



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs Laura Hogg  
**Respondent:** DK Resourcing Limited  
**Heard at:** Nottingham  
**On:** Thursday, 29 March 2018  
**Before:** Employment Judge Macmillan (sitting alone)

## Appearances

**For the Claimant:** In person  
**For the Respondent:** No response entered

# JUDGMENT ON REMEDY

1. The Claimant is entitled to a redundancy payment in the sum of £1,956.
2. The Respondent will pay the Claimant damages for breach of contract (notice pay) in the sum of £2,503.12.
3. The complaints of unfair dismissal and pregnancy related discrimination are stayed until Monday 30<sup>th</sup> April 2018. Unless by that date the Claimant has indicated that she wishes to pursue those claims, they will be dismissed.

# REASONS

1. This is a remedy hearing, a judgement in default of a response under rule 21 having been issued against the Respondents by Employment Judge Heap on 7<sup>th</sup> March 2018.
2. The Claimant brings 5 claims. The first relates to a failure to pay maternity pay which she has resolved through Her Majesty Revenue & Customs who have statutory responsibility for such claims. The others are unfair dismissal, pregnancy related discrimination, breach of contract, (that is a failure to pay notice pay), and for a redundancy payment.
3. The facts, so far as material, are as follows. The Claimant worked for a business known as DK Resourcing Limited. Her employment commenced on 16<sup>th</sup> September 2013 and was summarily terminated in a telephone

conversation on 22<sup>nd</sup> November 2017. At that time, she was on maternity leave which had started on 19<sup>th</sup> May 2017, her expected return to work date being 18<sup>th</sup> February 2018. The Claimant was born on 25<sup>th</sup> November 1985.

4. When the Claimant commenced her maternity leave, she was one of ten employees of the Respondent business. Very soon after she went on maternity leave, five of those employees were made redundant. She was not one of that group. Sometime during her maternity leave, she is not sure when, a business called Recon Services Limited was established. The Claimant's understanding is that the business was set up by a man called Andrew, who formerly worked for the Respondent together with two other former DK Resources Limited's employees. Andrew is the fiancé or partner of a lady called Amy Kent, who was a director of the Respondents, and who is believed to have some involvement in Recon Services Limited.
5. On 22<sup>nd</sup> November 2017, completely out of the blue, the Claimant received a telephone call from Amy Kent advising her that the business was no longer able to afford to pay maternity pay, and that in consequence that she was being made redundant with immediate effect. She was also told that there was no money to pay her a redundancy payment or notice pay. Although DK Resourcing Limited is still shown as 'active' on the Companies House website, the Claimant believes that it has ceased to trade and no longer has any employees. She also understands that another former director of DK Resourcing Limited is taking legal proceedings in the High Court against Amy Kent, and/or Recon Services Limited, on the basis that there was a transfer of the undertaking of DK Resourcing Limited to Recon Services Limited.
6. After a discussion with the Employment Judge, the Claimant asked for time to obtain further information about the state of DK Resourcing Limited, and in particular whether there would have been any job for her to return to on the 18<sup>th</sup> February 2018, had she not been made redundant in November. She also wishes to explore the possibility that there may have been a transfer of the undertaking of DK Resourcing Limited to Recon Services Limited and if so, whether that took place before or after her dismissal.
7. It was agreed that her claims of unfair dismissal and pregnancy related discrimination should be stayed for no more than one month and at the expiration of that time unless she had previously informed the Tribunal that she wished to continue with those elements of her claim, they would stand dismissed on withdrawal by the Claimant.
8. The Claimant is entitled to a redundancy payment. She was remunerated by a relatively modest basic wage plus commission. Her gross basic weekly wage, prior to her dismissal, was £480.76. In the three months preceding her departure on maternity leave, her earnings from commission amounted to £4,439.25 gross which gives a weekly figure of £341.48. Together with her basic pay this produces a total weekly gross pay of £822.24. However, at the time of her dismissal, the statutory maximum for the purposes of calculating a redundancy payment was £489. She had been continuously employed by the Respondents for four years, and in consequence her redundancy payment is  $4 \times £489 = \underline{£1,956}$ .

9. Her notice pay should be calculated by reference to the actual net earnings in the relevant period, in this case the 13 weeks prior to her going on maternity leave. In that period, her total nett earnings (that is her basic pay plus her commission) came to £8,135.14, which equates to £625.78 per week. Because she was employed for 4 complete years she was entitled to 4 weeks notice of dismissal or payment in lieu. As she was dismissed without notice or payment the respondents are in breach of contract and the damages to which she is entitled are therefore 4 x £625.78 = £2,503.12.

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Employment Judge Macmillan  
Date: 29<sup>th</sup> March 2018

JUDGMENT SENT TO THE PARTIES ON

09 April 2018

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FOR THE TRIBUNAL OFFICE