EMPLOYMENT TRIBUNALS

Claimant: Miss Robyn Devereux

Respondent: St Paul's Working Men's Institute

HELD AT: Manchester **ON:** 23 and 24 October 2017

BEFORE: Employment Judge Langridge
Mrs L A Buxton
Mr P Dodd

REPRESENTATION:

Claimant: Mr D Canning, Claimant's partner
Respondent: Mr T Wood, Solicitor

JUDGMENT having been sent to the parties on 10 November 2017 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided.

REASONS

Issues and relevant law

1. The claimant brought two claims against the respondent club, both of which she said related to her pregnancy during her employment, namely that she was:

   a. dismissed for discriminatory reasons; and
   b. discriminated against in other ways because of her pregnancy.

2. The first claim was that the claimant was constructively dismissed for discriminatory reasons contrary to sections 18 and 39 Equality Act 2010. In other words, the claimant alleged that when she resigned, she was entitled to do

so because of her employer's conduct, that her resignation amounted to a dismissal in law, and the dismissal was discriminatory because her pregnancy was the cause of it.

3. The second claim was that the respondent carried out other acts of discrimination against the claimant by treating her unfavourably because of her pregnancy, contrary to section18 Equality Act 2010. This part of the claim was broken down, with the help of previous Case Management Orders, into two elements. The first element related to:

   a. The respondent's handling of a risk assessment;
   b. The claimant's ability to take rest breaks;
   c. The carrying of heavy loads up from the club's cellar.

4. The second element related to:

   a. The respondent ignoring the claimant's requests for a contract and for holiday pay;
   b. The removal of key holder responsibilities from the claimant.

5. The Equality Act 2010 ('the Act') includes a number of provisions relevant to these claims. Section 39(2) says:

> *"An employer (A) must not discriminate against an employee of A's (B)—*
>
> *(c) by dismissing B;*
>
> *(d) by subjecting B to any other detriment."*

6. Section 39(7)(b) clarifies that the meaning of 'dismissal' can include what is commonly referred to as a 'constructive dismissal':

> *"(7) In subsections (2)(c) and (4)(c), the reference to dismissing B includes a reference to the termination of B's employment—*
>
> *(b) by an act of B's (including giving notice) in circumstances such that B is entitled, because of A's conduct, to terminate the employment without notice."*

7. This means that an employee who resigns, with or without giving notice, may treat themselves as dismissed by their employer if the latter's conduct is sufficiently serious as to repudiate the contract of employment. In keeping with well-established principles applying to all constructive dismissal cases, whether or not involving alleged acts of discrimination, this requires the employer to have committed a fundamental breach of the contract, such as a breach of the implied duty of trust and confidence. The leading authority is Western Excavating v Sharp 1978 ICR 221, CA, and the relationship of trust and confidence is dealt with also in Woods v WM Car Services 1981 ICR 666, EAT. Unreasonable conduct on the part of the employer is not enough. In the context of the present case, if the Tribunal were to find that an act of discrimination had taken place, it would then have to consider whether this contractual test had been met. The Tribunal would then have to determine whether the claimant's resignation was

caused by such a repudiatory breach, and whether she delayed her resignation or affirmed the contract in some way. To put it more simply: was the claimant entitled to resign because of discriminatory treatment on the respondent's part, and was that treatment of a sufficiently serious nature as to entitle her to treat herself as dismissed?

8. For the dismissal claim to succeed, not only must the requirements of the general law of constructive dismissal be satisfied, but the Tribunal must also conclude, on the evidence, that the cause of the claimant's resignation was a repudiatory breach and that the breach was an act of discrimination. Not every act of discrimination will be such a breach: Amnesty International v Ahmed 2009 ICR 1450, EAT.

9. Pregnancy and maternity is a protected characteristic under the Act, and section 18(2)(a) provides as follows:

> *"A person (A) discriminates against a woman if, in the protected period in relation to a pregnancy of hers, A treats her unfavourably —*
>
> *(a) because of the pregnancy …"*

10. In order for an employer to treat a woman unfavourably because of her pregnancy, that employer must also have knowledge of the pregnancy.

11. Given that the unlawful treatment must be *unfavourable* rather than *less favourable*, there is no need to identify a comparator in the workplace. In assessing the question of 'unfavourable' treatment, a Tribunal has to take an objective view of whether the treatment was adverse to the claimant. As stated by Langstaff P in Trustees of Swansea University Pension & Assurance Scheme v Williams [2015] IRLR 885, EAT:

> *"Persons may be said to have been treated unfavourably if they are not in as good a position as others generally would be."*

12. A causal connection between the pregnancy and the unfavourable treatment has to be made out. It is not enough simply to say that an employee was pregnant and then make assumptions about the reason why her employer conducted itself as it did. The Act requires a Tribunal to ask whether any unfavourable treatment was caused by the pregnancy. In Johal v Commission for Equality and Human Rights UKEAT/0541/09, the EAT adopted the reasoning of the House of Lords in Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337 and summarised the question as follows:

> *"Thus, the critical question we think in the present case is the reason why question posed by Lord Nicholls: "Why was the Claimant treated in the manner complained of?"*

13. Another way of putting the question is to ask whether pregnancy was an effective cause of the treatment complained of. The Tribunal had to approach the case in accordance with section 136(2) of the Act, which makes provision on the burden of proof in discrimination cases:

> *"(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.*
>
> *(3) But subsection (2) does not apply if A shows that A did not contravene the provision."*

14. This may be approached as a two-stage process, which first requires a claimant to prove facts from which the tribunal *could* conclude that the respondent had committed an unlawful act of discrimination. This is subject to the possibility that the respondent is able, through its evidence, to put forward an adequate explanation to displace any inference of discrimination. Following the guidance in Shamoon, these two stages need not be separated in such a structured way, but it is permissible to seek out the 'reason why' the claimant was treated in the way complained of. Whether the burden of proof shifts to the respondent in a formal way or not, dealing with the reason why may usefully address both stages of the analysis.

15. The Court of Appeal in Madarassy v Nomura International plc [2007] IRLR 246 said that the words 'could conclude' must mean 'a reasonable tribunal could properly conclude' from all the evidence before it. The second stage, which only applies when the first is satisfied, requires the respondent to prove that he did not commit the unlawful act. If the burden does shift, then the employer is required only to show a non-discriminatory reason for the treatment in question.

16. In Hewage v Grampion Health Board [2012] IRLR 870, the Supreme Court agreed with a warning given by Underhill J in Martin v Devonshires Solicitors [2011] ICR 352, that it is 'important not to make too much of the role of the burden of proof provisions':

> *"They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the tribunal is in a position to make positive findings on the evidence, one way or the other."*

17. This approach has recently been reaffirmed in the case of Ayodele v Citylink Ltd [2017] EWCA Civ 1913.

Findings of fact

18. Having heard the evidence of both parties over the course of this hearing, the Tribunal makes the findings of fact set out below. This is not a comprehensive recital of all the matters we have heard and read, but these are the facts which are most directly relevant to the issues in the case.

19. On 29 October 2016 the claimant started working for the respondent as a barmaid with key holder responsibilities. She was not employed as an assistant stewardess, because no such role existed with that title. The claimant worked regular Saturday shifts, and on Wednesdays she covered the steward's absence for which she needed keys to open and lock up the bar. The claimant was

recruited by Mr Brooks, the new steward, following a recommendation from a club member. Mr Brooks had not previously had any involvement with the club.

20. The terms upon which the claimant was recruited were not recorded in writing but were agreed orally with Mr Brooks. Those terms included the following:

    a. The claimant was employed to work as a barmaid, working flexible and variable hours, and with no fixed or guaranteed hours in any given week;
    b. Initially the working pattern was expected to include shifts on Saturdays, and on Wednesdays to cover the steward's absence;
    c. The claimant was to be given keys and key holder duties for such times as she covered the steward's absence on Wednesdays;
    d. The claimant might be offered other shifts as required, for example if functions were taking place;
    e. If she wished, the claimant could refuse to work shifts offered;
    f. The claimant's basic rate of pay was the same as the other bar staff, and she received an additional 50 pence per hour to reflect the key holder duties she performed.

21. The claimant knew that her shifts were not fixed and that a degree of flexibility formed part of the job. In fact she had left the same job approximately six months earlier on the grounds that she had wanted work with more fixed or stable hours.

22. No written particulars of employment or contract of employment were issued, the respondent believing that the claimant was a casual worker and not entitled to any such documentation. At that time the respondent issued contracts only to the steward and the cleaner. The then club secretary, Joe Flynn, was later tasked with producing contracts for all staff as noted in the minutes of a committee meeting of 7 February 2017. However, this was not done. It was not done for the claimant or indeed anybody else working behind the bar.

23. When the claimant started working for the respondent again in October 2016, she did so after a break in employment of approximately six months. Previously she had been employed for around two years by the respondent in the same job. During that previous employment the claimant neither asked for nor was given any written terms of employment. The claimant was considered by members of the respondent's committee, who reinforced this in their evidence to the Tribunal, to be excellent at the work that she did behind the bar. Nevertheless it was clear that there were problems between members of the claimant's family and the committee in place at the time she was re-hired. Those problems were serious enough to warrant the claimant's fiancé being barred from the committee and her brother being barred from the club. The claimant's fiancé is Mr Canning, who represented her during this hearing. Later, after the claimant's resignation, issues arose between the club and her father, the former President, and he left. Mr Brooks had been unaware of these problems when he hired the claimant.

24. Almost immediately after the claimant re-joined the respondent, a meeting of the committee took place on 1 November 2016 at which these problems were discussed and aired. The minutes record that Mr Brooks, as the new steward,

had been appointed on a three month probationary period, that the claimant was back working behind the bar, and that she "should not be working at the club". The reason for this view was the existence of the problems between the club's committee and the claimant's fiancé and family members.

25. So as not to undermine the new steward, who had responsibility for hiring and firing, the committee agreed to let the claimant continue in her employment for the three months of Mr Brooks' probation. This also gave the respondent the advantage that it would not be short staffed in the run up to Christmas. The committee was very concerned that if Mr Brooks left the club, the pool of applicants for the post of steward had been very poor and he had been by far the best candidate. The club did not want to upset this arrangement or take the risk of having to recruit again without finding a suitable candidate. A decision was made at this point, 1 November 2016, that the claimant would have to return her keys after the three months' probation.

26. On 5 November Mr Brooks told the claimant, following instructions to him from the committee, that her contract, like his own, would be on a three month probationary period. The claimant agreed to this change to her contract, raising no objection to it and continuing to work on this basis.

27. At a further meeting on 14 November the committee decided that the key holder duties would be returned to Natalie Worthington, another member of the bar staff, after this three month period. Ms Worthington had been the key holder until the claimant's employment recommenced in October 2016.

28. The decisions to treat the claimant's employment as probationary for 3 months, and to relieve her of key holder duties, each pre-dated any knowledge of the claimant's pregnancy. Unhelpfully, the claimant was not told about the latter decision until some time later, when she received a letter from the respondent on 14 February 2017.

29. It was on 24 November 2016 that the claimant told the respondent about her pregnancy. She did so by a letter which also asked for a risk assessment to be carried out. The claimant herself identified some risks that she perceived to exist, such as lifting heavy loads and standing for long periods. She was in a position to manage these risks herself, and did so.

30. The day after notifying the respondent about her pregnancy the claimant wrote a letter about the absence of a written contract. She wrote not to Mr Brooks or to the club committee, but instead to the Area Secretary of the CIU (a Mr Blakeley). In her letter the claimant asked whether a written contract should be in place given that she was a key holder. She received no reply from Mr Blakeley to this or any of her later letters to him.

31. There was a further meeting of the club's committee on 6 December 2016 which recorded receipt of the claimant's letter about her pregnancy. It was noted that advice would be taken on preparing a risk assessment, and that the respondent would let the claimant know she should not undertake any heavy work meanwhile. This was followed up by the respondent's letter of 9 December giving the claimant this instruction.

32. On 14 December a risk assessment was carried out by Mr Halliwell with assistance from Mr Barnes, the latter having particular HR and health and safety experience. A comprehensive risk assessment document was prepared and put behind the bar where the claimant could have access to it. There was some confusion amongst the respondent's witnesses about whether the claimant was told about this risk assessment, though it was not in doubt that they believed Mr Flynn, the former secretary, had told her about it. The Tribunal accepted that Mr Halliwell did mention the risk assessment to the claimant as he and Mr Barnes left the bar the day it was carried out, but no detailed discussion about the content of the document took place with the claimant. That said, she was able to and did manage the risks herself. At no time was the claimant required to work in such a way as to pose a risk to her or her unborn child, whether by carrying heavy loads or not taking rest breaks as and when needed.

33. In the period running up to Christmas 2016 the claimant made a request to take holiday on Christmas Eve, but she did not get any response or authorisation to do that. It was not until 29 December, after she had taken the day off, that the club treasurer said this time would have to be unpaid. This was in the mistaken belief that the claimant was not entitled to any paid holidays during the first 3 months of her employment. The point became the subject of ongoing correspondence, and eventually the accrued holiday was paid on 3 March 2017.

34. The holiday pay issue was the main focus of the claimant's next letter, dated 30 December 2016, in which she also identified her concerns about what she saw as a lack of contact from the committee about a contract of employment, and about her probationary period.

35. As noted above, the lack of a contract of employment was an issue which the claimant had taken up not with the committee but with Mr Blakeley from the CIU Area Office. The question of the claimant's probationary period was something that had already been discussed with her by Mr Brooks. These issues were raised again in a further letter from the claimant on 6 February 2017. This also included also a query about rest breaks.

36. On 7 February 2017 the committee discussed the question of rest breaks and the provision of a bar stool so the claimant could rest while at work. Mr Halliwell told the claimant she could take breaks as and when required, provided that customers were not waiting to be served. This was followed up in writing by the respondent's letter of 8 February saying that the claimant could take 15 minute breaks in line with Government regulations, again providing customers were not waiting.

37. This letter of 8 February, which the claimant received on 14 February, dealt with a number of key issues. Firstly it recorded the fact that a binding contract of employment had been entered into verbally for a three month period. It recorded the fact that the position of key holder had been allocated to another member of staff who, although not named in the letter, was clearly Natalie Worthington. The letter stated that the claimant could continue to work as a member of the bar staff, including after her return from maternity leave. Finally, it said that written contracts were to be issued in the near future. On the day of receipt of the letter, the claimant returned the keys to the respondent. Although she was no longer a

key holder, the claimant did not suffer any loss in her hourly rate of pay as a consequence, as the 50 pence uplift was not taken off her.

38. On 15 February the claimant wrote again to Mr Blakeley, not the committee (whose members were not copied into any of her letters to the CIU), complaining about the ending of her contract such that she was now, in her words, "only bar staff". In fact her contract had not ended; it was simply the case that her responsibility as a key holder had been taken off her. This was a change to duties and it had the consequence that the claimant would no longer be able to cover the steward's day off on Wednesdays. It did not preclude her from working such other hours as were available during the week, in accordance with her flexible working pattern.

39. On 16 February the claimant wrote to Mr Flynn disagreeing with the decision to remove her key holder duties. There was no reference in this letter to pregnancy discrimination, although that had been referred to in the letter to Mr Blakeley.

40. The claimant continued to work and on 19 February she wrote to the respondent notifying her intention to begin maternity leave period a month later, on 19 March. Two further letters followed on 24 February, one to Mr Blakeley and another to Mr Flynn, both focussing on the question of holiday pay and neither mentioning the issue of discrimination or any pregnancy issues at all. It was shortly after this that the holiday pay was paid in full, on 3 March.

41. It was on 23 March, shortly after starting her maternity leave, that the claimant wrote her resignation letter saying that the working relationship was "now far beyond repair". She did not in the letter go into an explanation for that, but in oral evidence said she assumed that the committee would understand that this was to do with the lack of communication she had referred to in previous letters. When questioned by the Tribunal about her reasons for resigning the claimant talked about the fact that she did not think she would be welcomed back, she thought the committee would be more hostile, and – significantly – she said "they were adamant they didn't want me in the first place".

Conclusions

42. The Tribunal reached its conclusions based on the above findings of fact, and its assessment overall of the evidence from the written evidence and the witnesses.

43. Dealing first with the allegation that the claimant was dismissed for discriminatory reasons, she argued that she was constructively dismissed within the meaning of sections 39(2)(c) and 39(7)(b) of the Equality Act 2010. Section 39(7)(b) mirrors the constructive dismissal language of the Employment Rights Act 1996, and the law in this area is very well settled. The Tribunal considered first whether there was a breach of a term of the claimant's contract, whether an express term or the implied duty of trust and confidence. The Tribunal concluded that the respondent did not breach any express term of the contract.

44. The key holder responsibility given to the claimant on appointment was ancillary to the initial arrangement whereby she would work a Wednesday shift and cover the steward's absence on that day. Previously, that shift was worked by Natalie

Worthington, who later took it over from the claimant. This reflected the flexible way in which shifts were allocated or sometimes changed. Whoever had to cover the steward's absence would have to be a key holder for that purpose, but it was not a binding term or a permanent feature of the role. The arrangements were intended by both parties to operate in a flexible way, as demonstrated by the transfer back and forth of key holder duties between the claimant and Ms Worthington. The key holder's basic hourly rate was the same as any member of the bar staff, with those extra duties rewarded by a small uplift to the hourly pay.

45. Even if the respondent were contractually bound by the key holder arrangement, such that changing this after the claimant's 3 month probationary period was a breach of contract, any such breach was a relatively minor one which did not go to the root of the employment relationship, or destroy that relationship.

46. As for holiday pay, the claimant did have the right to be paid for time off and the respondent was wrong in its initial view that there was no such entitlement. The claimant took time off on Christmas Eve and raised the question of payment afterwards, in her letter of 30 December. By the time of writing to the claimant on 8 February, the respondent had accepted that she was an employee with a verbally binding contract and entitled to holiday pay. The payment of this sum was delayed until 3 March, but this was not a breach of the contract. Even if it were, any such breach was not significant and did not undermine the employment relationship.

47. The other elements of the claimant's complaints are not contractual matters in their own right, though it might be said that their handling could amount to a breach (taken together or individually) of the implied duty of trust and confidence. It is therefore convenient to consider these elements before returning again to the subject of the claimant's dismissal claim.

48. The pregnancy discrimination allegations under section 18 of the Equality Act relate to unfavourable treatment because of pregnancy. The Tribunal considered what the treatment was, whether it was unfavourable, and whether it was because of pregnancy. We considered the three linked allegations in the first element of this claim, namely the management of risk during the pregnancy; the ability to take rest breaks; and the carrying up of heavy items from the cellar.

<u>Management of risk & rest breaks</u>

49. This part of the claim is not made out on the evidence. Firstly, the claimant asked for a risk assessment on 24 November and the respondent took immediate steps to address this. On 6 December it discussed the issue at a committee meeting and on 9 December it wrote to the claimant instructing her not to take any risks in carrying out her work, such as carrying heavy loads. A formal risk assessment was then carried out on 14 December, though with minimal involvement from the claimant, with whom it was not discussed in detail. The respondent could have done more to communicate better with the claimant about the risk assessment exercise, but the document was accessible. The claimant made no complaint that no risk assessment had been carried out, and did not follow up the issue except as to a specific point about rest breaks.

50. Having raised the issue of rest breaks in her letter of 6 February, the respondent again took immediate action. With a day or two Mr Halliwell told the claimant she could take the rest breaks she needed, albeit with the proviso that customers should not be kept waiting at the bar. This was confirmed by the respondent's letter dated 8 February.

51. It is notable that in the numerous letters sent by the claimant during this period, she did not place any emphasis on the risks of the work but was more focussed on the absence of a contract and the non-payment of holiday pay. This was consistent with the fact that she was able to identify and manage any risks herself.

52. We do not accept that there was unfavourable treatment or that the claimant was actually in a position of having to take risks. Indeed, the claimant did not produce any evidence that this was the case, nor that the respondent required her to work in such circumstances. We conclude that the claimant was able to identify and manage any risks herself, and did so, using her common sense so as not to undertake tasks that might have harmed herself or her unborn baby. The claimant was also in a position to ask for help if needed, for example with carrying heavy loads.

53. Important though it was to consider and manage risks during pregnancy, the claimant's point was an entirely theoretical one. The Tribunal does not therefore accept that the claimant was treated unfavourably in relation to the management of risks or the taking of rest breaks, and certainly not because of her pregnancy.

Contract, holiday pay & key holder duties

54. The claimant alleged that her requests for a written contract and for holiday pay were ignored, and that this was unfavourable treatment because of her pregnancy. The Tribunal noted that no members of staff had contracts other than the steward and the cleaner, and accepted the respondent's explanation that this was because bar staff were felt to be casual workers with no right to written terms of employment. We also concluded that the claimant knew this from her previous two year period of employment, during which she had neither a contract nor any issue with its absence.

55. In reaching these conclusions the Tribunal took into account the circumstances in which the club operated, with minimal staff and volunteers as committee members. It was an informal environment in which the provision of written contracts (or, as the law requires, written particulars of employment) was not a high priority for employer or employees. The Tribunal appreciated that a working men's club may not have the most sophisticated HR systems and methods of dealing with paperwork and procedures. That is not to say that things could not have been done better, particularly in relation to the communication of issues with the claimant.

56. The Tribunal did not accept that in the context of this workplace the failure to provide a written contract, or to respond in a timely way to the claimant's letters about this, amounted to unfavourable treatment. Most of the claimant's letters raising this issue were not sent to the respondent but to the CIU Area Office.

Even if it were unfavourable treatment, that was very evidently not because of the claimant's pregnancy but because of the respondent's genuine but mistaken belief that no such document was required for bar staff. This belief was not disputed by the claimant.

57. It is not difficult to treat a delay in payment of holiday pay as unfavourable treatment, but the Tribunal saw no basis upon which this could be said to be because of pregnancy. The respondent's explanation for this treatment, which again was not disputed, was the former secretary's mistaken belief that the holiday had not accrued due to the claimant's short service. Once that entitlement was established, the payment was made.

58. The final allegation of unfavourable treatment is the removal of the claimant's position as a key holder. As already indicated in the context of the dismissal claim, this did not amount to a breach of contract but rather a change of duties. It was not the bringing to an end of one type of contract and the start of a new one, though it did have the effect that the claimant was unable to cover the Wednesdays when the steward normally took his day off. She lost her Wednesday shift, but that was not guaranteed as no particular shifts were fixed. This was evidenced by the fact that Natalie Worthington had previously lost the Wednesday shift when it was given to the claimant. It was part and parcel of the way that the respondent operated its flexible bar staff arrangements. It is hard to say that it was unfavourable to the claimant that she was managed in a way that was consistent with her contractual terms, guaranteeing no fixed shifts or hours. The claimant was not treated unfavourably (per Trustees of Swansea University Pension & Assurance Scheme v Williams), because she was in as good (or bad) a position as others generally would be.

59. Even if this were unfavourable treatment (without the necessity for it to be a breach of contract), the Tribunal was satisfied that this was in no way connected to the claimant's pregnancy. The necessary causal connection was not made out. The decision to remove the keys from the claimant was taken on 14 November 2016. This was consistent with the minutes recording the three month probationary nature of the employment. The decision therefore predated the claimant notifying the respondent of her pregnancy by ten days. There was no suggestion that the respondent had any knowledge of the pregnancy before her letter of 24 November. The decision to remove the key holder duties was not communicated to the claimant, or acted upon, until three months later. It was 14 February 2017 when the claimant received the letter asking her to return the keys, the first she knew about the decision. Although not told about the planned change to key holder duties until this stage, the claimant had been made aware on 5 November that a three month probationary period would apply.

60. The Tribunal therefore accepted that this decision was made prior to knowledge of the pregnancy, on the grounds that for a three month period the steward's decision to hire the claimant was to be left undisturbed for the sake of the smooth running of the club. We noted also that the claimant continued to be a key holder for some time after notifying her pregnancy to the respondent.

61. For the above reasons the allegations which form part of the section 18 claims do not succeed.

62. Returning to the wider issue of the claimant's employment coming to an end, it follows from our conclusions on the pregnancy discrimination claims that we do not conclude that the respondent breached the implied duty of trust and confidence in its management of risk, or its handling of the issue about a written contract, holiday pay or the removal of key holder duties. Even taken together, those actions did not amount to a fundamental breach of the implied duty. The lack of communication with the claimant at times, and the time taken to resolve the question of holiday pay and written particulars of employment, show an employer which was imperfect and at worst behaving unreasonably (though we make no such finding). Accordingly, those imperfections were not sufficient to found an argument that the claimant was entitled to treat herself as dismissed by reason of her employer's conduct.

63. There being no breach of contract, it cannot be said that the claimant was dismissed. It follows that no discriminatory dismissal took place. The claimant simply chose to leave.

64. Even if we had found that the claimant was entitled to resign by reason of the respondent's conduct, we would not have found any connection between that and the claimant's pregnancy. The Tribunal was unanimously of the view that the recent problems between the club and the claimant's family members had found their way into this second period of her employment. It was clear that this affected *both* parties' conduct towards each other, including the claimant's handling of her correspondence. Committee members were unhappy from the outset that the claimant had been re-employed. This sentiment was echoed in the claimant's own evidence about the reason she resigned, demonstrating that the relationship was unhappy for reasons quite separate from her pregnancy.

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Employment Judge Langridge

11 April 2018

REASONS SENT TO THE PARTIES ON

17 April 2018

FOR THE TRIBUNAL OFFICE

[AF]