EMPLOYMENT TRIBUNALS

Claimant: Mr M Welsch

Respondent: University of Bedfordshire

HEARD AT: CAMBRIDGE **ON**: 12, 13 & 14 December 2016
23rd March 2017 (no parties in attendance)

BEFORE: Employment Judge Ord

MEMBERS: Mrs M Prettyman
Mr A Schooler

REPRESENTATION

For the Claimant:

For the Respondent:

JUDGMENT

1. The Claimant was unfairly dismissed.

2. The Claimant's complaint that he was automatically unfairly dismissed for having made protected disclosures is not well founded and is dismissed.

3. The Claimant's claims that he was subject to detriment having made protected disclosures is not well founded and is dismissed.

4. A hearing to determine the remedy to which the Claimant is entitled will be fixed in due course.

REASONS

BACKGROUND

1. The Claimant was employed by the Respondent from 1st September 2013 until 31st January 2016. He was employed as Director of the Institute for Sport and Physical Activity Research.

2. The Claimant resigned on 3 months notice with effect from 22nd January 2016, confirming in answer to the Respondent's enquiry that he was giving full contractual notice and not resigning with immediate effect. The Claimant was due to face a disciplinary hearing that day.

3. The Claimant says that the Respondent's conduct prior to that date was such that his resignation was a dismissal within the meaning of Section 98 of the Employment Rights Act 1996.

4. On the 28th January 2016 the Respondent terminated the Claimants contract of employment with effect from 31st January 2016 and made a payment in lieu of his notice period.

5. The Claimant says that he was unfairly dismissed, alternatively that he was automatically unfairly dismissed relying on alleged detriments which he said was put to as a result of having made protected disclosures.

THE HEARING

6. The Claimant gave evidence and the Respondent called evidence from Sally Bentley (Executive Dean for the Faculties of Education and Sport & Health Social Sciences), Andrew Mitchell (Head of School of Sport Science and Physical Activity), Jan Domin (Executive Dean of the Faculty of Creative Arts, Technologies and Science), Bill Rammel (Vice Chancellor), Debra Leighton (Executive Dean, Business School) and Mary Malcolm (Deputy Vice Chancellor, Academic). A statement from Warwick Riley (Technical Team Leader, Sports Science) was taken as read. All witnesses gave evidence in chief by reference to statements which had been prepared and previously exchanged between the parties, and each party made closing submissions.

7. At the conclusion of the hearing during the course of Tribunal deliberations the Tribunal became concerned that the acts of the Respondent on 28th January 2016 appeared to constitute an actual dismissal and that although the Claimant had referred in his original application to the Tribunal to the fact that the Respondent terminated his employment with effect from 31st January 2016 neither party had addressed in evidence or in closing submissions the effect of the Respondents actions on 28th January. Accordingly the Tribunal postponed deliberations to give each party the opportunity to comment upon this aspect of the case in writing and submissions from counsel on behalf of each party was subsequently received.

THE FACTS

8. Based on the evidence presented to the Tribunal we have made the following findings of fact:

9. The Claimant is citizen of the United States of America and prior to his appointment with the Respondent lived and worked in that country.

10. On 8th July 2013 Dr Bentley wrote to offer the Claimant the position of Professor of Sport and Exercise Science at the Respondent. After an exchange of emails fine tuning details the formal confirmation of the Claimants appointment (albeit from a date to be confirmed and subject to references) was sent to the Claimant on 18th July 2013 by the Director of Human Resources.

11. The Claimant's appointment began on 1st September 2013 although selected scientific papers from his previous research activity were used in the submitted Research Excellence Framework submission by the Respondent prior to his formal commencement of employment.

12. The Claimants says that during the period of his employment he made four protected disclosures and attributes treatment which he thereafter received to his having made those disclosures.

13. It is not disputed that during the course of the Claimants employment he became concerned in particular about the condition of "wet lab" and raised issues regarding the condition of the wet lab on a number of occasions.

14. The Claimant became Director of the Institute on 1st March 2014.

15. The Claimant relies on the following as amounting to protective disclosures:

    (1) On 17th March 2014 he submitted a report concerning labs standards.
    (2) On 1st April 2014 he wrote to the Respondent's Laboratory Committee regarding laboratory standards and to make suggestions about the use of the laboratory following some ongoing renovations.
    (3) On 30th June 2014 he submitted a document expressing concerns about the institute and in particular regarding Dr Will Brown.
    (4) On 16th December 2014 he wrote to Warwick Riley regarding an issue of clinical waste.

16. The Claimant closed the molecular laboratory on 14th May 2015.

17. The Claimant's email of 09:52 on 14th May was sent to Sally Bentley, Andrew Mitchell, the Research Graduate School Office, Warwick Riley, John Hough and Bryna Christmas. It referred to an email from Kevin McDermott (a PhD Student) of the previous afternoon and stated that because of repeated violations of laboratory practices he was left with no other choice then to shutdown the molecular laboratory. He went on to say that if a Regulatory Body observed the evidence presented in the email the laboratory would be shutdown immediately with fines and other punitive consequences put in place. He said he was taking steps to ensure that only he and Mr Mitchell had access to the laboratory.

    The Claimant relies on that email as being the first of his protected disclosures.

18. When this matter came to the attention of Mr Mitchell he was critical of the fact that the Claimant had not himself gone to observe the position within the laboratory and expressed the view that the respondent should do "everything we can to avoid shutting the lab down".

19. The following day, Gary Smith (Head of Occupational Health) visited the laboratory along with Dr Maria Simon (Senior Technician). Mr Smith had subsequent meetings with Dr Mitchell, Mr Riley and the Claimant. He then submitted a report setting out the need for immediate action to bring the standards within the laboratory up to an acceptable level.

20. On 5th June 2015 the Claimant was one of a number of people in receipt of an email from a Post Doctoral Student (Dr Tuttle) co-signed by two other students (Mr Foster and Mr McDermott) expressing their frustration and concern regarding what they described as improper lab management use and research processes.

21. The following day the Claimant wrote to Dr Bentley and Mr Mitchell in part in response to that email and set out his view of what he called the long period of problems within the laboratory and inactivity to rectify the problems which he laid at the door of Dr Bentley and Mr Mitchell. That email was sent on 6th June and the Claimant relies upon it as constituting his second protected disclosure.

22. On 18th June the Claimant wrote to Dr Mitchell again saying that he had become aware of at least two tests conducted on 15th and 17th June during a time when the laboratory was closed. That testing had apparently been approved by Mr Riley as Lab Manager. The tests involved bio samples and the Claimant said that it was "this sort of behaviour" that had led to frustration and dangerous practices. The Claimant says this email constituted his third protected disclosure.

23. On 8th July 2015 Mr McDermott was suspended as there was an allegation of serious misconduct raised against him (threats of violence against members of staff). On 28th August 2015 the Claimant wrote to Mr Rammel setting out his "perspective and facts" concerning not only Mr McDermott but also Josh Foster, another student who was facing disciplinary issues concerning his conduct. In that email the Claimant repeated that whilst he had closed the laboratory in May an overhaul was in process and progress was being made with the laboratories being re-opened in stages although he described "an air of resistance" between the lab staff, concerned students and himself with requests from the Claimant being "minimised and trivialised". The Claimant referred to a deterioration of behaviour of lab staff towards students and repeated that Warwick Davies had instructed students to remove pipettes from clinical waste (a request which he described as "most unfortunate"). The Claimant said he considered that it appeared that Mr McDermott was being targeted and offered to meet the Vice Chancellor to discuss matters if Mr Rammel considered it worthwhile.

24. The Vice Chancellor invited the Claimant to a meeting.

25. At that meeting with the Vice Chancellor the Claimant says he was subject to his first detriment which he attributes to his protected disclosures. According to the Claimant he said it became clear that his opinion and comments were not appreciated and that he was spoken to "as if I were the person having done wrong and committed a crime" (that quotation coming from his statement). But he did not give details of the precise words used other than to say that he was told he should not interfere and should be a team player. He complains that at the end of the meeting the Vice Chancellor did not shake his hand which the Claimant says he found "disconcerting and intimidating".

26. The following day, 8th September, the Claimant sent a report to Sally Bentley which he had prepared following an email to him of 15th July from Simon Gooch regarding the discovery of confidential information about participants in a guided research study. It appeared that, contrary to practice, information was being stored in a locked filing cabinet in a PhD Student Office. The discovery of confidential data resulted in a swift decision to secure and centralise potentially sensitive information. The Claimant says the contents of this report were his fourth and final protective disclosure.

27. On 9th October 2015 Mr McDermott was told by email that no action was to be taken in relation to the allegation of misconduct against him and that there was no case to answer. The suspension was not immediately lifted and the Claimant wrote to the Student Adjudication Manager and to Dr Bentley (copied to Mr Rammel) urging the university to lift the suspension. Dr Bentley's reply was that she was liaising directly with Mr McDermott on the next steps for his re-integration into the department.

28. On 21st October 2015 Mr Rammel replied to the Claimant expressing concern about the Claimant's "tone and conduct" around the McDermott matter "as a professor and senior manager". Mr Rammel said he would ask Dr Bentley to speak to the Claimant about that. He also confirmed that it was his decision to continue Mr McDermott's suspension until he engaged with Dr Bentley and said that he did not expect the Claimant to pass any of this onto Mr McDermott.

29. The Claimants reply of the same day to Mr Rammel was to say that Mr McDermott was feeling "vulnerable and targeted". Mr Rammel's reply later the same day said that Mr McDermott was neither of those things although accepted that that may be Mr McDermott's perception and said that he found the Claimant's tone on what had been a difficult matter to not be that which he would expect of a Professor and Senior Manager. He expressed his willingness to discuss the matter with the Claimant if he so wished.

30. On 2nd November 2015 the Claimant received an email from Helen Parbhoo (Head of HR and HR Systems) advising the Claimant that a "serious matter" had been brought to the attention of the University and inviting the Claimant to attend a meeting with Deputy Vice Chancellor Professor Ashraf Jawaid on 3rd November which was then re-scheduled for 5th November. The Claimant was advised that he could bring a Trade Union Representative or work colleague to the meeting.

31. At the meeting on 5th November the Claimant was suspended from work (which he identifies as the second detriment to which he was put as a result of having made protected disclosures). The letter of suspension confirms that the decision to suspend was taken by the Vice Chancellor following the need to investigate allegations that the Claimant had forwarded or sent sensitive and/or confidential correspondence including information regarding the condition of laboratories, criticisms of staff members and other internal communications to post graduate student; in particular that he had forwarded or sent approximately five items of email correspondence between himself and other managers within the faculty including the Dean and Head of Department.

32. On 6th November the Claimant asked for copies of the relevant emails and any other relevant information or documents which had resulted in his being suspended from work. These were not immediately forthcoming. On 9th November the Claimant was advised that an investigatory meeting would take place on 13th November. The Claimant requested a postponement of that meeting because he had not received the relevant emails. They were then provided on 14th November and the investigatory meeting was held on 27th November.

33. The Investigatory Meeting was Chaired by Ms Leighton. The Claimant was accompanied by a Regional Trade Union Representative, Ms Thompson. The meeting was recorded and a transcript of the meeting was made available to the Claimant.

34. Ms Leighton confirmed the purpose of the meeting was to investigate whether there was a disciplinary case to answer, as during an investigation into allegations from students about the safety of laboratories evidence had come to light which suggested that the Claimant might have shared sensitive or confidential information by email relating to the laboratories and other internal communications with a post graduate research student. The Claimant was taken through the emails in chronological order.

35. The first email was dated 24th January 2014 sent by the Claimant to the Head of Department of Sports Science and Physical Activity, Mr Mitchell. The letter raised concerns which the Claimant had regarding the molecular laboratory, including contamination of samples. It then went on to discuss staffing issues. Members of staff were mentioned by name and reference was made regarding potential staff departures, roles, possible recruitment, finance and budgets.

36. One minute after sending that email, the Claimant forwarded it to a post graduate student (Mr McDermott). The Claimant did not deny doing so and said that because he had not marked the email as confidential he did not think it contained any confidential information. His sole purpose in forwarding it to the student was, he said, to protect the University by “holding the student at bay” and show the student that he was trying to resolve the issue.

37. The Claimant said that staffing issues were something which the student either was already aware of or needed to be aware of (although he did not say why).

38. Ms Leighton then took the Claimant to two emails of 31st March 2014 between the Claimant and Bryna Christmas regarding the make up of the Laboratory Committee. The Claimant said that he had not forwarded these emails to any student.

39. The third email group was an exchange on 1st April 2014 between staff members of the Laboratory Committee which had attached to one of the emails a report on Laboratory Standards. The Claimant said that report had been generated by post graduate students. The emails concerned renovations and contained significant complaints by the Claimant of current practices describing them as "abysmal, disrespectful, unsafe, hazardous and unhealthy". The Claimant accepted that he forwarded the email chain in it's entirety to the student, Mr McDermott.

40. The Claimant said that he had assumed that the relevant student would be selected as a member of the Lab Committee which was why he sent the email. In fact the student was not selected as a member of the Lab Committee.

41. Ms Leighton then took the Claimant to emails of 7th April 2014 between himself and Mr Mitchell regarding, amongst other matters, issues relating to Mr McDermott. The Claimant's reply included his assessment of Mr McDermott and how "he perceived problems we believe we face with him pale in comparison to the mess that is the MSC in MOLol/Cell Ex Phys" and saying that was "led by individuals who do not have a foundation in exercise biology and promises training in techniques that we can't, because we do not have the infrastructure in place". That email was forwarded three minutes later to Mr McDermott with the words "Dang why do I constantly deal with this melarkey".

42. The Claimant said that he had forwarded these emails to the student because he was concerned that the student had been singled out by Mr Mitchell and was being victimised, targeted, bullied and harassed.

43. The Claimant was then taken to an email exchange of 13th and 14th May 2015. The Claimant had written to a number of senior members of staff advising that as concerns had been raised he had no choice but to close the molecular laboratory. Ms Christmas invited him to reconsider and proposed a meeting to talk about the decision and the Head of Department Dr Mitchell also asked the Claimant for a "catch up" on the issue and asked if the Claimant had been to look at the issues in the lab. The Claimant replied "It is ridiculous. This should not be minimised, trivialised or rationalised. It is unacceptable.".

44. On 14th May at 13:28 the Claimant wrote to Mr Mitchell in terms critical of another member of staff and he forwarded this to Mr McDermott again, two minutes later, advising that he was doing so as he believed that this was "potentially turning to pointing the finger the wrong way AGAIN".

45. The Claimant justified forwarding this to the student because the student had already raised concerns and repeated that he thought the student was being targeted. He also said that he was trying to prevent the student expressing his concerns externally. When asked how forwarding the emails would assist the situation rather than inflame it the Claimant said that he was the only one "on the student's side" and was trying to protect the University and was not telling the student anything he did not already know.

46. Another email chain of 14th May 2015 was then referred to which again dealt with concerns about the closure of the laboratory. An email from Dr Lee Taylor (Acting Principal Lecturer in Exercise Physiology) expressed concern that the laboratory could be closed on the say so of one email from a post graduate student to which the Claimant advised "DO NOT POINT THE FINGER AT THE WHISTLEBLOWER OR I WILL TAKE IT TO THE NEXT LEVEL …… THE PROBLEM IS ABSOLUTLEY NOT THE WHISTLEBLOWER. IT IS WITH THE LACK OF STANDARDS IN LAB AND THE STAFF WHO SHOULD BE TAKING CARE OF THESE ISSUES".

47. Dr Taylor responded, the Claimant replied again half an hour later forwarded the email exchange to Mr McDermott.

48. The Claimant was asked why, if there had been complaints by a number of students, only Mr McDermott was being given this information to which the Claimant replied that the others were not "his students" and were not being targeted.

49. The final email chain which the Claimant was taken to began with an email sent by Mr McDermott on behalf of three students which subsequently led to the investigation by Professor Domin. The Claimant was asked whether the information he had provided to the student was reflected in that complaint (dated 5th June) to which the Claimant said it was difficult for him to answer as he was not the author of the email.

50. The Claimant recapped on a number of points regarding his motivation in sending emails. He referred to increasing pressure from students, issues to be resolved and the threat of external communication. He referred to the duty of care he had to students, the conditions of the lab and what he said was potentially volatile situation. He said he felt that students were being targeted. He said his motivation was transparency, internal resolution and not to try to give any student an advantage or strategic information they could use against the University.

51. Ms Leighton concluded in the investigation report that six of the seven emails in question had been forwarded by the Claimant to students (as he admitted) but that the Claimant had submitted mitigation in relation to why he had done so. It was her recommendation that the matter should proceed to a disciplinary hearing with respect to conduct which could amount to breach of trust and confidence and conduct which could also be deemed to bring the University into disrepute. Under the Respondent's Disciplinary Policy bringing the University into disrepute is potentially an act of gross misconduct.

52. The Claimant was signed off work by a General Practitioner on 30th November 2015 until 14th December. The Claimant referred to escalating stress associated with the issues set out above and aggravated by the sense of isolation and stigma arising from his suspension.

53. The Claimant made an application for leave over the Christmas period. Sally Bentley, Dean, advised the Claimant that following the conclusion of the investigation – should the recommendation lead to a disciplinary hearing – that hearing would be held on the afternoon 22nd December 2015 (the last working day before Christmas). The Claimant said this essentially denied him his "customary" Christmas holiday arrangements in the USA.

54. The Claimant replied to Dean Bentley on 9th December asking that his suspension be considered by the University's Board of Governors as it had exceeded three week time limit set out in the University own procedures and that his complaints about his treatment should be dealt with as a formal grievance. There has been no reply to that latter request.

55. On 10th December the Claimant received the transcript of the investigatory meeting, the investigatory report was forwarded on the 14th December and on the same day the Claimant was told that a disciplinary hearing was to take place on 22nd December. The letter indicated that one potential outcome of the disciplinary hearing was dismissal for gross misconduct.

56. Because the Claimant's Trade Union Representative was unavailable, the disciplinary hearing was postponed until 22nd January 2016. In the meantime, the Claimant and his representatives attempted to seek confirmation that dismissal was not an appropriate sanction for the alleged misconduct even if it was found to be blameworthy because the possibility of dismissal for gross misconduct was something which the Claimant said he "simply could not ignore" as such dismissal would bring his career to an immediate end as a result of reputational damage to him as a senior academic.

57. The Claimant said he had no confidence that the University would not use an alleged transgression of confidentiality as an excuse to get rid of him which concerns he said were exacerbated by his suspension in circumstances where he considered his presence at work could not have any impact on the investigation which itself had taken a lengthy period of time. The Claimant challenged the idea that suspension was a neutral act because it was noticed and "people assumed the worse". The Claimant considered that even if he had returned to work damage had been done to his reputation and he could not risk further such damage. He said that in the absence of any assurances to the outcome of the disciplinary procedure he intended to resign in the face of the University's "threats" hoping that they would "draw back from the brink".

58. The Respondents replied to the threat of dismissal by identifying that even if the Claimant resigned the disciplinary hearing would still proceed. The Claimant said that made him more convinced than ever that he would be dismissed and replied to say that he was happy to fulfill the requirement to

give notice but as his trust and confidence had been completely undermined he had no confidence that the outcome of the hearing was not pre-determined. He pointed out again that dismissal would be in his view inappropriate and that it would be easy for the University to indicate that, whilst it was considering disciplinary sanctions, dismissal was not one of them. It is noted that all of this took place before the disciplinary hearing had begun.

59. On the day fixed for the disciplinary hearing, 22nd January 2016, the following occurred:

    (1) At 08:16 the Respondent wrote to the Claimant by email stating that it had received a letter from his Solicitor's advising of his intention to resign and reminding him of his obligation to give three months notice which he could request to be waived.
    (2) The Claimant replied at 09:45 saying that he was happy to fulfill the requirement to give notice.
    (3) At 10:08 the Respondent replied saying that if contractual notice was given the disciplinary hearing would proceed that afternoon but if the Claimant resigned with immediate effect it would not proceed.
    (4) At 11:01 the Claimant submitted a letter of resignation giving three months notice of termination of his employment in accordance with his contract of employment.
    (5) At 11:48, notwithstanding the terms of that letter, the Respondent sent a further email asking the Claimant to confirm whether his resignation was requested with immediate effect.
    (6) At 13:02 the Claimant confirmed that he was giving three calendar months notice.
    (7) At 13:54 the Respondent told the Claimant that his resignation had been "accepted".

60. The Claimant did not attend the disciplinary hearing which was held in his absence. On 27th January the Respondent wrote to the Claimant setting out the outcome of the disciplinary hearing which was to issue a written warning under Stage II of the disciplinary process which applies to "more serious acts of misconduct".

61. On 28th January 2016 the Respondent wrote to the Claimant stating that the University had indicated that he would not be required to work his period of notice and that his employment would therefore terminate on 31st January 2016.

62. Against that background the Claimant brings complaints of detriment from making protected disclosures, automatically unfair dismissal and unfair dismissal.

THE ISSUES AND FURTHER SUBMISSIONS

63. A list of issues had been agreed between the parties prior to the commencement of the hearing. In relation to dismissal the issue was stated to be that the Claimant contended that he was "constructively unfairly dismissed, in that his treatment by the Respondents amounted to

fundamental breach of contract, namely the implied term of trust and confidence".

64. During the course of the hearing that was how the issue of unfair dismissal was argued although the Claimant does complain in his tribunal application of the fact that after his resignation the University "issued a counter notice to bring my employment to a premature end thereby dismissing me".

65. The Respondent had denied that the Claimant had been dismissed but did so on the basis that the Claimant's resignation did not amount to a dismissal within the meaning of Section 95(1)(c) of the Employment Rights Act 1996.

66. During the course of Tribunal deliberations the sequence of events as recited above from 22nd to 28th January 2016 concerning the Claimants resignation on notice and the Respondents subsequent shortening of the notice with a payment in lieu was considered by the Tribunal and each party was given an opportunity to comment on whether or not in the circumstances that amounted to a dismissal.

67. Supplementary submissions from the Respondent were that the Claimant had not signified in the list of issues that he had been dismissed other than to rely upon his resignation as an act of constructive dismissal. It was suggested that because the Claimant through his representatives had advised the Tribunal – by reference to the refined list of issues – that any other claim or part of it was withdrawn or not pursued then any complaint relating to actual (as opposed to constructive) dismissal must come to an end following which withdrawal the Tribunal was obliged to issue a judgment dismissing that claim. Accordingly the Respondents admission was that the Claimant had withdrawn his claim to have been actually dismissed, the Tribunal was obliged to therefore issue a judgment dismissing any claim that he had been dismissed, in accordance with Section 95(1)(a) of the Employment Rights Act 1996 and allowing a claim for unfair dismissal on the basis of a dismissal under Section 95(1)(c) to continue.

68. It was further said by the Respondent that a conscious decision had been taken by it's Counsel not to cross examine the Claimant about matters post dating the submission of his resignation (said to have been received with agreement by the Tribunal) and that the issue did not feature in closing submissions advanced by either side. The Respondent said it would considered to be an abuse process if the Claimant was "permitted" to advance submissions based on how the Respondents letter of 28th January fell to be analysed.

69. The Respondent further said that if the foregoing was not correct than the reason for dismissal was some other substantial reason being the Claimant's intimation that he believed he had lost trust and confidence in the Respondent and his refusal to attend a disciplinary hearing. Further it was said that under the terms of the Claimants contract of employment the Respondent had an express right to terminate by means of a payment in lieu of notice and that the Claimant did not seek to appeal against or otherwise complain about the decision to terminate his employment and that the

Claimant himself was not critical (in the Respondents view) of the Respondents actions.

70. With respect to the submissions advanced of behalf of the Claimant they did not advance the argument further other than to say that the Claimant denied there was a contractual right to make a payment in lieu of notice.

71. We have considered the Claimants offer letter and contract of employment which are dated 18th July 2013. The letter and contract is seen to be subject to the current conditions of service for middle managers which was attached to it. The only entry which relates to termination employment (following the introductory period of twelve months when different considerations are said to apply) is as follows:

"You are entitled to give and to receive 3 calendar months notice. Notice should be given in writing."

There is no reference to any right to pay in lieu of any period of notice and the Respondent does not suggest that the Claimant asks to be relieved of his contractual obligation to give notice or accepted an offer to leave on short notice with a payment in lieu.

THE LAW

72. Under Section 43A of the Employment Rights Act 1996 a protected disclosure means a qualifying disclosure as defined in Section 43B which is made by a worker in accordance with any of Sections 43C to H.

73. Under Section 43B a qualifying disclosure means a disclosure of information which in reasonable belief of the worker making the disclosure is made in the public interest and tends to show (inter alia) one or more of the following:

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.

74. Under Section 43C a qualifying disclosure is made in accordance with that section if the worker makes the disclosure to his employer.

75. Under Section 47B a worker has the right not to be subjected to any detriment by any act or deliberate failure to act by employer on the ground that the worker has a protected disclosure.

76. Under Section 94 an employee has the right not be unfairly dismissed.

77. Under Section 95 an employee is dismissed if the contract under which he is employed is terminated by the employer (with or without notice) or if the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employers conduct.

78. Under Section 103A an employee who is dismissed shall be regarded as unfairly dismissed if the reason (or more than one of the principal reasons) for the dismissal is that the employee made a protected disclosure.

CONCLUSIONS

Applying the facts found to the relevant Law we have reached the following conclusions:

79. The Respondent has agreed that the following amount to protected disclosures:

79.1 The Claimants email to Ms Bentley and others dated 14th May 2015 wherein he said (in response to an email from Mr McDermott complaining of issues in the laboratory):

> "Given the email below concerning repeated violations of lab practices that we all agreed upon I am left with no other choice than to shutdown the molecular lab until we can resolve the issues. NO ONE IS ALLOWED TO ENTER THE MOLECULAR LAB UNTIL FURTHER NOTICE!!!!!
>
> If any Regulatory Body from the UK Government would observe the evidence presented in the email below the lab would be shutdown immediately, fines levied and other punitive consequences put in place. I am EXTREMELY disappointed with this situation given the number of times we have raised these issues.
>
> I will contact security to change the codes on the lab doors and ensure only Andrew and myself have the code to get into the labs.
>
> WE HAVE TO DO BETTER!!!!!!!"

79.2 His email to Ms Bentley and Andrew Mitchell of 6th June 2015 headed "wet lab situation" setting out concerns dealing with laboratory safety, a sound environment to conduct scientific research and what is described as the "underlying problem being a reluctance of the existing lab staff to assist in providing such an environment stemming from two major issues, lack of training by the lab staff to provide optimal care and undermining behaviour from the Lead Lab Co-ordinator".

79.3 The Claimants email of 18th June 2015 to Mr Mitchell sent at 05:51 that morning advising Dr Mitchell that despite the fact that the laboratories were closed the Claimant was aware of at least two tests conducted on Monday and Wednesday in the exercise labs. The tests were apparently approved by Warwick Riley, involved blood collection and at least one of the tests was conducted after hours. Warwick is a reference to Mr Davies and the Monday and Wednesday were 15th and 17th June. The Claimant described the decision to allow the tests as being in violation of the law, discriminatory to other students who were told to cancel all tests whilst others had been allowed to test and were

consistent with Mr Davies pattern of behaviour which was not conducive to the development of a safe and sound environment.

79.4 The Claimant's email to Dr Bentley of 8th September 2015 enclosing a report regarding data security breach generated by the Claimant following the discovery of confidential information concerning participants in the University Guided Research Study advising that against current practice information/data was being stored in a locked filing cabinet in a PhD Student Office, the current regulations would not allow for that to occur as all confidential information must be centralised and properly secured and managed by the laboratory staff and identifying that the discovery of confidential data had resulted in a swift decision to secure and centralise potentially sensitive information which should not have been initially stored as it was.

80 The Respondent has admitted that the documents contained disclosures of information, do not take any point as to the reasonableness of the Claimants belief or the public interest test. Thus it is accepted that the documents amount to protected disclosures in accordance with Section 43A of the Employment Rights Act 1996.

81 The issues for the Tribunal to determine in relation to those disclosures, therefore, are whether the Claimant has been subjected to any detriment as a result of his having made such disclosures.

82 The Claimant relies upon four things:

82.1 First, the alleged threatening behaviour of the Vice Chancellor admitting on 7th September 2015. The Claimant in particular complains that he was spoken to as if he were the person having done wrong and committed a crime, was told by the Vice Chancellor that he should not interfere and to "be a team player". He describes it as "disconcerting and intimidating" that at the end of the meeting Mr Rammel refused to shake his hand and that he therefore left the meeting concerned for his job security.

82.1.1 Mr Rammel accepted that there had been legitimate concerns raised about the laboratories and that they were being properly investigated. Mr Rammell's evidence was that he explained that to the Claimant and relayed concerns that the Claimant may have been inappropriately colluding with students and undermining colleagues. Mr Rammel said that he went onto explain that that, if it was the case, was not appropriate and that proper lines of communication should be used to raise any issues. He emphasised the expectation that the Claimant would behave properly and professionally and that it was not expected that a Professor and Senior Manager at the University should be orchestrating student complaints about colleagues.

82.1.2 In oral evidence Mr Rammel indicated that he did not habitually shake hands with people at the end of meetings,

when evidence was not challenged in any way. We are therefore bound to accept that it was not Mr Rammel's normal conduct to shake hands at the end of the meeting. Accordingly his not shaking the Claimants hand was not any detrimental treatment and we cannot understand why the Claimant might consider that a failure to shake hands was indicative of his employment being at risk.

82.1.3 So far as the tone of the meeting is concerned we note that there was no contemporaneous complaint made about it and we accept that whilst the Claimant was told that as a Professor and Senior Manager within the University he should not orchestrate student complaints and should raise matters through accepted and established channels of communication, that of itself did not we find amount in the circumstances to a detriment. It was a reasonable statement of management expectation.

82.1.4 It was not made clear to us the basis upon which Mr Rammel held (or had been told that others held) concerns that the Claimant was operating in concert with or acting to assist students in their criticisms of the University. However, it later transpired the concern of inappropriate collusion with students (to the extent that emails passing between the Claimant and other Senior Members of staff were being shared with students) turned out to be correct.

82.1.5 We do not find that it amounts to a detriment to advise a Senior member of a Management Team to operate within the parameters of established lines of communication, not to act in a way which encourages and assists those with a ground of complaint against the University and to act as a "team player" with other members of the Management Team.

82.1.6 In any event those words used by the Vice Chancellor were not, even if they amounted to a detriment, said because of any disclosure that the Claimant had made to his employer but rather related to a student complaint. The Claimant's suggestion that he was left with the impression (as set out in his Witness Statement) that the University had wanted him to keep quiet about concerns and cover them up was at odds with his own evidence that the Respondent was inviting him to use established lines of communication and not operate outside that.

82.2 The 2nd detriment which the Claimant says he was put to because of having made protected disclosures was the fact of his suspension on 5th November 2015.

82.2.1 The sequence of events around that incident are that the Professor Domin's Report into the complaints submitted by

three students was published on 2nd November 2015 and included the following:

"During the course of this investigation evidence produced by a student [Mr McDermott] were emails sent to him by [the Claimant]. These included the email exchanges between himself and the Head of Department and Executive Dean. Multiple examples demonstrate that discussions concerning laboratory management, staff competence and support for course provision was shared. The University should review this evidence against our code of conduct for employees."

82.2.2 The report is not criticised in anyway by the Claimant.

82.2.3 We are bound to conclude that those words within the report were the reason why the Claimant was suspended and why investigation followed into the Claimant's conduct. There was no issue related to protected disclosures which influenced the outcome of Professor Domin's report. The statement that the University should review the evidence against the Code of Conduct for Employees related solely to the fact that discussions between the Claimant and other senior members of staff regarding matters of potential sensitivity and confidentiality had been shared with students. That has no connection whatsoever with any protected disclosures or other communications between the Claimant and his employer and is entirely based upon the potentially inappropriate communications between the Claimant and students.

82.2.4 The Claimant was suspended on 5th November 2015 and we conclude that the sole reasons for his suspension was the recommendation set out in the Domin Report and to allow an investigation into the matters raised in that report to be carried out.

82.2.5 In any event suspension is, ordinarily, considered to be a neutral act and not a detriment. The Claimant says that in the particular circumstances of his case suspension is not a neutral act as carries stigma and damages his reputation and that the Respondent has failed to show why it was necessary to suspend the Claimant. That is not, however, the appropriate test, which is whether suspension amounted to a detriment and if so was the act of suspension because the Claimant had made protected disclosures.

82.2.6 The Claimant has pointed to a number of flaws (as he sees them) in the way the Disciplinary Policy was followed, including the decision to suspend. These are matters of process and were as follows:

82.2.6.1 The Claimant received an email from Deputy Vice Chancellor Jowaid telling him to come to a meeting on 3rd November because of an unspecified "serious" matter, rather than the normal practice of the Line Manager informing the Claimant of the allegations and arranging for an investigation. We note, however, that the purpose of that meeting was to identify the issues and to suspend the Claimant.

82.2.6.2 Normally the Line Manager would conduct the investigation but it was in this case conducted by Ms Leighton. It has not been explained how any detriment or disadvantage thereby was caused to the Claimant.

82.2.6.3 Under the Respondents Disciplinary Policy it is the Line Manager who should decide whether the issue should be dealt with formally at the end of the investigative process. In this case the Vice Chancellor made that decision (though again the Claimant does not identify how that caused him any disadvantage).

82.2.6.4 The Claimant complains that he was suspended not by his Line Manager but Professor Jowaid who did not give the Claimant the opportunity to make observations on the reason for his suspension nor was he informed of any right to appeal the suspension. We note that there is no right of appeal against suspension (nor is there any obligation to provide the same), but also that the Claimant did not raise a grievance concerning his suspension or any other matter until 9th December 2015.

82.2.6.5 As set out above the Claimant has pointed to a number of occasions when the Respondents disciplinary procedure was not followed to the letter. Mr Rammel considered that it had been complied with "in spirit" but could not explain why the written policy was not complied with fully. However the Claimant has not been able to establish that any of matters which he has raised as being failures to follow the disciplinary policy amounted to a detriment, nor did he rely upon it as a reason for his resignation (which focused upon his lack of confidence in him receiving a fair outcome under the disciplinary hearing and a statement that his trust and confidence in the University had been destroyed).

82.2.6.6 It is the very fact of suspension that the Claimant says was a detriment but we do not find that the Claimant was suspended because he had made protected disclosures. His suspension was, and was only, because of the findings in the Domin report that he had shared emails with students when it was on the face of it potentially inappropriate for him to do so and that that required investigation.

82.2.6.7 Even if, therefore, in this case suspension was not a "neutral act" as the Respondents submit the Claimant was not suspended because of any protected disclosures and further did not rely upon the fact of suspension as being a reason for his resignation.

82.3 The third detriment which the Claimant says he was put to on the ground that he had made a protected disclosure was the fact that he was subjected to a disciplinary process.

82.3.1 Ms Leighton's report 11th December 2015 concluded that on the basis that the Claimant had admitted sharing emails with a student there was a disciplinary case to answer with regard to conduct which could amount to a breach of trust and confidence that the University should have in the Claimant and further that his actions could be deemed to bring the University into disrepute.

82.3.2 It was not put to Ms Leighton that she reached that conclusion in anything other than good faith nor that she was influenced to make that decision because of the disclosures which the Claimant had made.

82.3.3 The Respondent's Counsel has invited us to accept that the emails which were shared with the students contained sensitive information. That is no part of our function. Our function is to determine whether the Claimant was subjected to a detriment because he had made protected disclosures and we conclude that the reason why the Claimant was subjected to the matter which he identifies as a detriment (facing disciplinary action) was because he had shared those emails and that in the reasonable conclusion of Ms Leighton (which was not challenged as anything other than that) this was sufficient to found a potential case of misconduct, potentially gross misconduct amounting to a breach of trust and confidence and potentially bringing the University into disrepute.

82.3.4 It was submitted on behalf of the Respondent that there was no realistic suggestion that Ms Leighton could not or should not have arrived at the findings she did (which we accept)

considering that but also that the University's concerns were amplified by the fact that the Claimant denied any wrong-doing and considered that he was justified in forwarding information to Mr McDermott as part of his academic freedom. The Respondent says, can we accept, that that made it more imperative that the issue should be considered through a formal disciplinary process rather than by any informal resolution.

82.3.5 The reason why the Claimant was subjected to a disciplinary hearing was we find, entirely because of the outcome of Ms Leighton's investigations and her conclusions. That was why the Claimant was subject to disciplinary action. It had no connection with the fact that he had previously made protected disclosures.

82.4 The fourth and final detriment which the Claimant relies upon (prior to resignation/dismissal) is the failure to deal with his grievance. The Claimants grievance complaint was about the length of his suspension and the fact that he had not been notified of any disciplinary hearing as well as saying that he was being bullied and being threatened to return to attend the disciplinary hearing on 22nd December 2015.

82.4.1 The reply from Human Resources on the same day, 9th December, identified that the investigation report was being finalised but the recommendation was that the case should be referred to a formal disciplinary hearing which the University wished to take place as soon as possible to alleviate potential anxiety on the Claimant's part. The date of 22nd December was communicated to him in the event that the investigation outcome deemed disciplinary action to be appropriate and as that had now been confirmed the date of 22nd December was also confirmed. The Claimant had only booked leave on 7th December at which time the disciplinary process was well underway and the University considered it in everyone's interest that the hearing should proceed on the date indicated. The letter confirmed that suspension had been kept under regular review and as the Claimant had now been advised of the investigation outcome and at the hearing his appeal against suspension would not need to be considered. The Claimant was told that he would have the opportunity at the hearing and as part of his response to the investigation report to raise any issues that were relevant to the case.

82.4.2 That response was not challenged by the Claimant and the evidence which the Tribunal received from Sally Bentley was unequivocal. She said that where there was a link between a disciplinary hearing and a grievance the matters would be considered at one hearing. That was not challenged by the Claimant and it has been pointed out by the Respondent's

Counsel, that that approach is in accordance with the ACAS Code of Practice (Paragraph 44).

82.4.3 The Respondent therefore says – and we agree – that part of the basis for the grievance was resolved because the Claimant was being critical of the length of the suspension and his not having been notified of a hearing date, which was addressed by the Human Resources letter. The disciplinary procedure says that suspension continues to operate pending the determination of any appeal, the Respondent agreed to adjourn the hearing from 22nd December thus the reference to being "bullied into" attending that hearing was resolved. The Claimant did not repeat his grievances after that date, did not challenge the response from Human Resources and did not respond to the investigation report in any way. Further had he attended the disciplinary hearing he would have had the opportunity to raise his complaints before the Disciplining Officer. The grievance would have been considered at the same time. However the Claimant resigned rather than attend that disciplinary hearing.

82.4.4 Accordingly the Claimant did not suffer any detriment as a result of making protected disclosures by what he considers to be the failure to address his grievance. To the extent that we have set out above the grievance was addressed. The Claimant had an opportunity thereafter to pursue his points of grievance at the disciplinary hearing but he did not exercise that right. In any event the Claimant has not established that the failure as he sees it to resolve his grievance – even if that were the case – is in any way connected to his having made the protected disclosures upon which he relies.

82.4.5 We are satisfied that the Respondent replied appropriately to the letter of grievance, provided the opportunity for the Claimant to raise his points of grievance at the disciplinary hearing in accordance with it's normal procedure (and in accordance with the ACAS Code of Practice suggesting that both a disciplinary hearing and a grievance hearing could be held together when the points of issue were sufficiently close) and in any event none of the matters about which the Claimant complained in this regard were connected to his having made protected disclosures.

83 We now turn to the question of whether or not the Claimant's resignation amounted to a dismissal in accordance with Section 95(1)(c) of the Employment Rights Act 1996.

84 The Claimant effectively relies on the matters which he identifies as detriment as also amounting to a fundamental breach of the Claimant's Contract of Employment by the Respondent. He also relies upon the fact that he was subject to a disciplinary hearing with a potential outcome of a

finding of gross misconduct amounting to/which could lead to summary dismissal. He said a finding of gross misconduct would effectively terminate his academic career and that for the University to proceed in that way was a breach of trust and confidence because there was no prospect whatsoever of a finding of gross misconduct. It was his submission that the matters in question could not under any circumstance amount to gross misconduct and it was suggested in submissions that the fact that the outcome of the disciplinary hearing conducted by Professor Malcolm was to issue the Claimant with a written warning was a tacit acceptance of that.

85 We have already found that the purported detriments upon which the Claimant relies do not amount to detriment. The comments made by the Vice Chancellor at his meeting with the Claimant on 7th September were appropriate, the decision to suspend the Claimant pending the investigation was not inappropriate (and indeed was not the subject of any appeal or grievance by the Claimant until considerably later in the day). Further the Claimant was properly subject to a disciplinary process bearing in mind his actions in forwarding emails containing what the Investigating Officer considered to be sensitive material and which it was inappropriate for him to forward to students. That was a decision reached in good faith and was reasonable. Finally that to the extent that the Claimant's grievance was not resolved by the letter from Human Resources dated 9th December 2015 the Claimant was able to raise any relevant and pertinent issues (including his points of grievance) at the disciplinary hearing but he failed to avail himself of that opportunity.

86 We are reminded of the following authorities which the Respondent in it's closing submissions brought to our attention:

86.1 Malik v BCCI [1997] IRLR 606 confirming there were established implied terms in all contracts of employment that neither party will without reasonable and proper course act in a way that is calculated or likely to destroy or serious damage the relationship of trust and confidence between employer and employee.

86.2 That a course of conduct or series of acts can be relied upon which cumulatively destroy the implied term of trust and confidence (Lewis v Motorworld Garages Ltd [1985] IRLR 465).

86.3 The threshold to establishing a breach of trust and confidence is not unfairness but a severe one requiring conduct calculated or likely to destroy or seriously damage the employment relationship (Gogay v Hertfordshire County Council [2000] IRLR 703).

86.4 That not every failure to comply with an internal procedure will suffice to constitute a breach of the term (Blackburn v Aldi Stores Ltd [2013] IRLR 846) in which case the Employment Appeal Tribunal said a "failure to adhere to a grievance procedure is capable of amounting to or contributing to such a breach. Whether in any particular case it does so is a matter for the Tribunal to assess. Breaches of grievance procedures come in all shapes and sizes. … there may be a wholesale failure to respond to a grievance. It is not difficult to see that such a

breach may amount to or contribute to a breach of the implied term of trust and confidence."

86.5 The resignation must be in response to the repudiatory breach (Nottingham County Council v Meikel [2004] IRLR 703).

87 Taking account of all of the matters which have been aired before us we do not find that the Claimant was entitled to resign as a result of any fundamental breach of contract by the Respondent nor do we find that his resignation amounted to a dismissal on the basis of his having made protected disclosures.

88 None of the detriments upon which the Claimant relies as flowing from his protected disclosures have been made out. Those parts of his claim are dismissed. In those circumstances, therefore, it cannot be the case that his resignation amounted to a dismissal because of or principally because of his having made protected disclosures.

89 Indeed we have not been able to find that the Claimant has established any link between the matters about which he complains and the admitted protected disclosures. The reason why he was spoken to by the Vice Chancellor as he was (and we have found, reasonably so), the reason why he was suspended, the reason why he was subjected to disciplinary action were all because the University first believed that he was and then established that he was sharing information with students which they considered it was inappropriate for him to share.

90 In relation to the failure to reply to the grievance, we have concluded that it was in part replied to and that the balance of the grievance would be considered if raised at the disciplinary hearing because the two matters would be considered together. It would be wrong for us to leave that matter, however, without commenting on the evidence which we heard from Dr Bentley about this matter. Her view was that the letter from Ms Parbhoo answered the Claimants grievance in full. It clearly did no such thing. It invited, in substantial part, the Claimant to respond to the investigation report and raise any other relevant and pertinent issues relating to the case at the disciplinary hearing. It did not specifically state that the grievance would be considered in that way. For Dr Bentley to say that the answers to the Claimants grievance were somehow "embedded" (which was the word she specifically used) in that answer was an example of her failure to properly address several questions that were put to her which made the Tribunal's considerations rather more difficult then they otherwise have been. There appeared a reluctance to answer a straight question with a straight answer on many occasions and the Tribunal's task in this case would have been made rather easier had that not been the case.

91 We have found that the letter from Ms Parbhoo addressed one part of the Claimant's complaint (the length of his suspension) but the remainder was effectively (and unfortunately not explicitly) reserved to be considered at the same time as the disciplinary hearing. That letter could have been clearer but the matter was no more serious than that.

92 It is also correct that the Respondent failed to fully comply with its own disciplinary process in that decisions were made by or actions were taken by individuals who would not ordinarily take them under the disciplinary process. We do not consider that to be a serious matter which would damage the implied term of trust and confidence. It did not affect the actual sequence of events in any material way and nor was it something about which the Claimant raised any complaint at the time (he did not for example complain that he was suspended by or that the investigation was conducted by someone other than the individual identified by title in the disciplinary process). In the circumstances of this case and having considered the extent to which the disciplinary process was not followed to the letter, we do not find that this was a serious or significant matter and not conduct calculated to or likely to destroy or seriously damage the employment relationship. It was, in any event, not part of the reasons expressed by the Claimant for his resignation at the time.

93 Accordingly we find that there was no series of events which individually or collectively amount to a breach of the fundamental term of trust and confidence in the Claimants contract of employment. None of the Respondent's actions about which complaint was been made amount to conduct that was unfair or unreasonable, let alone of a nature which could be said to be damaging to the implied term of trust and confidence.

94 To address the matter another way, why did the Claimant resign? He resigned because he did not believe that he would receive a fair hearing at the disciplinary meeting on 22nd December 2015. He chose to resign rather than attend that meeting. In fact the meeting still took place during the period of his employment, with the outcome of a written warning, notwithstanding his non-attendance at the hearing.

95 The fact that the Respondent refused to rule out the possibility of a finding of gross misconduct prior to the hearing was in no way a breach of any term of the Claimants contract of employment including the implied term of trust and confidence. We say this because the finding of the investigation report was not in any way criticised by the Claimant. That referred to a breach of trust and confidence and potentially bringing the University into disrepute. The latter of those is specifically stated to be potentially an act of gross misconduct in the Respondent's Disciplinary Procedure. To have then identified, in advance of the hearing and any explanations offered by the Claimant for what he did and any consideration by the Disciplining Officer, that the Claimant's conduct could not amount to an act of gross misconduct might be to tie the hands of the Disciplining Office unnecessarily. The Investigatory Report had properly identified a potential gross misconduct offence and the Respondent cannot be said to have been acting in any way unreasonably (let alone in breach of the fundamental term of contract) by proceeding on the basis of that investigation report and not "ruling out" as the Claimant invited them to do that potential outcome.

96 Accordingly the Claimant resigned when he did simply and solely, we conclude, to avoid having to face a disciplinary hearing. He expressed at the time and during the course of the hearing before us, his concern about reputational damage and we conclude that it was his hope that the

disciplinary hearing (notwithstanding what was said by the Respondent) might not take place in the face of his letter of resignation.

97 For those reasons the Claimant was not automatically unfairly dismissed, nor was he entitled to resign on the 22nd December in circumstances which amounted to a dismissal.

98 The final issue, therefore, is whether the subsequent events amounted to a dismissal and whether that dismissal was unfair within the meaning of the Employment Rights Act 1996.

99 We do not accept that we have no jurisdiction to consider whether the Respondent's letter of 28th January 2016 does or does not amount to a dismissal as the Respondent has suggested.

100 We do not accept that the Claimant had withdrawn any aspect of his claim in this regard and that the Tribunal is therefore obliged to issue a judgment dismissing the Claimant's claim to have been unfairly dismissed by this letter. The Claimant's claim to the Employment Tribunal included a claim that he was unfairly dismissed. In his claim form he sets out the particulars of his claim which include a complaint that the Respondent issued a letter of termination as bringing his employment to what he described as a premature end (i.e. terminated his employment during the period of notice which he had given). The Respondents letter of 28th January 2016 says this:

"Following Professor Malcolm's decision to issue you with a written warning your suspension from work is now lifted. However in light of your decision to resign giving the University 3 months notice as per your contract of employment, the University has decided that you will not be required to work your notice period and your employment will therefore terminate effective from 31st January 2016."

101 It is abundantly clear that that is a letter of dismissal. The Claimant's employment was continuing, his suspension had been lifted, but rather than allow the Claimant to return to work for the balance of his notice period the Respondent dismissed him on 3 days notice with a payment in lieu.

102 There is no contractual provision in either the Claimant's Letter of Appointment or in the Code of Conduct for Middle Managers which is attached to it (which are the only contractual documents which have been put before us) which gives the Respondent the right to terminate an employment and make a payment in lieu of notice. The Respondent had no contractual right to do so and the letter in question terminates the Claimant's employment.

103 It is quite clear that the letter amounts to a dismissal within the meaning of Section 95(1)(a) of the Employment Rights Act 1996 because the letter terminates the contract under which the Claimant was employed (either with or without notice). It terminates it without notice and makes a payment in lieu of notice to rectify the breach of contract by the failure to give notice.

104 It is said on behalf of the Respondent that it had a fair reason for dismissal and relies on "some other substantial reason" in accordance with Section 98(1)(b) of the Employment Rights Act 1996.

105 Indeed in paragraph 47 of the response the Respondent identified that it if is found that the Claimant was constructively dismissed (and we consider that this pleading is as applicable to that circumstance as to the circumstance of an actual dismissal) the Respondent would say that the Claimants dismissal was fair in all the circumstances. Ms Bentley's evidence which the Respondent relies on in support of the suggestion that the Claimant's dismissal was fair for some other substantial reason was this:

"…I was copied into a letter to [the Claimant] confirming that a written warning was the outcome of the disciplinary process … this meant that his suspension from work would be lifted. However in the light of Michael's resignation … and his expressed poor feeling towards the University at the time, it was decided that he would not be required to work his notice and he was paid in lieu of notice instead. I thought he would prefer this to seeing out his notice in the workplace. Michael also received a payment in lieu of accrued but untaken holiday"

106 Given that the outcome of the disciplinary hearing was that the Claimant would receive a written warning and that he could return to work because his suspension was lifted, we do not find that the Respondent had a substantial reason for terminating the Claimant's employment. We do not consider that the fact that an employee has resigned is a substantial reason justifying the termination of his employment in the circumstances of this case.

107 The Respondent could, and should, have discussed the matter with the Claimant and invited him to accept an early termination with a payment in lieu of notice but it did not do so it unilaterally imposed upon him the termination of his employment on the 31st January 2016. That is, clearly, a dismissal and the Respondent had no fair reason for dismissal.

108 For those reasons the Claimant was unfairly dismissed.

THE CONSEQUENCES OF THE CLAIMANT'S DISMISSAL

109 We are concerned, however, to note that the effect of that dismissal was simply to bring the Claimants employment to an end a number of weeks before it would already have ended on the basis of his resignation and as the Claimant was also paid in lieu of a period of notice which extended beyond the date when his resignation would be effective. Accordingly, subject to any submissions or evidence at a remedy hearing it appears that the Claimant has no financial loss as a result of his dismissal.

110 The Claimant is clearly entitled to a basic award for unfair dismissal and a payment to reflect his loss of statutory rights.

111 In the circumstances of this case, therefore, the parties are invited to agree the issue of remedy, if they are able, to avoid the need for a further hearing.

SUMMARY

1 The Claimant was unfairly dismissed.

2 The Claimant's dismissal was not automatically unfair contrary to Section 103A of the Employment Rights Act 1996 and that claim is dismissed.

3 The Claimant was not subject to any detriment for having made protected disclosures and his claim under Section 47B of the Employment Rights Act 1996 is dismissed.

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Employment Judge Ord, Cambridge
Date: 11 May 2017

JUDGMENT SENT TO THE PARTIES ON

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FOR THE SECRETARY TO THE TRIBUNALS

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.