IN THE STATE COURTS OF THE REPUBLIC OF SINGAPORE

[2026] SGECT 7

Employment Claims Tribunals – Claim No 10033 of 2026

Between

JIW

… *Claimant*

And

JIX

… *Respondent*

GROUNDS OF DECISION

[Employment Law — Dismissal without just cause or excuse — Poor performance — Probationer assessed to be unsuitable for confirmation]
[Employment Law — Dismissal without just cause or excuse — Discrimination]

Version No 1: 28 Jul 2026 (09:00 hrs)

JIW
v
JIX

[2026] SGECT 7

Employment Claims Tribunals – Claim No 10033 of 2026
Tribunal Magistrate Joel Tan
13 May 2026, 10 June 2026, 28 July 2026

28 July 2026

Tribunal Magistrate Joel Tan:

Introduction

1 The claimant in the present case commenced this action under s 14(2) of the Employment Act 1968 (the "EA"), alleging that she was dismissed by the respondent without just cause or excuse.

Background

2 Briefly the facts are these. On 21 April 2025, the claimant was employed by the respondent as a regional internal control audit manager, subject to a probationary period of six months. On 16 October 2025, shortly before the expiry of that period, she was informed that her performance had not met the standards required for confirmation and was given two weeks' written notice of termination. Her last day of employment was 31 October 2025.

Parties' positions

3 The claimant advanced her case on three grounds.

4 The first concerned the grounds which had been given for her dismissal. She contended that the respondent's allegations of poor performance had not been substantiated, and that the probation evaluation process had in any event been procedurally deficient: she received no prior verbal or written performance warnings, no probation review with her reporting supervisor ("RS") was held, and no extension was discussed.

5 She said that she was informed of the dissatisfaction with her performance only on 16 October 2025, when she read for the first time the comments, ratings, and scores that RS had recorded in the evaluation form. She submitted that the evaluation was unfair because the expectations against which she was assessed had never been communicated to her, and the concerns RS had formed about her work had never been raised with her in a manner that gave her any meaningful opportunity to address or improve upon them.

6 The second ground was closely related to the first. The claimant contended that her dismissal was materially connected to her inability to read, speak, write, or understand Korean. Although English was the working language and no Korean language proficiency was stipulated as a requirement of her role, she said that key work-related discussions and decision-making among senior colleagues—including RS, the financial controller ("FC"), and the chief financial officer—were frequently conducted in Korean, from which she was necessarily excluded.

7 In this regard, she suspected that performance expectations and priorities were shaped during those discussions in ways she could not access, understand,

or respond to. Her case was that this affected the reliability and fairness of the performance assessment, because expectations formed outside her participation were then used against her without ever having been clearly articulated to her.

8 The third ground was that her dismissal constituted retaliatory action for what she termed as “whistleblowing”. Between August and early September 2025, the claimant said that she raised concerns in good faith with the chief financial officer of a related company and the head of shared services (“HSS”) regarding a proposed restructuring of the regional Internal Control over Financial Reporting (“ICFR”) function. The proposal was for regional headquarters ICFR functions to report directly to headquarters rather than through regional finance—the very function whose work ICFR is required to audit. The claimant considered this arrangement to create a self-review threat inconsistent with audit principles and raised her concerns accordingly.

9 She also raised with HSS that audit functions ought to be led by personnel with audit qualifications and experience—a standard she met but RS did not. Those discussions led to a possible proposal, developed with headquarters ICFR personnel and other regional counterparts, to restructure the regional ICFR function into an audit shared services team reporting directly to headquarters. She suspected that her dismissal was connected to her participation in those discussions.

10 The respondent’s position was that the dismissal was based solely on performance, as documented in the probation evaluation form, and that the evaluation reflected clear and pre-set targets and goals that had been duly communicated to the claimant.

11 The respondent denied that language played any part in the dismissal, and denied any knowledge of the claimant's whistleblowing activities at the time the decision to dismiss had been made.

My decision

12 I address the grounds in turn, beginning with the performance ground, which formed the respondent's stated basis for dismissal and was the subject of the most substantial dispute between the parties.

Poor performance

13 The case advanced by the respondent was that its decision to dismiss the claimant was grounded upon its assessment that the claimant had performed poorly and was, on that account, neither competent nor suitable for confirmation as a regular employee. The burden of establishing that allegation of poor performance rested with the respondent under s 27(2)(b) of the Employment Claims Act 2016.

14 To that end, the respondent pointed to its probation management process as the foundation for its assessment. That process disclosed, from the outset of the claimant's employment, two requirements which she had to meet in order to pass probation: an overall score of at least 80% for her agreed performance goals, and an average rating of at least 3 out of 5 across 10 functional competencies. These two requirements constituted what may be termed "suitability standards"—the threshold below which the respondent would regard a probationer as not competent or suitable to be confirmed for regular employment.

15 It was not disputed that the claimant was aware of these suitability standards. Nor was it disputed that the respondent assessed her as having failed to meet either threshold. She had attained an overall score of 71% against the 80% requirement, and an average competency rating of 2.4 out of 5—which was then rounded down to 2—against the required 3.

16 I accept that employers should be afforded the latitude to reasonably calibrate the suitability standard that each position in the organisation requires. Different organisations may legitimately set different bars for the same notional role, and the tribunal should not sit as a superior manager, ready to second-guess every such determination. Where an employer can demonstrate that an employee fell below a reasonably calibrated suitability standard, that would, in principle, constitute just cause or excuse for dismissal in most cases.

17 The dispute in the present case was narrower. The respondent's suitability standards had been expressed as aggregate thresholds derived from the scores and ratings assigned to the claimant across her performance goals and functional competencies. The claimant did not challenge the thresholds themselves. What she challenged was whether the individual scores and ratings that produced her aggregate result were justified—that is, whether the shortcomings the respondent identified in respect of each goal and competency were proven, and whether they were assessed against standards that were sufficiently clear and communicated.

The functional competencies

18 The claimant had received an average competency rating of 2.4 out of 5 because RS had assigned her a rating of 2—a below-average rating—across 6 of the 10 competencies. It should be observed that had any one of those 6 competencies been rated 3 instead of 2, the claimant's average would have been

2.5, which under the respondent's appraisal process would have been rounded up to a passing rating of 3. The entire case on competencies therefore rested on whether all six ratings of 2 were justified.

19 The performance standards applicable to each of the 6 contested competencies—collaboration, driving force, business acumen, work standards, decision-making, and global perspective—had been set out in the probation evaluation form. They were all qualitative in nature. Take driving force as an illustration. The form stated that the employee was required to demonstrate personal leadership in ensuring assigned projects and tasks were successful, and to identify areas of resistance and risk while establishing plans and contingencies to keep major initiatives on track.

20 But what would "personal leadership" look like in practice for an auditor three months into her first role? At what point would a failure to "establish contingencies" become a competency deficiency rather than a probationer's unfamiliarity and inexperience as she adjusts to a new working environment? The form did not say. These descriptors were capable of a wide range of interpretations depending on who was doing the interpreting and against what baseline. They were not naturally capable of objective measurement.

21 That vagueness would not necessarily be fatal to the respondent's case. It would appear that the respondent's probation management process anticipated it, and therefore required the reporting supervisor to meet the probationer within the first week of employment to discuss both the performance goals and the competencies, giving the supervisor the opportunity to explain clearly what each competency meant and what a passing rating required.

22 In addition, periodic documented reviews were to follow throughout the probation period, allowing the supervisor to give the probationer an ongoing assessment of how she was performing against each competency and what she would need to do to achieve a rating of 3 or above. Those reviews would have served a dual function: they would have given the claimant clear and sufficient notice of the standards against which she was being assessed, and they would have given RS's final ratings the specific and documented foundation that the qualitative descriptors, by themselves, lack.

23 But RS acknowledged, candidly, that she did none of this. She did not, at the start of the claimant's employment, explain what she was looking for in respect of each competency or how she would be rating the claimant's performance against them. Nor did she conduct any of the periodic, documented reviews the process required. The claimant was accordingly left to navigate a set of qualitative descriptors without any guidance as to how they would be applied to her work in practice, or what she would need to demonstrate to achieve a passing rating. As a probationer, the claimant would naturally be unfamiliar with the respondent's specific methods, priorities, and ways of working. She could not be expected to intuit what each competency required in the context of the particular position she occupied. The responsibility for making those standards clear fell on RS, but I was not satisfied on the evidence that RS discharged it.

24 The ratings themselves demonstrated this. The probation evaluation form provided a dedicated column for RS to record her justification for each rating. Every entry in that column was left blank. The only justifications offered were given orally at the hearing. In my judgment, they did not withstand scrutiny.

25 On collaboration, RS said the claimant "could have a bit of difficulties in teamwork… and also to collaborate to work together, and especially in some of the communication… with the team leaders or the team members." On driving force, she said that the claimant "might not be that passionate" about non-ICFR related tasks, and that she "[did] not see like a lot of value added kind of jobs that ha[d] been done." On business acumen, the claimant was said to have been inattentive when RS tried to explain the business and operations of the respondent. On work standards, RS said there was "a gap" between her expectations and the claimant's performance. On decision-making, she said the claimant "could be more proactive to make more decision" for tasks unrelated to ICFR. On global perspective, RS said the claimant was uninterested in how the company was doing.

26 These impressions, taken together, revealed a supervisor who had formed a view of the claimant—that she lacked passion, initiative, and engagement—but who did not explain the standard against which that view was formed, or demonstrate that the claimant had been measured against it in any principled way.

27 None of this is to say that the claimant had no areas for improvement. But identifiable shortcomings are not the same as proven failures against a defined standard. The existence of shortcomings may be sufficient to justify assigning a rating of 3 rather than 4 or 5. But where a reporting supervisor assigns a rating below 3—a rating that places the probationer's continued employment at risk—it is not sufficient to point to impressions of inadequacy without articulating the standard required to achieve a passing rating and demonstrating that the employee was measured against it.

28 Put another way, the ratings produced by this process were, in substance, RS's impressions dressed up as a suitability review. I was therefore not satisfied that the respondent had proven, on the balance of probabilities, that the claimant's performance across the 6 contested competencies justified a rating of 2 rather than 3. Since the respondent's own suitability standard required the claimant to attain an average competency rating of at least 3, and since that average was depressed below 3 by ratings I was not satisfied were justified, the competency limb of the respondent's case fails.

The performance goals

29 Related issues arose in respect of the performance goals. The same process that required periodic documented reviews for the competencies imposed an identical obligation for the performance goals. Again, RS did not discharge it. The claimant received her first set of formal feedback on her performance goals on 16 October 2025—the very day she was informed that she had failed her probation and was given two weeks' notice.

30 The five performance goals established at the start of the claimant's employment, with their respective weightages, were as follows:

Performance goal	Description	Weightage (%)
ICFR – Manage ICR for region	To perform 1H & 2H TOE for all subsidiaries within dateline (In-scope & out scope)	50%
Financial Health Check	Completion of FHC	20%
HQ or Mgmt adhoc	HQ Audit, RM, ICFR related adhoc checking	10%
Training	Conduct training to employees on HQ Audit, RM, ICFR etc	10%
ARAP Recon	Completion of Quarterly recon	10%

31 RS assigned each goal a score out of 100; the weighted scores were then aggregated to produce the final achievement score of 71%. The claimant's breakdown was as follows:

Performance goal	Weightage (%)	Score	Weighted Score	Remark
ICFR – Manage ICR for region	50%	75%	38%	Completed but fail to comply request reporting format within timeline
Financial Health Check	20%	75%	15%	Report was completed, but there was a lack of thorough follow-up
HQ or Mgmt adhoc	20%	60%	12%	Primarily only focused on addressing requests related to ICFR, with limited scope in other areas
Training	10%	60%	6%	Limited individual contribution or value add to provide training materials to improve on subsidiaries quality
ARAP Recon	0%	0%	0%	Not done, covered by other employee. Removed from evaluation

32 It should be observed at the outset that RS's final assessment removed the fifth goal (ARAP Recon) from the evaluation on the basis that the task had been reassigned to another employee. The 10% weightage originally assigned to this goal was transferred to the third goal by RS unilaterally, and without any discussion with the claimant. That transfer effectively doubled the significance of a goal for which the claimant received one of her lowest scores. I return to this point below.

(1) The first goal: The ICFR audit reports

33 The first goal required the claimant to complete ICFR audit testing and remediation for approximately 13 subsidiaries under the respondent's regional headquarters umbrella. It was assigned the highest weightage of 50%, reflecting its centrality to the claimant's role and the fact that she was the sole person within the respondent's organisation carrying out this specialised function. RS assigned a score of 75%, deducting 25 points on the basis that the reporting had been completed but the claimant had "fail[ed] to comply [with the] request[ed] reporting format within [the] requested timeline".

34 RS's evidence focused exclusively on the second round of ICFR reporting, which commenced in August 2025 with a headquarters-imposed deadline of 12 September 2025. Her contentions were threefold: that the claimant failed to meet this deadline, with final completion achieved only on 25 September; that the claimant failed to provide interim reports on potential issues despite being requested to do so, which in turn contributed to the deadline breach; and that the claimant failed to adhere to the prescribed reporting format.

(A) THE DEADLINE

35 It was not in dispute that the claimant submitted a draft report on 12 September. RS's position, however, was that the submission was incomplete because it contained outstanding controls without a definitive "pass" or "fail" outcome, pending further clarification or rectification by the relevant subsidiaries. The claimant disputed this, pointing out that only 4 of 406 controls tested remained pending clarification. She explained that marking those controls as failed before subsidiaries had been given the opportunity to respond would have been professionally inappropriate. According to the claimant, ICFR testing is designed to assess internal control effectiveness, not to penalise subsidiaries

for documentation preparation. Her audit working paper, submitted alongside the draft report, documented the status of every control in detail.

36 RS maintained that headquarters had made clear from the outset that any outstanding controls were to be classified as control failures, and that this had been communicated to all parties before testing commenced. She also contended that the claimant had failed to follow up sufficiently with subsidiaries on outstanding matters, which itself contributed to the deadline not being fully met.

37 I was not persuaded that the claimant failed to complete the second round of ICFR reporting by the deadline. The respondent's case rested on the submission that the draft report was incomplete because certain controls remained pending clarification. But if, on RS's own evidence, headquarters had communicated that outstanding controls were to be treated as failures, then whether the claimant characterised those controls as pending clarification or marked them as failed was an editorial distinction—one that RS could have resolved by a simple instruction to the claimant. The respondent therefore did not establish that the report was substantively incomplete as at the deadline date.

38 As to whether closer follow-up by the claimant could have ensured no controls remained outstanding by the deadline, the respondent produced no evidence that the delays were attributable to the claimant's conduct rather than the inherent difficulties of an offsite audit involving overseas auditees whose cooperation lay beyond her control. The emails in evidence showed that the claimant had regularly followed up with subsidiaries.

39 Therefore, I found that the respondent had not proven that the claimant failed to meet the deadline for the second round of ICFR reporting.

(B) INTERIM REPORTING

40 The claimant had been requested by RS to provide interim reporting of potential issues. However, she replied on 21 August 2025 that it was premature to flag issues while the audit was ongoing, explaining at the hearing that doing so would be unfair to auditees who had not yet had the opportunity to respond to her queries or provide additional documentation.

41 I accepted that the claimant's explanation was a reasonable one rooted in her audit professional judgment. That said, it was RS's prerogative as supervisor to insist on compliance notwithstanding the claimant's reservations, and RS did precisely that. By a subsequent email dated 27 August 2025, she requested that the claimant provide interim reporting by 29 August 2025. The claimant maintained her position and did not comply. To that extent, I accepted that there was deficiency in the claimant's performance in respect of this particular request.

42 That said, the failure to provide interim reporting did not have any material consequence on the completion of the goal. In particular, RS's argument that interim reporting would have accelerated completion by the deadline was not persuasive. I accepted the claimant's evidence that RS and FC had been kept informed of the audit's progress through regular status reports and were in a position to intervene with subsidiary chief financial officers had they chosen to do so.

(C) FORMATTING

43 Finally, on the question of formatting, RS pointed to an email dated 26 September 2025 expressing frustration that "format / font / aesthetic are important". According to RS, even though the claimant had been provided with

a template with the correct formatting, her deliverables consistently had formatting issues requiring RS to personally rectify these issues. In response, the claimant said she had used the template provided and had not been told by RS what specifically was wrong.

44 The respondent produced no evidence of the nature or extent of the formatting deficiencies alleged, such as annotated documents, before-and-after comparisons, or specific examples. In the absence of such evidence, I found that the respondent had not established that any formatting deficiency existed of a nature or extent that would justify treating it as a performance shortcoming, let alone one warranting a deduction.

(D) Conclusion on the First Goal

45 In summary, on the deadline and formatting issues, I found that the respondent did not prove the deficiencies it alleged. On the interim reporting issue, I accepted that a deficiency existed—the claimant did not comply with a direct request from RS, and that non-compliance was not justified merely because of her professional reservations.

46 But a proven deficiency does not automatically constitute a proven basis for the 25-point deduction applied. The respondent could not establish that the interim reporting failure had any material consequence for the audit's completion, nor did it establish that RS had communicated to the claimant that compliance with such requests would carry sufficient weight to contribute to a deduction of 25 points from the most heavily weighted goal in the evaluation. For these reasons, I found that the respondent could not justify the 25-point deduction from the first goal, and that deduction could not in turn justify the respondent's assessment of the claimant's unsuitability for confirmation.

47 It should be observed that at no point in her evidence did RS criticise the substantive quality of the claimant's audit work, which is arguably the core of what this goal required. The ICFR testing was by any measure a substantial undertaking, requiring the claimant to examine thousands of supporting documents across various subsidiaries as the sole person responsible for that function.

48 Rather, RS's criticisms were confined largely to peripheral and administrative matters. The claimant, for her part, said she had taken the initiative to produce enhanced working papers with detailed sample sizes, population data, and comprehensive citations. The respondent acknowledged this work product, but admitted that little to no credit was given because those working papers were perceived as unnecessary.

49 What this revealed was a misalignment between RS and the claimant on what the performance standards for the first goal were about. RS, on the one hand, appeared to place significant weight on administrative compliance; the claimant, on the other hand, prioritised the rigour and integrity of the audit process itself as an audit professional. Neither set of objectives was inherently unreasonable. But if administrative compliance was to carry sufficient weight to warrant a 25-point deduction—a deduction with direct adverse implications for the claimant's suitability assessment—RS should have made that clear to the claimant in terms specific enough for her to understand what was expected and calibrate her conduct accordingly. She did not.

50 The difficulty this created was not merely procedural. A deduction of that magnitude would be meaningful as evidence of unsuitability only if it reflected a genuine failure by the claimant to meet a known standard. However, if the respondent was unable to prove that the relevant standard had been

communicated to the claimant with sufficient clarity for her to conform her conduct to it, there would be considerable difficulty with accepting the deduction as demonstrating that she was unable or unwilling to meet it. It demonstrated only that she had not been told what was required.

51 In the present case, I therefore found that the 25-point deduction from the first goal could not be accepted as justifying the respondent's assessment of the claimant's unsuitability for confirmation.

(2) The second goal: Financial health check

52 The second goal, assigned a weightage of 20%, required the claimant to complete a financial health check across the respondent's subsidiaries. This was a semi-annual exercise involving the consolidation of financial data, identification of variances, and the preparation of management reports. The deadline was 11 June 2025. RS assigned a score of 75%, citing a lack of timely follow-up.

53 RS's evidence was that the final report was submitted only on 1 July 2025, approximately three weeks beyond the deadline, and that the Excel report contained broken links and the accompanying Word document suffered from formatting deficiencies.

54 The claimant's position on the missed deadline was that the delay was attributable to subsidiaries rather than to any failing on her part. The exercise was structurally dependent on subsidiaries providing adequate explanations for identified variances and submitting required documentation in timely fashion, and it would be professionally inappropriate to finalise a consolidated report before proper clarification had been received. On the technical deficiencies, she said she had been unaware of the broken links in the Excel report and had not

been told of them until the hearing, and that she had noted and addressed the Word document formatting feedback when it was raised.

55 The analysis here proceeded on two levels. The first concerned whether the respondent had proven the deficiencies it alleged. On the missed deadline, the respondent did not discharge its burden of demonstrating that the delay was attributable to the claimant's conduct rather than to the inherent difficulties of consolidating financial data from multiple overseas subsidiaries. No evidence was produced to show that the claimant failed to follow up diligently with subsidiaries. I found that the respondent could not prove that the delay was the claimant's fault.

56 On the formatting and technical deficiencies, the respondent produced no evidence of the nature or extent of the broken links or the formatting issues beyond RS's bare assertion. The specific feedback the claimant received—on font size and indentation—was, on her evidence, noted and addressed. I found that the respondent had not proven that any such deficiency was of a nature or extent that would justify treating it as a performance shortcoming.

57 Second, even if some shortcoming in timeliness or presentation could be established, the respondent did not prove that it had communicated to the claimant, with sufficient clarity, that these matters were to carry the significant weight that a 25-point deduction implied. In the absence of such communication, a reasonable probationer in the claimant's position would be entitled to assume that her performance on this goal would be assessed primarily by reference to the substantive quality of her work—the completeness of her financial analysis and the reliability of her conclusions—with any shortcomings in timeliness or presentation attracting, at most, a modest adjustment.

58 The claimant was not told otherwise. A deduction of 25 points on a goal carrying a weightage of 20% was more than a modest adjustment; it denoted significant underperformance, with direct adverse consequences for the claimant's suitability assessment. In my judgment, an employer cannot visit consequences of that magnitude on a probationer for failing to meet a standard it never articulated, and which the probationer could not reasonably have been expected to discern for herself.

(3) The third goal: Ad hoc assignments

59 The third goal covered a range of ad hoc assignments throughout the probationary period. RS deducted 40 points from the claimant's score, recording in the evaluation form that while the claimant had completed ad hoc assignments relating to ICFR, her contributions in other areas were limited. At the hearing, RS relied on one example: a request that the claimant conduct a process audit of the respondent's B2B and online business segments.

60 According to RS, she first raised this assignment with the claimant in June, following the conclusion of the first round of ICFR audit, but the claimant declined, citing lack of time in preparation for the next round. RS followed up again in September, as evidenced by an email of 18 September asking the claimant to "make plan for review for B2B or Online process review". The claimant replied asking for the specific scope, explaining that without a clear scope and review objective the assignment could not proceed. RS replied: "Make plan for review for B2B or Online process review 1 slide. Process / fraud risk related".

61 The claimant's position was that the instructions were vague and the scope was never adequately defined. She said it was not realistic to expect her to produce an audit plan without clearer guidance on audit coverage, particularly

in her first months with the organisation when she was still familiarising herself with the relevant business areas and operational workflows.

62 RS's response was that preparing an audit plan should not be a difficult exercise for someone with 15 years of audit experience. Her expectation was not a completed audit or a formal programme, but a conceptual and executive-level deliverable—a single PowerPoint slide identifying preliminary risk areas and likely checkpoints that might warrant further testing—informed by walkthroughs with relevant functions and subject matter experts.

63 Having considered the evidence, I found that while RS's instructions were high-level and open-ended, they were not so vague as to be incapable of execution. What RS was asking for was, in substance, a proposed audit coverage over the operational workflows, controls, and key risk areas of the B2B and online segments, distilled into a concise single-slide summary. As an experienced auditor of 15 years, the claimant was in a position to understand that, and to know what producing it would require. I therefore accepted that it had proved difficult to engage the claimant in this assignment, and that it ultimately remained incomplete.

64 That finding, however, did not dispose of the matter. The question was not only whether the claimant failed to complete the assignment—it was whether the score assigned to the third goal on account of that failure was justified, and whether the claimant could appreciate the significance of that failure to her overall assessment. Here, two difficulties arose.

65 The first concerned the scoring methodology. The third goal was a composite, covering not only the process audit assignment but a range of ICFR-related ad hoc requests throughout the probationary period. RS justified the 40-

point deduction on the basis that the process audit assignment was "not like a very simple thing" given that it required walkthroughs, interviews, and meaningful time investment. But RS never communicated to the claimant how the scoring for this composite goal would be conducted, nor communicated that a single incomplete task of this nature would result in so substantial a deduction. A 40-point deduction was not a minor adjustment; it could be the difference between a passing and a failing score on a goal that carries significant weight in the overall assessment.

66 The second difficulty concerned the weightage of the goal itself. As noted above, RS unilaterally transferred the 10% weightage from the removed ARAP Recon goal to the third goal, without any discussion with the claimant. The claimant therefore found herself assessed against a goal that had quietly doubled in significance—from 10% to 20%—based on a scoring methodology she had never been told and was penalised heavily for a task whose importance to her overall assessment she had no reason to appreciate.

67 While I therefore accepted that the claimant's failure to engage adequately with the process audit assignment was a genuine shortcoming, that did not automatically justify the deduction applied. The respondent could not rely on a scoring process it never disclosed, and one which the claimant could not reasonably have been expected to discern for herself, to establish that the claimant's performance on this goal fell below the suitability threshold. Therefore, I found that the score of 60% assigned to the third goal could not be sustained.

(4) The fourth goal: Training

68 RS assigned a score of 60 out of 100 to the training goal on the basis that the claimant's contribution and value-add were limited. RS and the claimant,

however, gave directly conflicting accounts of what the claimant was required to do for this goal.

69 RS said she had informed the claimant that she was required to organise a training session for subsidiaries over a virtual meeting ahead of the second round of ICFR audit, and that she had provided sample training slides prepared by the claimant's predecessor to assist her.

70 The claimant denied receiving any such instruction. Her understanding was that training sessions were required only in February to March 2026 as part of the annual work plan—falling outside the probationary period entirely. She acknowledged receiving slides from RS but said these related to the annual work plan sessions. She also pointed out that an e-learning module was already available for employees preparing for the ICFR audit, making it difficult to understand why RS was saying at the hearing that a separate training session would additionally have been required of her. And insofar as RS was suggesting that training and guidance to subsidiary employees was required, the claimant said she had in fact provided this regularly—through emails and calls explaining what was required of the relevant employees—which was how she understood the training goal to be discharged.

71 While RS claimed to have informed the claimant of the scope of work for this goal, the respondent produced no corroborating evidence of any kind—no email, no meeting record, no documented discussion. The description in the probation form was neutral and resolved nothing. The sample slides were not produced in evidence. The claimant produced no documentary evidence either, but that is understandable: she would not have retained access to the respondent's internal records after termination. More importantly, the burden of proof rests with the respondent.

72 As before, the respondent had not established that any such standard was ever communicated. I found that the respondent could not prove what the scope of work for the training goal was, nor the performance standard the claimant was expected to discharge. I accepted that the goal was communicated to the claimant in terms no more specific than what appeared in the probation evaluation form, and that she genuinely believed it related to the annual work plan training sessions. The claimant could not be said to have known—or to have been reasonably expected to know—the standard she was said to have failed. The score of 60% could not therefore be accepted, as it presupposes a standard against which performance was being fairly measured.

(5) The evidence of the FC and HR

73 Before concluding, I briefly address the evidence given by the respondent's two other witnesses: FC and HR.

74 FC had not been involved in the assessment of the claimant in the probation evaluation form and testified that he had not seen the results himself nor discussed the claimant's performance against the goals and competencies in any detail with RS.

75 He nonetheless said that he had independently formed the view that the claimant was unsuitable for confirmation, drawing on more than 20 years of experience within the organisation. His reason was that, compared against other employees he had encountered, the claimant was simply not up to expectation. While others had been able to adapt and adjust to the organisation within three to four months, the claimant could not demonstrate the same, and could not cope with the demands of the role. He reiterated concerns about the claimant's failure to meet deadlines, though he acknowledged that there were not many instances

where she reported to him directly, and that his assessment was based largely on feedback from RS.

76 FC's evidence did not assist the respondent in discharging its burden. The difficulty was the same one that afflicted RS's evidence on the competencies: FC's assessment rested on a comparison against an unstated benchmark, and no particulars were given as to how exactly the claimant fell short of it. I could accept that the claimant may not have adapted to the organisation as quickly as others FC had encountered. But that observation did not distinguish between two very different explanations—that the claimant lacked the capacity to meet the respondent's standards, or that those standards were never clearly communicated to her. For the reasons set out above, the evidence pointed more toward the latter than the former, and FC's impressionistic comparison did nothing to resolve that ambiguity in the respondent's favour.

77 HR testified that conversations she had with the claimant demonstrated that the claimant had been aware she was underperforming. On 17 June, approximately two months into her employment, the claimant told HR that she was not coping well with the workload. HR said the respondent took that feedback into account and a contract staff member had been hired in September. HR also testified that the probation evaluation reflected only what the claimant could realistically be expected to discharge.

78 A further conversation on 15 August with HR was initiated by the claimant, who told HR that she did not think she would pass probation because she was not a good fit in the department, and that she did not consider RS to be qualified to manage her given RS's lack of audit experience. She asked whether she could change her reporting line or transfer to another department; HR told

her this was not possible. The claimant then said that resignation might be her only option, though HR acknowledged this remark was likely made in frustration and no resignation letter followed.

79 The claimant did not dispute that these conversations took place. She said she was concerned about not passing probation because she had perceived an expectation gap: although she believed she was performing her core audit function properly, she anticipated that RS would find fault with peripheral matters rather than with the quality of her audit work, because RS was unfamiliar with audit procedures and the practical challenges of offsite testing. She said she felt RS was "evaluating [her] at the wrong side of the audit table."

80 I accepted that these conversations had occurred and that the claimant had been genuinely concerned about her prospects. But I did not accept that they advanced the respondent's case. The claimant's concern about not passing probation was, if anything, consistent with her own account: she had identified an apparent mismatch between what RS valued and what she considered the substance of her role. That was not an admission of incompetence but reflected the same expectation gap that the evidence likewise disclosed. The August conversation, in particular, did not demonstrate that the claimant conceded unsuitability; it demonstrated that she had been concerned that RS was assessing her by a different standard, one which may not have been obvious or clear to her. This, for the reasons expressed above, was a conclusion this tribunal had also reached.

Concluding observations

81 The respondent's case rested on its assessment that the claimant had fallen below the suitability standards established in the probation evaluation form, and that her dismissal on that account was with just cause or excuse. That

proposition required the respondent to establish that the individual scores and ratings which produced the claimant's aggregate result were themselves justified. This, the respondent could not do.

82 The assessments across both the competency review and the performance goals were unreliable. In respect of the competencies, RS assigned below-average ratings of 2 across six of the ten competencies without ever explaining to the claimant what a passing rating required, without conducting any of the periodic documented reviews that the respondent's own probation management process mandated, and without recording a single word of justification in the evaluation form itself. The oral justifications offered at the hearing amounted to little more than impressions untethered to any defined standard and unsupported by any documented observation. Ratings produced by that process could not be accepted as reliable evidence that the claimant fell below the competency threshold.

83 In respect of the performance goals, the same pattern recurred. Across all four goals, the deductions applied rested on one or more of the following deficiencies: the respondent failed to prove that the alleged shortcoming existed at all; where a shortcoming was proven, the respondent failed to establish that it had any material consequence; and in no case did the respondent establish that the claimant had been told, with sufficient clarity, that the matters complained of would carry the weight that the deductions implied. Moreover, in no case was the scoring methodology disclosed with sufficient clarity, and in one case the weightage of the goal had been silently doubled without the claimant's knowledge.

84 The scores assigned to the performance goals were therefore not a reliable measure of the claimant's performance, and the aggregate result of 71%

they produced could not be accepted as establishing that she fell below the 80% suitability threshold.

85 Given the design of the respondent's probation management process and the case which it advanced in these proceedings, that failure went to the root of whether the respondent could prove that the claimant fell below the suitability standard it had set. An employer who has not made its performance standards clear cannot then rely on an employee's non-conformity with those standards as evidence of unsuitability. Ignorance of a standard and inability to meet it are different things and treating them as equivalent is precisely the error that a structured probation management process is designed to prevent. Unfortunately, the respondent did not implement its probation management process in the way that it was designed.

86 To avoid doubt, I am not endorsing an absolute requirement that employers must exhaustively articulate every performance standard for every employee, confirmed or otherwise. There will be cases where such articulation is unnecessary—for instance, where an employee's failings are so material that any reasonable employer would regard them as gross incompetence, or where the employee is sufficiently senior that a pre-existing understanding of what competent performance entails can reasonably be assumed. In such cases, the employer need not spell out what should otherwise be self-evident.

87 This was not such a case. Although the claimant was an experienced audit professional, the matters for which she was criticised were not failures of audit judgment. They were largely peripheral, and precisely the kind of expectations that an employee unfamiliar with a new organisation's culture and practices would require guidance on, and where the burden of providing that guidance fell on RS. The claimant's experience as an auditor told us what she

knew about audit. It did not tell her what this respondent expected in terms of how audit outputs were to be presented, or what administrative and peripheral responsibilities she was to discharge alongside her core function.

88 The respondent's evidence established that the claimant was not without her shortcomings. Her reluctance to engage with the process audit assignment and to provide the interim reporting, despite being asked on more than one occasion, were findings I made. But I was not convinced that these proven shortcomings demonstrated that the claimant was more likely than not incompetent or unsuitable to be confirmed for regular employment, such that dismissal was a justified and proportionate decision taken by the respondent in the circumstances.

89 Therefore, I found that the respondent had not proven that the claimant fell below its suitability standards in a manner that would constitute just cause or excuse for dismissal.

Discrimination and whistleblowing

90 I turn to the claimant's remaining two grounds. As noted above, my finding on the performance ground was sufficient to dispose of this action in the claimant's favour, and what follows did not affect that outcome.

91 On the language discrimination ground, I accepted as a matter of principle that language ability can form the basis of discriminatory treatment in the workplace. But the claimant could not establish, on the balance of probabilities, that her inability to understand Korean was a reason for the respondent's decision to dismiss her.

92 The respondent's correspondence with the claimant was in English, and while the evidence showed that some communications between colleagues were in Korean, it was not demonstrated that such communication had an impact on her performance appraisal and, consequently, her dismissal.

93 The claimant's more nuanced contention was that her exclusion from Korean-language discussions may have led to expectations being communicated and priorities being set in ways she could not access, which in turn affected the fairness of her assessment. There may well be structural disadvantages that arise where a working environment operates partly in a language an employee does not understand, but there was no objective evidence to support the claimant's contention. In any case, to the extent that performance expectations were not communicated to her, I had already found—on an entirely independent basis—that the failure lay with RS's failure to conduct the periodic reviews required under the respondent's own probation management process.

94 On the whistleblowing ground, the claimant's case was speculative. She suspected that her participation in discussions with HSS regarding the proposed restructuring of the ICFR function was known to RS and FC and influenced their decision to dismiss her.

95 RS, FC, and HR each gave evidence that they had been unaware of any such discussions at the time the decision to dismiss was made, and that they learned of the claimant's allegations only after the termination of her employment. I accepted that evidence. The claimant offered nothing to contradict it beyond her own conjecture, and I was unable to find, on that basis alone, that the dismissal was retaliatory.

Compensation

96 Having found in the claimant's favour, she would be entitled to compensation calculated in accordance with the Second Schedule to the Employment Claims Regulations 2017. That Schedule provides that the award shall consist of two components: first, the claimant's loss of income, not to exceed three months of her gross rate of pay; and second, compensation for the harm caused to her by the wrongful dismissal, comprising a base amount not exceeding two months of her gross rate of pay, subject to adjustment for any aggravating or mitigating factors that the evidence may have disclosed.

97 The claimant testified that she had been unable to secure employment since her dismissal. She had submitted more than thirty applications and attended approximately five interviews yet received no offer of employment. That evidence stood unchallenged by the respondent.

98 In the ordinary course, I was satisfied that the claimant would have at the very least been employed for a further three months under an extended probationary period if not for the wrongful dismissal. She should therefore be entitled to three months of her gross rate of pay by way of loss of income. Her gross rate of pay was $11,500 per month, which would have placed the full three-month award at $34,500. The prescribed claim limit for the present proceedings, however, was $30,000—a ceiling that constrained the award to a sum equivalent to slightly more than 2.6 months of her salary. I accordingly awarded the claimant the maximum permissible sum of $30,000.

99 Given that the award of $30,000 already exhausted the prescribed claim limit, it was unnecessary to consider separately whether compensation for harm ought also to be awarded. I would, however, observe in passing that had the ceiling permitted it, I would have awarded an additional two months' salary

under that head as well. The respondent brought the claimant's employment to an end in a manner that was both sudden and unjustified, and it would be difficult to suppose that such a dismissal did not occasion her considerable distress.

Conclusion

100 For the reasons given, I allowed the claim in full and awarded the claimant the sum of $30,000. In addition, I ordered the respondent to pay the claimant $300 in costs and $60 in disbursements.

Joel Tan
Tribunal Magistrate

The claimant in person;
The respondent in person.