



## EMPLOYMENT TRIBUNALS

BETWEEN

**Claimant**

Mrs S Deol

and

**Respondent**

Sonic Laboratories Limited

**Held at Reading on** 16 and 17 January 2017 (Hearing)  
21 February 2017 (In Chambers)

**Representation**

**Claimant:** Mr S Jones, counsel  
**Respondent:** Mrs E Read, counsel

**Employment Judge**

Mr S G Vowles

**Members:**

Mrs V Parsons  
Mrs M Moore

### UNANIMOUS RESERVED JUDGMENT

**Evidence**

1. The Tribunal heard evidence on oath and read documents provided by the parties. From the evidence heard and read the Tribunal determined as follows.

**Pregnancy/Maternity Discrimination – section 18 Equality Act 2010**

2. The Tribunal found that the Claimant was subjected to pregnancy discrimination. This complaint succeeds.

**Pregnancy/Maternity Unfair Dismissal – Section 99 Employment Rights Act 1996**

3. The reason for the Claimant's dismissal was related to pregnancy. She is to be regarded as unfairly dismissed. This complaint succeeds.

**Direct Race Discrimination – section 13 Equality Act 2010**

4. The Tribunal found that the Claimant was not subjected to direct race discrimination. This complaint fails.

### Remedy Hearing

5. The case will now be listed for a one day remedy hearing before the same Tribunal.

### Reasons

6. This judgment was reserved and written reasons are attached.

## REASONS

### Submissions

#### Claimant

1. On 31 May 2016 the Claimant presented complaints of unfair dismissal, sex discrimination, pregnancy/maternity discrimination and race discrimination to the Tribunal.

#### Respondent

2. On 19 July 2016 the Respondent presented a response and resisted all claims.

### Preliminary Hearing

3. At a preliminary hearing (case management) on 26 September 2016, and the claims were clarified in a case management order as follows:

#### 4 *Pregnancy and Maternity Discrimination*

4.1 *Has the Respondent subjected the Claimant to the unfavourable treatment of dismissal because of her pregnancy?*

4.2 *Has the Claimant proved primary facts from which the Tribunal could properly and fairly conclude that her dismissal was because of her pregnancy? If so, what is the Respondent's explanation, does it prove a non-discriminatory reason for the treatment?*

4.3 *It is not in dispute that at the date of termination of the Claimant's employment she was within a protected period as she was pregnant. It is in dispute as to whether or not the Respondent knew of that pregnancy.*

#### 5 *Automatically unfair dismissal*

- 5.1 *Was the reason or principal reason for the Claimant's dismissal of a kind which related to her pregnancy or proposed maternity leave, contrary to section 99 ERA 1996 / regulation 20 of the Maternity and Parental Leave Regulations 1999?*
- 6 *Direct discrimination on grounds of race*
- 6.1 *The Claimant is of Indian ethnicity. Has the Respondent subjected her to less favourable treatment by dismissed her. The Claimant relies on hypothetical comparators and also refers to the treatment of Lisa Harrop who is a white British employee and Lauren Smith who was a white British employee; these are in addition to a hypothetical comparator.*
- 6.2 *Has the Claimant proved primary facts from which the Tribunal could properly or fairly conclude that the difference in treatment was because of the Claimant's race? If so, what is the Respondent's explanation? Does it prove a non-discriminatory reason for her dismissal?*

#### **Evidence**

4. The Tribunal heard evidence on oath from the Claimant, Mrs Sakshi Deol (Administrator) and from Mr Tejpal Singh (the Claimant's husband).
5. The Tribunal also heard evidence on oath from Mr Ismail Nawasra (Director), Mr Craig Murkett (Administrator), Mr Graham Little (General Manager) and Mr Nathan Munro (Director).
6. The Tribunal also read documents in a bundle provided by the parties.

#### **Findings of fact**

##### Background

7. The Respondent operates a business manufacturing ear moulds. It is a small company employing 13 people.
8. The Claimant was employed as an Administrator from 10 November 2014 until her dismissal on 24 March 2016.

Comments about Pregnancy

9. The Claimant said that in January 2015 Mr Nawasra had told her *“I don’t like pregnant women in the office. I was planning on terminating Lisa [Lisa Harrop - Administrator] but cannot now that she is pregnant. A pregnant lady in this country is very strong”*. She said that she understood him to mean that pregnant women have many rights and therefore an employer cannot dismiss, or has to be careful of considering dismissing, a pregnant worker.
10. In his evidence Mr Nawasra agreed that he had said words to that effect because the Claimant had complained about Lisa putting her private post through the company but he said that *“we can’t put a pregnant women under stress”*. He denied saying that he did not like pregnant women in the office.
11. On 31 July 2015 Lisa Harrop went on maternity leave. She did not return to work before the Claimant was dismissed.
12. The Claimant said that on an occasion in September/October 2015 Mr Nawasra asked her about family planning and whether or not she was planning to start a family in the near future. Mr Nawasra agreed that he often gave the Claimant a lift to work and that whilst chatting he had casually asked her if she was planning a family and she had said that she would look to do so after Lisa returned to work. He accepted that he asked her not to leave while Lisa Harrop was absent on maternity leave.

Concerns about Attendance

13. The Claimant took 4 weeks annual leave in December 2015 and was due to return to work on 4 January 2016. She failed to turn up for work on that day and informed Mr Nawasra that she felt sick and dizzy and that it was probably due to jet lag.
14. Mr Nawasra said that he told the Claimant on her return to work on 5 January 2016 that her conduct had been unacceptable. The Claimant denied that she had been spoken to in this way. Both parties agreed, however, that no formal action was taken against her.
15. Mr Nawasra referred to a general staff meeting held on 5 January 2016, attended by all staff including the Claimant, at which he raised general concerns regarding, amongst other matters, the taking of holiday, sickness leave and staff reliability. The conduct of the Claimant was not specifically mentioned at the meeting.

Knowledge of Claimant's Pregnancy

16. There was a conflict of evidence between the parties about when, and to whom, the Claimant had disclosed her pregnancy.
17. The Claimant's case was that she received confirmation of pregnancy from her GP on 6 January 2016. She said that on or about 9 January 2016 she informed Mr Nawasra of her pregnancy and he told her that she would have to submit a MATB1 form which her GP would give her before the 25<sup>th</sup> week of her pregnancy. She said that he approved her absence for pregnancy-related absence and an antenatal appointment on 19–22 January 2016. In support of this assertion she referred to documents recorded on the company's "HrOnline" database as follows:

.....  
*Sakshi Deol's absence request from 19/01/2016 13:25 to 21/01/2016 09:00 has been approved.*  
support@hronline.co.uk Thu, Jan 21, 2016 at 12:12 PM

*boxbe support@hronline.co.uk is not on your Guest List / Approve sender / Approve domain*

*Type: Pregnancy Related  
Dates: 19/01/2016 13:25 to 21/01/2016 09:00  
Working Days 1.54*

*Hronline*  
.....

*Sakshi Deol's absence request from 22/01/2016 12:30 to 22/01/2016 17:00 has been approved.*  
support@hronline.co.uk Fri, Jan 22, 2016 at 2:08 PM

*boxbe support@hronline.co.uk is not on your Guest List / Approve sender / Approve domain*

*Type: Pregnancy Related  
Dates: 22/01/2016 12:30 to 22/01/2016 17:00  
Working Days 0.6*

*Hronline*  
.....

18. She said that all her absences were approved by Mr Nawasra. Also that the company's HrOnline system was managed and updated by Craig Murkett or

- Graham Little because they were the only people who had the password code to the online system. She denied using the system herself.
19. It was not in dispute that once requested leave is approved, it is automatically updated on HrOnline and a confirmatory email is sent to the employee to confirm the approved leave.
  20. The Claimant produced a text message to Mr Munro dated 19 February 2016 which read:

*Good morning Nathan, I may not come today, I was very sick last night. I have emergency appointment with midwife n GP. Sorry for that. Please do call me if need me, I will help you on phone. Many thanks.*
  21. She said that the message was marked “Not Delivered” so she called him to inform him of her sickness. She said she shared her good news with Mr Munro and Lauren Mae-Smith (Administrator).
  22. The Claimant said that she had her first scan at Reading Hospital on 12 February 2016 and also had an emergency appointment relating to her pregnancy on 19 February 2016. She said that she informed Mr Munro about her pregnancy-related absence on that date. She said that after attending the first pregnancy scan on 12 February 2016 she took a copy of the scan into the office and showed it off to all the staff, including Mr Nawasra. She said that at this time he told her about his daughter also being pregnant and they discussed finding out about a baby’s sex before birth. She also told Mr Nawasra that her MATB1 certificate would be available in the last week of March. She requested leave of absence to attend her cousin’s brother’s wedding in India from 7 to 18 March 2016. It was not in dispute that this period of leave was approved by Mr Nawasra.
  23. The Respondent’s case was that the Claimant never informed anyone at the business about her pregnancy until after she had been dismissed.
  24. Both Mr Nawasra and Mr Little denied using, or even knowing how to use, the HrOnline system. Mr Murkett said that on the Claimant’s return to the office in January 2016 she had trained him on the HrOnline system and taught him how to register an employee’s absence such as sickness or holiday. He said that in order to demonstrate this, she entered an absence for herself onto the system for 19-21 January 2016 as “*pregnancy-related*”. She then authorised it herself using Mr Graham Little’s account details and this generated the emails referred to above. Mr Murkett said that a number of days later the Claimant showed him how to edit the reason for an absence and she thereupon called up the same authorised absence for 19-21 January 2016 and amended it from “*pregnancy-related*” to “*unpaid leave*”. In support of this account Mr

Murkett referred to a different printout from the HrOnline system which showed the leave for 19 and 22 January 2016 as “unpaid leave”. He said that he asked the Claimant if she was pregnant and she replied “*I would rather not discuss this and please do not tell anyone about it, all that I am showing you is strictly for training purposes*”. He said that he did not mention this to anyone because the Claimant was his line manager.

25. All of the Respondent’s witnesses denied that the Claimant had informed anyone that she was pregnant before she was dismissed. They all denied that she had shown her scan around and denied seeing anything on HrOnline about pregnancy-related matters.

#### Leave in India

26. On 4 March 2016 the Claimant travelled to India on her approved leave from 7 to 18 March 2016. She was due to return to the UK on Saturday 19 March 2016 and to return to work on Monday 21 March 2016. However, on 16 March 2016, in India, her brother-in-law died unexpectedly. By chance, her husband called that day to speak to his mother in India and the Claimant answered the call. She told him about the death of his brother and asked him to speak to Mr Nawasra to tell him that she wished to stay on in India for the funeral. The Claimant’s husband said that he called Mr Nawasra who did not say that he objected to the Claimant staying for an extended period in view of the death of his brother. The Claimant’s husband then booked a flight to India to be with his wife and family for the funeral arrangements.
27. Mr Nawasra confirmed that the Claimant’s husband did contact him regarding his brother’s death but he had said that the Claimant would need to have a further two to three weeks’ absence. Mr Nawasra said he told him that he could not allow a further absence and that the Claimant was expected to return to work on 21 March 2016 as previously agreed. He said that he specifically warned him that if the Claimant did not return to work on that date she risked losing her job. Mr Munro said that he overheard the call and heard Mr Nawasra say that the Claimant was expected at work on 21 March 2016.

#### Disciplinary Procedure

28. It was agreed that the Respondent had a written disciplinary procedure which included the following:

##### *DISCIPLINARY PROCEDURES*

*2) The rules set standards of performance and behaviour whilst the procedures are designed to help promote fairness and order in the treatment of individuals....*

*3) Every effort will be made to ensure that any action taken under this procedure is fair, with you being given the opportunity to state your case and appeal against any decision that you consider to be unjust. ...*

*4d) you will only be disciplined after careful investigation of the facts and the opportunity to present your side of the case....*

*4f) you will not normally be dismissed for a first breach of discipline, except in the case of gross misconduct; and*

*4g) if you are disciplined, you will receive an explanation of the penalty imposed and you will have the right to appeal against the finding and the penalty.*

### Dismissal

29. The Claimant did not return to work on 21 March 2016 as she was still in India. Mr Nawasra said that he attempted to call her but her telephone was switched off. He said that he discussed the matter with Mr Little and Mr Munro. Mr Little spoke to the Respondent's HR advisers, Peninsula, who advised him that the Claimant did not have the necessary 2 years continuous employment to make a claim for unfair dismissal. There was then a joint decision by Mr Nawasra, Mr Munro and Mr Little to dismiss her summarily for unauthorised absence from work.
30. On 22 March 2016 Mr Little sent a letter by post to the Claimant's home address in Newbury as follows:

*22 March 2016*

*Dear Mrs Deol*

*According to our records you have been absent without permission since 21/03/2016. At the time of writing, we have received a telephone communication from your husband to explain you wanted another two – three weeks away from the company. You booked holiday 07/03/2016 to conclude on 18/03/2016 a further two – three weeks would make your return to work date 04/04/2016. This is detrimental to the business and we do not have the personnel to cover your absence. You took 1 month off during December 2015 and were due back to work on 04/01/2016 you came back to work on the 05/01/2016 this was 1 day Unauthorized.*

*Therefore, we have no alternative other than to conclude that you no longer wish to work for Sonic Laboratories Limited and that you have terminated your employment by your own volition.*

*We will arrange for your P45 and any monies owing to you to be forwarded under separate cover.*

*If you feel that I have been incorrect in reaching this conclusion then it is important that you contact me immediately upon receipt of this letter in order that we may arrange a meeting to discuss the situation.*

*Yours sincerely  
Graham Little  
General Manager.*

31. On 24 March 2016 Mr Nawasra sent the following text message to the Claimant:

*Thu 24 Mar, 09:26*

*Hi Sakshi*

*We can't run a business like this. Taking a long time off from work is not acceptable*

*I am sorry about your loss, but business is business.*

*According to the employment law you have handed in your resignation and no longer work for soniclabs.*

*A formal letter has been sent in accordance with our legal advisers Peninsula to your known address in Newbury to say that you no longer work for us.*

*You will be paid all your enrolments.*

*Regards*

32. On 26 March 2016 the Claimant responded with a text message as follows:

*Respected Ismail,*

*I do understand about your business and feeling very sorry for my holidays. As my 10 days holiday were planned and now it happened all of sudden.*

*I don't have intention to give resign and I don't have any other planned holidays. We have already booked our return tickets on 4<sup>th</sup> April and will join sonic on 5<sup>th</sup> april.*

*I would request you to give me a chance to stay with Sonic.*

*I hope you will understand my situation and accept me as Sonic employee.*

*Thanking you*

*Kind regards  
Sakshi.*

33. On 5 April 2016 the Claimant emailed Mr Little and Mr Nawasra and asked for a meeting, to which they did not respond. Accordingly, on 8 April 2016 she attended the Respondent's offices and spoke to Mr Little. Amongst other things she referred to her pregnancy. He told her to put any complaints in writing, and she did so as follows:

*To:  
The Director  
Sonic Laboratories Ltd  
4 Langley Business Court  
Beedon  
RG20 8RY*

*Dated: 8<sup>th</sup> April 2016*

*Subject: Regarding my termination.*

*Respected Ismail*

*My husband informed you about the emergency in family, death of my brother-in-law on 16<sup>th</sup> march when I was in India on planned holidays. Also he requested you that it may take up to 2-3 weeks, based on the family situation in India. After that incident, I went under medical supervision (Document enclosed with letter). I was planning to return on 26<sup>th</sup> March but Doctor advised me not to fly on 26<sup>th</sup> March and at least one more week rest required before any long journey.*

*I booked my return ticket on 4<sup>th</sup> April based on the doctor's recommendation and same has been communicated to you as well.*

*I have received termination letter from sonic on 4<sup>th</sup> April the day I came back from India. The reason of my termination mentioned as unauthorised off from work. It was the emergency off from work as situation was not under my control. Also, employee expects co-operation from company in these situation.*

*I am very much disappointed with termination letter, without any fault or valid reason from my side.*

*I went to Sonic to discuss the reason/fault of termination letter on 6<sup>th</sup> April 16. Initially, General Manager wasn't ready to discuss this matter. I requested couple of time then he listen to my case and responded in rude manner that*

*you are terminated due to unauthorised off from work. Also, he said I haven't informed anyone in company that I am pregnant.*

*I am surprised with general manager's stated reason because I shared with you in January that I am pregnant and my husband communicated you about the family incident and got your consent that time for further 2-3 week off. And I haven't received any further communications that I need to join before any specific date.*

*I believe my dismissal from the company is to avoid paying my SMP, and because I am Pregnant.*

*I would request you to kindly have a look to my case and consider my request in favor to continue my employment with Sonic.*

*Please let me know if any further information is required from my side.*

*Thanks*

*Kind regards*

*Sakshi Deol.*

34. Mr Nawasra, Mr Munro and Mr Little all denied having any knowledge of the pregnancy before she mentioned it to Mr Little on 8 April 2016 and denied that the pregnancy played any part in their decision to dismiss the Claimant. They also all denied that the Claimant's race played any part in their decision to dismiss her. They said it was wholly and solely because of her unauthorised absence.
35. Mr Nawasra, Mr Munro and Mr Little all agreed that not only was the disciplinary procedure not followed, in fact no procedure whatsoever was followed. When asked during the hearing if there was any investigation, Mr Little said: "*We looked at her previous history - coming back late on 5 Jan 2016 - lateness - she was never there - general behaviour – not following instructions – I can't give you an example – we discussed the 2/3 weeks' extension and how it impacted the business.*" They all agreed that the disciplinary procedure should have been followed but each said that they simply acted on the Peninsula advice which was to dismiss her without any procedure because of her short service.
36. In short, they all put the decision to dismiss the Claimant down to the Peninsula advice.

## Relevant Law

### Discrimination Burden of Proof – section 136 Equality Act 2010

37. For discrimination claims under the Equality Act 2010 the burden of proof is set out in section 136 of the Act. If there are facts from which the Tribunal could decide in the absence of any other explanation that a person contravened the provision concerned the Tribunal must hold that the contravention occurred. But that does not apply if the person shows that he or she did not contravene the provision.
38. There is guidance from the Court of Appeal in Madarassy v Nomura International plc [2007] IRLR 246. The burden of proof does not shift to the employer simply on the Claimant establishing a difference in status and a difference in treatment. Those bare facts only indicate a possibility of discrimination, they are not without more sufficient material from which a Tribunal could conclude that on the balance of probabilities the Respondent had committed an unlawful act of discrimination. The Claimant must show in support of the allegations of discrimination a difference in status, a difference in treatment and the reason for the differential treatment.
39. If the burden of proof does shift to the Respondent, in Igen v Wong [2005] IRLR 258 the Court of Appeal said that it is then for the Respondent to prove that he did not commit or is not to be treated as having committed the act of discrimination. Since the facts necessary to prove an explanation would normally be in the possession of the Respondent, a Tribunal would normally expect cogent evidence to discharge that burden of proof and to prove that the treatment was in no sense whatsoever on the prohibited ground.
40. Section 23 requires that on a comparison of cases there must be no material difference between the circumstances relating to each case.

### Direct Discrimination – section 13 Equality Act 2010

41. A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

### Employees and Applicants - section 39 Equality Act 2010

42. An employer must not discriminate against an employee by dismissing her or subjecting her to any other detriment.

Pregnancy Discrimination - section 18 Equality Act 2010

43. A person (A) discriminates against a woman (B) if, in the protected period in relation to a pregnancy of hers, A treats her unfavourably because of the pregnancy, or because of illness suffered by her as a result of it.

Pregnancy Related Dismissal - section 99 Employment Rights Act 1996

44. An employee who is dismissed shall be regarded as unfairly dismissed if the reason or principal reason for the dismissal is of a prescribed kind (under the Maternity and Parental Leave Regulations 1999) or the dismissal takes place in prescribed circumstances. The reason or prescribed circumstances must relate to pregnancy, childbirth or maternity.

**Decision**

Knowledge of Claimant's Pregnancy

45. The Claimant's pregnancy/maternity-related discrimination and dismissal claims depended upon Mr Nawasra, Mr Little and Mr Munro being aware of the Claimant's pregnancy because it was their joint decision to dismiss the Claimant. As set out above there was a direct conflict of evidence on this material matter.
46. The Tribunal preferred the Claimant's account and found as a fact that she had informed the Respondent, in particular Mr Nawasra, about her pregnancy as she had claimed, in January 2016. The reasons for preferring her account were as follows.
47. The Claimant's evidence on oath was convincing and consistent. It was supported by the entries on the Respondent's HrOnline system which generated the e-mails dated 21 and 22 January 2016 set out above. These "*pregnancy related*" absences were consistent with appointments recorded in her medical records. They were also consistent with the Claimant's account that she was being open about her pregnancy because by then she had already informed Mr Nawasra about her pregnancy.
48. Her account was also supported by the content of the undelivered text message to Mr Munro on 19 February 2016 referring to an "*emergency appointment with midwife n GP*". There was no dispute that the message was genuine and sent, though for an unknown reason it was not delivered. The existence of this message was in its turn consistent with the Claimant's account that she called Mr Munro later when it was marked not delivered.

49. Additionally, she was consistent in her grievance dated 8 April 2016 when she confirmed that “... *I shared with you in January that I am pregnant ...*”.
50. By contrast the Tribunal found Mr Murkett’s account of the Claimant entering details of her own personal circumstances, and then later altering the details, as part of a training exercise on the HrOnline system, to be implausible. If she wished to keep the fact of her pregnancy confidential as he suggested, she would not have put such information on the Respondent’s system where it could be read by others who had access to it, and also allow Mr Murkett to see it.
51. It was implausible that an employee would be allowed to approve and enter details of her own absences, including the reasons for them, on the automated leave management system without the involvement or knowledge of at least one of her managers.
52. Mr Little took the lead in setting it up in January 2016 and allowed other staff to use his account details for access. It was not in dispute that several people, including Mr Little, Mr Murkett, Miss Mae-Smith and Mr Nawasra had access to the system. Any one of them could have entered or altered the details.
53. The Tribunal found that it was more likely than not that a manager would enquire as to the reason for leave, approve it if satisfied that it was legitimate, and then themselves update the system, or request someone to do it for them.
54. In the circumstances of this case, the Tribunal found that Mr Nawasra had approved the absences, that he must have known they were “pregnancy related” and then he, or someone on his behalf, entered those details on the system.
55. This finding, taken with the denials by the Respondent’s witnesses that they had no pre-dismissal knowledge whatsoever of the pregnancy, cast doubt upon the credibility of those witnesses.

#### Pregnancy Discrimination

56. The Tribunal found as a fact that Mr Nawasra had serious concerns regarding staff absences from work. He was particularly concerned about lengthy absences due to maternity leave. That was clear from his conversations with the Claimant regarding Lisa Harrop’s absence and about the possibility of the Claimant leaving during the course of Lisa’s maternity leave. He was concerned about the possibility that the Claimant would also become

pregnant because that may involve a further lengthy absence due to maternity leave.

57. Concerns about staff absences were also at the forefront of Mr Nawasra's mind during the general staff meeting on 5 January 2016. Amongst other matters, he expressed concerns regarding absences on holiday, through sickness, and punctuality. The minutes of the meeting included the following:

Holiday

*Ismail explained that due to the number of staffing we have within the business it is expected employees take 1 weeks holiday at any one time a maximum holiday of 10 days would be agreeable. If the staff would like to extend this past 10 days it would have to be discussed with senior management. It was explained that Sonic is a small and steadily growing company and it simply could not afford more than one person on leave at any one time due to limited numbers in each respect section, this is due to if a member of staff is off due to illness we would not have the staff to cover.*

58. The Tribunal took account of the fact that the Respondent failed to follow any fair disciplinary procedure, or any procedure at all, when dismissing the Claimant. This was despite having put in place a clear, straightforward disciplinary procedure specifically designed to deal with such circumstances. That had been completely ignored, although Mr Nawasra, Mr Little and Mr Munro all agreed that it should have been followed.
59. Additionally, the Respondent failed to explain why, after only one day's absence on 21 March 2016, it was necessary to dismiss the Claimant summarily without any further investigation or process. They were aware that the Claimant had given a legitimate reason for her absence, namely the death of a close relative, which had been communicated to them by her husband. They were also aware that she was still in India and that communications were difficult. Yet they proceeded immediately, for no apparent reason, to dismiss her without giving her the opportunity to explain her absence in person as required by their written disciplinary procedure. The need for such haste was completely unexplained.
60. The Tribunal considered that the Respondent's assertion that this was the second occasion on which the Claimant had failed to attend work on the day after a leave period was disingenuous. There was no formal action taken against the Claimant in respect of her absence on 4 January 2016 nor any record of any concern having been expressed at the time.
61. The Tribunal concluded that the Claimant had shown facts from which it could decide, in the absence of any explanation that her dismissal was pregnancy-related. The burden of proof therefore shifted to the Respondent to show, by

- way of cogent evidence, that the dismissal was in no sense whatsoever motivated by the Claimant's pregnancy. The Tribunal found that the Respondent had failed to discharge this burden.
62. The Respondent's treatment of the Claimant was unreasonable and manifestly unfair. The Tribunal reminded itself that discrimination cannot be inferred from unreasonable conduct alone. In this case, however, the unreasonable conduct occurred alongside other evidence indicating discrimination on the grounds of pregnancy and that altered the position. It is widely understood that it is unlikely in discrimination cases there will be direct, overt and decisive evidence that a Claimant has been treated less favourably because of a protected characteristic. Decisions may, therefore, be based upon inferences drawn from actual findings of fact.
63. The relevant findings of fact in this case are as set out above. In brief, that Mr Nawasra was concerned about staff absences, in particular lengthy absences resulting from maternity leave; that the Respondent was aware of the Claimant's pregnancy from early January 2016, that the credibility of the Respondent's witnesses and the reliability of their evidence was adversely affected by their denial of such knowledge; that the circumstances of the dismissal were unfair and unreasonable; that the dismissal had been effected with unexplained haste after only one day's absence when the Claimant had given forewarning of her absence for a legitimate reason; and that the Respondent knew that the Claimant was abroad and would not be in a position to provide any explanation for her conduct or challenge the dismissal.
64. Based upon these facts, the Tribunal drew the clear inference that, given the opportunity to dismiss the Claimant and avoid a further lengthy pregnancy-related absence, and where they had received advice that the Claimant could not pursue a claim of unfair dismissal, and in circumstances where they could avoid having to consider any explanation or challenge from the Claimant which might delay their decision, the Respondent seized upon the opportunity to dismiss her with immediate effect.
65. The Tribunal found that the Claimant's dismissal amounted to unfavourable treatment because of her pregnancy and that the dismissal was discriminatory.

#### Pregnancy Related Dismissal

66. In a claim for automatically unfair dismissal under section 99 Employment Rights Act 1996, and where the Claimant had less than two years' qualifying employment, the burden was upon her to show the automatically unfair reason for the dismissal. In this case, she has the burden of proving, on the

- balance of probabilities, that the reason for dismissal was a reason related to her pregnancy, childbirth or maternity leave.
67. On the facts found proved above, the Tribunal was satisfied that the Claimant had discharged the burden of proof upon her.
68. The Tribunal has found above that the reason for the dismissal was to avoid further pregnancy-related absence. The circumstances of the dismissal, in particular the gross unfairness and lack of procedure and the unexplained haste, made the Claimant's one day absence inherently implausible as the true reason for dismissal. It was simply a convenient opportunity to dismiss the Claimant to avoid the inconvenience of her impending maternity leave.

Race Discrimination

69. So far as race discrimination was concerned, the Claimant said in her evidence: *"I feel that I was also treated less favourably by the Respondent company in dismissing me from my employment on the grounds of my Indian ethnicity. My colleague, Lisa Harrop, who is a white British employee, was pregnant and on maternity leave shortly prior to me learning of my pregnancy. By comparison with my colleague, Lisa, I was not aware of, and did not fully understand, my employment rights coming from and being in a different country at the time. I therefore believe that I was treated differently to Lisa because of my race or ethnic origin."*
70. The complaint of race discrimination was misconceived. There was no evidence whatsoever of any animosity towards the Claimant's race or ethnic origin. This complaint was based upon an unfounded belief. There was no evidence whatsoever upon which the Tribunal could find, nor any facts upon which it could infer, any race discrimination.

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Employment Judge Vowles

Date: 28/02/2017

Sent to the parties on:

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For the Tribunal Office

**Case Number: 3323774/2016**