

and difficult to push. So Lawrence would have had to turn round and push the door open. If I pushed Lawrence at that point he would have smacked his face on the door as he's pushing it open. He pushes the door open. I can't walk in after Lawrence, I have to hold the door open otherwise it will close in my face. So I don't understand how, how I could have pushed".

and later on in the transcript:

"Dr Cassaglia – There's no way that I would push someone assaulted someone then think well maybe there's a possibility. Did I brush you know, did I brush past somebody and walked through and maybe not even notice, it possible".

and later on in the transcript:

"Dr Cassaglia – I was in the room talking to Lawrence wasn't a long conversation at all but, minutes estamo hablando theres a time line the log provides a time line for everything pretty much"

and later on in the transcript:

"Dr Cassaglia – No that I started, I said something like what the hell is going on. Why isn't this information being released? I ve spent time with Megan collecting the information. I turn my back walk out and suddenly its not forthcoming".

and later on in the transcript:

"Mr Gil – Did you say to Lawrence at any time "who the fuck do you think you are?"

Dr Cassaglia – I don't talk to people like that. That's not my recollection of what I said to Lawrence at all".

"Mr Gil – Did you swear at any time.

Dr Cassaglia – I could have done but I don't remember specifically and certainly if there was any swearing it wouldn't have been directed at Lawrence and I think and I think that's important in that you know. I guess everyone uses swear words from time to time out of frustration but not insulting language at him no".

and later on in the transcript:

"Dr Cassaglia – No I think it was a backwards and forwards it was, it started off with em what you think you're doing or why would you stop the information given to me, I

can't remember the exact words. And then he says it wasn't me and then I said hang on a minute you know what do you mean it wasn't you. Words to that effect. And then at one point he says to me you can't just come down here and get the information that you need. Which I thought what you mean I am the medical director of course I can. And then he said well I don't go up to your office and get all the information that I want from your office I've got to go through a process and I said that hang on its not the same issue. Which I thought again I couldn't quite understand. And then at that point I tell him that its you know you may have thought that this was Daniel Cassaglia the Paediatrician coming for information. I wasn't I was there in my capacity as a Medical Director so. It's a totally different scenario you know".

and later on in the transcript:

"Dr Cassaglia - I told him, I told him that, I asked him what was going on. Why isn't this information being given to me? I think he then said it wasn't him who had, who had this is interesting because I just assume that it was him. But he denied it straight away"

and later on in the transcript:

"Dr Cassaglia – And I wanted to express my dissatisfaction to him. I assumed he was the one who had put a stop to getting me the information. When he told me that it wasn't him, I thought that, I didn't think that was plausible to be honest. But I continued to make the point that if the Medical director comes down and requests information, there is nobody there that can overrule that request".

and later on in the transcript:

"Dr Cassaglia – I remember Audrey walking in. I remember that she told me that she'd released the information to me."

and later on in the transcript:

"Dr Cassaglia – I didn't open the door, I didn't open the door. Audrey came into the room".

and later on in the transcript:

"Dr Cassaglia – She said right I tell her but I'm telling Lawrence I'm upset with the fact that you stopped me from getting the information. And she says to me no, no it was me

who stopped it. But I still don't understand how that was possible"

and the later in transcript:

"Dr Cassaglia: – I remember then telling her I said I can't believe that this wasn't given to me when I asked for it. And by the way its sensitive information that I want, I don't want this, the name of the patient to be banded around the organisation and I specifically instructed her not to disclose the name of the patient. Because of the sensitivity surrounding the complaint and the fact that the grandmother was a member of staff and I didn't know who in the lab maybe would be friendly with her and repoting back. So I wanted to keep it confidential. That was a direct instruction from me to Audrey".

Mr Gil – In front of Lawrence.

Dr Cassaglia – Si.

Mr Gil – And than what happened you walked away.

Dr Cassaglia – Si"

I note from the above passages that Dr Cassaglia admits to the possibility of swearing although he did not recall doing so. The reference to Dr Cassaglia asking for the information as the MD and not the paediatrician is also worthy of note bearing in mind that the ombudsman's investigation was requiring him to provide a statement with regard to the patient as the paediatrician of the patient and not as MD.

In his evidence to the tribunal Dr Cassaglia made the following statements when referring to what had occurred during the course of his visit to the Histology laboratory:-

"At the time the information that I thought was forthcoming was not forthcoming so I went back down to the lab. My frame of mind when I went down is someone has interfered, someone has stopped this information:-

"I went down because I needed the information. I was clearly not prepared to wait".

"There is a long corridor in the lab. I entered via the chemotherapy side. As I entered towards the end of the corridor I saw Lawrence standing by the entrance to the histology lab with his back to the door holding it slightly ajar with his body talking to Megan Jackie and Mohit who are all huddled in a group".

"Lawrence was under the doorframe. I could see all four of them talking. The distance was about 20 metres. I could see Mr Stagnetto

absolutely. He was at the entrance holding the door slightly open with his body. Maybe his leg behind the door frame. He was half in half out of the doorway with the door slightly ajar”.

“As I approached I asked Lawrence if we could have a chat in the room and as he started to turn round and walk in Mohit and Megan moved to the side and I just walked in behind Lawrence”.

“As far as I recall I did not raise my voice”.

“I accept that maybe my voice may have been slightly raised but it is not my recollection”.

“I did not push Lawrence into the room, not at all. My evidence is that Lawrence turned round and pushed the door open”.

“I can categorically state that I did not push Lawrence there is no question of that”.

“I did not say “who the fuck you are”. I did not say this. I asked him what is going on. And then I said, its difficult to recall exactly, why did you tell Megan not to send the information? He responded something along the lines of it was not him. He went onto say that I can’t come to the lab requesting information whenever I want or something to this effect. He went onto say that I would not like it if he went to my office to collect whatever information he wanted I reminded him that as the medical director I was entitled to have whatever information I required from the lab in the course of my duties”.

“ I could have said” What the hell is going on? It’s possible but its not my recollection”.

“I don’t recall saying you are no one to have any authority over what I am doing. I do not recall waving my finger at him. I use hand gestures when I speak”.

“During this conversation I remember him saying possibly me estas faltando respeto. I am not sure why he said this. When he expressed his dissatisfaction I did apologise to him but I did insist that I needed the information for my investigation”.

“At one point Audrey came into histology. I can’t recall if she opened the door or I saw her through the window and opened the door, one of the two. She came in, I can’t recall if she said que pasa? Her exact words I don’t recall, it was an invitation for me to explain that I had had or was having with Lawrence. I started explaining at which point she said it was me along the lines of I told Megan to wait until I came back and I have told her to send it to you. At this point I was satisfied the information was sent to me and I decided to go back to my office. I did remind Audrey to tell Megan to delete the information or not to discuss this specific case”.

“My anger frustration did not affect my interaction they were feelings at a lower level. I am told that I am getting the information so I am happy and go back to my office to get on with my work”.

“I did not tower over her or shout at her or point the finger at her. This did not happen”.

“I was speaking to Mr Stagnetto in the histology lab in a normal manner, a to and fro conversation”. He felt comfortable enough to challenge me and tell me I couldn’t come to the lab requesting information”.

“In the histology section it took a couple of minutes it was not very long. Audrey then came in. It was even shorter than with Lawrence the conversation with Audrey. I then walked out of the office”.

It is clear from these statements that Dr Cassaglia (a) does not believe he raised his voice to Mr Stagnetto but admits this could have occurred (b) denies categorically pushing Mr Stagnetto (c) denies swearing at Mr Stagnetto (d) accepts that Mr Stagnetto denied having instructed Megan not to send the e-mail (e) denied waving his finger at Mr Stagnetto although he accepts he uses hand gestures whilst speaking (f) admits to having apologised to Mr Stagnetto if Mr Stagnetto felt he had been rude (g) admits that Mrs Smith informed him that it had been her who had stopped Ms Davis from sending the e-mail (h) denied having pointed a finger at or shouting at Mrs Smith.

This then is the entirety of the evidence given by Dr Cassaglia with reference this part of events.

On the one hand, we have the evidence of Messrs Stagnetto, Mahbubani, Davis and Barea to the effect that Dr Cassaglia pushed Mr Stagnetto into the Histology laboratory, and on the other hand, we have Dr Cassaglia stating that he did not push Mr Stagnetto and that to the best of his knowledge and belief he never touched Mr Stagnetto at any time throughout the incident. There seems to be no possibility whatsoever in this case of someone being mistaken or misrepresenting a situation. One side is lying. If its Mr Stagnetto and his witnesses then obviously, as Dr Cassaglia believes, Messrs Stagnetto Mahbubani, Davis and Barea have colluded and concocted a case against him, possibly with the knowledge and help of other members of the department. This is the stark choice that is before me. Both sides positions raise a myriad of questions some of which, and there are many more which I have not lost sight of, are as follows.

Bearing in mind that:-

- (a) the evidence is that Dr Cassaglia’s investigation had nothing directly to do with the department (ie it was not directed against or involved any allegation against any member of the department or the department itself), why would at least four people in the department suddenly collude to try to destroy Dr Cassaglia’s career?

- (b) the evidence is that both Mr Stagnetto and Mr Mahbubani had a cordial relationship with Dr Cassaglia and that Ms Davis and Mrs Barea had never met Dr Cassaglia before this incident, so why would they suddenly, and for no apparent reason, concoct a case of assault against Dr Cassalia?
- (c) there is no evidence to suggest that Mr Stagnetto was involved directly or indirectly in the decision to prevent Ms Davis from sending the e-mail and/or was the person who had instructed Ms Davis not to send the e-mail, why then would Mr Stagnetto wish to concoct an allegation of assault against Dr Cassaglia, especially if one bears in mind Mr Stagnetto's unchallenged ingrained character disposition?

On Dr Cassaglia's side, the following questions, which Dr Cassaglia himself raised before the investigative board, and which I will simply quote from the transcript, arise:-

"Dr Cassaglia – I mean, would he have gone into a room with me if I had pushed him in? Would he not have wanted to walk straight back out again? The witnesses just watched me push him into the room and then they just went about their normal business? Audrey comes back and then what comes and talks to Megan and says send him the information and doesn't say Danny pushed Lawrence into the room aggressively. I mean how does that work? I don't understand the pattern is incongruent, that to me doesn't make sense".

and

"Dr Cassaglia – Did anyone explain why if they thought I had assaulted him, so now you've got three people outside, Lawrence whose been assaulted and pushed into the room. At that point why does nobody call security. Why does nobody worry about whats going on in the room or come in to save Lawrence. Why does Audrey come in and going to the office to look at something on the computer to authorise before coming in, if they are all so worried about what was going on in that room with Lawrence".

These are all good questions from both sides of the divide. I have not found it easy to decide where the answers to all the many questions lie.

Taking all the evidence into account as referred to in the preceding pages, and how the witnesses gave their evidence, and doing the best I can, it is my opinion that events during a period of about five minutes unfolded as follows.

When Dr Cassaglia entered the department through the Blood Production Entrance he was already of the view, wrongly as it turned out, that Mr Stagnetto had prevented his obtaining the Modulab information, which he had instructed Ms Davis to send to him. Dr Cassaglia saw this as just one more example of the Departments obstruction to his authority. He was angry and

frustrated that his instructions were not being followed and intent on ensuring that he made a point as to who was boss. These feelings were further reinforced when he saw Messrs Mahbubani, Davis and Barea outside the Histology laboratory talking to Mr Stagnetto. Dr Cassaglia purposefully strode down the corridor directing himself towards Mr Stagnetto. As Dr Cassaglia approached Mr Stagnetto's location Messrs Mahbubani, Davis and Barea, seeing or sensing Dr Cassaglia was in a far from cordial mood, stepped aside in order to let Dr Cassaglia through. Dr Cassaglia on reaching Mr Stagnetto location simultaneously asked to speak to him in private and pushed Mr Stagnetto on his shoulders with sufficient force to make him go backwards but not to either make his head hit the door behind his body or make Mr Stagnetto stumble backwards into the room. In my view Dr Cassaglia did not intend to assault Mr Stagnetto, although legally it is an assault, but rather to ensure that he got Mr Stagnetto into the room to give him a piece of his mind. This was his sole focus. Once in the room Dr Cassaglia did not scream or shout or insult Mr Stagnetto but he did speak to Mr Stagnetto in a raised and, at times raising voice; he was angry and frustrated. As the door closed Mr Mahbubani, Ms Davis and Mrs Barea sharply decided that their interests lay in quickly leaving the scene and this is what they did. I do not believe that once the door closed they could have heard anything or much of what was said inside the room and that before the door closed all they heard was Dr Cassaglia speaking in a determined raised voice to Mr Stagnetto - as to whether one classifies Dr Cassaglia's voice as having been determined, aggressive, threatening is all very much a matter of personal interpretation shaped by one's perception of how events are unfolding before you. I do not accept that the door was closed before Dr Cassaglia spoke. I do accept that Dr Cassaglia used the word "fuck" but only by way of a question in the course of the conversation with Mr Stagnetto. I do accept that on more than one occasion, basically because Dr Cassaglia believed Mr Stagnetto to be lying, Dr Cassaglia accused Mr Stagnetto of having prevented the sending of the e-mail with the Modulab information and not having the authority to do so. I do believe that each time Mr Stagnetto denied preventing the sending of the e-mail Dr Cassaglia's frustration and anger increased and therefore so did his hand gestures, which could well have included pointing his finger at Mr Stagnetto and invading his personal space. I do accept that Dr Cassaglia did at one stage apologise to Mr Stagnetto but only to the qualified extent of, if Mr Stagnetto believed Dr Cassaglia had been rude to him. I do accept that Mr Stagnetto did stand up for himself and did challenge Dr Cassaglia's authority to obtain information from the department without going through Mr Stagnetto's view of proper channels. I do accept that Mrs Smith opened the door to the laboratory herself and walked in at a time when Dr Cassaglia was speaking to Mr Stagnetto. I also accept that Mrs Smith did inform Dr Cassaglia very shortly after walking into the room that it was her who had prevented Ms Davis from sending the e-mail. I am of the view that even at this stage Dr Cassaglia was not convinced that Mr Stagnetto did not prevent the sending of the e-mail but had no alternative but to grudgingly accept Mrs Smith's statement. I do accept that Dr Cassaglia then directed himself at Mrs Smith and in a raised voice did inform her that she had no authority to question his ability to require and obtain the information he had been seeking. I do accept that at this point Mrs Smith did inform Dr Cassaglia that she was going to authorise the sending of the information (rather than had authorised the release) and that as a result Dr Cassaglia, having made his point, left the laboratory together with Mrs Smith.

I do not accept Dr Cassaglia's view of this incident being a non-event for either Mr Stagnetto or himself. My conclusion that as at this point in time the e-mail from Ms Davis to Dr Cassaglia had not yet been sent means that what occurred inside the Histology office could not have taken more than three or so minutes to run its course if the timeline is correct.

The parties are in agreement that Dr Cassaglia walked out of the Histology laboratory with Mrs Smith and that on doing so a conversation ensued between Dr Cassaglia and Mrs Smith. As to the contents of the conversation there is a dispute, so I now turn to deal with that issue.

In her Witness statement Mrs Smith has the following to say with regard to what occurred in the corridor:-

“Dr Cassaglia and I then left the Histology Section and he cornered me in the corridor telling me to make sure none of the ‘girls in the office’ snoop around and look at these results because it was confidential and part of an investigation. At this stage I told Dr Cassaglia very politely that after 30 years of service, I didn’t need a lecture on data protection and confidentiality and that he had no right to speak to me, or anyone in that manner. He completely ignored me and then stormed off out of the department via the chemotherapy exit. He was like a bull in a china shop”.

It is clear from this that there (i) is no reference to Ms Davis or Mrs Barea being in the corridor (ii) the exchange of conversation was very short (iii) there is no suggestion that the exchange of conversation was other than polite (iv) Mrs Smith is of the view that she was “cornered” in the corridor and (v) Dr Cassaglia stormed off on being replied to.

The above quoted passage from Mrs Smith's witness statement is virtually word for word taken from the e-mail Mrs Smith sent to Dr Menez on the 24th September 2017.

In the course of her investigative board interview of the 16th October 2017, Mrs Smith has the following to say with regard as to what occurred in the corridor:-

“and then we left the department and he cornered me in the corridor. And he told me to make sure that the girls in the office ie Megan or Jackie do not snoop around or you know try to look into you know, asking about the investigation or anything to do with the investigation like that. And I told him that they’ve been working here for thirty years and he didn’t have to give me a lecture on confidentiality and that he had no right to speak to me or anyone in that manner. But it was very, very intimidating and then he left”.

and later on in the transcript:-

“Mr Gil – Did he walk away then.

Mrs Olivares – Inaudible. Then he, he. We both came out of the section and he cornered me.

Mr Gil – What do you mean by cornered?

Mrs Olivares – *Cornered just sort off you know sort off. I don't know how to explain it. Wasn't pushed or anything it's just like you know sort off shoving me in a sort of side like saying you know, like when you go next to a wall you know, just sort off walking closer to the wall yeah. As all the time going back towards the wall and he told me mira ensure that the girls in the office ie Megan and Jackie our two clerks don't snoop around don't look into the investigation and don't you know see things in the computer asking me questions and stuff. I replied I said you know thirty years we know about Data Protection, we know about confidentiality and very politely I told him that he had no right to speak to me or anyone in the department, anyone for that matter in that manner".*

It is clear from the statement in the transcript that (i) there is no reference to Ms Davis or Mrs Barea being in the corridor (ii) the exchange of conversation appears to have been very short (iii) Mrs Smith was of the view she was cornered and felt intimidated but she politely stood up for herself and replied to Dr Cassaglia and (iv) there was no reference to Dr Cassaglia being angry and/or storming off.

In her evidence to the Tribunal Mrs Smith gave the following evidence as to what occurred on her leaving the Histology office:-

" I came out of the Histology Office before Dr Cassaglia. I was heading towards my office".

"Both Dr Cassaglia and I left the Histology office and I told Megan send the results to Dr Cassaglia. Dr Cassaglia was behind me in the corridor just behind".

"I gave the instruction to Megan to send the e-mail to Dr Cassaglia. I gave this instruction to Megan in the corridor. When I gave this instruction Dr Cassaglia was in the corridor".

"When I left the Histology office with Dr Cassaglia both Megan and Jackie were in the corridor/office. I was going back to my office. We were going in the same direction. Dr Cassaglia cornered me and told me to make sure the girls in the office didn't snoop around looking at the data of the investigation as it was a very private confidential thing which was part of the investigation".

I pause here to point out that neither Ms Davis or Mrs Barea at any time state that either one of them or both of them were in the corridor at this time. Their evidence was that they were in the Office at this time. Moreover, Dr Cassaglia does not refer to either of these persons being in the corridor and I find it strange that Dr Cassaglia would have done or said what Mrs Smith alleges (eg cornered her) if either or both these persons had been in the corridor at the time. What is more if Mrs Smith was walking towards her

office then I am surprised that she could have ended up on the opposite wall by the toilet; especially if he was on the outside of Mrs Smith as they walked.

“We were walking out as we were speaking. He said to tell the girls not to snoop around with regard to the data of the investigation. In the manner that he spoke to me at was a bit disconcerting. He told me to make sure that the girls did not snoop around because this was an investigation and this was private and confidential”.

“He was on the outside of me all the time getting closer and closer. It would have been five or six steps that we walked whilst the conversation occurred. When the conversation finished he turned round and went in the opposite direction”.

I pause here to note that by being on the outside of her I take it that Mrs Smith was referring to her left side and, if this is correct, it seems to me unlikely that Mrs Smith could have ended up by the wall in between of the toilets which were in fact on her left side.

“It was in between the two toilets that he cornered me. He got in front of me and I started moving back and back until he had me against the wall between the two toilets”.

“He never touched or swore at me during the conversation in the corridor. He just left after I replied to him that I did not need lessons in confidentiality”.

“We both came of the Histology office, he cornered me, he gave me the instruction about snooping, I replied to that, he then stormed out through the exit by the chemotherapy unit”.

“He ignored me after giving me the instruction about the girls snooping around to which I replied”.

“Dr Cassaglia went in the opposite direction to me”.

“I am 5 ft 1. He is 6 ft 4 in. He is of a large stature. He completely ignored me and stormed away. He left in a very quick manner, moving his arms side to side in a very rushed manner. He was walking away very very quickly”.

It is clear from the above that it is Mrs Smith's position that on leaving the Histology office she exited first and turned right towards the Office and that Dr Cassaglia followed her and manouvered himself in a manner which made her back upto the wall in between the two toilets; which wall was on the opposite side of the Histology office and some paces down from said office. I must admit to being perplexed why in such an open area Dr Cassaglia would have intentionally made such a move when all he needed to do is ask Mrs Smith to stop and then issue his instruction, which after all was an instruction which he was entitled to issue even if it might ruffle the feathers of third parties. Could it be that after what had occurred in the Histology office, which undoubtedly emotionally affected all three parties concerned, Mrs Smith

unconsciously gave what occurred in the corridor a more sinister interpretation than was required and/or was the reality of the situation.

Turning then to the evidence of Dr Cassaglia with regard to this point.

In his undated statement to the investigative board Dr Cassaglia states the following with regard to what occurred in the corridor:-

“After speaking to Audrey, I left the lab and returned to my office, the e-mail from Megan had arrived at 16.15 in my box”.

At this stage at least Dr Cassaglia was either not aware of any allegation concerning and/or did not believe that anything at all had occurred in the corridor. Such a situation continued since in his statement to the investigative board dated the 15th March 2018, Dr Cassaglia makes even less reference to what occurred in the corridor. However, such a scenario would appear not to be the case since during the investigative board hearings Dr Cassaglia stated as follows.

In the course of the investigative board interview of the 6th October 2017, Dr Cassaglia has this to say:-

“Mr Gil – And then what happened you walked away?”

Dr Cassaglia – Si, Lawrence was there, Audrey.

Mr Gil – You walked down the corridor on your own.

Dr Cassaglia – Si I walked back to my office.

Mr Gil – nobody else accompanied you.

Dr Cassaglia – I don't remember. Audrey wouldn't have accompanied me back to my office.

Mr Gil – So you didn't walk down the corridor with Audrey? She said that you did.

Dr Cassaglia – I know I spoke to her maybe I was walking and talking at the same time but I didn't feel accompanied by Audrey. Not that some that I recall.

Mr Gil – Okay. You don't recall, you don't recall.

Dr Cassaglia – She came in we spoke maybe as I walked out she came with me for a few steps as em but then I walked out of the lab back to my office”.

In the course of the investigative board interview of the 20th November 2017, Dr Cassaglia has this to say:-

“Mr Gomez – And at that point Lawrence stays behind and you walk with Audrey?”

Dr Cassaglia – Si I walked out. I can't remember exactly. I remember walking out of the lab maybe talking to her as we were walking down the corridor. But em.

Mr Gil – You don't remember the context of this conversation do you?

Dr Cassaglia – I was quite keen because that's the other thing I didn't want the staff in the department to start talking about the issue that I was investigating. So I told Audrey that I wanted to make absolutely sure that this remained confidential. I was keen for Megan for her to delete her emails to me from her system. I didn't want her to have access to the information that she got from me. Just to keep it as discreet as possible”.

It is apparent from the statements made to the investigative board that (i) Dr Cassaglia did not at that time have a good recollection as to what occurred in the corridor with Mrs Smith (ii) Dr Cassaglia makes no reference to Mrs Smith making any comment to him in reply to anything he may have said to her and (iii) the conversation he had with Mrs Smith centered around Dr Cassaglia being keen for certain staff not to pry into the information he had examined.

In his evidence to this Tribunal Dr Cassaglia gave the following evidence with regard as to what occurred outside the Histology office:-

“I opened the door and she went out and I followed. We walked together a few paces and then I went back to my office. I went straight up to my office”.

“I walked with Audrey just a few paces. When I came out I turned left. I am clear in my mind. I was going to my office. I knew the information had been sent or was to be sent”.

“We were talking as we left. I was telling her or asking her as I have said before”.

“The interaction with Audrey was calm and normal. The interaction occurred outside the room when we walked a few paces. I was going to my office. Audrey walked with me a few paces. She stopped and I carried on”.

“The discussion with Audrey was a passing comment and a reminder to make sure that the case was not discussed. It was not a reminder to Audrey. I had told Megan to delete prior to this”.

“I did not walk out of the office to the right and corner Audrey by the toilets. This did not happen. My recollection is that the discussion was cordial. I left via the chemistry side. I did not see what Audrey did. I just walked out of the lab”.

It is clear from the above that in so far as Dr Cassaglia is concerned he did not corner Mrs Smith and the little conversation that occurred was cordial and of little consequence. Moreover, it seems clear from this that Dr Cassaglia turned left on coming out of the Histology office and Mrs Smith walked with him a few paces towards the Blood Production Entrance. Bearing in mind what had occurred in the Histology office seconds before I find it peculiar that Mrs Smith, who exited the office first would have turned left and not right and/or would have wanted to walk with Dr Cassaglia; there was no reason for her to do so and the context of the conversation was such that it was Dr Cassaglia who wanted to speak to Mrs Smith and not vice versa.

Taking all the evidence into account as referred to above, and how the witnesses gave their evidence, and after examining the plan of the Department and doing the best I can, it is my opinion that events unfolded as follows upon Mrs Smith leaving the histology office.

I accept Mrs Smith left the Histology Office first and turned left heading in the direction of the Office. I do not accept that either Ms Davis or Mrs Barea were in the corridor when Mrs Smith left the Histology office. I do not accept that Mrs Smith instructed Ms Davis to send the e-mail to Dr Cassaglia whilst in the corridor. I do not accept that on leaving the office Dr Cassaglia turned right, he turned left and caught up with Mrs Smith straight away and moved in front of her making her step sideways/backwards. I do not accept that five or six paces (especially with Dr Cassaglia's gait) were walked before the incident occurred as this would put them past the toilets. I do not accept that Dr Cassaglia "cornered" her in the sense of making it impossible or difficult to escape; I take account of the difference in individual statures when saying this. The word has an unpleasant ring to it and I do not believe that Dr Cassaglia had any intention other than that of reminding Mrs Smith to ensure that neither Mrs Barea nor Ms Davis gossiped about the investigation. I do accept that in the light of what had occurred in the Histology office seconds earlier Mrs Smith interpreted Dr Cassaglia moving in front of her as an act of "cornering her", a word she used because she had no other way of describing what had occurred. I do accept that once Dr Cassaglia had reminded Mrs Smith to tell the girls in the Office not to gossip Mrs Smith stood up for herself and pointed out to Dr Cassaglia that she was well aware of her responsibilities of confidentiality. I do accept that Dr Cassaglia may not have taken kindly to Mrs Smith's retort, turned round and left. I am also of the opinion that when Dr Cassaglia turned round and left Mrs Smith immediately went to the office and instructed Megan to send the e-mail, an e-mail that arrived before Dr Cassaglia had returned to his office.

Bearing in mind the factual conclusions that I have arrived at I now turn to apply them to the matters that I have to decide on with regard to each of the two claims before me.

Case N° 42 of 2017

As I stated at the beginning of this judgement the Claimant in this case has to prove on a balance of probabilities that:-

- (i) there was conduct that amounted to bullying; and

- (ii) the bullying caused the Claimant to be alarmed, distressed, humiliated or intimidated.

If so proved, the Respondent has the burden of proving that it has an adequate explanation or justification under section 4(3) of the Bullying Act.

Dealing first with the issue of whether there was conduct that amounted to bullying. I have, as stated above, concluded that Dr Cassaglia (i) pushed Mr Stagnetto on both shoulders (ii) spoke to Mr Stagnetto in a raised and raising voice whilst gestulating with his hands (iii) wrongfully accused Mr Stagnetto using inappropriate language on more than one occasion of preventing the release of the Modulab information and (iv) was angry and frustrated at the time. This all occurred in one continuing incident spanning a few minutes in time. So is this conduct that can amount to bullying under section 4 of the Bullying Act?

As stated earlier on in the judgement I am of the opinion that an isolated incident of misconduct, if sufficiently serious in nature, can amount to bullying for the purposes of section 4(i) of the Bullying Act. So are the above stated actions of Dr Cassaglia viewed together and subjectively sufficiently serious to amount to a one off incident of bullying. In my opinion they do. This being the case, am I satisfied that Mr Stagnetto was any one or more of being alarmed, distressed, humiliated or intimidated by Dr Cassaglia's conduct?.

The Respondent has made no admissions as to whether or not Mr Stagnetto underwent any of those emotions at the time in question and neither did it cross examine Mr Stagnetto on the matter; it has simply left it to Mr Stagnetto to satisfy me on the issue. Having said this, Dr Cassaglia has argued that Mr Stagnetto could not have been alarmed or distressed etc since he (Mr Stagnetto) stood up for himself and argued back in the course of the interchange in the Histology office. Whilst I accept that it is a point to take into account when determining the issue, I do not accept that simply because one stands up for themselves that it necessarily means that the person concerned is not distressed, alarmed etc. The two things do not necessarily go together. I have taken into account Mr Stagnetto's statements to the investigative board and the evidence in his witness statement, as well as the fact that he raised his grievance with the union straight away, as well as the manner Mr Stagnetto gave his evidence, and the evidence of Ms Davis who saw Mr Stagnetto as she left the office that day, and have come to the conclusion that Mr Stagnetto was indeed alarmed and, especially, distressed by the incident.

The above being the case, the final question for me to decide, as the Respondent does not rely on the defence afforded by section 6(5) of the Bullying Act, is whether Dr Cassaglia's conduct amounted to reasonable action taken by an employer relating to the management and direction of employees. In my opinion it was not a reasonable action at all at so many different levels.

In the circumstances of all the above, I find that the complaint of bullying presented by Mr Stagnetto under section 8 of the Bullying Act is well founded.

I have stated above what a claimant has to prove on a balance of probabilities so I will not repeat it here again.

Dealing with the issue of whether there was conduct that amounted to bullying, it is Mrs Smith's case that Dr Cassaglia whilst in the Histology office shouted/screamed aggressively at her whilst pointing his finger at her face and invading her personal space; this allegation is based entirely on Mrs Smith's evidence. However, as I stated above, I am of the opinion that where and to the extent that there is discrepancy between the versions of events given by Mr Stagnetto and Mrs Smith it is Mr Stagnetto's version that should be followed. In other words, I have not found that Dr Cassaglia pointed, repeatedly or otherwise, his finger at Mrs Smith or invaded her personal space. Moreover, I have not found that Dr Cassaglia "cornered" Mrs Smith in the corridor. I have found that Dr Cassaglia did in a raised voice accuse Mrs Smith of being no one to stop his request for Modulab information and of informing her to tell the office staff not to, basically gossip about the investigation. This being the case, and even assuming that Dr Cassaglia may have repeated the accusation more than once and/or used an aggressive voice when doing so and/or made Mrs Smith feel hemmed in, does it amount to bullying conduct"? The essence of the complaint here is that Dr Cassaglia used a raised, or even an aggressive voice whilst verbally pointing out, as he was entitled to do, his opinion that Mrs Smith did not have the authority to stop his request; this over a period of less than a minute. In my opinion such behaviour would have to be brought within the ambit of the example set out in section 4(2)(a) in order to be conduct that amounts to bullying. This being the case the behaviour has to be "persistent". Even if Mrs Smith may have considered what occurred in the Histology office and/or in the corridor to be offensive, intimidating or insulting the fact remains that at the end of the day it was a one off incident and, in my opinion, not an incident sufficiently serious when viewed subjectively as to bring it within the ambit of a one off act of bullying. In the circumstances, there is no need for me to consider further any of the other limbs. I find Mrs Smith's bullying complaint not to well founded and I dismiss the complaint.

Conclusion

I find, as stated above that Mr Stagnetto's complaint of bullying is well founded. Consequently pursuant to section 9 of the Bullying Act I have to consider which of the orders prescribed by that section I consider is just and equitable to award. Before doing so, I will hear counsel for the parties on this particular issue at a management conference to be held on such a date as the secretary to the Tribunal will now set.

Dated this 23 day of August 2019


Joseph Nuñez
Chairman