



# EMPLOYMENT TRIBUNALS

**Claimant**

Ms K Baxter

**Heard at:** Watford

**Before:** Employment Judge Manley

**Representation**

**For the Claimant:** In person

**For the Respondent:** Mr T Kirk, counsel

**Respondent**

Pictons Solicitors LLP

**On:** 22 May 2017

## PRELIMINARY HEARING JUDGMENT

- 1 I cannot say, at this stage, that some of the earlier complaints of pregnancy discrimination are not part of conduct extending over a period and are out of time. That issue will be considered at the merits hearing.
2. I am also not able to assess whether those earlier complaints of pregnancy discrimination have little reasonable prospect of success and I make no order that a deposit be paid.
3. The claimant has withdrawn any indirect and sex discrimination complaints and they are dismissed on withdrawal.
4. By consent, the second named respondent, Ms Fowler, is dismissed from these proceedings.
5. The case remains listed for five days between Monday 2 to Friday 6 October 2017 for liability only. A date for the remedy hearing (if needed) was agreed for Monday 4 December 2017.

## CASE MANAGEMENT DISCUSSION SUMMARY

### *Listing the Hearing*

1. The claim has already been listed for listed for the full hearing for five days between **Monday 2 to Friday 6 October 2017** at Watford Employment Tribunal, Radius House, 51 Clarendon Road, Watford, Hertfordshire WD17 1HU to start at 10am or so soon thereafter. It is expected that there will be 3-4 witnesses for the respondent and the claimant will give evidence with the possibility of three other witnesses. That hearing will deal with liability only and further date for remedy, if needed, was agreed for **Monday 4 December 2017**.
2. At the October hearing, there will be half a day for the tribunal to consider any preliminary matters and read the witness statements and essential documents. It is expected that the claimant and her witnesses will give evidence for no longer than one and a half days and the same for the respondent's witnesses. That should leave sufficient time for submissions, tribunal deliberations and the giving of judgment.

### *Clarification of the issues*

3. There had been considerable discussion at the first preliminary hearing about the complaints the claimant brings and they were further clarified today. In the main, the claimant complains that the attitude of her line manager Ms Fowler was unfavourable after she was told that the claimant was pregnant and that this continued through maternity leave and her return and then through another pregnancy and maternity leave period. The complaints are of constructive unfair dismissal and direct pregnancy and maternity discrimination. The issues are as follows:-

(1) Pregnancy/maternity discrimination (sections 13 and 18 Equality Act 2010)

- a) Can the claimant show that the following incidents occurred?:-

1.1 Between July 2013 to December 2013,

1.1.1 Ms Fowler became more abrupt;

1.1.2 Ms Fowler was quick to assume the claimant had not done work

1.1.3 Ms Fowler double checked the claimant's work more than before.

1.1.4 The claimant complained to Mr Saini in October but he took no steps to address the issues.

1.2 March-April 2014

1.2.1 During maternity leave on 11 and 27 March and 3 April the claimant asked about keeping in touch days but was told Ms Fowler did not need her. She was only asked to carry out around 3-4 days whereas in a previous maternity leave period she had done about 10 keeping in touch days.

1.2.2 The claimant spoke to Mr Saini in July 2014 and September 2014 just before her return from maternity leave about her concerns about Ms Fowler. He took no steps.

1.3 September 2014 – January 2015

1.3.1 Ms Fowler removed some responsibilities from the claimant. In particular, a) she told the claimant's team that holiday requests should go through her rather than the claimant; b) she stopped having Monday meetings which she had had before;

1.3.2 Ms Fowler singled the claimant out over mistakes such as an incident around 15 October about salaries when another member of staff was not similarly criticized

1.3.3 Ms Fowler refused to swop a working from home day though she later asked the claimant to swop.

1.3.4 The claimant complained to the respondent and a meeting was arranged in January 2015 with Ms Fowler and Gaby from HR. Ms Fowler criticised the claimant saying she was "unreliable", "didn't know double basic entry" and that she could not be trusted to carry out work given to her.

1.4 February 2015-July 2015

1.4.1 The claimant informed Ms Fowler she was pregnant and the treatment of being abrupt, criticising her continued;

1.4.2 In May 2015 the appraisal process began. Ms Fowler said she could not set goals as the claimant was due to go on maternity leave;

1.4.3 The appraisal document sent to the claimant contained matters not discussed at the appraisal meeting and the claimant refused to sign it;

14.4 Ms Fowler did not respond for some time to the claimant's concerns about the appraisal;

1.4.5 The claimant was informed by Gaby around late June that Ms Fowler would be given management training because of issues raised;

1.4.6 The claimant was discouraged by Gaby from bringing a grievance because she was about to go on maternity leave

1.5 July 2015 – February 2016

1.5.1 The claimant was informed by her sister who worked at the respondent that Gaby had told her no training of Ms Fowler had taken place and she did not know what to do about her.

- b) If any or all of these matters occurred, were they because the claimant was pregnant and/or had taken or was on maternity leave?
- c) If so, does the unfavourable treatment form part of conduct extending over a period such as to bring the claim in time?
- d) If not, is it just and equitable to extend time to allow the claim to be heard?

(2) Constructive Unfair dismissal (section 95 1) c) Employment Rights Act 1996

- a) Can the claimant show that the respondent committed a fundamental breach of contract? The claimant relies on the matters set out above as being a breach of the mutual term of trust and confidence.
- b) If so, can the claimant show she resigned in response to that breach and did so without delay?

## **ORDERS**

### **Made pursuant to the Employment Tribunal Rules 2013**

1. The respondent has leave to present an amended response before **16 June 2017**.
2. The claimant will send a statement of the remedy claimed in these proceedings to the respondent and the tribunal by **26 June 2017**.

3. The parties will send a list of relevant documents with copies to the other party by **26 June 2017**.
4. The claimant will inform the respondent which documents she wishes to be included in the hearing bundle of documents by **21 July 2017**. The respondent will prepare a joint bundle of documents and send one copy to the claimant by **21 August 2017**.
5. The parties shall prepare witness statements for all witnesses who will attend the tribunal. Those statements should contain facts relevant to the issues to be determined. Witness statements should be typed and arranged in paragraphs in chronological order. Where possible the witness statements should refer to pages in the joint bundle of documents. Generally, witness statements do not need to be longer than between 10-20 pages. The parties will exchange witness statements by **11 September 2017**.
6. The parties will agree a short neutral chronology for use at the hearing.

### CONSEQUENCES OF NON-COMPLIANCE

1. Failure to comply with an order for disclosure may result on summary conviction in a fine of up to £1,000 being imposed upon a person in default under section 7(4) of the Employment Tribunals Act 1996.
2. The tribunal may also make a further order (an “unless order”) providing that unless it is complied with, the claim or, as the case may be, the response shall be struck out on the date of non-compliance without further consideration of the proceedings or hold a hearing.
3. An order may be varied or revoked upon application by a person affected by the order or by a judge on his/her own initiative.

Dated 22 May 2017

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Employment Judge Manley

Sent to the parties on:

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For the Secretary to the Tribunals