEDLINE. But says our search terms don't work on Pubmed. So he developed own. Advised to please search across other data bases and use search strategy already provided. Requested to please complete asap as ms needs to be submitted to JID latest by 31/12.. HN asks if he can inflate the data to 2021 cost prices using the tool that Shanshan has recommended and is mentioned in the manuscript. AC says he is not aware of this tool and has not used it (although this is a standard economics tool); he suggests using XE. HN says this is not standard for academic publications and should use same methods has has (sic) been used previously, which he laughs off). HN asks if he can learn this tool and AC says 'you are sure it's not rocket science'."*

36. Professor Nair went on to advise that the claimant completed an EMBASE search and sent extractions to Shanshan on 22 December.

37. On 16 December 2021, the claimant wrote to Shanshan to maintain that the search strategy document sent for a different database could not be used for EMBASE because there was a lot of missing information (593). As the information was unclear, he said, he discovered the Polly Keeling pdf manuscript which Shanshan had sent. Polly Keeling was an undergraduate student who had done some work on the project as part of her studies. The claimant went on to say that he hoped to complete the update by that night or the following day.

38. On 23 December 2021, the claimant emailed Shanshan (594) to attach the completed EMBASE and PubMed search results. He explained that more time than expected was taken to do this work because of the volume of cost effectiveness modelling studies. He maintained that this was very comprehensive.

39. On 10 January 2021, Professor Nair noted (595): *"Alagesan continues to argue that Pubmed is fine and MEDLINE is not required. Advised that he should follow the protocols that we use it in this group. He is critical of the search strategy that was used in the initial draft of the paper. This was developed in collaboration with College librarians. Alagesan has not yet reviewed the systematic review lecture or accessed resceu Sharepoint. He said that there were too many emails that came in over Christmas and he hadn't had a time to look. Advised to do so ASAP."*

40. The claimant, throughout his employment, and indeed throughout these proceedings, continued to argue that his search strategy, using Pubmed, was widely used across the world by experts, and that it was the appropriate and indeed better approach to take. Professor Nair continued to advise the claimant that he wished him to follow the protocol agreed with the funding body for the project that MEDLINE would be used as the search tool. This disagreement was never resolved. The claimant continues to argue that his approach was superior, and sought to convince the Tribunal repeatedly and insistently that this was the case, despite frequent admonitions from the Tribunal that it is not our role to determine which is the superior search strategy for a project such as this.

41. The claimant's position remained that he was not told by Professor Nair to use MEDLINE until very late in the process, and that these notes of discussions were simply falsified. We did not accept this. We were of the clear view that not only did Professor Nair regularly stress to the claimant that he should follow the project's established search strategy, but that the claimant was in fact well aware of this, but was unwilling to concede the point, for reasons which we shall deal with below. Professor Nair's evidence before us was that it did not matter whether MEDLINE was better or more effective than PubMed, but that the claimant required to follow the protocol which had been agreed in the project.

42. On 18 January 2022, Professor Nair recorded (596) that the claimant had now reviewed the systematic review lecture but had not accessed Sharepoint, and felt that there was nothing new in the lecture. Two days

later, Professor Nair emailed the claimant (597): *"Ahead of our meeting next week, a reminder, please familiarise yourself with the resceu SharePoint and read carefully the DOA – particularly around the objectives and WP1 (full description). This should have been completed several weeks ago as soon as you receive access to the SharePoint. Any problems accessing SharePoint or locating the DOA et cetera please contact Stephanie."*

43. On 21 January 2022, following conversations with Shanshan, Professor Nair asked her to send on materials to the claimant. She did so, in an email of that date (598). She pointed out that she could use some help from him in updating information tables 1 and 2, for example, and other work.

44. On 24 January 2022, Professor Nair met with the claimant and noted (599):

"Alagesan presents the PICO on RSV in PW – HN advises and points out the errors (fetal outcomes don't include outcomes later in life). HN asks if he has started working on SZ [Shanshan] email. Alagesan has not received it. But when pointed out he is on recipient list he says he deleted Shanshan's email. HN forwarded him the email. Alagesan says his task related to 1.2, but HN says it is related to BOD and not cost. But AC says BOD includes cost. HN says in DOA BOD is morbidity and mortality and for cost of illness there is a separate task. He should report under that task. AX argues that this is not correct."

45. The claimant asserted that he had informed Professor Nair during this meeting that quality assessment standards were undermined. Professor Nair was adamant that this was not the case., at that meeting. In any event, Professor Nair referred him to Shanshan to raise such concerns.

46. The claimant also asserted that during that meeting, Professor Nair told him that the search strategy which his daughter could do. Professor Nair denied that he had said this, but accepted that he had sought to convey to the claimant that the task he had been asked to do was a simple one.

He accepted that developing a search strategy is a complex task which people would be expected to learn over time.

47. On 25 January 2022, the claimant wrote to Professor Nair (600), though the email appears to address Shanshan at the outset. He thanked her for sending the information, and confirmed that he was more than happy to help, but was unsure why only 7 of the studies were included. He referred to the fact that in November he had sent 16 studies from PubMed updated from 2017. He maintained that it was important to include these studies in the systematic review. He asked for the reason for excluding particular articles highlighted by him in green.

48. In response, Professor Nair wrote to the claimant on 25 January 2022 (601):

"While you await her response, please can you do what she wants to (sic) you to do. Time is important here – as 7 studies she included will get included either ways, please ensure that we don't lose the time and momentum. I am sure she has a good reason for not including the rest of studies, because she has told me she spent a lot of time cross-checking what you sent her."

49. Professor Nair met again with the claimant on that date and noted (602):

"Alagesan has Questions re Shanshan's method. Discussed with Alagesan his concerns. Alagesan extremely critical of the earlier draft that he has reviewed so asked which draft he is looking at because the final report to IMI and the draft manuscript was shared by Shanshan prior to his joining. He says he has looked at draft by Polly Keeling – HN clarified Polly was SSCA student in 2017 supervised by HN and SZ. HN advised him to look at the report to IMI and the draft. He said Shanshan had not sent him these documents. HN pointed out that these documents were indeed in the email attachment at which he laughs and said there were too many attachments in the email that Shanshan and is not sure which one to look at. Advised him to proceed with data extraction and updating tables pending response from Shanshan clarifying his questions. Sent

him the deliverable document submitted to IMI and the draft document (three finalisation) peer-reviewed by Philippe Beutels with his comments to as to provide context and understanding."

50. On 26 January, the claimant wrote again to Professor Nair (602A) and asked further questions about what was required of him. In particular, he was concerned that the risk of bias tool being used could undermine the systematic review.

51. On the following day, Professor Nair met with the claimant and discussed the risk of bias tool. They decided that they would not use risk of bias due to the concerns expressed by the claimant. Professor Nair accepted that the claimant had a legitimate point of view about this. He wrote to the claimant on 27 January to confirm this (604).

52. On that date, they met again. Professor Nair recorded the discussion as follows (605):

"AC arrives 17 minutes late. HN pointed out that he is late and that he has another meeting at half past – AC does not apologise but says got down at wrong stop. HN asked Alagesan has not moved forward on the work with regard to the four tables. HN asks AC why and he says that entire methodology is flawed. HN says that Shanshan has published using the same quality assessment scoring methodology previously on two occasions and the work has been well cited. The paper has been peer-reviewed and the peer reviewers have not raised any concerns. If AC thinks some of the questions are not applicable then he should not score them and include them in the numerator and denominator. And this can be made aware to Shanshan. AC challenged HN to show where in any published literature risk of bias scoring is done for cost of illness of studies. AC gesticulates wildly and is clearly getting agitated shouting 'show me show me'. HN steps away and says he cannot speak for this particular risk of bias tool in this context as he is an epidemiologist and not a health economist; but 2 things to be borne in mind – risk of bias is standard in epidemiology SR and that if any new method is now used,

then it is a major change that requires a full 45 day peer review. HN says that he will arrange a meeting with Shanshan for tomorrow but in the meantime AC should please update the tables as it is time sensitive. Meeting finishes at 9.45; HN is late for his next meeting."

53. The claimant challenged the accuracy of this note. He argued that he was not late for this meeting, and adamantly denied that he had gesticulated wildly or shouted during the meeting. Professor Nair was very clear in his evidence, which was supported by the contemporaneous note made, and accordingly we preferred Professor Nair's evidence. We regarded the note as accurate.

54. The claimant alleged that Professor Nair called him "unacademic" for suggesting that he use the XE currency converter. Professor Nair's position was simply that he said that XE was not used for academic purposes, but that he did not use the word unacademic, nor would he ever called someone unacademic.

55. The claimant also alleged that Professor Nair suggested giving the data to Johns Hopkins University (in Baltimore, Maryland, in the USA) in a threatening manner. Professor Nair was taken aback by that suggestion, and could not understand why such an allegation was made. He said that he had done a lot of work with Johns Hopkins University, but that they were not involved in this project, nor would they do anything without attaching a cost to it. There was no reason for him to suggest this, and he denied that he did. He called it "a figment of his imagination", referring to the claimant. Again, we accepted that Professor Nair did not suggest that he would pass data to Johns Hopkins University, and that there would have been no good reason for him to do so.

56. On 28 January, Professor Nair sent two further emails to the claimant (606) pointing out how much time he had spent on this matter with the claimant during the course of that week. His evidence was that he would not normally spend more than one hour each week with a post-doctoral

researcher. He urged the claimant to complete the tables and said that they would review progress by 7 February.

57. Professor Nair and Shanshan met with the claimant on 28 January 2022. The meeting took place online. Professor Nair's note (608) stated:

"Shanshan and HN met with Alagesan and clearly outlined what needs to be done. Shanshan clearly explains that Alagesan just needs to enter the data from his seven new studies into the supplementary table 5. She has entered data for one of the seven as a prototype. So we just need to enter six further studies. For supplementary table 6 and supplementary table 7 it was agreed that risk of bias scoring and transferability can be excluded as AC has strong feelings regarding risk of bias scoring and PB had reservations about transferability. It is agreed that AC will complete the tables (table 1 and table 2 and supplementary table 5, but does not deal with other 4 tables. HN reminds she also wanted you to update tables 6 and 7 (only quality score) and then main table 1 and 2."

58. We should note that there was a transcript provided by the claimant (609ff) which bore to relate to a recording carried out by the claimant of the meeting of 28 January. He made that recording covertly (as he accepted in evidence) and did not produce a copy of the recording. Little reference was made to the transcript before us, and accordingly we have not regarded it as a relevant or admissible adminicle of evidence. Had there been an opportunity for the respondent and the Tribunal to listen to the recording in order to verify the accuracy of the transcript, the Tribunal may have permitted its inclusion, but without that precautionary step we were not prepared to take it into account.

59. On 31 January, Professor Nair wrote to the claimant (638/9), copying Shanshan, to point out that having checked table 1 there were errors made, and that these required to be resolved as they would be "easy pickings for anyone reviewing the manuscript". He also pointed out that having been asked to update tables 1 and 2, he had only done table 1, with errors. He noted that there were other tasks which he had been

asked to do but had not. He concluded the email by saying: *"Her instructions were clear. We repeated this on the call on Friday. I also again repeated this in my email on Friday evening. I am not sure how many times I need to repeat this again."*

60. Professor Nair was concerned that the claimant was not carrying out the requests being asked of him. The Journal of Infectious Diseases had set a deadline of 15 February 2022 for the article, but prior to being sent to the Journal it would need to be reviewing by the Project Steering Group, which would take a minimum of 7 days The claimant was concerned that Professor Nair was "making things up", and not doing any work on this project.

61. On 2 February 2022, Professor Nair emailed the claimant (641) asking him to prepare a revised document which was free of errors and had all the changes requested by Shanshan. He stressed the urgency of this work, and that he was "dropping everything else and checking the work you are doing".

62. Professor Nair had never had to do so much checking of a post-doctoral researcher who should require minimal supervision.

63. The claimant emailed Professor Nair on 4 February 2022 (659) to confirm that he was yet to start on the changes which he had requested. He explained how he was approaching the task and said that he would complete everything on that date, including the changes requested.

64. Later that day, the claimant emailed Professor Nair at 1747 hours (which Professor Nair would have seen for the first time on Monday 7 February 2022)(664). In it he set out a number of criticisms of the instructions which Professor Nair had given to him, and pointing out that he was doing as much as anyone could in the circumstances. He specifically stated that *"You had sent me a Quality Assessment and Risk of Bias questionnaire for the wrong study and made me do the assessment. Further, asking me to categorise them in a binomial value. Not sure how anyone could do that particularly when the questionnaire is incorrect and can undermine or*

exaggerate the findings in our study. Despite the shortcomings I did that work while also leaving a footnote. Further, I gave you the solution to overcome that limitation and voluntarily opted to redo for all the 64 studies."

65. He went on to list "Other issues I am a bit disappointed with". In this he included the assertion that Professor Nair had wilfully delayed his eTime sheet for approval and removed all the mandatory university training work he had done in the month of December 2021; that he had had unreasonable deadlines and had therefore had to work extra hours; and requested that Professor Nair not misrepresent information, exercise mutual respect over the phone and in in-person meetings.

66. Professor Nair's perspective was that the claimant did not understand the tasks which he was being required to carry out. The problems he complained of were not insurmountable, in his view. He did not accept the claimant's criticisms.

67. As a result of his concerns, he wrote to Vivien Smith, in Human Resources, on 6 February 2022 (665/6):

"I hope you are well. I was hoping to have a meeting with you to discuss the issue of Alagesan Chinnasamy who was appointed on the RESCEU project as a replacement to Ting. He has been with us for over 2 months and the progress thus far has been unsatisfactory and is getting worse with each passing day. I am doing his 3rd month probation review tomorrow. I think you (sic) it may be a good idea for you to be aware of what is happening as there are 2 issues we will need to deal with – one is HR related and how to handle this situation and second is our ability to deliver to IMI. I did alert Julie last week when I spoke with her and she sent some university guidance around probation but thought you may want to be in the loop as well. If you suggest suitable times next week I am happy to meet in person or on TEAMS.

This entire situation is quite distressing to me."

68. Professor Nair arranged to meet with the claimant on 7 February 2022 in order to conduct his probation review. He made a note of the events of that day (668):

"8.40am. HN has printed off documents relating to job description, and grade 7 profile, questionnaire to be used for probation review (P&DR questionnaire) and highlighted the relevant sections for discussion during the review. AC arrives at 8:52AM. HN gives him all the paperwork and asked him to take 10 minutes to familiarise himself with it. AC takes a look and then tosses them away. He says that the job description provided is different from the job description that was advertised and was on his visa. HN asks why this may be so. AC says that this job description has PhD is an essential criteria whereas the job description he has got has PhD as desirable criteria. HN says that he may have misunderstood – the first essential criteria always was PhD degree (or nearing completion). HN then pulls out the job description from the interview pack shows him the job description on the screen using we-present. AC says that he has a lot of questions for HN. HN says that we will first do the probation review and that lays out the purpose of the probation review, the probation review procedure and states that the probation review procedure allows the employee to have a conversation with their manager about where things are going wrong and to be given a chance to improve and that structural support will be provided for the required improvements. HN then draws AC's attention to the job description particularly sections around problem-solving, decision-making and then highlights section 7.1.2, 7.1.4, 7.2.9, 7.2.10, 7.2.11, 7.2.12 and 7.3.3 and 7.3.4. by this time AC is visibly agitated and he interrupts HN multiple times to say that he has a right to be heard and that HN is wasting time. HN says that probation review is a structured process, we will discuss generic issues and not specific this instance. HN will lead hi through it and will make ask specific questions, invite feedback so that training needs can be assessed and if in the end of anything is left unanswered HN will offer AC an opportunity to ask him questions. HN starts to speak again but AC interrupts and HN says that if he interrupts again he will need to terminate

the interview. AC says that he has questions for HN and that he has concerns around HN's conduct. HN says that this is a probation review for AC and not HN and that HN as the line manager and not the other way round. Again, HN tries to resume the probation review at which time AC gets visibly agitated starts interrupting, gesticulating wildly, and HN says that he is terminating the review. HN says that he will now only conduct a review in the presence of a third person and that he will let HR know that review has been terminated. At this point AC says 'if you want to play hardball let us play hardball'. HN then gets up and moves to his desk. AC asks what about my other questions when are you going to answer them. HN says that he would deal with them once a probation review is completed but he is feeling threatened and no longer feeling safe, so he politely asked AC to leave."

69. The claimant's version of events in relation to this meeting was quite different. He maintained that he was late for this meeting, and not for the previous meeting, rather than early as Professor Nair suggested. He maintained that Professor Nair was very angry when he arrived, and that he wanted to punish the claimant for his email of 4 February. He denied resolutely that he was being aggressive, and asserted that it was only Professor Nair who was aggressive in the course of that meeting. He said that the note was "100% falsified". He said that he asked Professor Nair "why do you want to play a hardball kind of game?", but denied that he said something to the effect of "let's play hardball".

70. After the meeting, Professor Nair sent an email to Vivien Smith and Julie MacMillan, at 9.25am (669):

"I am sorry to report that Alagesan's Probation review got off to a bad start today. He said that the job description he was provided/applied for and what we have on records are different. He specifically pointed that the JD did not require a PhD and that PhD was only a desirable criteria. Then when we started the probation review he kept interrupting and not allowing me to speak [although I kept pointing out respectfully that he after we have discussed generic concerns with regard to his conduct and

capability I will offer him will get an opportunity to cover/ask anything that is unaddressed]. But he became very aggressive and would not allow me to speak and started gesticulating wildly as I felt threatened I had to terminate the review. I am still shaking from the trauma and as I am unable to dictate I am typing out this email to you. He said if I wanted to play hard ball then we can play hard ball. I am completely at loss here and there is a complete breakdown of working relationship.

It is very distressing to say the least.

Sorry about bringing all this to you on Monday morning."

71. Professor Nair's evidence was that he felt threatened by the claimant's conduct in the meeting, and that he was very shaken when it came to composing the email above.

72. We preferred the evidence of Professor Nair to that of the claimant in relation to this meeting. Professor Nair was, throughout, a clear and credible witness and his evidence was consistent with the contemporaneous email he wrote within minutes of the meeting ending. We rejected the claimant's constant criticism of Professor Nair as having fabricated the terms of the note of this meeting, as of other notes. In our judgment, Professor Nair was entirely truthful about this meeting and conveyed to us sincerely his concern about the claimant's behaviour during it. He immediately summarised in the same terms what had happened in his email. Further, he quoted the claimant's "hardball" comment in that email just as he gave evidence about it before us.

73. Professor Nair's concern therefore extended to the working relationship which he had with the claimant, which he believed had been significantly undermined.

74. As a result of Professor Nair's email, Sara Murphy, Senior HR Partner, invited the claimant to a Stage 1 Formal Probation Review Meeting on 10 February 2022, by letter dated 8 February (671), as a follow-up to the informal Probation Review Meeting on 7 February.

75. The meeting took place on 10 February 2022 commencing at 11.30am. at 10.02am on that date, the claimant submitted a grievance to Sara Murphy (674), attaching a grievance form (677) setting out a number of concerns relating to Professor Nair.

76. An IT log was produced (685) showing activity on Ms Murphy's computer on 10 February 2022, and it is noted that there was a gap between 09:58:12 and 13:29:04, which would be consistent both with her being away in attendance at the Probationary Review Meeting and also away from her computer at the point when the grievance email from the claimant arrived at 10:02.

77. Professor Nair was not aware at the Probationary Review Meeting that the claimant had lodged a grievance. Sara Murphy did not tell him that the claimant had done so.

78. The grievance set out incidents on 18, 24 and 28 January 2022, in which he complained both about the substance of Professor Nair's instructions to him in relation to the RESCEU project and also Professor Nair's intimidating, threatening and insulting behaviour towards him.

79. Notes were prepared by Ms Murphy of the discussion at the Probationary Review Meeting which took place on 10 February 2022 from 11.30am until 1pm (692ff). These notes are a reasonably accurate record of what was said at that meeting.

80. In the course of the meeting, the claimant asserted that he had been advised in an email by Professor Nair to use PubMed, though he then accepted that he was told not to use it and to use Medline. He maintained that using PubMed the results are better and are evidence based. He said that he did not like to be criticised, and that he was an academic who knew what he was doing.

81. The claimant continued to maintain that he had done what was asked of him, and did not accept any of the criticisms directed at him during the course of the meeting.

82. The meeting was chaired by Sara Murphy, as Professor Nair had explained to her that he still felt traumatised by what had happened at the previous meeting with the claimant. When the meeting adjourned, Ms Murphy and Professor Nair had a discussion. Professor Nair's view was that the claimant showed no remorse for his conduct at the previous meeting, and that he had continued to justify his performance up to that point. They considered whether he could perform tasks under a different line manager, but took the view that that was not possible as Professor Nair was the principal investigator on the project.

83. With regard to the claimant's conduct, particularly at the previous meeting with Professor Nair, Ms Murphy advised that they could suspend the claimant and conduct an investigation; however, the claimant's contract was a fixed term contract, and therefore she proposed that the contract could be terminated. They discussed this, and they agreed that they both believed that termination of the contract was the appropriate way to proceed. Professor Nair wished to be able to carry out the work on the project without having to be concerned about the day to day matters which were affecting his relationship with the claimant. As he pointed out, he would not normally have that level of daily involvement with a post-doctoral researcher.

84. Professor Nair's evidence was that there were two reasons for the claimant's dismissal: firstly, the aggressive behaviour on 7 February towards Professor Nair; and secondly, the claimant's underperformance in relation to the tasks which were provided for him to carry out.

85. At the conclusion of the meeting, Ms Murphy stated (697):

"Thank you for the adjournment. So on reviewing all the information during your time in the role, your meetings with Harish and our discussion today, unfortunately due to the serious concerns regarding your ability to work at a grade 7 level in terms of the inaccuracies in your work and lack of deliverables, but also major concerns around your behaviour of being

aggressive and unprofessional towards Harish, the decision today is to dismiss you on the grounds of failed probation."

86. Ms Murphy wrote to the claimant on 14 February 2022 (691) to confirm the respondent's decision. In the letter, she said:

During the course of your probationary period, Harish has spoken to you on a number of occasions (10 January 2022, 18 January 2022, 24 January 2022, 25 January 2022 and 28 January 2022) in connection with your performance. Due to his ongoing concerns about your performance, you were invited to a probationary review meeting on Monday 7 February 2022; however this meeting had to be terminated due to your conduct and behaviour towards Harish.

At the probation review meeting on 10 February 2022, we discussed your performance in the role and also your conduct and behaviour towards Harish in particular your –

- *Failure to follow reasonable instructions related to your work (eg regarding the use of Medline);*
- *Failure to complete work allocated to you in a timely manner, in particular review the systematic review lecture, access RESCEU Sharepoint and complete cost inflation and meta-analysis;*
- *Inaccuracies and lack of attention to detail in relation to updating 4 tables;*
- *Aggressive and inappropriate behaviour towards Harish on a number of occasions.*

Unfortunately it was our decision based on the seriousness of the concerns outlined above, in that you have not met the required standards for your grade, in particular, you require a high level of support from Harish, your failure to plan and organise your workload appropriately, your inability to work independently, inaccuracies in your work and your inability to meet deliverables. In addition to this, one more than one

occasion you have behaved inappropriately and aggressively towards your line manager Harish. Therefore at the meeting it was decided to terminate your employment on the grounds of failed probation for performance and conduct with immediate effect. Your dismissal is with effect from 10 February 2022. It was explained to you that you would receive your final pay along with 3 months pay in lieu of notice, on the 28 February 2022 in line with the Universities normal pay date."

87. The letter went on to confirm that the claimant had the right to appeal against the decision. Ms Murphy also attached the notes of the meeting.

88. The claimant was upset and angry at the decision to dismiss him, and submitted an appeal against dismissal by letter dated 8 March 2022 (741).

89. He maintained that the allegations levelled against him by his manager were "baseless, unsupported and misrepresented". He also complained that the guidance contained in the respondent's Interim Guidance for Managing Probation (515ff) under "Difficulties during probation" was not followed by the respondent. He also maintained that he had not been given one month's notice in terms of his contract of employment.

90. He alleged that his line manager had been guilty of a breach of academic and research integrity by removing a significant number of research publications which met the inclusion criteria for the systematic review, and for wilfully removing all the tasks he had completed in December 2021 from the eTime sheet.

91. Further, he alleged that his line manager had harassed him over the phone and in person. He said he had completed the anonymous discrimination and harassment survey on two occasions. He suspected that his line manager had come to know of this, and the dismissal was the direct consequence of that; also, that he had submitted a grievance prior to the probation review.

92. The respondent arranged an investigation interview with the claimant, to be conducted by Professor Andrew Baker, on 31 March 2022. HR support was provided by Meredith Ireland, and Elora Oosterhoff took notes (752ff).

93. The note of this meeting is a reasonably accurate record of what was said.

94. Later that day, Professor Baker met with Professor Nair (763ff), and on 4 April 2022 with the claimant again (777ff). on 5 April 2022, he met with Ms Murphy (932ff). Ms Murphy explained in her meeting with Professor Baker what had happened in relation to the grievance (938):

"SM said she was working from home that morning and did not get to Teviot for the meeting until 10/10.30am. SM said she met VS and JMc and then had her meeting with HN. SM said she had not switched on her laptop until after the probation review meeting. SM confirmed the probation review meeting with HN and AC was at 11am or 11.30am so the grievance was not mentioned as SM did not know it was in her emails, as it had been sent around 10am on 10 February. SM said AC had not sent it to HN either and that AC did not mention it himself during the meeting."

95. Professor Baker considered the materials available to him, including the information gathered in the interviews which he had conducted, and produced an Investigation Report (948ff). The report was explicitly aimed at dealing both with the claimant's appeal against dismissal and his grievance.

96. Having summarised the information provided to him, he set out his findings (952ff). He made his findings in relation to the points which were raised by the claimant.

97. With regard to the claimant's complaint that he had been required to work prior to his employment, Professor Baker noted that this had taken place, but that he considered the information and concluded that there was no

excessive pressure from the respondent, and that the arrangement appeared to be mutually agreeable.

98. With regard to the use of different tools for tasks and online training, Professor Baker noted that *"This has been a major problem between the Respondent and Appellant."*

99. He went on: *"The Appellant had no access to Pubmed in India for work tasks before the start of employment, thus use of Medline specifically was not possible.*

Having said that, the Appellant even after starting appears to have been insistent that Pubmed is the correct tool to us and has continued to do so, despite the requests of the Respondent. Hence, the Appellant in this regard appears not to have followed the explicit instructions of the Respondent, even after employment at the University (Medline was preferred by the Respondent to align to the existing analysis, thus updating it with the same tool was preferred). There is a clear difference in account from the Appellant and Respondent with regard to guidance re: Pubmed. The Appellant said that the Respondent did not say once not to use PubMed instead of Medline before 24 January 2022, whereas the Respondent said the guidance to use Medline was during the onboarding meeting in December after arrival."

100. Professor Baker also addressed the difference of opinion about the use of the XE tool, consistent with the general disagreements between the Appellant and Respondent regarding tools to use. He noted that the claimant had been asked to view a lecture on how to perform such analyses, as well as accessing Sharepoint where the work supporting documentation was held.

101. He concluded: *"In summary, despite the fact that any of these tools might have positive and negative aspects, it appears that the Appellant was guided to use particular tools but did not. Whether he was given sufficient time since employment to adhere is less clear."*

102. Under the subject of E-Time sheets, Professor Baker felt it was clear that there was simply confusion about what was allowed to be submitted on the H2020 timesheet, which could only reflect work associated with the Grant Agreement and not the full range of tasks performed by the claimant. He described this as "normal for these grants".

103. Under Guidance and Training, Professor Baker concluded *"While training and guidance have been given, and it appears not often followed by the Appellant, there appear to have been limited formal meetings that have discussed progression, given written objectives and training plans."*

104. With regard to what he called "Aggression accusations and dismissal decision", he said that he did not find the claimant's email of 4 February 2022 to be aggressive (as Professor Nair had asserted), but the meeting of 7 February was very important and appeared to have defined the decision-making. He observed that Professor Nair was very shaken by the meeting and referred to the verbal aggression of the claimant, and that subsequent events were rapid, leading to the dismissal of the claimant. Although there were no witnesses to the alleged aggression of the claimant in the meeting of 7 February, it was noted that he had sent an email outlining what had happened shortly after the end of the meeting.

105. Finally, he concluded that he had found no evidence of bullying or harassment by Professor Nair, under the heading of "Grievance allegations regarding bullying/harassment".

106. Professor Baker then set out a number of recommendations. In doing so, he addressed the dismissal decision (954):

"It is clear to me that the working relationship appeared to break down completely following the meeting on the 7th of February and the Respondent felt that he could not continue to work with the Appellant going forward. It appears that the Appellant has not followed instructions on the work task or training guidance and has been very stubborn in defining why the approach could be different. However, the time between

employment start and dismissal coupled to the sometimes unclear, not always formally documented feedback/guidance, appears to me to be quite short from employment to dismissal (especially with a Christmas period in between). When coupled to the lack of witnesses to the alleged aggression, it is perhaps premature and the Appellant should possibly have been suspended with subsequent investigation regarding the alleged aggression instead (which was the only major reason for the dismissal as indicated by the Respondent and Sara Murphy)."

107. His recommendations were:

1. *"The probationary guidance be clearer to both line managers and employees, particularly around formal/informal meetings; timings of those meetings; clear documentation on work tasks, feedback on those, how to manage expectations, HR engagement and the requirement for clear and evidenced justification for actions.*

2. *The University provides guidance to PIs on work that future employees might ask/be asked to undertake prior to formal commencement of employment and the associated policy/risks."*

108. Following the production of the Investigation Report, a Probation Appeal Hearing was arranged to take place on 25 May 2022 via Microsoft Teams. Notes of the meeting were prepared by the respondent (1072ff). The Hearing was chaired by Professor Jamie Davies, accompanied by Professor Gillian Gray.

109. Having considered the information presented at that Appeal Hearing, Professor Davies issued his Outcome letter dated 7 June 2022 (1068ff).

110. Professor Davies considered each of the grounds of appeal set out by the claimant in turn.

111. The first ground was that *"Your statement that all allegations made by your line manager are 'baseless, unsupported and wilfully misrepresented', most specifically the allegation that you did not do all you were asked to do."* Professor Davies confirmed that this was not

upheld: *"At the appeal hearing on 25th May 2022 you stated that you understood that your role was to work with the PI and other stakeholders on the project that had already begun before you joined it. However, it was clear from your comments in the appeal hearing, and also from the report prepared by Prof Baker, that you did not follow at least some of your line manager's instructions and did not do all that you were asked to do. Specifically, you did not follow his instructions about search strategies, and you treated Pubmed as identical to Medline (they are not: Pubmed includes material that Medline does not). You also admitted that you had viewed the training material (a video) late and, in your later email submission to us, you indicated that you had felt it was not necessary for you to view it given your knowledge and experience. You cited pressure of work as a reason for not delaying this training. Your point 4, below, also highlights that you did not follow instructions."*

112. The second ground was that *"The 'Difficulties during probation' part of the University's 'Interim Guidance for Managing Probation' was not followed".* Professor Davies advised that this ground was not upheld. He noted that *"You and your line manager said you had been having discussions about what your line manager considered to be problems with your performance (indeed, you allege that the later examples of these discussions constituted harassment). Your line manager arranged an informal meeting for 7th February to discuss these issues and you agree that you both attended that meeting. We are satisfied, from the descriptions you and your line manager gave of the preparations for this meeting, that it was likely to include the features recommended in the Interim Guidance document. The meeting did not go as planned, and the line manager felt he had to stop it because of alleged aggression on your part (we accept you do not view your behaviour as inappropriately aggressive). Your line manager then discussed the matter with an HR advisor, which is again in line with the Interim Guidance, and HR arranged a formal meeting. We note that you were not given 1 week's notice, but also note that this time interval is guidance and not a requirement. The Interim Guidance*

document states clearly that dismissal is a possible outcome on the grounds of conduct."

113. The third ground of appeal was that the claimant did not receive one month's notice. This was not upheld on the basis that the claimant received three months' pay in lieu of notice, permitted by his contract of employment.

114. The fourth ground of appeal was that Professor Nair had breached research integrity by altering the results of the claimant's systematic review. Professor Davies did not regard this as relevant to the appeal. It was noted that there had been a disagreement about the methods of research to be used, but that if the claimant wished to complain about research misconduct that should be addressed to the university through a separate process.

115. The fifth ground of appeal was that Professor Nair breached academic integrity by deleting material which had been typed on an EU project timesheet. This was not upheld. EU time sheets, they said, were administrative and not part of research or academic integrity. However, they were satisfied that Professor Nair was acting to correct an error and ensuring that items not permitted on an EU time sheet were not included within it. They are a measure for tracking how EU grant money is spent.

116. The sixth ground of appeal was that Professor Nair had harassed and insulted the claimant, possibly because they knew of the claimant expressing concerns in an anonymous discrimination and harassment survey. This was not upheld. They found no evidence that the claimant was harassed or insulted by Professor Nair and could not therefore uphold what they regarded as a serious allegation. They considered it "not proven". In any event, they found that the survey submitted was anonymous and that Professor Nair was unaware that he had submitted it.

117. The seventh ground of appeal was that Professor Nair did not comply with regulations by dismissing the claimant within the one year

probationary period. This was not upheld. They explained that the probationary period is to ensure that an employee is capable of fulfilling the requirements of the position. There was nothing, they found, which prevented dismissal of an employee, following proper procedures, from occurring within a probationary period.

118. Professor Davies concluded by stating that *"having carefully considered each part of your appeal, we cannot find grounds for upholding any of them. We realise you will be disappointed at this outcome, but hope that you manage to find a new position in which you are able to thrive in the future."*

119. He stressed that there was no further avenue for appeal within the respondent's process.

120. Following the claimant's dismissal, he has been unable to secure paid employment, and has received no pay in respect of employment to the date of the Tribunal Hearing. He said that he found it very difficult to secure work in India owing to institutions not recognising foreign degrees. He said that he had applied for many jobs.

121. The claimant's evidence was that he had started to renovate his and his mother's properties in order to obtain income for his son's education, though he was unclear as to what if any income he did receive in this regard.

122. The claimant maintained that finding new employment will be very difficult as he requires to disclose that he was dismissed from the respondent's employment, and even if he says that he has been discriminated against by the respondent, a prospective employer is, in his view, unlikely to employ him. Each time he has to complete an application form there is a box asking him if he has been dismissed from any employment, and he requires to be honest and to tick that box.

123. The claimant set out a list of the applications for positions he has submitted, from 30 July 2022 until 11 February 2023.

124. He advised that he is permitted to practise as a dentist, but that he has "lost touch" with clinical dentistry, partly because of the passage of time within which he has worked in other fields, and partly because he has never practised as a clinical dentist.

125. On 7 March 2023, the claimant emailed IDP IELTS (235). IDP is understood to be an Indian company, and IELTS stands for International English Language Testing System. He confirmed in this email that he had booked an IELTS examination for 15 March 2023 in Chennai. He said *"I have new work assigned during this period. Hence, unable to prepare for the exam due to this new development."*

126. When asked about this in cross-examination, the claimant maintained that this must have related to work given to him by the Tribunal to do in these proceedings.

127. With regard to the allegation that the claim was time-barred, the claimant gave evidence about the reason why he presented his claim when he did.

128. The claimant was dismissed with effect from 10 February 2022.

129. On 9 May 2022, he submitted notification to ACAS that he intended to make a claim to the Employment Tribunal against the respondent (13), and on 8 June 2022, ACAS issued the Early Conciliation Certificate.

130. The claimant then proceeded to present his claim to the Tribunal on 8 July 2022 (14). However, the initial claim was directed against Susan McNeill rather than against the named respondent. As a result, the claim was rejected by the Tribunal by letter dated 13 July 2022 on the basis that the name of the respondent did not match the name on the Early Conciliation Certificate. That letter was not produced but is available to the Tribunal on the administrative case file.

131. The claimant applied for reconsideration of that rejection by letter dated 25 July 2022. Again no copy of that letter was produced in the joint bundle, but a copy was available to the Tribunal on the case file. On 2 August 2022, the Tribunal wrote to the claimant advising him that his

application for reconsideration had been granted without a hearing, and that the claim would be treated as being accepted as at 25 July 2022.

132. The claimant's evidence was that the claim was presented one day before the date upon which ACAS informed him that it was due to be lodged.

Submissions

133. Both parties presented submissions in writing to the Tribunal, to which they spoke. The Tribunal took these submissions carefully into account. At this stage, it is not necessary to set the submissions out in detail but in the decision section below reference will be made to them as appropriate.

The Relevant Law

134. Section 13(1) of the 2010 Act provides:

> *"A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others."*

135. We had regard to **Shamoon v Chief Constable of the Royal Ulster Constabulary 2003 ICR 337, HL**, and in particular to the requirement that the Tribunal must ask "why did the alleged discriminator act as he or she did? What, consciously or unconsciously, was his or her reason?"

136. Section 27(1) of the 2010 Act provides:

> *"A person (A) victimizes another person (B) if A subjects B to a detriment because –*
>
> *(a) B does a protected act, or*
>
> *(b) A believes that B has done, or may do, a protected act."*

137. Section 43A of the Employment Rights Act 1996 ("ERA") provides:

"In this Act a 'protected disclosure' means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H."

138. A qualifying disclosure is defined in section 43B as *"any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following:*

a. *That a criminal offence has been committed, is being committed or is likely to be committed;*
b. *That a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject;*
c. *That a miscarriage of justice has occurred, is occurring or is likely to occur;*
d. *That the health or safety of any individual has been, is being or is likely to be endangered;*
e. *That the environment has been, is being or is likely to be damaged; or*
f. *That information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed."*

139. Section 47B prohibits a worker who has made a protected disclosure from being subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker made a protected disclosure.

140. Helpful guidance is provided in the decision of **Blackbay Ventures Ltd (t/a Chemistree) v Gahir [2014] IRLR 416** at paragraph 98:

"It may be helpful if we suggest the approach that should be taken by employment tribunals considering claims by employees for victimisation for having made protected disclosures.

1. Each disclosure should be identified by reference to date and content.

2. The alleged failure or likely failure to comply with a legal obligation, or matter giving rise to the health and safety of an individual having been or likely to be endangered or as the case may be should be identified.

3. The basis upon which the disclosure is said to be protected and qualifying should be addressed.

4. Each failure or likely failure should be separately identified.

5. Save in obvious cases if a breach of a legal obligation is asserted, the source of the obligation should be identified and capable of verification by reference for example to statute or regulation. It is not sufficient as here for the employment tribunal to simply lump together a number of complaints, some which may be culpable, but others of which may simply have been references to a check list of legal requirements or do not amount to disclosure of information tending to show breaches of legal obligations. Unless the employment tribunal undertakes this exercise it is impossible to know which failures or likely failures were regarded as culpable and which attracted the act or omission said to be the detriment suffered. If the employment tribunal adopts a rolled up approach it may not be possible to identify the date when the act or deliberate failure to act occurred as logically that date could not be earlier than the latest of act or deliberate failure to act relied upon and it will not be possible for the Appeal Tribunal to understand whether, how or why the detriment suffered was as a result of any particular disclosure; it is of course proper for an employment tribunal to have regard to the cumulative effect of a no of complaints providing always have been identified as protected disclosures.

6. The employment tribunal should then determine whether or not the claimant had the reasonable belief referred to in s43B(1) and under the

'old law' whether each disclosure was made in good faith and under the 'new' law whether it was made in the public interest.

7. Where it is alleged that the claimant has suffered a detriment, short of dismissal it is necessary to identify the detriment in question and where relevant the date of the act or deliberate failure to act relied upon by the claimant. This is particularly important in the case of deliberate failures to act because unless the date of a deliberate failure to act can be ascertained by direct evidence the failure of the respondent to act is deemed to take place when the period expired within which he might reasonably have been expected to do the failed act.

8. The employment tribunal under the 'old law; should then determine whether or not the claimant acted in good faith and under the 'new' law whether the disclosure was made in the public interest."

141. With regard to the claimant's claim that he was subjected to a detriment or detriments as a result of having made a protected disclosure or disclosures, Section 103A of ERA provides: *"An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure."*

Observations on the Evidence

142. In this case, the Tribunal heard evidence from a number of witnesses. In our assessment, the evidence of Professor Baker and Professor Davies was uncontroversial, except to the extent that the claimant clearly disagreed with the conclusions reached by each of them. They both gave their evidence in a straightforward and helpful manner. We had no difficulty accepting their evidence and that they sought to carry out the responsibilities which they each had in this case is a professional and diligent manner. They responded courteously and respectfully to the claimant when questioned by him.

143. The major issues in this case arise between the claimant and Professor Nair.

144. We found Professor Nair to be an impressive witness, truthful and clear in his evidence. It is plain that Professor Nair is a man of considerable distinction in his field, and has achieved a very senior position within the respondent's organisation. We found him to be an entirely credible and reliable witness, both in the manner in which he spoke under questioning and also in the clear and consistent contemporaneous records which he took during the course of this process. We considered that Professor Nair, far from acting in an insulting and harassing manner towards the claimant, demonstrated considerable commitment and patience in seeking to assist the claimant to carry out his role. As he put it himself, he would not normally expect to spend more than an hour or so each week with an experienced post-doctoral researcher, but with the claimant he found himself dealing regularly with issues arising from his work.

145. We found his evidence about the claimant's conduct during the meeting of 7 February 2022 to be believable, and to demonstrate that the claimant had acted aggressively towards him such that he considered it necessary to send an email to his HR support immediately thereafter. Again, this was a contemporaneous adminicle of evidence supporting Professor Nair's version of events.

146. It was notable that throughout his evidence, Professor Nair sat in such a position as to avoid making eye contact with the claimant, even during cross-examination. He did, on occasion, show signs of irritation with the claimant during questioning, but we did not consider this to undermine his credibility, but to be a sign of genuine frustration that he was unable to persuade the claimant to carry out his set tasks in the timescales required. He did not, in our judgment, respond inappropriately to questioning, even when the claimant put provocative assertions to him.

147. We did find that Professor Nair had a tendency to speak at considerable length at times, but that did not in any way affect our view of his credibility.

148. The claimant gave evidence at length, largely under questioning from the Employment Judge, in the absence of a representative acting on his behalf.

149. We found the claimant to be an intelligent and pleasant man, with an interesting career experience. However, his evidence was in a number of respects unsatisfactory. Firstly, he tended to resist answering direct questions, giving the strong impression that he was determined to make a number of points whether they were considered to be directly relevant or not to the Tribunal's considerations; secondly, he constantly returned to the same themes despite being advised by the Tribunal that he required to focus his evidence on the issues before us, particularly given the limited time available to us in this Hearing and the need, if possible, to avoid requiring the claimant to incur the time and expense of having to return to Scotland from India to continue his evidence; thirdly, he was anxious to make very strong personal and professional criticisms of Professor Nair in particular, without clear justification for doing so, such as that he was guilty of lies, falsification of data, academic and research misconduct and insulting behaviour towards him; fourthly, he was resistant to any criticism of his own conduct or performance in the role, to the point where he described his work as "flawless", which was in stark contrast to the evidence of his highly experienced and distinguished line manager; fifthly, when confronted with evidence about his aggressive behaviour at the meeting of 7 February, the claimant sought to suggest that it was in fact Professor Nair who had been aggressive to him; and sixthly, he was quite ready to suggest that Professor Nair's contemporaneous notes of meetings and discussions were wholly fabricated, notwithstanding his subsequent admissions that parts of those notes may have been accurate. We were left with the sense that we could not believe the claimant's evidence as it was inconsistent and appeared

to be motivated, at least in part, by very strong antipathy towards Professor Nair.

150. Accordingly, we concluded that where there was a difference between the evidence of Professor Nair and the claimant, the evidence of Professor Nair was to be preferred.

Discussion and Decision

151. The list of issues in this case is as follows.

LIST OF ISSUES

1. Automatic Unfair Dismissal (section 103A, Employment Rights Act 1996)

a. Did the respondent dismiss the claimant for the reason, or, if more than one, the principal reason that the claimant made a protected disclosure, or protected disclosures?

b. The protected disclosures relied upon by the claimant are:

i. On or around 13 December 2021, by email, the claimant raised a concern about the "flawed EMBASE search strategy" to "HN" (the claimant's line manager) and "Shanshan", a colleague;

ii. On 24 January 2022, the claimant informed HN verbally, in a face-to-face meeting, that the QA standards required by a research study were undermined, and offered to redo all the incorrectly presented values in HN's work prior to his involvement. QA, understood to mean Quality Assessment, means, according to the claimant, the set of criteria which a study should fulfil. What he believed was that a cost effectiveness tool was being used for a

cost of illness study, leading inevitably to the wrong results being obtained;

iii. On 25 January 2022, he sent an email to HN and Shanshan requesting reasons why several Medline and Embase publications on cost of illness systematic review were removed despite having met the inclusion criteria for the study. The claimant's complaint is essentially that the project was funded on the basis of a grant application submitted by the respondent; that having obtained that funding, the respondent was departing from the basis of the funded project; and that that amounted to falsification. The grant was obtained for a particular purpose, to which the respondent was bound to adhere. The claimant has not seen the grant application, nor the grant award itself, and is therefore unable to point to a particular provision of the grant funding which was breached by the respondent. However, his assertion is that this project was to be a systematic review, and that the respondent was guilty of failing to carry out such a review.

iv. On 26 January 2022, the claimant raised concerns to HN by email that the Risk of Bias values of global researchers were being undermined in the project, on the basis that the incorrect tool was being used for the project.

v. On 4 February 2022, the claimant sent an email to HN outlining incorrect categorisation of studies in a table which HN had sent to him, though without pointing out all of the specific errors.

vi. On 10 February 2022, the claimant informed Sara Murphy and HN of incorrect values presented in the Quality Assessment, in person, during his probation review. This was a repetition of the concern raised on 24 January 2022.

c. Did these alleged protected disclosures amount to disclosures of information?

d. Were they made in the reasonable knowledge that they were in the public interest?

e. Were they disclosures made in terms of section 43B(1)(b), that is, tending to show that the respondent had breached a legal obligation? If so, what was that legal obligation?

2. Direct Race Discrimination (section 13, Equality Act 2010)

f. Did the respondent treat the claimant less favourably on the grounds of race than they treat or would treat others?

g. The treatment relied upon by the claimant is as follows:

i. The decision to dismiss him with effect from 10 February 2022;

ii. The decision to reject his appeal against dismissal issued on 7 June 2022

3. Harassment Related to Race (section 26, Equality Act 2010)

h. Did the respondent engage in unwanted conduct:

i. On 24 January 2022, when HN told him that the search strategy he had carried out in the project was work which "my daughter can do", and that it was at the level of a "3rd year medical student"?

ii. On 27 January 2022, when HN called him "unacademic" for suggesting the use of the Xe currency converter; and suggested that he would give the

data to Johns Hopkins University (in the United States of America) in a threatening manner?

iii. On 28 January 2022, when HN telephoned the claimant 4 or 5 times, being very rude and challenging to him. He asked the claimant why he had not wished Shanshan a happy Chinese New Year; the claimant's own celebration of the Tamil New Year had passed without HN or anyone else wishing him the same?

i. Was the conduct related to the claimant's protected characteristic of race?

j. Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

k. If not, did the conduct have the effect of violating the claimant's dignity or creating such an environment for the claimant, having regard to the claimant's perception, the other circumstances of the case and whether it was reasonable for the conduct to have that effect?

l. Did the respondent take reasonable steps to prevent the alleged harassment?

4. Victimisation Relating to the Claimant's Race (section 27, Equality Act 2010)

m. Did any of the following amount to a protected act by the claimant?

i. He completed the Usher Institute equality diversity and inclusion survey for BMEG staff highlighting workplace racial discrimination on 24 and 28 January;

ii. He submitted a formal grievance on 10 February 2022 complaining of harassment, falsification and misrepresentation of information before the probation review;

iii. On 8 March 2022, he presented an appeal against his dismissal based on wilfully misrepresented, falsified and baseless allegations on performance and conduct, breach of employment contract, breach of "academic and research" and breach of the respondent's probation review policy;

iv. He completed a declaration form (apparently relating to timesheets for particular projects);

v. On 31 March and 4 April 2022, he informed the investigation officer about wrongdoing by HN, including harassment and insulting conduct.

n. Did the claimant suffer the following disadvantages as a result of doing the protected act or acts?

i. There were economic and other consequences of the claimant's dismissal;

ii. The investigation officer and appeal committee failed to review the documents he presented to the investigation;

o. Did the respondent take reasonable steps to prevent the alleged victimisation?

5. Remedy

p. Should the Tribunal make a declaration that the claimant has been subjected to unlawful discrimination, or automatically unfairly dismissed?

q. Did the claimant suffer financial loss and/or injury to feelings as a result of any discrimination identified, or of automatic unfair dismissal?

r. If so, what amount of compensation does the Tribunal consider to be just and equitable in all the circumstances of the case?

145. We addressed the list of issues in turn.

1. Automatic Unfair Dismissal (section 103A, Employment Rights Act 1996)

a. Did the respondent dismiss the claimant for the reason, or, if more than one, the principal reason that the claimant made a protected disclosure, or protected disclosures?

b. The protected disclosures relied upon by the claimant are:

i. On or around 13 December 2021, by email, the claimant raised a concern about the "flawed EMBASE search strategy" to "HN" (the claimant's line manager) and "Shanshan", a colleague;

ii. On 24 January 2022, the claimant informed HN verbally, in a face-to-face meeting, that the QA standards required by a research study were undermined, and offered to redo all the incorrectly presented values in HN's work prior to his involvement. QA, understood to mean Quality Assessment, means, according to the claimant, the set of criteria which a study should fulfil. What he believed was that a cost effectiveness tool was being used for a

cost of illness study, leading inevitably to the wrong results being obtained;

iii. On 25 January 2022, he sent an email to HN and Shanshan requesting reasons why several Medline and Embase publications on cost of illness systematic review were removed despite having met the inclusion criteria for the study. The claimant's complaint is essentially that the project was funded on the basis of a grant application submitted by the respondent; that having obtained that funding, the respondent was departing from the basis of the funded project; and that that amounted to falsification. The grant was obtained for a particular purpose, to which the respondent was bound to adhere. The claimant has not seen the grant application, nor the grant award itself, and is therefore unable to point to a particular provision of the grant funding which was breached by the respondent. However, his assertion is that this project was to be a systematic review, and that the respondent was guilty of failing to carry out such a review.

iv. On 26 January 2022, the claimant raised concerns to HN by email that the Risk of Bias values of global researchers were being undermined in the project, on the basis that the incorrect tool was being used for the project.

v. On 4 February 2022, the claimant sent an email to HN outlining incorrect categorisation of studies in a table which HN had sent to him, though without pointing out all of the specific errors.

vi. On 10 February 2022, the claimant informed Sara Murphy and HN of incorrect values presented in the Quality Assessment, in person, during his probation review. This was a repetition of the concern raised on 24 January 2022.

c. Did these alleged protected disclosures amount to disclosures of information?

d. Were they made in the reasonable knowledge that they were in the public interest?

e. Were they disclosures made in terms of section 43B(1)(b), that is, tending to show that the respondent had breached a legal obligation? If so, what was that legal obligation?

152. We take these issues together, on the basis that the first question – whether the reason, or if more than one the principal reason, for the claimant's dismissal was that he had made protected disclosures to the respondent – requires an analysis of whether or not the claimant had made any protected disclosures as averred by him.

153. The first alleged disclosure was said to have been contained in an email of 13 December 2021 (592) in which he raised a concern about the flawed search strategy.

154. The respondent admits that there was a disclosure of information in an email of 16 December 2021, and do not raise any issue about the issue referring to an email of 13 December.

155. However, they deny that the claimant was raising a matter which was, in his reasonable belief, in the public interest, since this was simply a matter of academic discussion, which was then subject to peer review before publication.

156. The claimant's submissions do not assist with this legal analysis. They simply repeat the claimant's vivid accusations of "bogus" and "falsified" information being presented by Professor Nair.

157. It appears that the claimant categorises the disclosure as falling under section 43B(1)(b), that the respondent had failed to comply with a legal obligation.

158. In our judgment, there is no legal obligation which is being referred to by the claimant. There is no evidence before us that the "flawed EMBASE search strategy" somehow failed to comply with any legal obligation upon the respondent. It is clear that the claimant considered the search strategy adopted by the respondent to be flawed – this was a major theme of his evidence – but at no point has he proved that there was a breach of a legal obligation by the respondent.

159. The respondent's position was simply that they required to follow the search strategy which had been agreed as part of the funding proposal underpinning the project. They told the claimant this on a number of occasions, and instructed him to follow their strategy. The argument between the parties as to whether or not this was suitable ran at some length throughout the claimant's employment.

160. The fact that the claimant thought the search strategy adopted by the respondent was simply wrong does not mean that this amounted to a protected disclosure. We concluded, on the evidence, that it did not.

161. The second alleged protected disclosure related to the claimant's averment that on 24 January 2022 he informed Professor Nair that the quality assurance standards required by a research study were undermined.

162. We do not accept that the claimant did so inform Professor Nair. Professor Nair's evidence was that no such statement was made by the claimant at that meeting, and his note (599) does not refer to it.

163. We are aware that the claimant did raise concerns about the quality assurance standards being observed in the study had been breached. It does not appear to have been raised at this meeting, as alleged.

164. Even if it were raised, however, at that meeting, we do not consider such a disclosure to have been made in the public interest. The reality was that there were ongoing discussions between the claimant and Professor Nair about the nature of the work which the claimant was being asked to carry out. The report which they were working on was in draft form, and their discussion led, on the evidence of Professor Nair, to a decision to remove an aspect of the study on the basis that the claimant's concerns were well-founded. This was, as the respondent argued, part of an ongoing academic discussion seeking to refine and improve the work of the study. The claimant put forward an argument; Professor Nair reflected on it and accepted its force; the paper was therefore adapted.

165. Again, we were unable to discern any legal obligation being breached by the respondent at any stage in these discussions. The claimant's position was in our view somewhat overstated.

166. Accordingly, we do not consider this to be a protected disclosure by the claimant made in the public interest, or in his reasonable belief to have been in the public interest.

167. The third alleged disclosure was that the claimant sent an email to Professor Nair and Shanshan on 25 January 2022 requesting reasons why several Medline and Embase publications on cost of illness systematic review were removed despite having met the inclusion criteria for the study. The claimant's argument was that the respondent was departing from the basis upon which the study had been funded.

168. The email (600) simply confirms that the claimant was asking for clarification why the nine articles under consideration were excluded from the study – the email concluded by the claimant asking "Can you help me understand the reasons for exclusion of the nine articles colour coded in green?" This does not, in our judgment, amount to the disclosure of

information, but a request for an explanation about a point relating to the project on which the claimant disagreed with the stance taken by the respondent.

169. We accept the respondent's argument on this point, that it did not amount to a disclosure of information and accordingly that the claimant was not making a protected disclosure in this email.

170. Professor Nair's position on this was, in any event, that the respondent was not departing from, but specifically complying with, the requirements set down by the funder of the project.

171. Further, as is observed within the issue itself, the claimant has not seen the grant application nor indeed the terms upon which the funding was granted, and cannot properly assert that the respondent is acting in breach of it.

172. The fourth alleged protected disclosure was that on 26 January 2022 the claimant raised concerns to Professor Nair by email about the risk of bias values of global researchers being undermined on the basis that the incorrect tool was being used for the project (922). The respondent accepts that this email contained a disclosure of information.

173. Again, however, the respondent argues that this did not amount to a disclosure of information in the public interest, on the basis that the report was in draft form and this was essentially an academic discussion between the post-doctoral researcher and the principal investigator on the project.

174. The claimant's email said that "To give a risk of bias score using questions that is meant for cost benefit analysis can undermine the COI systematic review" (922), not that it had or was likely to do so. It did not, in our judgment, amount to a protected disclosure since at that stage when the disclosure was made, the claimant could not reasonably believe that the disclosure would be in the public interest. There is no clear assertion here, but more the expression of a view that there are risks

about using that particular tool. In any event, Professor Nair's response, the following day (922), indicates that the matter would be discussed and agreed if possible. Again, it is clear that this formed part of an academic discussion in relation to a process which was ongoing.

175. This did not, in our judgment, amount to a protected disclosure for this reason.

176. The fifth alleged disclosure was said to have been contained in an email dated 4 February 2022 outlining the incorrect categorisation of studies in a table which Professor Nair had sent to him (664).

177. The claimant did make a disclosure of information, which is admitted by the respondent, in this email.

178. Once again, however, it is our judgment that this did not amount to a protected disclosure made, or reasonably believed by the claimant to have been made, in the public interest. The email simply highlights a point of disagreement between the claimant and Professor Nair as to the detail of the study and the information being provided. In essence, in our judgment, which including the disclosure of information, the email was intended as a criticism of Professor Nair's approach, and an attempt to persuade him of the error of his ways. It formed part of the ongoing discussion, or perhaps more accurately argument, which featured heavily in the correspondence between the claimant and Professor Nair, and since it related to the draft stage it formed part of the process of refinement of the work being carried on in the project.

179. No legal obligation is identified by the claimant as having been breached, as being breached or as being likely to be breached, in the email of 4 February 2022.

180. Accordingly, we have concluded once more that this alleged disclosure did not amount to a protected disclosure.

181. The sixth alleged protected disclosure was said to have been made on 10 February 2022, when the claimant informed Ms Murphy and Professor

Nair of incorrect values in the Quality Assessment, during his probation review, a repetition of the concern raised on 24 January 2022.

182. Once more, we do not consider that this disclosure amounted to a protected disclosure, for the reasons given in relation to the alleged disclosure of 24 January 2022. There is, in any event, no reference to the alleged disclosure having been made in that meeting in the note completed by Ms Murphy (692-697). We were not prepared to accept the claimant's own note of that meeting as being entirely reliable, and accordingly we have concluded that the claimant did not, in this regard, make a protected disclosure to the respondent.

183. Accordingly, in terms of issue 1, we have concluded that none of the alleged disclosures amounted to protected disclosures within the meaning of section 43B(1) of the Employment Rights Act 1996.

184. In these circumstances, the claimant's claim that he was dismissed for the reason, or if more than one the principal reason, that he made protected disclosures, fails and is accordingly dismissed.

2. Direct Race Discrimination (section 13, Equality Act 2010)

s. Did the respondent treat the claimant less favourably on the grounds of race than they treat or would treat others?

t. The treatment relied upon by the claimant is as follows:

i. The decision to dismiss him with effect from 10 February 2022;

ii. The decision to reject his appeal against dismissal issued on 7 June 2022

185. The claimant is of Indian nationality, and relies upon that nationality in his claim of discrimination on the grounds of race.

186. We confess to being perplexed by the claimant's complaint of race discrimination. He barely mentioned his race or nationality during the course of his evidence before us. He did not mention his race or

nationality at all in his written submissions to the Tribunal at the conclusion of the evidence. He made no reference to his race or nationality in his letter of appeal against dismissal submitted to the respondent on 8 March 2022 (741). In the grievance which he presented to the Tribunal on 10 February 2022 (677ff), he made no reference to race or nationality.

187. At no stage has the claimant advanced any basis for his assertion that he was treated less favourably by the respondent, and in particular by Professor Nair, on the grounds of race, in comparison to a hypothetical comparator who did not share the same race as himself.

188. Professor Nair is of Indian nationality. While sharing the same nationality is not determinative of the attitude or actions of any individual towards another, we were entirely unconvinced that the claimant had presented any evidence which could demonstrate that the reason for his dismissal was related to his race or nationality in any way.

189. Professor Nair, in his evidence, dismissed any such suggestion, and was adamant that the reason why he had dismissed the claimant was that he had not fulfilled the requirements of the role for which he was employed, and that he had behaved himself in an insulting and aggressive manner towards Professor Nair on 7 February 2022.

190. In our judgment, there is simply no basis upon which it could be found that the reason for the claimant's dismissal was related to his race or nationality.

191. Further, he has failed entirely to prove that any hypothetical comparator performing and conducting himself as he had would be treated any differently.

192. We considered that the reason for the claimant's dismissal was precisely as Professor Nair had identified it. Our sense was that Professor Nair was feeling sorely tried by the constant need to answer questions and discuss points in the claimant's work when he expected him simply to carry out

the tasks set for him, as he regarded them well within the capacity of an experienced post-doctoral researcher; and that when he acted in such an aggressive manner in the meeting of 7 February, he felt that the relationship between them had completely broken down. This was, in our judgment, a credible position for Professor Nair to take in all the circumstances, and we could find no basis for any suggestion that Professor Nair dismissed the claimant because of his race or nationality.

193. The claimant also asserted that the fact that his appeal was not upheld by Professor Davies and the panel amounted to less favourable treatment on the grounds of race. We have concluded that the claimant has entirely failed to prove such a serious assertion. Again there is no mention of this in the claimant's submissions to us in this case. Professor Davies, who gave evidence before us about the appeal process and decision, gave clear and cogent reasons for the panel's decision on the appeal, both in the letter of outcome and in his oral evidence to the Tribunal.

194. When it was put to him (by the respondent's solicitor, quite properly) that the claimant's assertion was that his appeal was rejected on the grounds of race, Professor Davies appeared taken aback, and expressed himself surprised to hear that. He stressed that he had been taught by an Indian mentor, and denied that there was any basis for such a suggestion on the part of the claimant.

195. It was significant, in our judgment, that the claimant did not put to Professor Davies that the reason for the rejection of the appeal was based on his race or nationality.

196. In our judgment, therefore, the claimant's claim that the rejection of his appeal was because of his race or nationality is simply baseless, on the evidence, and the claimant has completely failed to prove it, even on a prima facie basis.

197. The claimant's claim of discrimination on the grounds of race fails, and is therefore dismissed.

3. Harassment Related to Race (section 26, Equality Act 2010)

a. Did the respondent engage in unwanted conduct:

i. On 24 January 2022, when HN told him that the search strategy he had carried out in the project was work which "my daughter can do", and that it was at the level of a "3rd year medical student"?

ii. On 27 January 2022, when HN called him "unacademic" for suggesting the use of the Xe currency converter; and suggested that he would give the data to Johns Hopkins University (in the United States of America) in a threatening manner?

iii. On 28 January 2022, when HN telephoned the claimant 4 or 5 times, being very rude and challenging to him. He asked the claimant why he had not wished Shanshan a happy Chinese New Year; the claimant's own celebration of the Tamil New Year had passed without HN or anyone else wishing him the same?

b. Was the conduct related to the claimant's protected characteristic of race?

c. Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

d. If not, did the conduct have the effect of violating the claimant's dignity or creating such an environment for the claimant, having regard to the claimant's perception, the other circumstances of the case and whether it was reasonable for the conduct to have that effect?

e. Did the respondent take reasonable steps to prevent the alleged harassment?

198. We did not find, as a matter of fact, that Professor Nair ever said to the claimant that the work he had been asked to do was work which his daughter could do; nor that the work to be carried out was at the level of a 3rd year medical student. It was our conclusion that Professor Nair sought to stress to the claimant that the work he was being asked to carry out was simple work (for a post-doctoral researcher), but that he did not say that it was work his daughter could do. The reference to a 3rd year medical student may have been a reference to Polly Keeling, who carried out a project in her honours year which contributed to the work of the overall project, but we were not convinced that Professor Nair said that the work that the claimant was being asked to do was at that level.

199. In any event, we were unable to discern any relationship between such alleged comments and the claimant's race.

200. We did not consider that the claimant proved that the alleged comments had been made, nor that they would have had the effect he maintained they did.

201. We did not find that Professor Nair called the claimant unacademic for using the Xe currency converter. There was certainly a disagreement about the use of the particular currency converter proposed by the claimant, and Professor Nair said that it was not an academic tool. That is far short of using an insulting term such as unacademic directed personally at the claimant. It is our view that the claimant has overstated this exchange and has sought to alter the meaning of the conversation to the detriment of Professor Nair.

202. As to the suggestion that Professor Nair told the claimant that he would take the data produced and send it to Johns Hopkins University in the United States of America, we did not accept this to be true. Professor Nair denied it, and said that there would be no reason for him to provide data to another institution when the respondent had secured the funding for the project, which was to be carried out by him. He had no budget to pay for any work to be carried out at an American university, and assured the

Tribunal that such a university would expect to be paid if they were to be asked to participate in this project.

203. We did not find, either, that Professor Nair had taken the claimant to task for not having wished Shanshan a happy Chinese New Year, and there was no evidence to the effect that the claimant's own celebration of the Tamil New Year had passed without anyone wishing him the same. Accordingly, the claimant's allegations in this regard were not proved on the balance of probabilities. In any event, we were unable to discern any reasonable basis upon which we could conclude that these alleged exchanges amounted to harassment on the grounds of race.

204. It is our conclusion, therefore, that the claimant has failed to prove that Professor Nair acted in the ways alleged, and further that these allegations, even had they been proved, demonstrate that Professor Nair was guilty of harassment on the grounds of race.

205. What was very striking both in his evidence and in his submissions before us was the claimant's willingness to make wild and unsubstantiated allegations in the strongest terms against a distinguished senior colleague, and to conduct himself in an aggressive manner in meetings with him. To accuse Professor Nair of academic misconduct (though not through the appropriate channels), of falsification of data and of lies and bogus claims, as he did, suggested to us that it was not Professor Nair who was responsible for inappropriate language and behaviour, but the claimant himself, in the engagement which they had as line manager and employee.

206. The claimant's claims of harassment under section 26 of the Equality Act 2010 therefore fail and are dismissed.

6. Victimisation Relating to the Claimant's Race (section 27, Equality Act 2010)

u. Did any of the following amount to a protected act by the claimant?

i. He completed the Usher Institute equality diversity and inclusion survey for BMEG staff highlighting workplace racial discrimination on 24 and 28 January;

ii. He submitted a formal grievance on 10 February 2022 complaining of harassment, falsification and misrepresentation of information before the probation review;

iii. On 8 March 2022, he presented an appeal against his dismissal based on wilfully misrepresented, falsified and baseless allegations on performance and conduct, breach of employment contract, breach of "academic and research" and breach of the respondent's probation review policy;

iv. He completed a declaration form (apparently relating to timesheets for particular projects);

v. On 31 March and 4 April 2022, he informed the investigation officer about wrongdoing by HN, including harassment and insulting conduct.

v. Did the claimant suffer the following disadvantages as a result of doing the protected act or acts?

i. There were economic and other consequences of the claimant's dismissal;

ii. The investigation officer and appeal committee failed to review the documents he presented to the investigation;

w. Did the respondent take reasonable steps to prevent the alleged victimisation?

207. The first alleged protected act was that the claimant said he had completed an Usher Institute Survey on 24 January 2022 in relation to equality and diversity. The claimant did not give any evidence about having done so before us. No copy of the completed survey, or any correspondence relating to it, was presented to us during the Hearing. We acknowledge that the claimant was representing himself, and that he was led through his evidence by the Employment Judge rather than a representative, but the Tribunal did allow the claimant the opportunity to add anything at the conclusion of questioning, and this matter did not arise.

208. However, even if it were correct that the submission of an equality and diversity survey could potentially amount to a protected act, there is no evidence before us as to what was said in the survey by the claimant. It is alleged by the claimant that he highlighted workplace racial discrimination on 24 and 28 January 2022. However, it appeared to us that the survey was said to have been submitted on 24 January, so could not have sought to take into account any matter arising on 28 January 2022.

209. Without sight of the survey, or evidence from the claimant as to what he said therein, we are unable to conclude that this submission amounted, on the balance of probabilities, to a protected act in terms of section 27 of the 2010 Act.

210. Professor Nair made it clear in his evidence (and he was not challenged on this) that he was not aware that any such survey had been completed. He would not have expected to have had sight of such a survey, as any completed response is always treated anonymously. There was no reference to this in the claimant's grievance, nor in any correspondence sent by the claimant to the respondent produced in the Joint Bundle.

211. In our judgment, the evidence simply does not justify any conclusion that the survey completed by the claimant, if it was so completed, contained such allegations or statements as to amount to a protected act, nor that

Professor Nair had any knowledge of the matter until after he had made the decision to dismiss the claimant.

212. Accordingly, this does not in our judgment amount to a protected act, and in any event, Professor Nair was unaware of it at the time and therefore could not have acted in response to it.

213. The second protected act alleged to have been done by the claimant was the submission of his grievance on 10 February 2022 (677). There is no reference to race discrimination, nor any allegation that the respondent had breached the Equality Act 2010, in the claimant's grievance. The claimant certainly set out a large number of complaints but against none of them did he attach the description of discrimination or race discrimination.

214. Accordingly, we do not find that the claimant's grievance submission amounted to a protected act under section 27.

215. Thirdly, the claimant complained that his appeal against dismissal dated 8 March 2022 amounted to a protected act under section 27.

216. In his appeal letter (741), the claimant repeated many of the criticisms of Professor Nair which he had previously made, though he did not name him in the letter other than by referring to him as his line manager. He complained that he had been harassed, insulted on a number of occasions over the phone and in in-person meetings. He referred to having completed the anonymous discrimination and harassment survey on two occasions, though provided no detail as to what was said therein. He said that *"I suspect that my line manager had come to know of this, and the dismissal is the direct consequence of that."*

217. There was no reference to race discrimination (notwithstanding the passing reference to a discrimination and harassment survey, without any content attached), nor to any allegation that any person, including Professor Nair, had contravened the Equality Act 2010.

218. In our judgment, this was entirely consistent with the claimant's complaints before us. He barely made any reference to race during the course of these proceedings, and none in his submissions at the conclusion of the evidence.

219. Accordingly, in our judgment, there is no basis upon which the claimant can argue that this was a protected act under section 27: it was not, in our view.

220. Finally, the claimant complained that he completed a declaration form apparently relating to timesheets for particular projects. He gave no date upon which he submitted such timesheets, but in his evidence complained regularly that by removing certain items from his December 2021 timesheet he had been deprived of pay and evidence of work he had done.

221. It is not at all clear to us on what basis the claimant maintains that the submission of a timesheet (which was not included in the Joint Bundle) could be regarded as a protected act. As we understand it, the timesheet was simply a list of dates and hours in which the claimant said he had carried out work for Professor Nair. Professor Nair removed these items, or some of them, from the timesheets before submitting them to the European Union, on the basis that they would only reimburse the respondent in respect of time specifically spent on this funded project.

222. There was no suggestion on the part of the claimant that the timesheet contained any allegation or complaint that the respondent or Professor Nair had breached the Equality Act 2010 or acted in any discriminatory manner, and accordingly the submission of the declaration form was not demonstrated by the claimant to have any bearing on these matters or any relevance to the claims made before us.

223. The fifth protected act was said to have been that the claimant informed the investigation officer (Professor Baker) on 31 March and 4 April 2022 about wrongdoing by Professor Nair, including harassment and insulting conduct.

224. The claimant met Professor Baker on 31 March 2022, and notes were produced relating to that meeting (752ff). The claimant was given the opportunity to add any amendments he considered appropriate and did so, but no reference appears in the notes of that meeting to the effect that the claimant raised an issue about race discrimination, or accused the respondent or Professor Nair of having breached the terms of the Equality Act 2010.

225. He met with Professor Baker again on 4 April 2022. Notes were produced relating to that meeting (777ff). Once again, the claimant was given the opportunity to review the notes and make any amendments, but no reference appears in the notes of that meeting to the effect that the claimant raised an issue about race discrimination, or accused the respondent or Professor Nair of having breached the terms of the Equality Act 2010.

226. We have also considered the evidence of Professor Baker before us, and he insisted that there was nothing mentioned to him about race at all by the claimant, and that there was nothing in the documents he saw about the claimant's race. It was not a matter which came up in any of the investigatory interviews he conducted with the various people involved, including the claimant, Professor Nair and Sara Murphy.

227. We accepted Professor Baker's evidence, supported as it was by the documentary evidence to which we have just referred. The claimant did not, in his appeal, make any reference to race nor did he complain that any individual had discriminated against him on the grounds of race nor breached the provisions of the Equality Act 2010.

228. In our judgment, therefore, the claimant's claims that he was victimised under section 27 of the Equality Act 2010 must fail, and he has not proved that he did any protected act as alleged in his claim.

229. However, we were also convinced by the evidence that the decisions which were taken by the respondent, and in particular by Professor Nair and Professor Baker, were taken on the basis that the claimant's work

performance and conduct had not been acceptable, and that there was no basis for any suggestion that they acted on the basis of the claimant's race.

230. Accordingly, the claimant's claims of victimisation fail and must be dismissed.

7. Remedy

p. Should the Tribunal make a declaration that the claimant has been subjected to unlawful discrimination, or automatically unfairly dismissed?

q. Did the claimant suffer financial loss and/or injury to feelings as a result of any discrimination identified, or of automatic unfair dismissal?

r. If so, what amount of compensation does the Tribunal consider to be just and equitable in all the circumstances of the case?

231. In light of our findings on the merits of the claims made by the claimant, we have no findings to make on the issue of remedy. No award is appropriate in this case, as none of the claimant's claims have been upheld.

232. Although the issue of time bar has been raised, it did not appear in the List of Issues, and accordingly, we have not addressed this, given our findings on the merits of the claim.

233. We would wish to record our gratitude to Ms Coutts, the solicitor for the respondent, in particular for her considerable assistance both to the Tribunal and to the claimant in the manner in which she presented her case, and prepared the documents in advance of the Hearing. We also thank the claimant for making the considerable effort to attend the Hearing in person, and to conduct himself generally in a respectful manner towards the Tribunal and his opponent. It is understood that from

time to time he became frustrated or concerned about the way in which he and his work were being described, particularly by Professor Nair, since as an unrepresented party he had little experience of being in Tribunal. He also betrayed occasional frustration when the Employment Judge sought to remind him to pursue questioning with the bounds of relevance to the issues.

M A Macleod
Employment Judge

2 July 2024
Date of Judgment

Date sent to parties 02/07/2024

I confirm that this is my Judgment in the case of Chinnasamy v University of Edinburgh and that I have signed the Judgment.