EMPLOYMENT TRIBUNALS

Claimant: Mr D Nwachukwu

Respondent: Wrightway Health Limited

Heard at: Cambridge Employment Tribunal

On: 2, 3, 4, 5, 6 September 2024 (5 hearing days)
6 December (deliberation day)

Before: Employment Judge Hutchings
Ms E. Deem
Mr C. Grant

Representation
Claimant: in person
Respondent: Mr Brown, counsel

RESERVED JUDGMENT

It is the unanimous decision of this Employment Tribunal that:

1. The complaint of direct race discrimination (section 13 Equality Act 2010) is not well founded and is dismissed.

2. The complaint of harassment related to race (section 26 Equality Act 2010) is not well founded and is dismissed.

3. The complaint of victimisation (section 27 Equality Act 2010) is dismissed upon withdrawal by the claimant.

REASONS

Introduction

1. The claimant was employed as a trainee occupational health physician by the respondent, a company that provides occupational health and wellbeing services, at the respondent's Norwich site, from 4 October 2021 until his dismissal on 23 February 2022. ACAS consultation started on 14 March 2022 and a certificate was issued on 22 April 2022.

2. By an ET1 claim form dated 20 May 2022 and undated further and better particulars of claim the claimant made claims of unfair dismissal and race discrimination.

3. The Claimant describes his race as Black African. HIs discrimination complaints are:

   3.1. Direct race discrimination (section 13 Equality Act 2010);

   3.2. Harassment related to race (section 26 Equality Act 2010); and

   3.3. Victimisation (section 27 Equality Act 2010) is not well founded and is dismissed.

4. The claimant relies on the same facts to allege less favourable treatment, unwanted conduct and detriment. These facts, and the legal issues, are summarised in the case management order of Employment Judge Spencer dated 16 January 2023, and sent to the parties on 28 January 2023. This List of Issues is set out below. At the hearing the claimant provided further details about his claim, which are recorded in italics in the List of Issues.

5. By an ET3 response form and Grounds of Resistance dated 27 July 2022 the respondent defends all claims, asserting that the claimant was dismissed for failure to complete his probation due to concerns with the claimant's clinical competence, his communication skills and interactions with colleagues. The respondent denies it discriminated against the claimant due to his race, or at all.

6. The Tribunal determined that the claimant does not have the required 2 year period of continuous employment to pursue a claim of unfair dismissal. Accordingly, by Judgment dated 10 August 2022, and sent to the parties on 21 August 2022, Employment Judge Postle dismissed the claim of unfair dismissal.

Evidence and procedure

7. The case was listed for 5 days in September 2024. During this time the Tribunal heard evidence from both parties and closing statements. There was insufficient time for the Tribunal to consider the evidence and make a decision. Therefore, it was necessary to identify a date for the Tribunal panel to meet and make its decision. Unfortunately, the first available date for the panel to meet was 6 December 2024. While we are mindful a wait of 3 months is not ideal, due to diary commitments which could not be moved, it was not possible for the panel to meet sooner. Parties were informed of this deliberation date and that a written judgment would be sent to both parties as soon as possible thereafter.

8. The Tribunal had the benefit of a 217 page hearing file. We took the morning of the first day to read the documentary evidence and witness statements. As the claimant told us he had not done so, we suggested to the claimant he do the same, having first taken some time to explain to him the process of an Employment Tribunal hearing and setting an outline timetable. Mindful the claimant was representing himself, and our obligations under rule 2 of the Employment Tribunals Rules of Procedure 2013, particularly to ensure parties

are on an equal footing, we gave the claimant guidance on asking questions of the respondent's witnesses.

9. During the hearing the respondent provided some additional documentary evidence in response to oral evidence given by the claimant, which was not referenced in his witness statement. We admitted the evidence listed below as we considered these documents relevant to the claims and issues in dispute

    9.1. The claimant's pay slip showing the statutory sick pay he received; and

    9.2. A pay slip for the payroll run 22 December 2021 of the doctor the claimant referred to as a comparator (identified as Dr Nathan from the Netherlands) showing the payments this doctor received during his sickness absence.

10. The claimant represented himself and gave sworn evidence.

11. The respondent was represented by Mr Brown of counsel who called sworn evidence from:

    11.1. Alison Mackway, the respondent's Managing Director at the time of the events about which the claimant complains;

    11.2. Emma Shreeve, Head of Operations;

    11.3. Ruth Weanie, HR Director;

    11.4. Philip Mcilroy, Senior Medical Director;

    11.5. Laura Blackburn, Occupational Health Physician; and

    11.6. James Quigley, Chief Medical Officer/Consultant in Occupational Medicine and Senior Medical Director, at the time of the events about which the claimant complains.

12. At the start of the hearing Mr Brown made an application for witness orders for Alison Mackway and James Quigley, explaining that both had left the respondent's employment, had provided witness statements as their interactions with the claimant were integral to his claims and the respondent considered it vital that they attend the hearing so that questions could be asked of them by the claimant and the Tribunal. Having read the List of Issues and witness statements, we granted the applications and issued witness summons for these witnesses on 2 September 2024.

13. We gave Mr Brown the opportunity to ask additional questions of Dr Mcilroy, Dr Blackburn and Ms Weanie in response to oral evidence given by the claimant during the hearing, which was relevant to his claims, but not referred to in his witness statement as the hearing was the first time the respondent's witnesses had heard this evidence. The claimant's oral evidence included allegations of a serious nature; therefore, we consider it quite right and fair that they had the opportunity to respond.

14. The Tribunal took regular breaks, starting at 10am and finishing no later than 4pm each day. On day 1 the claimant confirmed he did not require any reasonable adjustments.

15. On 6 September 2024 the respondent sent a skeleton argument to the claimant and the Tribunal and Mr Brown and the claimant made closing statements.

Preliminary applications

16. On 29 August 2024 the claimant sent an email to the Tribunal, copied to the respondent's solicitor stating that he was concerned the respondent had manipulated the contents of the hearing file and requesting that he had the opportunity to conduct a "forensic examination" of the documents. He states:

    "I am confident and convinced that most of the documents have been manipulated, facts have been altered and falsified".

17. In this email the claimant asked the Tribunal to continue with the hearing, while allowing him the opportunity to conduct a forensic examination. He was unable to tell us how he intended to do so. The respondent's solicitor replied to this application, stating that *"the claimant agreed the contents of the Bundle on 5 May 2023 and has not taken issue with the contents until now".* In fact, that is incorrect. The claimant accepted that he had received an electronic and hard copy of the hearing file in May 2023. On receipt he sent an email to the respondent's solicitor raising his concern that the hearing file had been manipulated. No further action was taken by either party at this time. The claimant did not raise these concerns again until the 29 August email. Neither the May or August emails from the claimant refer to specific documents in the hearing file he says have been altered; nor do the emails set out the basis on which the claimant had reached his conclusion.

18. We considered this application at the start of the hearing, first taking a break to allow the claimant to gather his thoughts so he could explain to the Tribunal the basis on which he had reached this conclusion, by reference to specific documents in the hearing file.

19. After the break, the claimant referred us to the following emails and explained why he consider the contents had been manipulated as follows:

    19.1. Pages 112 and 113. The claimant explained that the introduction to the email (sender and recipient details) was printed on a separate page to the body of the email (they are) and says for this reason he considered that the respondent had printed the email, delete parts that supported the claims and inserted into the hearing file the changed version. The claimant told us he did not have a copy of the "original" email as it was sent from his work account, to which access was blocked when he was dismissed.

    19.2. Pages 102 (8 November 2021), 112 (11 November 2021) and 113 (10 November 2021). The claimant told us his recollection of events and the order in which he says he wrote the emails means that the chronological order for these emails is 102, 112 and 113 and therefore the dates must have been manipulated; he suggested that the email at page 102 was a response to the emails at pages 112 and 113 and therefore it could not predate them.

    19.3. The claimant suggested that many documents in the hearing file had been altered, but was unable to direct us to any more examples.

20. Mindful that the claimant accepted that he had received a copy of the hearing file on 5 May 2024 and that despite being in receipt of it for 15 months was only able to identify concerns with 5 emails, we did not consider it proportionate to allocate more hearing time to allow the claimant to identify further documents. Therefore, we considered the application by reference to the emails the claimant identified. In doing so we considered the respondent's response to the claimant's application to postpone the hearing to allow a forensic examination of the documents in the hearing file, and ordered the respondent to forward these 5 emails to the Tribunal, copied to the claimant, directly from its email systems, which it did.

21. On behalf of the respondent Mr Brown opposed the application rejecting *"in the strongest possible terms that the respondent had altered documents".* Mr Brown acknowledged that the claimant had made an application to the Tribunal prior to any disclosure taking place citing concerns about the document, which was deemed premature by the Tribunal. We have seen this application, to which Employment Judge Spencer responded as follows:

    "Employment Judge Spencer considers the claimant's request to be premature. A case management order has already been made requiring both parties to disclose to each other all documents that are relevant to the issues that the tribunal will need to decide. If the claimant considers that the Respondent's disclosure of documents is incomplete, the claimant should first make a request for those further documents to the respondent. The request should:
    • Identify the specific documents that the claimant requires; and
    • Explain why those specific documents are relevant to the issues that the Tribunal will need to decide."

22. Mr Brown told us that, despite the Tribunal's guidance, there was no detail or proper basis for any inference of foul play or forgery and that the application was misconceived and would delay the hearing as it could not be the case that the hearing could proceed while the claimant engaged in a forensic investigation of the documents, as his application suggests. Mr Brown referenced the claimant's 5 May 2023 email, acknowledging that it did reference manipulation, but submitting that the email did not contain any details as to the basis of any concerns (as required by Employment Judge Spencer's guidance). Mr Brown suggested that, in any event, the claimant did agree the contents of the hearing file at that time and did not raise any concerns until months later, these concerns also lacking specificity.

23. Addressing the specific emails identified by the claimant, Mr Brown told us that page 111 containing the sender and recipient details is a result of the printing, and the electronic version evidences that the contents of page 112 are accurate to this email. The respondents says the claimant has not identified any basis for any inference of foul play or forgery nor is there any foundation for an inference of forgery. Granting the claimant's request would result in the hearing necessarily being vacated, delaying a resolution for all parties and putting the claimant and respondent to additional time.

24. We took a break to consider our decision. The application was refused, unanimously, by the Tribunal and reasons given orally at the hearing, as follows.

25. The claimant has not provided any basis or evidence to support a very serious allegation that documents have been altered. While he did reference concerns about document accuracy in his 5 May 2023 email, he did not provide details (despite the guidance provided by Employment Judge Spencer), agreed the hearing file and has not followed up his concerns in the 15 months since, until his email of 29 August 2024, which also does not provide any details as to the basis of his concerns. The emails to which the claimant refers do not read as if omissions have been made. The content aligns with the date order: in reviewing the emails the Tribunal noted that the 8 November email (a Monday) states "hope you had a nice weekend", a feasible greeting for an email sent on a Monday; it does not follow that this email post-dated the 11 November email. Furthermore, on day 2 of the hearing, the respondent produced electronic copies of these emails (and 5 May email). The electronic versions accord exactly with the paper copies. To allow time for a review of the documents would result in considerable delay as no hearing can proceed if such an exercise is undertaken. In any event, the claimant has not provided a reasonable basis for his allegations that documents have been altered.

26. Mindful that the claimant is not represented, we explained to him that where the content of a document is challenged, it is for the Tribunal to determine the accuracy of that document taking account of how and why the claimant believes the document has been changed, and to examine the document in the context of all oral and documentary evidence.

Agreed list of issues

27. At the case management hearing before Employment Judge Spencer parties agreed the following List of Issues. We considered the List of Issues when reading the evidence on day 1. We are satisfied this List accurately summarises the complaints.

28. At the start of the hearing, we explained the purpose of the List of Issues. In discussing the List with the claimant, he was able to provide some additional, specific information about his factual allegations. These are recorded below in italics.

<u>The factual complaints on which the claimant relies in his claims of direct race discrimination and harassment</u>

(a) Requiring the claimant to work in excess of his 40 contracted hours per week by requiring him to start early and/or finish later than his contractual working hours of 9am to 5pm. *The claimant alleges that his travel hours are included in his contractual hours and/or this was agreed when he accepted the job and for this reason he was required to work in excess of his contractual hours as this was not recognised when he started work. The respondent says travel hours are not included in his contractual hours.*

(b) Requiring the claimant to work those extra hours *(in that the respondent did not include his travel time as part of his contractual hours)* without additional pay or time in lieu.

(c) Dr James Quigley bullying the claimant into signing a new contract which provided for the claimant to work an additional 20-30 hours per month

without additional pay or time in lieu.

(d) Making unjustified accusations without evidence that the claimant has a bad style of communication *(with his colleagues, specifically Sarah, and with clients)*, poor clinical competence *(in relation to his referral of an offshore worker)* and disrespect for colleagues *(Sarah and administrative colleagues)*. The specific allegations are:

(i) Being accused of incorrectly disposing of used sharps (needles) into the general waste bin and not the sharps bin;

(ii) Being accused of entering a colleagues office without knocking on the door and leaving the door ajar on the way out;

(iii) Being accused of not assessing a patient correctly and poor clinical judgment;

(iv) Being accused of poor communication with colleagues;

(v) Being accused of committing a crime that should have been reported to the GMC.

(e) Withholding / failing to pay contractual benefits. The specific allegations are:

(i) Deductions from the claimant's salary were made from his October and December 2021 salary payments (when the claimant stayed away from the respondent's office following a Covid outbreak at the premises) *the December claim relates to a deduction of 3 days SSP*;

(ii) Making Deductions/failing to pay throughout the claimant's employment a relocation allowance, training programme, indemnity insurance, GMC annual fee and appraisal fees;

(f) Seeking to persuade the claimant to resign with an offer of 2 weeks in lieu of salary;

(g) Dismissing the claimant without grounds to do so after he declined to resign;

(h) Threatening to report the claimant to the GMC if he did not keep quiet about his dismissal

<u>Time limits</u>

1.1 Were the discrimination and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? *The respondent says that events about which the claimant complains which are found to have taken place before 15 October 2023 are out of time.*

The Tribunal will
decide:
1.1.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint

relates?
1.1.2 If not, was there conduct extending over a period?
1.1.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
1.1.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
1.1.4.1 Why were the complaints not made to the Tribunal in time?
1.1.4.2 In any event, is it just and equitable in all the circumstances to extend time?

Direct race discrimination (Equality Act 2010 section 13)

2.1 The claimant is Black African.
2.2 Did the respondent do the things set out at paragraphs 40(a) to (h) above?
2.3 Was that less favourable treatment?
The Tribunal will decide whether the claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the claimant's.
If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether he was treated worse than someone else would have been treated.
The claimant has not named anyone in particular who he says was treated better than he was. With regard to the allegations set out at paragraphs 40(a) to (c) above, the claimant says that he was treated less favourably than all other persons employed by the respondent.
2.4 If so, was it because of race?
2.5 Did the respondent's treatment amount to a detriment?

Harassment related to race (Equality Act 2010 section 26)

3.1 Did the respondent do the things set out above at paragraphs 40(a) to (h)?
3.2 If so, was that unwanted conduct?
3.3 Did it relate to race?
3.4 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?
3.5 If not, did it have that effect? The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

Victimisation (Equality Act 2010 section 27)

4.1 Did the claimant do a protected act (or acts) as follows:
4.1.1 Complaining to the respondent that he was being treated differently to other employees as he was not getting his extra working hours "returned" to him when he worked extra hours when other employees were. The claimant says that he repeated this complaint on three occasions:
(a) In writing in an email to the respondent's MD Alison Mackway in November 2021*the claimant withdrew this claim at the hearing*; and
(b) Verbally to Dr Quigley and Dr Philip at a meeting in late

November 2021 *the claimant accepted there was no reference to his race in this conversation*; and
(c) Verbally to Ruth Weanie and Emma Shreeve at a meeting
in about early December 2021 *the claimant accepted there was no reference to his race in this conversation*.
4.2 Did the respondent do the things set out at paragraphs 40(a) to (h) above?
4.3 By doing so, did it subject the claimant to detriment?
4.4 If so, was it because the claimant did a protected act?
4.5 Was it because the respondent believed the claimant had done, or might do, a protected act?

Remedy for discrimination or victimisation

5.1 Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?
5.2 What financial losses has the discrimination caused the claimant?
5.3 Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?
5.4 If not, for what period of loss should the claimant be compensated?
5.5 What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?
5.6 Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?
5.7 Is there a chance that the claimant's employment would have ended in any event? Should their compensation be reduced as a result?
5.8 Should interest be awarded? How much?

Findings of fact

Credibility

29. Mindful that the claimant is not represented and that his witness statement is limited in its detail (he does not set out the specifics of what he says occurred, nor does he include dates for the alleged events) the claimant's oral evidence was key to our decisions. Therefore, we allowed the claimant some flexibility, on occasion, in providing answers beyond the scope of the question asked by Mr Brown, to fill in some of the gaps and provide context. Given the emphasis on the claimant's oral evidence, and some additional factual allegations he made orally which are central to the complaints he makes (we address the specific evidence below), of which the respondent's witnesses did not have prior notice, we consider it particularly important that we assess the credibility of the witnesses.

30. The claimant did not identify in his ET1 claim form, additional information or his witness statement why he considered the events about which he complains were linked to his race. Mindful he is not represented, the Tribunal explained to the claimant the tests for claims of direct race discrimination, harassment and victimisation.

31. We consider the following exchange between Mr Brown and the claimant, which took place on day 2 of the hearing when Mr Brown was asking the claimant questions to establish why he considered the alleged events were

linked to his race (something not addressed by the claimant in the documents or his witness statement), important to our assessment of the claimant's credibility. Specifically, Mr Brown was asking the claimant about his conversations with Dr Quigley concerning his working hours and commuting times, as follows:

Mr Brown: *"Even if you were required to work excessive hours and commuting times were included, that was not because of your race."*

Claimant: *"Why I think it was because of race, it was a statement he [Dr Quigley] made, that he finds it difficult working with black people as since Brexit happened and other people left the country it is quite difficult working with the black people as they don't understand the system as they…So he was expressing a view it was difficult working with Africans."*

Mr Brown: *"You have not set that out in your witness statement, claim form, you did not include this in the list of issues, there is no email about this, there are emails referring to Dr Quigley being amicable, it is simply not true that Dr Quigley says he has a problem with working with black people, this is a lie."*

Claimant: *"No, it is completely true."*

Mr Brown: *"It is such a serious point that if it were true it would have been mentioned in an email at the time or in your witness statement."*

Claimant: *"I did not know I needed to mention it."*

Mr Brown: *"That is because it was not related to race."*

Claimant: *"It was given Dr Quigley's comments."*

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32. For ease of reference in this judgment we will refer to this as the "Brexit conversation". As this exchange (which is taken from the Tribunal's transcript notes of the hearing) shows, on day 2 the claimant was categorical in his evidence that it was Dr Quigley who made a comment that he did not like working with black or African people.

33. However, when giving evidence on day 3 Mr Brown put to the claimant that Dr McIlroy's suggestion that the claimant may want to think about resigning, in which case he would be paid 2 weeks' pay, was not to do with his race, the claimant replied:

"It was to do with race, from conversations with Dr Philip [McIlroy] in the past because of Brexit he had made that remark that he was frustrated with working with Africans from the beginning and he stated this in the November /December 2021 zoom call when he was introduced to a few of us, Laura [Blackburn], he [Dr McIlroy] said it was difficult working with Africans since EU and Brexit."

34. As the claimant had vehemently suggested the previous day that it was Dr Quigley who had made the same comments, the Tribunal paused the evidence to allow the claimant to clarify whether both men had made the same comment (mindful that they are quite different in age, appearance and accent and in this regard, on no interpretation could they be easily confused). The claimant told us that the previous day it was he who had been confused. On day 3, still under

oath, the claimant told us he was certain Dr Quigley had not commented on working with Black or African people, but Dr McIlroy had.

35. Leaving aside whether these comments were said by anyone (which we address in our findings of fact below), the claimant's explanation that he was confused is simply not credible. As Mr Brown pointed out in his closing statement (and the Tribunal had already discussed at the end of day 3) Dr Quigley and Dr McIlroy are different ages, have different accents and given Dr McIlroy was sitting in the hearing room on day 2 it is simply inconceivable that the claimant was confused or made a mistake, even accounting for the passage of time (almost 3 years) since the events about which the claimant complains.

36. The claimant's confusion in recollection of alleged events of this severity calls into question the accuracy of the claimant's other recollections, not least he recollection of what he wrote and read in email exchanges. Therefore, we find it necessary, unfortunately, to treat the claimant's evidence with very considerable caution. Our findings of fact below corroborate our finding about the claimant's credibility that many times the evidence he gave was untruthful. We make this finding as there were many occasions when the claimant's evidence was manifestly inconsistent with the contemporaneous documentary evidence (we have addressed relevant facts in our findings below). The claimant was generally unwilling to make factual concessions, instead telling us (without any factual basis) that the documentary evidence had been manipulated when it did not accord with his own recollection of events. The claimant was generally unwilling to make factual concessions, however implausible his evidence. Inevitably, this affects our overall view of his credibility and our assessment as to the truth of what he told us. In making this assessment we are, of course, mindful that untruthful evidence may be given to mask guilt or fortify innocence.

37. In our judgement, significant parts of the claimant's case were not credible. As we set out in our findings of fact, several of his factual allegations did not take place at all and the majority of the remaining did not take place in the way the claimant describes in his complaints and evidence. Indeed, often the claimant changed his recollection of events when challenged on his account by reference to a contemporaneous document recording a different version or he alleged, without basis, the document had been changed from its original version by the respondent. We have found there is no evidence this is the case; consequentially, there has been a degree of self-deception on his part.

38. Indeed, unfortunately, we are unanimous in reaching a conclusion that the claimant's recollection of events is detached from reality. It seems to us that he has convinced himself that something has happened in a certain way when the contemporaneous emails record differently and accord with the recollections of respondent's witnesses. It is curious that when this was pointed out to the claimant, usually his response was that these documents have been manipulated. Yet, when the documents do align with his recollection, and this was pointed out to him by Mr Brown or the Tribunal, his immediate response was that these documents were exceptions.

39. The claimant was polite and considerate throughout the hearing. Rather than deliberately lying, in detaching himself from reality, he seems to have convinced himself that his version of events is the only version. It is possible that he now genuinely believes that events occurred as he describes and not

as the documents and the respondent's witnesses consistently record. For example, the terms of his contract are clear in written form. Yet, the claimant seems to have convinced himself that the words say something else and mean something other than a plain English interpretation. When this was pointed out to him, he would not even look at the documents. Quite simply, the case he presents is in his head, detached from the reality of the things which were actually written, said and done during the time about which he complains.

40. We are compelled to the conclusion that claimant believes the reality he sets out in his witness statement, however far from the truth this is. That said, there can be no question that the claimant's evidence about the Brexit conversation was a fabrication, made up on the spot when the Tribunal asked the claimant to explain the reason he considered the respondent's alleged behaviour was linked to his race. We address our specific findings about this evidence below.

41. We found the respondent's witnesses honest and reliable. They were clear and consistent in their recollection of events and sought to answer the questions put to them without any evasion. Their accounts of meetings aligned contemporaneous emails. They were open and transparent when they could not recall details of things said and done, even if the inability to recall was not favourable to the respondent. All respondent witnesses sought to assist the Tribunal in their understanding of how the respondent business operated, and their and the claimant's roles within it.

42. We found Ms Mackway's account of her discussions with the claimant about his working hours comprehensive and lucid, aligning accurately to the detailed emails she sent the claimant when he raised queries about their conversations. Ms Mackway demonstrated an acute knowledge of what she had written without the need to check the detail in the correspondence. There was no sense that answers to questions were prepared; rather that she had a clear grip of the conversations she had with the claimant. Indeed, having explained calculations about the claimant's working hours in conversation and writing to him at the time he made the queries, notwithstanding the context of this forum, she persisted in giving the claimant explanations to assist his understanding, going beyond what was required to answer the question.

43. Dr Quigley and Dr McIlroy were both visibly shocked and shaken when they heard the claimant's evidence about the alleged Brexit Conversation, both strongly denying they discussed the claimant's race. Rebutting this allegation, Dr McIlroy became very distressed; however, he was still able to articulate a robust denial and a powerful and an eloquent explanation as to why he could never have said the words alleged.

44. Dr Blackburn was patient in her account of the support she recalled giving and offering the claimant and consistent in her account of her conversations with the claimant, when asked the same question several times by him. She was able to recount relevant, contemporaneous emails and documents to assist his, and the Tribunal's, understanding of her explanations. Notwithstanding the forum, she spoke directly to the claimant still seeking to assist his understanding of this issues which had arisen during his employment and with which she had sought to assist him, going beyond an explanation necessary to answer the question.

45. It is our observation that the claimant does not listen. Frequently, he was asked a question by the Tribunal, or we made a suggestion (mindful of our obligations under Rule 2 to support a non-represented party) as to a question he may wish to ask or a document to which he may wish to refer the respondent's witness. Politely, the claimant acknowledged our suggestion, only to go on to completely ignore it. This resonates with the evidence of the respondent's witness that the claimant would not listen to advice from colleagues who were experienced doctors. In this respect we find the claimant to be strident in the workplace and also in this hearing.

46. For these reasons, generally in our findings below, where the evidence of the claimant conflicts with the evidence of the respondent's witnesses (supported by the contemporaneous documents) we prefer the respondent's version of events.

Factual findings

47. Mindful the claimant is not legally represented, we explained during the hearing that we make findings of fact as to what we consider, on balance, happened, when the claimant's and respondent's witnesses recollection of events differ and the facts our relevant to the complaints. There are our findings.

Working hours / payment

48. The claimant alleges that he was required *"to work in excess of his 40 contracted hours per week by requiring to start early and / or finish later than his contractual working hours of 9am to 5pm."* He also claims that he was *"required to work those additional hours without additional pay or time in lieu)."* The claimant has not provided any evidence of him working in clinics or at client sites over his contractual hours. Accordingly, he clarified this claim, telling us it was agreed with the respondent that his contractual hours would include commuting time.

49. We have considered the terms of his written employment contract, which the claimant accepts he signed on 20 September 2021. Clause 8 *"Hours of Work"* states:

> *"Your core working hours are 40 hours per week, Monday to Friday, with start and finish times between* [Tribunal emphasis] *8a.m to 6p.m. You may be required to work additional hours at weekends or during public holidays, whenever this is reasonably necessary to carry out your duties properly. In addition to which you will be required to carry out on-call duties to a maximum of 15 weeks per year."*

50. Factually, the claimant's description of his contractual working hours in his claim is not accurate. His contractual hours were not 9am to 5pm. There is no reference in the contract to travel time forming part of the claimant's contractual hours. Clause 14 of his employment identifies his place of work a Wrightway Health Clinic, stating also that: *"you may also be required to work at any other location in the UK."*

51. The respondent referred us to the offer letter which Alison Mackway sent to the claimant on 22 March 2021. In this she provides details of the respondent's base address, telling him *"you will be required to attend any of the company's*

clinics or client premises according to business need. In this letter she expressly states:

"As with all employees, travel to work (your base clinic) or to a client's site will be in your own time. In some circumstances we will allow 30 mins at the start or the end of the day to assist with additional travel, however this is not guaranteed"

52. We find that it is clear from the wording in this letter that travel is not included in working hours and the term of the contract reflect this. Indeed, when asked about this letter in evidence the claimant agree that he was told in this email that travel to his base clinic, or a client's site was in his own time. Having signed this contract, during the first part of his employment the claimant queries his working hours in meetings with Dr McIlroy and Dr Quigley in meetings on the 18 and 21 November 2021, and subsequent emails. We have found Dr Quigley's email dated 24 November 2021 summarising these discussions to be accurate, having seen the electronic version of the email sent by the respondent to the Tribunal. Dr Quigley explains the claimant's contractual terms in relation to working hours and that a reasonable commute in the OH profession is generally considered 60 minutes to start a clinic at 9am and where the commute exceeds this an adjustment is made to account to this amount of travel time. In her evidence Dr Blackburn confirmed this approach.

53. The claimant's email reply evidences that the claimant does not accept what is written in his offer letter, contractual terms or the explanation offered by Dr Quigley, stating that *"it was agreed that travel time will be part of working hours as is being done for every other staff".* This statement evidences just how much the claimant has misled himself as to the clear terms of his employment. It is a fact (and clear from the wording of the offer letter) that he was told by Alison Mackway that commuting time was not included in his working hours. The contract the claimant signed does not refer to commuting time being included in working hours. This was explained to him by Dr Quigley, Dr McIlroy and Dr Blackburn. We found that the claimant did not read, or does not understand the offer made or the wording of the contract he signed. He had produced no evidence that colleague's travel hours were included in their contractual working hours.

54. Indeed, the respondent's witnesses confirmed that this was not the case for any of them or their colleagues. Alison Mackway told us:

"We [she and the claimant] *did have a conversation and during that conversation I explained the policy and procedure in place for all staff and I explained to you the email in detail."*

55. Preferring the evidence of the respondent's witnesses, which is consistent, we find that non contractual accommodations were made on a case by case basis where a colleague's commuting time on occasion exceeded 60 – 90 minutes and the colleague raised a concern; the evidence before us is that the claimant did not fall in this category

56. We find that this was clearly explained to the claimant at the start of his employment, Alison Mackway telling the claimant at the hearing:

"Prior to you starting your work you and I had a text conversation in which I asked if you would travel to other sites and there was a conversation documented in the email but it was not an agreement for the future or a contractual change it was a discussion around that time for commuting for the flu clinics.

I would have had no authority to make a contractual change as any contractual change as that would be for the company to change.

During this period of time you did not in fact had a UK driving licence which is not what you told us at the interview we agreed for a short period of time that we would facilitate your travel – there was a number of very specific things we had to do not available to other staff which were not contractual.

My email to you dated 8 November 2021 stipulates very clearly hours worked and can reassure you they are not made up …..they were taken from the vehicle trackers."

57. The same explanation was repeated by colleagues (Dr Quigley, Dr McIlroy and Dr Blackburn) each time the claimant, repeatedly, raised the same concern. Clearly he did not listen to the explanation.

58. Based on the documentary evidence and the comprehensive explanations about the claimant's working hours given by the respondent's witnesses to the claimant at the time and to the Tribunal during the hearing, we find that the claimant was not required to work in excess of his contractual hours. Therefore, the claimant was not entitled to additional pay.

New contract

59. The claimant alleges that Dr Quigley bullied him into signing a new contract requiring to work an additional 20 – 30 hours. The claimant has not provided evidence that he was presented with a new contract. The only employment contract we have seen is the contract the claimant signed on 20 September 2021 at the start of his employment.

60. We have considered the evidence of Dr Quigley's and Dr McIlroy's meetings with the claimant on 18 and 23 November 2021, and the email summary Dr Quigley sent to the claimant on 24 November 2021. There is no evidence that this email was fabricated by the respondent, as alleged by the claimant. The summary accords with Dr Quigley's and Dr McIlroy's evidence of these meetings in their witness statement and at the hearing. We find that conversations took place in which Dr Quigley and Dr McIlroy attempted to explain to the claimant the terms of his employment contract, given he did not understand what was written, and the respondent's approach to commuting time, in line with what Ms Mackway had previously told the claimant.

61. The respondent never presented the claimant with a new contract to sign. For the claimant to suggest he was bullied in this regard is fanciful. We find this another example of the claimant failing to listen to the explanations he was being given, and conflating these explanations in his mind to something that did not happen.

Unjustified accusations

62. The claimant alleges that the respondent made unjustified accusations in relation to several factual events. For the reasons stated below, we find that the issues colleagues raised about the claimant's conduct were justified.

63. First, we make a general observation that if an employee raises a concern about a colleague's behaviour, and that employee can show they genuinely believed there was an issue, it is incumbent on managers to investigate concerns. Even if, ultimately, managers do not agree with the concerns raised, it does not render raising the concerns with said colleague and investigating them unjustified It seems that the claimant has not understood this process.

Communication style

64. Administrative colleagues and the colleague (Sarah) who gave the claimant a lift (as, despite telling the respondent at interview that he had a UK driving licence, it transpired post-employment that the claimant's licence was not valid) raised concerns about the claimant's manner of communication and suggested he was not respectful of colleagues. We find this was a genuine concern. Ms Weanie told us that Dr McIlroy had raised concerns with her early in December 2021 that the claimant had a lack of understanding of his relationship with his colleagues. Indeed, in the November meetings Dr Quigley and Dr Mciltroy had already raised these concerns (particularly in relation to the claimant's interactions with Sarah) with the claimant , and recorded the agreed actions from those meetings (*"to be flexible and treat colleagues with dignity and respect")* in Dr Quigley's 24 November 2021 to the claimant, summarising these meetings.

65. On January 2022 Ms Weanie emailed the claimant, telling him:

"Unfortunately, we have received a further concern regarding your communications with colleagues and clients."

66. As a result the claimant was invited to, and attended, a meeting with Dr McIlroy which Ms Weanie told him was *"to discuss the concerns raised and to look for ways to support you going forward."*

67. Dr Blackburn told us she received a complaint from a client who said they had found the claimant *"standoffish"* and *"that colleagues had reported to [her] that they found his manner to be abrupt and defensive".* Dr Blackburn told us raised this feedback with the claimant informally.

68. Given colleagues and clients had, as a matter of fact, raised concerns about the claimant's communication style, it was right and proper that the respondent's manager raised these concerns with the claimant. For these reasons, we find that raising the concerns was justified.

Clinical competence

69. The claimant alleges that unjustified concerns were raised by the respondent about his clinical competence and judgement, and that he was accused of not assessing patient properly. The respondent did raise and discuss the claimant's clinical competence with him. Dr Blackburn told us that in December 2021 a

letter completed at the claimant's direction *"did not contain the correct clinical information or symptoms"* Blackburn escalated these concerns.

70. In January 2021a non clinical member of staff raised concerns with Dr Backburn that the claimant had passed two individuals on safety critical tests when they should have failed. A clinician agreed with this assessment. As a result, also in January 2021, Dr Blackburn provided the claimant with information feedback about this concerns and management take the decision to place the claimant on a performance improvement plan, noting the claimant's work performance *"is well below par".* The claimant has not provided any explanation or evidence to support his assertion raising these concerns with him was unjustified. We find that the respondent's managers, who were experience clinicians were justified in raising these concerns with him, offering the claimant support from the outset. We have seen emails in January 2022 between Dr Blackburn and Dr McIlroy in which Dr McIlroy escalates these concerns.

Disposal of needle

71. The claimant alleges that he was (unjustifiably) accused of incorrectly disposing of used sharps (needles) into the general waste and not the sharp bin. Several of the respondent's witnesses attested to that that a needle was found that had been disposed of incorrectly; it was found in a bin in a clinic room that had last been used by the claimant. As the needle was found in his clinic, we find that the claimant was justified in raising this matter with him. Indeed, the respondent did not accuse the claimant; rather an email was circulated reminding all staff of the rules for disposing of sharps. When asked by the claimant why she thought he was responsible, Dr Balckburn replied:

    "…I had an email from a senior technician forwarding an email from another technician with photo. The senior technician went into the clinic room you were in and the waste bin that room (the room only you had been in that day) so it was found in the clinical room you were in. We had a conversation about it, you said it was not you and suggested someone had come into your clinic room and suggested that the needle was not used (written)… I was certain it was you so raised it with you. When you said it wasn't you I did not insist it was you, we send a memo out if there is clinical incident, to remind all clinicians"

72. We find the respondent did not accuse the claimant. Dr Blackburn raised a serious and genuine concern based on reasonable evidence at the time with the respondent. This is another example of the claimant extrapolating reasonable events into something they were not.

Entering colleague's office

73. The claimant alleges he was (unjustifiably) accused of entering a colleague's office without knocking. The claimant could not recall any details about his allegation that that he was accused of entering a colleague's office without knocking. He could not recall the date or who the colleague was. Ms Mackway's recollection to the Tribunal is that a colleague did accuse C of entering without and this was investigated, but she could not remember the outcome. This incident is not documented in the evidence before us. Given Ms Mackway's recollection we find that this did happen. However, we find that managers raising this with him would have been justified, particularly given the clinical and

confidential nature of the respondent's work. Indeed the record of the 12 January meeting states that ~~the claimant~~ in the November meeting the claimant said he would reflect on his communication style but it seems in the January this was still problematic given the feedback Dr Blackburn had received from a client.

74. Given the seriousness of the concerns that were raised, we find that the respondent was justified in raising this concern with the claimant; indeed, given the clinical environment in which the claimant works, we find that it was imperative that the respondent did so. We are not making a finding about the claimant's clinical competence; that is not a matter for the Tribunal and falls within the expertise of the respondent's clinicians.

Report to GMC

75. The claimant alleges that he was (unjustifiably) accused of committing a crime that should have been reported to the GMC. The claimant does not provide any details in his evidence of who accused him, when or what the crime was. Nor was he able to do so. There is no evidence before the Tribunal that the respondent alleged the claimant had committed a crime. A conversation took place at the meeting the claimant attended with Dr McIlroy and Ms Weanie on 12 February 2022 in which the respondent's obligations to the GMC was discussed. The notes of that meeting do not make reference to Dr McIlroy threatening to report the claimant. Indeed, prior to the meeting, in an email dated 21 January 2022 Dr McIlroy sought advice about the respondent's concerns with the claimant' clinical performance and the respondent's professional reporting obligations. We have seen that email exchange; it is measured.

76. Dr Blackburn told us that after the claimant's contract had been terminated. She recalls the claimant came into office and said he was sorry it has ended like this but she does not recall the claimant saying that Dr McIlroy had threatened to report him to the GMC.

77. Given the lack of any documentary evidence that a threat was made and the consistency of the respondent's evidence, we prefer their evidence that at no time did the respondent's manager accuse the claimant of a crime nor did anyone threat to report the claimant to the GMC. Again, he is conflated a reasonable discussion to something it was not, taking the reference to a significant event to be a crime. The 'significant event' was discussed in the meeting of 31 January 2022. It was appropriate for the matter to be raised in that meeting as the claimant's clinical error was a significant event. It was suggested that the Claimant should record the event and discuss it with his appraiser. Appropriately this was picked up by Dr Blackburn. If the GMC was mentioned in either of the probation review meetings it was in the above context. The claimant was not threatened. Moreover, he was not threatened with a report *"if he did not keep quiet about his dismissal"*. We find his suggestion he was fanciful and completely detached from reality.

<u>Withholding benefits / failing to pay contractual benefits</u>

October 2021 pay

78. At the hearing the claimant clarified that his monetary claim for October 2021 I that he should have been paid a full month's salary. This explanation accords with an email the claimant sent to Ms Mackway on 11 November 2021 in which he suggests his gross monthly salary for October should be £70,000 divided by 12.

79. This claim is misconceived as the claimant did not start work with the respondent until 4 October 2021. Therefore, as a matter of fact, for October 2021 he was only entitled to pro rata pay for the period he actually worked. When, in November 2021, the claimant raised his concerns about his October pay Ms Mackway investigated these. In an email to the claimant dated 10 November 2021 Ms Mackway explained that he is only entitled to pro rata pay, setting out a calculation showing how the claimant is paid for October 2021. She applies an alternative formula for calculating the pro-rata October pay, which results in a slight increase, which we have seen from the claimant's payslip he was paid in December 2021. Therefore, we find that the claimant is not owed any salary for October 2021; the claimant has not explained or provided any evidence that the adjusted calculation was due to his race. It was not; Ms Mackway checked the calculation when the claimant raised his concerns, employed an alternative method of calculating pro-rata pay which was to the claimant's benefit.

Deduction of 3 days sick pay December 2021

80. The claimant alleges that he is entitled to 3 days sick pay when he was ill with Covid in December 2021. The claimant's entitlement to sick pay is a contractual right, the terms of which are set out in his contract, which the claimant signed on 20 September 2021. Clause 10.4 sets out the terms governing the claimant's entitlement to sick pay. It provides the for service 0 – 12 months (the claimant had been employed just over 2 months when he claimed sick pay in December 2021) the claimant is entitled to *"Statutory Sick Pay"* "SSP"*.* Therefore, any claim the claimant is entitled to his full pay while sick in December 2021 is misconceived; this was not the claimant's statutory entitlement.

81. We have seen email exchanges between Ms Weanie and HR confirming that there was no government guidance at this time requiring an employer to pay people who were self-isolating or unable to attend work if they had tested Covid-19 positive. We find the claimant's only entitlement was that recorded in his contract; 3 days SSP. SSP is a legislative entitlement, which is paid to an employee on the 4th day of sickness. There is no entitlement to SSP for days 1 to 3 of sickness. Therefore, the claimant is not entitled for any pay for these days and the 3 days salary deducted for his December law was lawful.

82. These provisions were explained to the claimant in an email exchange with the claimant at the end of December 2021. The deduction of pay in December 2021 had nothing to do with his race. The respondent was following the legal provisions of SSP and the claimant's contract.

Relocation allowance

83. The claimant claims the respondent did not pay him his relocation expenses and this was because of his race. The repayment of the claimant's relocation expenses were a contractual entitlement. Clause 6 states:

"It is agreed that a Relocation Allowance of £1,500 will be paid on the submission of relevant invoices. This is subject to a 24 month clawback."

84. We find that the claimant provided receipts; this is evidenced by an email from Ms Weanie to the claimant dated 21 December 2021 in which she states:

"I am just reviewing your relocation expenses and I wanted to check…"

85. By 31 January 2022 Ms Weanie confirmed that the receipts had been passed to the finance department and were awaiting payment. The relocation expenses were not paid to the claimant prior to his dismissal on 23 February 2022. Ms Weanie told us that the receipts were still been processed. When the Tribunal asked when the receipts were given to finance, Ms Weanie told us that sometime January she went up to Manchester for the senior leadership team meeting and she would have handed them to the finance department then. We find there was a delay in processing the expenses receipts. The claimant has provided no evidence that this delay and failure to pay was because of his race. When asked the question why he thought so by the Tribunal, he referred to things he alleges Dr Quigley and Dr McIlroy said to him (addressed in our findings below); neither were involved in the review of his expenses receipts.

86. In any event, the claimant has not suffered financial loss as clause 6 of his contract states that relocation expenses are subject to a claw-back provision:

"This is subject to a 24 month clawback."

87. The claimant was employed for less than 24 months. Had his expenses been paid in a more timely manner, he would have had to repay them to the respondent / the respondent had the legal right to deduct any relocation expenses from his final salary. This provision was explained to the claimant in the letter dated 17 February 2022 confirming his dismissal:

"As our employment has come to an end, you are not entitled to claim the relocation expenses as these are subject to a 24-month clawback provision."

Training programme fees

88. Clause 7.4 of the claimant's employment contract states:

"You are entitled to a £2,000(FTE) contribution to CPD costs a claw back applies."

89. The claimant complains that he was not paid this £2,000 and this was because of his race, telling us at the hearing that his offer letter entitles him to an outright payment of £2,000. We have considered the offer letter dated 22 March 2021. It does refer to a *"CPD allowance £2,000".*

90. We find that the claimant has misunderstood the terms of his employment contract. The contractual terms were clarified by Ms Weanie in an email to the claimant dated 19 January 2022:

"If you wish to claim any of the contractual additions in your contract, you will need to provide evidence of expenditure such as a receipt, invoice or indeed a quote if it is not an expense you have yet paid for [sic]

For any CPD training, you would take your request to Emma for approval and she would pay this on the company credit card."

91. We find this was in line with company policy. The claimant was not entitled to payment of an upfront sum of £2,000 for training. He was told on at least 3 occasions during his employment that he would be reimbursed up to this amount for any external training he booked / paid for. He did neither therefore there was no amount for the respondent to reimburse.

92. The claimant has not presented any evidence to the Tribunal that not paying training fees was related to his race. Nor has he presented any evidence that any of his colleagues training fees were paid without following the contractual provisions and expenses policy. The only reference to race is the claimant's confused recollections of things he alleges Dr Quigley and Dr McIlroy said (which we have found they did not say for the reasons stated below). We find that the respondent was following, and explaining to him, the claimant's contractual provisions when he queried training fees.

Indemnity insurance and appraisal fees

93. Clause 7.2 of the claimant's employment contract entitles him to a contribution of:

"…..up to £2,000 pa towards the cost of your professional indemnity insurance."

94. While the contract expressly states that it is the employee's responsibility to source that insurance, we have seen correspondence with confirms that the claimant did not do so and that the respondent made suggestions to assist him with this process.

95. Similarly, during his employment the claimant did not incur appraisal fees or provide evidence of professional membership; therefore he was not entitled to be paid them under the terms of his contract. In any event, these fees were subject to the same clawback explained above.

96. He did not do so, we find, because he did not incur any. His claims were driven by the misconception that he was entitled to these amounts upfront. For the reasons stated, we find that he was not.

97. The claimant has not presented any evidence to the Tribunal that not paying training fees was related to his race. Nor has he presented any evidence that any of his colleagues training fees were paid without following the contractual provisions and expenses policy. The only reference to race is the claimant's confused recollections of things he alleges Dr Quigley and Dr McIlroy said (which we have found they did not say for the reasons stated below). We find that the respondent was following, and explaining to him, the claimant's contractual provisions when he queried appraisal fees.

GMC fee

98. Clause 7.2 of the claimant's employment contract provides that he is entitled to payment of his professional membership fees, including the GMC and that this is subject to the claw back provision. There is no evidence before us that the GMC fee was incurred during the claimant's employment, nor that he produced evidence to the respondent of the same. Nor is there any evidence not paying it was related to the claimant's race or that others had had their fee paid without submitting evidence to the respondent they had incurred this expense. Given the length of his employment the claimant any fee paid would have been deducted under the claw back provision. We find the fee was not paid as the claimant did not incur the fee during the course of his employment, the claimant having provided us with receipts showing the dates fees were incurred.

99. Indeed, the March 2022 dismissal letter gives the claimant the opportunity to claim any outstanding expenses. He is told:

"….you are still entitled to claim the indemnity insurance, GMC, FOM, SOM membership fees for the period of your employment, therefore, I would ask you to please send me the documentation to verify the expense and we will make this payment to you."

100. The claimant did not provide receipts post-employment, we find because these were not expenses he had incurred during his employment.

Resignation proposal

101. The claimant alleges that the respondent sought to persuade him to resign with an offer of 2 weeks in lieu of notice. The respondent's evidence was that the claimant was given this option, neutrally, they did not try to persuade him, they had decided to end his employment in any event due to the concerns they had raised with him and this offer was made to terminate with a more generous outcome for the claimant than his contractual rights.

102. Indeed, the claimant's recollection of these events his muddled. We have seen the record of the meeting on 31 January 2022 in which Dr McIlroy and Dr Blackburn discuss their concerns with the claimant. At this meeting the claimant is told by Dr McIlroy that if things don't improve one option is for the respondent to end his employment with 1 weeks' notice [his contractual entitlement]. Dr McIlroy also tells the claimant that if in 2 weeks no further progress has been made employment could be ended. In his witness statement the claimant refers to a payment of £2000 being offered to him. This is not consistent with his own claim nor the contemporaneous evidence of the meetings which took place.

103. We find there was no need for the respondent to force out the claimant (as alleged) as he had less than 2 years' employment. There was no active attempt to persuade the claimant to take a more generous offer than his contractual entitlement. As it was more generous, we find that, objectively, the offer is persuasive. In the claimant's witness evidence he does not mention anything about race being a factor in this discussion. The only evidence he put forward was a sudden recollection at the hearing of an alleged comment by Dr McIlroy. For the reasons stated below we have preferred Dr McIlroy's evidence that he did not make this comment. We find there is no evidence from either the claimant or respondent that this offer related to the claimant's race.

Dismissal

104. The claimant alleges he was dismissed *"without grounds to do so after he declined to resign".* The claimant did not accept the offer of 2 weeks' notice. He was dismissed. We have considered the dismissal letter dated 17 February 2022. The grounds stated reflect the concerns Dr Blackburn, Dr McIlroy and Dr Quigley raised about the claimant's clinical competence and conduct with the claimant (and each other) throughout his employment. We find that the respondent did have grounds, and that the doctors involved in the discussions with the claimant had a genuine belief in the concerns they were raising supported by reasonable evidence. These were communicated to the claimant throughout his employment and in the dismissal letter.

Alleged racial comment

105. The claimant's claim documents, further particulars of claim did not contain any explanation as to why he considers the events about which he complains in some way connected to his race, hence the Tribunal question as to why the claimant considers his race related to the respondent's actions.

106. As set out above, the claimant told us he related the respondent's behaviour to his race due to a comment he, initially, alleged Dr Quigley had made, telling us the following day it was in fact a comment made by Dr McIlroy and not Dr Quigley. Both doctors vehemently denied saying what the claimant alleged. Dr McIlroy was visibly distressed about the allegation and gave detailed reasons, telling us about the challenges he faced in Northern Ireland as a young man, as to why he had never, and would never, reference a colleague's race.

107. We find it inconceivable that any doctor made this comment in a Teams meeting with colleagues and none of those colleagues raised a concern. Dr Blackburn told us that she was present at the meeting at which the claimant alleges this comment was made and nothing of this nature, or about the claimant's race, was said by anyone present. It is also inconceivable that the claimant could have confused Dr Quigley and Dr McIlroy. They are different ages, quite different in appearance and have distinctive, and very different, accents.

108. It is simply not feasible that the claimant did not think this allegation relevant until he was asked by the Tribunal to explain why he considered the factual allegations related to his race. We find he did not mention it as this was never said by either Dr Quigley or Dr McIlroy. The claimant did not mention it in any of his claim forms or evidence as it was something he made up in the moment in response to the Tribunal's question. The claimant confused the name of the doctor as he had fabricated the story and his fabrication was inconsistent. The only credible explanation for this story is that when asked the question by the Tribunal it dawned on the claimant he had not provided the Tribunal with any evidence that his allegations were linked to his race so he told the Tribunal a story in a desperate attempt to do that.

Relevant law

Jurisdiction – time limits

109. Section 123 s123 of the Equality Act sets the time limits for discrimination claims:

Subject to section 140B proceedings on a complaint within section 120 may not be brought after the end of—
(a)the period of 3 months starting with the date of the act to which the complaint relates, or
(b)such other period as the employment tribunal thinks just and equitable.
(2)Proceedings may not be brought in reliance on section 121(1) after the end of—
(a)the period of 6 months starting with the date of the act to which the proceedings relate, or
(b)such other period as the employment tribunal thinks just and equitable.
(3)For the purposes of this section—
(a)conduct extending over a period is to be treated as done at the end of the period;
(b)failure to do something is to be treated as occurring when the person in question decided on it.
(4)In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—
(a)when P does an act inconsistent with doing it, or
(b)if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

110. The ACAS early conciliation procedure covers discrimination claims. The primary time-limit is within 3 months of the discriminatory action. If the claim is late, the tribunal has a 'just and equitable' discretion under s123(1)(b) to extend time. *In Hendricks v Commissioner of Police for the Metropolis [2003] IRLR 96*, the Court of Appeal held that 'an act extending over a period' can comprise a 'continuing state of affairs' as opposed to a succession of isolated or unconnected acts. There needs to be some kind of link or connection between the actions.

Direct race discrimination: section 13 Equality Act 2010

111. Section 13 of the Equality Act 2010 provides:

112. (1)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.

113. (2)If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim.

114. (3)If the protected characteristic is disability, and B is not a disabled person, A does not discriminate against B only because A treats or would treat disabled persons more favourably than A treats B.

115. (4)If the protected characteristic is marriage and civil partnership, this section applies to a contravention of Part 5 (work) only if the treatment is because it is B who is married or a civil partner.

116. (5)If the protected characteristic is race, less favourable treatment includes segregating B from others.

117. (6)If the protected characteristic is sex—

118. (a)less favourable treatment of a woman includes less favourable treatment of her because she is breast-feeding;

119. (b)in a case where B is a man, no account is to be taken of special treatment afforded to a woman in connection with pregnancy, childbirth or maternity.

120. (7). . . . . .

121. (8)This section is subject to sections 17(6) and 18(7).

122. Mr Brown referred us to Lord Nicholls in Nagarajan v London Regional Transport [1999] ICR 877 (at 886), submitting that it is not necessary for the Claimant's race or any protected act to be the sole reason for any established less favourable treatment, unwanted conduct or detriment and noting that liability may be established if a protected characteristic (or a protected act) is a significant influence/more than trivial reason for the treatment complained of.

Harassment related to race: section 26 Equality Act 2010

123. Section 26 of the Equality Act 2010 provides:

(1)A person (A) harasses another (B) if—
(a)A engages in unwanted conduct related to a relevant protected characteristic, and
(b)the conduct has the purpose or effect of—
(i)violating B's dignity, or
(ii)creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
(2)A also harasses B if—
(a)A engages in unwanted conduct of a sexual nature, and
(b)the conduct has the purpose or effect referred to in subsection (1)(b).
(3)A also harasses B if—
(a)A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,
(b)the conduct has the purpose or effect referred to in subsection (1)(b), and
(c)because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.
(4)In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—
(a)the perception of B;
(b)the other circumstances of the case;
(c)whether it is reasonable for the conduct to have that effect.
(5)The relevant protected characteristics are—

- *age;*
- *disability;*
- *gender reassignment;*

- *race;*
- *religion or belief;*
- *sex;*
- *sexual orientation*

124. In considering the words "intimidating, hostile, degrading, humiliating or offensive" a Tribunal must be sensitive to the hurt comments may cause but balance so as not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase: *Richmond Pharmacology Ltd v. Dhaliwal* [2009] IRLR 336. Where a claim for harassment is brought on the basis that the unwanted conduct had the *effect* of creating the relevant adverse environment, section 26 has been interpreted as creating a two-step test for determining whether conduct had such an effect; *Pemberton v Inwood* [2018] EWCA Civ 564. The steps are:

124.1. Did the claimant genuinely perceive the conduct as having that effect?
124.2. In all the circumstances, was that perception reasonable?

Victimisation: Equality Act 2010 section

125. Section 27 EqA provides:

(1)A person (A) victimises 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.

(2)Each of the following is a protected act—
(a)bringing proceedings under this Act;
(b)giving evidence or information in connection with proceedings under this Act;
(c)doing any other thing for the purposes of or in connection with this Act;
(d)making an allegation (whether or not express) that A or another person has contravened this Act.
(3)Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.
(4)This section applies only where the person subjected to a detriment is an individual.

(5)The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule

Burden of proof: section 136 Equality Act 2010

126. Section 136 of the Equality Act 2010 provides:

127. Mr Brown referred us to the guidance of the Court of Appeal in Madarassy v Nomura International Plc [2007] ICR 867 at paragraphs 56 to 57, noting that it is not sufficient for the complainant to prove facts from which the tribunal could conclude that the respondent 'could have' committed unlawful discrimination. The words 'could conclude' (or 'could decide' (s.136(2) Equality Act 2010))

mean that a 'reasonable tribunal could properly conclude'. He also reminded us that unreasonable treatment of itself is not sufficient to give rise to an inference of discrimination or victimisation; employers 'will often have unjustified albeit genuine reasons for acting as they have. If these are accepted and show no discrimination, there is generally no basis for the inference of unlawful discrimination. Even if they are not accepted, the tribunal's own findings of fact may identify an obvious reason for the treatment in issue, other than a discriminatory reason' (Bahl v The Law Society [2004] IRLR 799 (CA) at paragraph 101).

Analysis and conclusion

Time limits

128. The respondent submits that any events about which the claimant complains which are found to have taken place before 15 October 2023 are out of time. The claimant has not provided dates for some of the events and not presented any reason as to why he says it is just and equitable to extend time. That said, we are mindful that the claimant is not represented and race discrimination is a very serious allegation. Many of the facts about which he complains interact. Therefore, taking the claimant's case at its highest, we consider it just and equitable to extend time.

129. However, based on our findings below the only factual allegation which took place before the time limit relates to payment of salary in October 2021. We have found that no salary was withheld by the respondent in October 2021 as alleged, so we do not need to consider this complaint further.

Events that did not happen as alleged

130. For the reasons stated above, many of the allegations made by the claimant did not happen at all. These are:

130.1. Being required to work in excess of his contractual hours: the claimant misunderstood his contract and did not work in excess of its provisions.

130.2. Not being paid for extra hours: there were no extra hours worked by the claimant to be paid.

130.3. Being bullied into signing a new contract; there was never a new contract nor any conversations about one.

130.4. Unjustified allegations about the claimant's communication style with clients and colleagues, clinical competence (incorrect assessment of a patient and poor clinical judgment), disrespect for colleagues, the disposal of a needle, entering a colleague's office without knocking; we have found that the respondent had a genuine belief that these things have happened and has demonstrated, in evidence, reasonable grounds for that belief to the Tribunal.

130.5. Withholding October 2021 pay, deductions for training programme, indemnity insurance, GMC annual fee and appraisal fees.

130.6. Dismissing the claimant without grounds

131. As we have not upheld these allegations factually we do not need to consider whether they amount to race discrimination. Quite simply if something did not happen, it cannot be related to a person's race.

Events that did happen as alleged

132. We have found that the following things did happen as alleged by the claimant.

December 2021 3 days deduction of SSP

133. The respondent did deduct 3 days of pay in December 2021 when the claimant was absence from work, ill.

134. In his claim of direct race discrimination (section 13 Equality Act 2010) the claimant alleges that this was less favourable treatment, relying on a hypothetical comparator when bringing his claim, and telling us at the hearing he was treated less favourably than Dr Nathan (who could be identified by the respondent without this doctors surname and for whom the respondent produced payslips for the relevant period).

135. We considered Dr Nathan's payslips. Dr Nathan was paid some SSP when he was off sick; the claimant was not. However, we conclude that claimant was not treated less favourably than Dr Nathan. The respondent was consistent in its approach that Dr Nathan was not contractually entitled to SSP until the 4th day of sickness. 3 days SSP was deducted from Dr Nathan's pay; the reason he was paid SSP is that, unlike the claimant, he was off sick for more than 3 days. Just like the claimant he was entitled to be paid SSP on his fourth day of sickness. The claimant was only sick for 3 days and therefore was not entitled to SSP under his contract. Dr Nathan was off sick for more than 3 and was entitled to, and paid, SSP from the 4the day; this is the reason his payslip shows 10 days of SSP. Dr Nathan was not in materially the same circumstances as the claimant given his longer period of sickness.

136. Both the claimant and Dr Nathan had £269.23 in line with their contracts to account for the contractual provision that, given both had been employed for less than a year, they were not entitled to be paid for the first 3 days of their sickness.

137. The next question of a Tribunal in a claim of direct discrimination is, if the Tribunal conclude there has been less favourable treatment, was it because of race? We have concluded the treatment was not less favourable, therefore we do need to consider race. In any event we have found that the claimant has not presented any evidence the respondent's approach to SSP was to do with his race. It was not; it was a contractual provision.

138. The claimant also alleges the respondent's treatment of SSP in December 2021 amounted to harassment related to race under section 26 Equality Act 2010. First we must decide is deducting pay when the claimant is off sick is unwanted treatment. The claimant alleges it was: objectively we agree; no employee welcomes their pay being deducted.

139. However, we have found the deduction was guided by the terms of the claimant's employment contract. He has not presented any evidence, and we have found there is no evidence before us relating this deduction to his race. The wording of the claimant's employment contract is clear; this is the only reason the deduction was made. The claimant was paid in line with his contract and norma practice.

Relocation expenses

140. We have found that the claimant was not paid his relocation expenses during his employment, despite providing receipts as required by his employment contract.

141. The claimant alleges this amounts to direct race discrimination. He has not identified an actual comparator; therefore, we have considered a hypothetical comparator of someone in the claimant's role who is contractually entitled to claim relocation expenses. We find expense would have been paid on receipt by finance of receipts, not least as this was a contractual provision. It would not be in the respondent's interests not to pay as failure to do so would put the respondent in breach of an employment contract.

142. We have found that the receipts the claimant provided to the respondent in December 2021 had not been paid by January 2022. Ms Weanie could not give an adequate explanation as to why it took this length of time nor why they were taken up to Manchester and not scanned to Manchester. The respondent's policy is that receipts normally paid within 2 weeks. We find that a hypothetical comparator would have been paid their receipts within 2 weeks. Therefore, we conclude that the respondent's failure to pay the receipts was less favourable treatment.

143. The claimant has the burden to provide evidence of "something more" than less favourable treatment. He has not done so; there is no evidence presented by the claimant, as to why he considers this non-payment to be related to his race. The only explanation about race he has put forward is the comment he alleged Dr Quigley / Dr McIlroy made, which we have found to be untrue. In any event neither were involved in processing or paying expense. We conclude this treatment was not related to his race, and likely to do with the fact the receipts were taken and not scanned to the finance team in Manchester.

144. Non payment of expenses in line with policy is unwanted treatment. However, it does not amount to racial harassment for the reasons stated above.

145. Leaving aside the race allegation, the claimant has not suffered financial loss as we have found payment of relocation expenses are subject to a contractual claw-back provision.

Victimisation

146. At the hearing, the claimant of victimisation was withdrawn by the claimant following his concessions that the November 2021 email and November and December 2021 conversations on which he relies did not contain the complaints he alleges at paragraphs 4.1.1 (a), (b) and (c) of the List of Issues.

147. For these reasons, it is the unanimous judgment of this Employment Tribunal that:

147.1. The complaint of direct race discrimination (section 13 Equality Act 2010) is not well founded and is dismissed.

147.2. The complaint of harassment related to race (section 26 Equality Act 2010) is not well founded and is dismissed.

147.3. The complaint of victimisation (section 27 Equality Act 2010) is dismissed upon withdrawal by the claimant.

Employment Judge Hutchings

19 December 2024

JUDGMENT & REASONS SENT TO THE PARTIES ON

20 December 2024

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FOR THE TRIBUNAL OFFICE

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