



DECISION

Fair Work Act 2009

s.789FC - Application for an order to stop bullying

Dr Veronica Hampson

(SO2021/15)

COMMISSIONER SIMPSON

BRISBANE, 22 APRIL 2022

Application for an FWC order to stop bullying - Application dismissed

[1] On 18 November 2021, Dr Veronica Hampson (**Dr Hampson / the Applicant**) made an application pursuant to s.789FC of the *Fair Work Act 2009* (**the Act**) to the Fair Work Commission (**the Commission**) for an order to stop bullying. The Applicant's employer was, at the relevant times and continues to be, the University of Southern Queensland (**the University / the Employer**) and the person named in the application is Professor Jeffery Soar (**Professor Soar / the Person Named**).

[2] The matter was allocated to me on 1 December 2021, and I listed the matter for a Directions Hearing on 16 December 2021. The matter was set for a substantive hearing on 14 and 15 March 2022 in person in Brisbane. At hearing, the Applicant was represented by Mr Travis O'Brien of counsel instructed by Mr Justin Peñafiel of Shine Lawyers. The Person Named and the Employer were represented by Mr James Ford of counsel, instructed by Ms Leanne Dearlove of Colin Biggers & Paisley.

[3] Dr Hampson alleges that Professor Soar has bullied her during her employment at the University. The Person Named has formally been Dr Hampson's supervisor since at least 19 March 2020.

BACKGROUND

[4] The Applicant is engaged by the Employer as an Accounting Lecturer at the Springfield Campus from 18 January 2013. She is classified as an Academic Level B within the meaning of clause 21.4 of the *University of Southern Queensland Enterprise Agreement 2018-2021* (**the Agreement**). Professor Soar, being the Applicant's supervisor since 19 March 2020, is the Chair of Human-Centred Technology. The Applicant noted this is a different discipline to her own.

[5] During the time in which the Applicant was supervised by Professor Soar, the Applicant alleges that she has been subject to bullying from Professor Soar, namely:

- Professor Soar has repeatedly attempted to coerce the Applicant to research output requirements that are unreasonable in that they exceed what is required of the Applicant under the Agreement and the *Workload Policies*.
- Professor Soar has set unreasonable research expectations on two grounds:
 - failing to recognise existing research activities, including Award-winning publications that comprise, if not exceed, twenty percent of the workers' workload as required under the policy and Agreement; and
 - being reluctant, if not declining, to recognise specific research activities for reasons including, but not limited to, the research papers not being uploaded to a certain electronic database or being published in a journal with a specific rank, in spite of these requirements not being in the policy or Agreement.
- Professor Soar has repeatedly attempted to coerce the Applicant to meet unreasonable work expectations by appropriating her students' work as her own research by publishing under each of their names, which a reasonable lay person may reasonably regard or apprehend to be plagiarism of a student's work.
- Professor Soar directed the Applicant to teach five semesters in the first semester of the 2021 academic year, despite the Applicant's usual and reasonable teaching workload being one to two classes per semester, and despite the Applicant supervising five higher degree research (**HDR**) students when she usually supervises one to two. This resulted in the Applicant performing 190.5 hours more than what the Agreement and policies requires of the Applicant to do in the 2021 academic year.
- Professor Soar delayed approving arrangements for the Applicant to work from home despite these arrangements being reasonable adjustments for the Applicant's mobility impairment.
- Professor Soar unnecessarily directed the Applicant to apply for paid leave despite attending a planning workshop with the Applicant, and despite the Applicant having received written permission to complete working hours on the day that she had to attend a morning medical appointment.

[6] The Employer submitted that the Applicant has made numerous complaints including complaints to:

- the University;
- the Queensland Ombudsman; and
- the Queensland Industrial Relations Commission (the **QIRC**).

[7] The Employer submitted that they have responded to each complaint/concern raised by the Applicant, and each complaint raised through the Ombudsman and the QIRC. After receiving a response from the University, the Queensland Ombudsman determined that further investigation was unjustifiable in accordance with the *Ombudsman Act 2001* (Qld).

[8] Shortly after the Applicant was provided with the outcome from the Queensland Ombudsman, the Applicant unilaterally discontinued her complaint of discrimination to the QIRC.

[9] The University observed that when the Applicant has not agreed with the outcome/decision made by the University, despite being provided with an explanation for the decisions, the Applicant has continued to agitate the issues to try to achieve a different outcome.

[10] As far as the University is concerned, all of the Applicant's concerns and complaints have been addressed.

ORDERS SOUGHT

[11] The Applicant seeks the following Orders, as set out in the Form F72 Application:

1. An Order that the employer replace Professor Soar with a new supervisor as agreed by the Applicant;
2. An Order that the employer take reasonable steps not to disparage the Applicant, including, but not limited to, directing its workers not to disparage the Applicant where it is reasonably required;
3. An Order that Professor Soar not disparage the Applicant; and
4. An Order that Professor Soar be removed from the Review Process.

EVIDENCE AND SUBMISSIONS

[12] The Applicant provided submissions and a witness statement in this matter. The University also provided submissions and witness evidence of the following people:

- Mr Brandon Geoffrey Punch;
- Dr Fiona Frances Russo;
- Dr Gregory Evans Jones;
- Ms Noeline Dawn Atterbury; and
- Professor Soar.

[13] Professor Marie Helen Kavanagh (**Professor Kavanagh**) also provided a witness statement and gave evidence as a Commission Ordered Witness.

[14] After the evidence had concluded, during closing submissions Mr O'Brien submitted on behalf of the Applicant that the Applicant only continued to press the five issues summarised below for the purpose of seeking orders, resulting in some of the alleged bullying allegations described above no longer requiring consideration as part of this decision.

[15] The Applicant submitted that I only needed to turn my mind to the following:

- The meeting held at Orion Shopping Centre in January 2021;
- The meeting on 20 April 2021;
- The meeting on 8 July 2021;
- The refusal to take into account work towards the ethics approval, concerning the Applicant's appraisal regarding research target; and
- Professor Soar's response to the Working from Home (WFH) email dated 4 March 2022.

Meeting in January 2021 at Orion Shopping Centre

[16] The Applicant alleged that in discussing how she could meet the workload requirements of "sufficient quality research outputs", Professor Soar said words to the effect that she should adopt her students' work as her own to satisfy the research targets (**Plagiarism Direction**).

[17] In particular, the Applicant refers to a meeting held in early January 2021, where Professor Soar organised to meet with Dr Hampson at the Orion Shopping Centre located near the Springfield Campus.

[18] During the meeting, the Applicant recounted a number of concerning comments by Professor Soar, particularly the following:

- suggesting that it was acceptable for the Applicant's research be used by another person and that plagiarism was the sincerest form of flattery.
- indicating that the Applicant needed to publish more articles to meet newly established School research output metrics. He suggested that a quick way to do this was to take the Applicant's student literature review and construct it into a paper. Once complete, the Applicant could then obtain the student's consent to submit and publish the work. The Applicant indicated to Professor Soar that she did not agree with this practice as it was unethical.
- offering the Applicant a gift card and indicating that this was an incentive to follow his advice. The Applicant advised she could not accept the card, and Professor Soar suggested that if she were not going to use it, she could give it to one of her students.

[19] In response, Professor Soar advised that the Applicant had previously informed him that she has a research project that she was working on with Professor Kavanagh that requires her to gather data from both teaching semesters for a particular course, namely ACC3118 – Audit. Professor Soar explained that there are two staff who teach this course, and in fairness to each, he allocates one semester to each of them to teach. Dr Hampson is only teaching one of the semesters and another employee, Dr Lynette Daff, taught the other semester. According to Professor Soar, Dr Hampson had repeatedly expressed her dissatisfaction in relation to this and repeatedly asked to teach both semesters. Professor Soar advised that the Applicant had previously raised to him that she was having difficulty obtaining data from Dr Daff for her project. It is Professor Soar's view that as Dr Daff has no obligation to participate in the project, he would not intervene, and it was up to Dr Hampson to approach Dr Daff if she wanted access to her students for data.

[20] In early January 2021, Professor Soar advised he ran into Dr Hampson and Professor Kavanagh at the University's Springfield campus. He invited them to lunch at the Orion Shopping Centre. At lunch, Dr Hampson began talking about the research project and access to data, saying words to the effect of "Lyn still won't give me the data so I don't know what I'm supposed to do." Professor Soar stated he encouraged the Applicant to make peace with Dr Daff. He recalled saying words to the effect, "If you want Lynn to allow you to use her data, you will have to make peace with her". Professor Soar then provided the Applicant a gift card in which he recently received from the University as a reward for his research. He suggested to the Applicant that she uses it to buy Dr Daff flowers or chocolates as a sign of goodwill before requesting to use her students' data. Professor Soar advised that he does not know the value of the gift card but presumed it would cover the cost of chocolates. He said that Dr Hampson responded, words to the effect, "If I did buy her chocolates, I would poison them". Professor Soar did not take this comment seriously.

[21] Professor Soar denied that he suggested to the Applicant to take her students work or use the gift card as a bribe to obtain her students' work. He further refuted that he encouraged or told the Applicant to do anything which is unethical or illegal. He denied saying, words to the effect, "Plagiarism is one of the best forms of flattery". He did not have any other gift cards in his wallet and claimed that the only reason he had the gift card was because it was given to him by the Employer for his research. Rather, Professor Soar advised he had repeatedly asked the Applicant, and other staff, to work with their HDR candidates to produce Q1 journal papers and this was mentioned several times in his Enrich assessments for Dr Hampson for 2019 and 2020. He noted that this allegation was investigated by the Research Integrity and Ethics' Acting division, in which the Deputy Vice-Chancellor reviewed and determined Professor Soar had not breached the Research Code of Conduct.

[22] The Applicant further advised that her first Enrich meeting occurred on 14 January 2021 where they discussed her Q1/2 publications in 2019. She explained that 2020 Enrich placed a lot of attention on HDR student publications and to publish their literature review. She advised that students with publications have a better chance of transferring from Masters to PhD. Professor Soar encouraged the Applicant to push her students to do publications, and that getting HDR students to publish gives her the runs on the board. The Applicant alleged that Professor Soar told her to "grab their literature... wouldn't be much work for you... and bobs your uncle." The Applicant said she questioned this by asking whether it should be the students who did this. Professor Soar then allegedly suggested that she could do it for them, in which the Applicant questioned whether this was ethical. The Applicant advised that Professor Soar suggested that she could do it for them and could ask the students after she did it. He said that they would be happy to get a publication and who would say no. The Applicant advised that without any discussion, Professor Soar placed her on a Performance Improvement Plan in relation to her research performance in 2020.

[23] Professor Soar advised that at the meeting held on 14 January 2021, he discussed how she could achieve more publications. He advised he said to the Applicant words to the effect of:

"But then again, you've got her material. You've got her writing, you've got her thesis. And the easiest paper to get out is that literature review. You can pull out that chapter.

It might need a bit of trimming, and it may or may not need some rectifying to conform. ...then sent it off to a journal.”

[24] Professor Soar advised that the Applicant asked whether “she” should do that, or whether he was saying that the Applicant should. Professor Soar stated that he replied, “I can’t see why you wouldn’t be able to do that. Especially if she’s not well”. According to Professor Soar, the Applicant responded as follows, words to the effect:

“Well see that’s what I did with one, um, that was published in 2019, you know. It was a literature review and I did most of, with the student, I kept pushing the student on the literature review. And then I moved on from being his supervisor. I moved on from that, you know. But I did that with Selim in his literature review.”

[25] Professor Soar explained that it was common practice for students to work with their supervisor to jointly publish papers with them. The suggestion he made to Dr Hampson is, in Professor Soar’s view, in line with the Authorship Procedure and are on the basis that the University recognises authorship in circumstances where there has been significant intellectual or scholarly contribution to a research output. Professor Soar denied that at any time he suggested to Dr Hampson to publish any of her students work without the student being a co-author with Dr Hampson.

Meeting on 20 April 2021

[26] Dr Hampson advised she attended a meeting with Professor Soar and Mr Rob Rule of the National Tertiary Education Union (**Mr Rule**), who attended as the Applicant’s support person, on 20 April 2021. At this meeting, the Performance Improvement Plan (PIP) was discussed.

[27] The Applicant noted that during the meeting, Professor Soar repeated some of the advice given at previous meetings, insisting that she publish her HDR student’s literature review in which she maintained was not in line with the University’s Research Code of Conduct. In a Transcript of the meeting provided by the Applicant, it is noted that Professor Soar advised:

“...So, I would have thought it research would be an easy one for you to get runs on the board because you are doing a great job in supervising HDR candidates through to completion. And I know John feels very strong on this, that publications are an important part of research. That’s how we disseminate the results, out there or the findings out there, both in terms for the research community but also the community generally. That’s how we benefit the community from the results of research activity, which fundamentally at least for the domestic students the community paying for it.

...

So publications are a win, win, win all around. There a win for a student even if, even if they are not necessarily following an academic career. They are a win for the academic and they are a win for the university and they are a win for the community. And, in, to getting at least one paper is not that difficult ahh in terms of the literature review, because the literature review chapter from those peoples thesis is ready, ready to fly.

Often it's, often it is a bit big for a journal paper and you might need a bit of editing. But then again editing is much easier, as you know, than creating content from the beginning. A bit of editing a bit of tweaking to get a literature review into a template for the journal and bob's your uncle."

[28] In response, the Applicant acknowledged that they had talked about this before, and Professor Soar suggested that she gets the literature journal from a student and then for her to massage it into being ready for a journal publication and then ask the student if it was okay. Professor Soar then corrected her, stating, "no you can flag it with [the student], it's probably good to flag it with [the student] at the beginning". Professor Soar asked whether the Applicant was okay with that, in which she advised:

"...I kind of find it that there is a power imbalance. Between, like I said before a power imbalance between [the student] and me, umm with me being his supervisor and if I go and grab his literature and massage it. And whether I ask him before or after, he is going to say yes isn't he, because I am his supervisor. So I've, I've just got a problem with that approach. I, I think it is fine with the students that have graduated. Umm I've already had discussions with those. One student has her thesis in embargo for a year, so we have a bit of a wait there, the other one already has about 3 papers underway. So I had two graduates this year, that, at the last graduation, one just has to wait for a year because she was an insider researcher, but the other one, that's got the PHD has 3 papers underway already. So I think that is pretty exciting. But all my other students are at the COC stage."

[29] Professor Soar suggested that she look at the thesis that is in embargo and see whether there is any sensitivity to the literature review. In response, the Applicant advised that she will talk to the student but she is uncomfortable taking their literature review and doing the work for them. She expressed she had a problem with that. However, Professor Soar continued stating that the literature review is already done and not much work would be required on it to get it into the format of a journal paper. When the Applicant asked, "wouldn't the student do that", Professor Soar replied:

"Well, either or. I mean it's a win, win, win all around. You would be doing them a service. If you can share the work between you. And say, hey, look this is great work now I would like to move this forward to get it published into a journal. I would imagine as you suggest that it would be unusual for a student to say no I don't want to do that. Umm because you're doing, everyone wins. Because you've already got the material there, the material is just sitting there going to waste, unless someone picks it up and sends it off to a journal."

[30] Professor Soar continued to suggest that the Applicant enquire about the literature component, stating that it would be a waste of an opportunity. He acknowledged there being a mistake on the PIP in relation to her not having enough publications since 2005. The Applicant advised that if this was a mistake, then she wanted her Enrich from 2020 to be adjusted.

Meeting on 8 July 2021

[31] Dr Hampson advised she attended a meeting with Professor Soar, Mr Rule and Ms Dianne Wooley of the Employer's Human Resources department (**Ms Wooley**) on 8 July 2021.

[32] In the transcript of the meeting, Professor Soar advised he had gone back and made comments in the Enrich. After Mr Rule sought clarification on this, Professor Soar explained that the Applicant had asked for more details of each item which he had. The Applicant denied this stating she challenged the fact that her summary did not match, and that he had not provided any comments. She did not seek more comments and rather, asked for the process of the Enrich to be reviewed. Professor Soar stated at the meeting that he had reviewed the process. The Applicant advised Professor Soar that he could not place her on a PIP without discussing it with her. She further claimed she had not seen the extended version of the Performance Improvement Plan and therefore challenges it.

[33] The meeting proceeded with discussing the Enrich. In relation to discussing the ROD, Professor Soar advised that:

“...my recommended approach to addressing is to work, with your HDR candidates to get publications out the door and I think it's a service that we need to offer to our candidates; it's a service to yourself and it's a service to the university. It's great that you're getting HDR completions but it's not good for them and too good for the community. Remember, someone is paying for their, their studies. If they're on a research training program, then taxpayers are paying for that. If they're on a scholarship then somebody has given them that and it's normally research that, that have publications; publications are the currency of research. That's how we disseminate research to other researchers and to the world. At the moment, your HDR candidates are completing but they're not getting publications out of their, their research. It's a very... it's probably the easiest way for you to start getting runs on this board.”

[34] In response to this, the Applicant advised as follows:

“Jeff, I thought we'd discussed that at length at... in a previous meeting with the two completions. One student has a couple in draft. Mind you, they're no longer students; they're out in the big, wide world so, you know, it's a bit they are completions. So, one student – a past student with a couple of papers in draft and as I said to you the other completion, her work is embargoed. Now, all my other HDRs are yet to do their confirmation of candidature, so I'm not sure how I can possibly get a publication out of those students if they haven't completed their candidature confirmation.”

[35] The Applicant explained at the meeting that one of the HDR completions is embargoed as she is an insider researcher, and that she needed her job. When Professor Soars asked what about her literature review, the Applicant stated that her entire thesis is embargoed by her employer.

[36] Professor Soar advised that during this meeting, it was agreed that Dr Hampson would provide details of how she believes she satisfactorily met the research outputs for 2020. Despite this agreement, Professor Soar maintained Dr Hampson has not provided anything for Professor Soar to consider.

The refusal to take into account work towards the ethics approval concerning the Applicant's appraisal regarding research target

[37] On 15 February 2021, the Applicant sent Professor Soar an email with the subject title, "Lodgement of Grievance". The email is extracted as follows:

"Dear Jeff

I lodge with you, as my Supervisor, a formal grievance against Lynn Daff on the basis of her unwillingness to discuss ACC3118 course related issues with me. Following your advice, I have made several attempts to meet with her, without success. I am of the view that Lynn's refusal to enter into discussions with me has an unreasonable negative impact on my ability to undertake my research duties in accordance with the Approved Ethics Approval and hence will impact on my career. Consequently, as my Supervisor, I request that you facilitate this discussion.

In accordance with USQ procedure I wish that this facilitation occur as expeditiously as possible. Given Marie Kavanagh's involvement in this research, I request that she also attend this facilitation meeting. I advise that I will request support from the NTEU in participating this discussion."

[38] Professor Soar replied to this on same day seeking various documents from Dr Hampson to help better the research project. Dr Hampson responded stating that the only document she thought was relevant was the Ethics Approval document which she had already attached. Following this, there were various emails exchanged back and forth, with Professor Soar sending the following on 18 February:

"Hi Marie and Bonnie,

I have no interest in replicating the research, it is not my field, I have more than enough of my own research. I am trying to help you guys obtain the data you require so I would be grateful if you would provide the documents listed in the ethics application; would be good to see the conference paper you presented also.

Cheers
Jeffrey"

[39] Professor Soar stated that he wanted to understand the project in more depth so asked Dr Hampson to provide the objective, research questions, variables and methods. He stated that Professor Kavanagh emailed alleging that Professor Soar wanted the information to enable him to conduct similar research. Professor Soar found this allegation to be absurd. Further Professor Soar's evidence was that he did not want to replicate the research. Rather, he wanted to understand the project so that he could try and find ways that Dr Hampson and Professor Kavanagh could access the data they desired. Professor Soar's evidence was that he was interested in being supportive and exploring ways of obtaining the desired data from the semester taught by Dr Daff.

WFH Request

[40] On 12 January 2021, Professor Soar advised that he received an email from the Applicant making a request to work from home from 12 January 2021 to 11 January 2026, a period of five years. Professor Soar wrote back to the Applicant in an email relating to her request to work remotely. The email is extracted below:

“Hi Bonnie,

I appreciate you have health issues but I’m not in a position to approve Working From Home until 2026. I’m happy to approve WFH until orientation week at the start of semester 1 if you would like to revise and resubmit please.

I will refer this to Noeline and her colleagues for advice on the requirements of s65 (1A) (c) and (d) of Fair Work Act 2009.

Cheers

Jeffrey”

[41] Professor Soar explained that Ms Atterbury is the University’s Rehabilitation Officer, and he knew that she had dealt with Dr Hampson extensively regarding her medical conditions and working from home requests. That same day, Professor Soar advised he received a response from the Applicant in which stated as follows:

“Hi Jeff

I am happy to change it to a period of 12 months, despite my medical practitioner advising that my condition is permanent and irreversible.

To refuse a reasonable work arrangement in accordance with the Fair Work Act, would probably be unwise. I doubt that approximately a month arrangement would be deemed reasonable. I assume that Noeline Attebury might wish to become involved.

I think it might have been a better option for you to seek advice on the provisions of the FWA before you made a decision on what you consider to be a reasonable workplace adjustment.

I’ll resubmit my application. However, I will submit it to cover a period of one year rather than 2026. This enables us to re-confirm in 2022 that I continue to suffer a physical disability. I will do this tomorrow.

Regards
Bonnie”

CONSIDERATION

[42] In order to make final orders in an anti-bullying application, there are two requirements under s.789FF(1)(b) of the Act. The Commission must first find that Dr Hampson has been bullied at work by an individual or a group of individuals. Secondly, the Commission must find that there is a risk that Dr Hampson will continue to be bullied at work by the individual or group concerned. Once these two requirements have been satisfied, s.789FF confers on the Commission a broad, discretionary power to make any order it considers appropriate (other than an order requiring payment of a pecuniary amount) to prevent an employee from being bullied at work.

[43] In the decision of *Amie Mac v Bank of Queensland Limited and Others*,¹ the Commission found that some of the features which might be expected to be found in a course of repeated unreasonable behaviour constituting bullying at work were:

“...intimidation, coercion, threats, humiliation, shouting, sarcasm, victimisation, terrorising, singling-out, malicious pranks, physical abuse, verbal abuse, emotional abuse, belittling, bad faith, harassment, conspiracy to harm, ganging-up, isolation, freezing-out, ostracism, innuendo, rumour-mongering, disrespect, mobbing, mocking, victim-blaming and discrimination.”²

[44] The Applicant further noted that unreasonable work expectations can also be considered as bullying behaviour.³ They submitted that unreasonable behaviour is behaviour that a reasonable person, having regard to the circumstances, may see as unreasonable. This is an objective test.⁴

[45] In *Edwards v E S Trading Co (Discounts) Pty Ltd (t/as E & S Kitchen, Bathroom Laundry)*,⁵ an employee’s genuinely held belief that she was being bullied at work was insufficient to enliven the Commission’s jurisdiction. The conduct must not only be perceived as being bullying, but that belief “must be reasonable in the sense that it is able to be supported or justified on an objective basis.”

[46] In *Re MS SB*, Commissioner Hampton noted that:

“Determining whether management action is reasonable requires an objective assessment of the action in the context of the circumstances and knowledge of those involved at the time. Without limiting that assessment, the considerations might include:

- the circumstances that led to and created the need for the management action to be taken;
- the circumstances while the management action was being taken; and
- the consequences that flowed from the management action.”⁶

[47] The Commissioner also relevantly stated:

“The test is whether the management action was reasonable, not whether it could have been undertaken in a manner that was ‘more reasonable’ or ‘more acceptable’. In general terms this is likely to mean that:

- management actions do not need to be perfect or ideal to be considered reasonable;
- a course of action may still be ‘reasonable action’ even if particular steps are not;
- to be considered reasonable, the action must also be lawful and not be ‘irrational, absurd or ridiculous’;
- any ‘unreasonableness’ must arise from the actual management action in question, rather than the applicant’s perception of it; and
- consideration may be given as to whether the management action involved a significant departure from established policies or procedures, and if so, whether the departure was reasonable in the circumstances.”⁷

[48] Commissioner Williams said the following in an anti-bullying decision involving *Jennifer Watts*:⁸

“[140] It is to be remembered that the legislative scheme is not directed at punishing those who may have behaved unreasonably in the past nor is it to compensate someone who has endured such bullying instead it is directed at preventing [the person] from being bullied at work in the future.”

[49] The Applicant had made earlier complaints about others matters prior to the making of this application directed at Professor Soar that appear to indicate that Dr Hampson has demonstrated a tendency to make allegations of this nature readily when others might not arrive at a similar conclusion concerning the earlier allegations. It is my impression having considered the evidence overall that it appears Dr Hampson tends to overreact and to assume the worst of others as was submitted against her. One such example is the previous complaint about a former student where the information provided would tend to indicate the particular students’ actions were not unreasonable as alleged by the Applicant.

[50] The Applicant also made a series of other allegations that she had been submitting amounted to bullying but as already stated above made a decision to no longer press those allegations after the completion of the evidence, so it is unnecessary to deal with those allegations any further.

The meeting held at Orion Shopping Centre in January 2021;

[51] It is submitted for the Applicant that the evidence of Professor Kavanagh in relation to Professor Soar’s alleged statement to the effect that plagiarism is a form of flattery supported the Applicant’s case. Professor Soar denied using the words attributed to him. I found Professor Soar to be a credible witness who was clear and direct in the course of his evidence.

[52] Professor Soar, as the Applicant’s supervisor, is a well credentialled and well published academic. Having considered the evidence overall I prefer the evidence of Professor Soar over the disputed evidence over what specifically was said at the lunch time meeting. I find it

implausible that Professor Soar would have attempted to pressure the Applicant to engage in unethical conduct as alleged, or conduct that would fall within the meaning of bullying. I do not accept that Professor Soar used language to the effect as put by Professor Kavanagh and the Applicant. However even if he did make the comment concerning plagiarism as alleged, in the full context of the evidence it would not have been for the purpose as alleged, and would not have amounted to bullying on the part of Professor Soar. As and in my assessment of the evidence, what he was proposing appears to be a not uncommon academic practice, and he was not proposing that the Applicant plagiarise students' work.

[53] It appears from the evidence that it is common for students to work with their supervisor to jointly publish papers, which may involve the academic using their knowledge and experience to take the work of a student and make intellectual or scholarly contributions to the work through amendments and adjustments to develop it to a quality that can be published. The allegation made against Professor Soar has been the subject of an earlier investigation by the University that found no inconsistency with the University's Code of Conduct.

[54] I am inclined to agree with Professor Soar's view that what he was proposing was in line with the Authorship Procedure and on the basis that the University recognises authorship in circumstances where there has been significant intellectual or scholarly contribution to a research output. On the basis of the evidence, I am not satisfied that Professor Soar was suggesting to Dr Hampson that she should publish any of her students' work without the student being a co-author with Dr Hampson, or that he was suggesting Dr Hampson place inappropriate pressure on students.

[55] The transcript documents which appear to be a record of a series of conversations do not support the Applicant's case that Professor Soar was engaging in such conduct.

[56] Similarly, I am also not inclined to accept that the evidence concerning Professor Soar offering a gift card that he had previously been given as amounting to conduct that could be indicative of bullying on his part.

The meetings on 20 April and 8 July 2021;

[57] The Applicant's concern regarding the discussions in January, 20 April and 8 July was in essence that Professor Soar was proposing that she adopt students work as her own and she was being pressured by him to adopt this course. The Applicant submits that it doesn't matter if Professor Soar himself held a subjective belief that the steps he was proposing the Applicant should take were ethical or otherwise, because he knew that the Applicant was not comfortable with what he was proposing at those times.

[58] I do not accept that by Professor Soar revisiting the issue again after initially raising it amounted to Professor Soar repeatedly behaving unreasonably toward the Applicant. I have already expressed the view that I am not satisfied that the conduct of Professor Soar in proposing that the Applicant discuss with higher degree students about working with them on their research to achieve joint publication was unethical. The evidence supports the conclusion that what Professor Soar was proposing fell within university policy. The evidence of Professor Soar was clear that he would regard it as unethical if an academic sought to publish work

without the agreement of a student. Professor Soar expressed the opinion that an approach in this regard should be flagged with the student in the beginning.

[59] The evidence indicates Professor Soar was emphasising the benefits to be achieved for the student, the university and the academic in publishing academic work and this was the basis on which he was raising it again. The evidence does not support a conclusion that Professor Soar was seeking to direct the Applicant to do what he was proposing, and it appears to be more a case of giving advice to the Applicant about achieving research targets.

The refusal to take into account work towards the ethics approval, concerning the Applicant's appraisal regarding research target

[60] There was considerable evidence about the Enrich review process. The evidence indicates that the Applicant was given a number of opportunities to provide evidence of her output in regard to the ethics approval. The evidence does not support a conclusion that Professor Soar's conduct was unreasonable in regard to this issue.

[61] I am satisfied from the evidence that Professor Soar was trying to understand the project in more depth so asked Dr Hampson to provide more information. I accept his evidence that he wanted to understand the project so that he could try and find ways that Dr Hampson and Professor Kavanagh could access the data they desired.

Professor Soar's response to the Working from Home (WFH) email dated 4 March 2022.

[62] It was submitted for the Applicant that Professor Soar was asked whether it was immoral to allow an employee's performance to interfere with a decision in relation to a need to work from home because of a disability and he accepted that. It was submitted that Professor Soar allowed this performance issue to interfere with his decision in relation to this issue in the context of a contested performance review.

[63] It is true that the Applicant had made an earlier application for approval to work from home for a period of 5 years however later withdrew this request and made a more modified application. The Applicant made seven requests to work from home and they were all approved with the exception of the request for approval for a period of five years.

[64] The advice Professor Soar received was that the Applicant was fit to attend work. The arrangement still provided for the Applicant to work from home for two days a week. I have read the email of 4 March and having considered its content, I do not find in the context of the facts including the medical assessment that the email amounts to bullying.

CONCLUSION

[65] As I have not found that the Person Named has bullied Dr Hampson, it is not necessary to determine if there is a risk that Dr Hampson will continue to be bullied at work by the individual.

[66] Due to not being satisfied that Dr Hampson was bullied at work, as alleged, there is no power to make the orders sought, and the application is dismissed.



COMMISSIONER

Appearances:

Mr T. O'Brien of Counsel instructed by Mr J. Peñafiel of Shine Lawyers, for the Applicant.

Mr J. Ford of Counsel, instructed by Ms L. Dearlove of Colin Biggers & Paisley, for the Employer and Person Named.

Hearing details:

2022.

Brisbane

14 & 15 March.

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¹ [2015] FWC 774.

² Ibid at [99].

³ See *Naidu v Group 4 Securitas Pty Ltd* (2005) NSWSC 618.

⁴ *Re MS SB* [2014] FWC 2104 at [41].

⁵ [2016] FWC 8223 at [61].

⁶ [2014] FWC 2104 at [49].

⁷ Ibid at [51]

⁸ [2018] FWC 1455.