**Case Number: 1400038/2017**

# EMPLOYMENT TRIBUNALS

**Claimant:** **Ms G Richardson**

**Respondent:** **Cembrit Ltd**

**Heard at:** **Southampton** **On: 27 June 2017**

**Before:** **Employment Judge Reed**
**Members: Ms A Sinclair**
**Mr N A Knight**

**Representation**
**Claimant:** **In Person**
**Respondent:** **Ms R Lorraine, counsel**

# JUDGMENT

The unanimous judgment of the Tribunal is that the claimant was not unlawfully discriminated against on the ground of pregnancy and accordingly her claim fails.

# REASONS

1. In this case the claimant Ms Richardson alleged she had been unlawfully discriminated against by her former employer Cembrit Ltd ("the Company"). Her employment had been terminated by the Company and she said the reason for that termination had been pregnancy. It was accepted by the Company that her employment had been terminated by it but it was said that the reason for her dismissal was her performance and general behaviour during the period of her employment and that her dismissal was not in any way related to pregnancy.

2. We heard evidence from Ms Richardson herself. For the respondent we heard from Mr Wilden, Technical Manager and the person who took the decision to dismiss, together with Mr Fair, Finance Director, Mr Heldgaard, Managing Director and Ms Knox, Area Supply Chain Manager. Our

attention was directed to certain documents and we reached the following findings.

3. Ms Richardson began working for the respondents on 13 July 2016. She told us that at the interview leading to her employment she was specifically asked what her intentions were in relation to having children in the future. That account was not accepted by the Company and we were not inclined to accept that her version of events was accurate. We considered this might be a "recollection" engendered by a subsequent email, to which we refer below.

4. Over the ensuing weeks there clearly were concerns about aspects of Ms Richardson's behaviour, evidenced by contemporaneous emails. There were issues with her time keeping, the ability of the Company to contact her and on one occasion the way she conducted herself at training.

5. Ms Richardson was on a probationary period and the Company's case was that during a conversation between Mr Heldgaard and Mr Wilden on 31 August a decision was taken to dismiss her. On that day Ms Richardson was actually at her place of work but was not told of any such decision.

6. The following day Ms Richardson was off sick. She was actually in hospital.

7. There was then a series of exchanges between herself and Mr Wilden. On 1 September she informed him that she had an ectopic pregnancy and told him what procedures were going to be required as a consequence. The responses from Mr Wilden would not have led her to understand that her future employment with the Company was in jeopardy. There were perfectly pleasant exchanges between the two of them over the ensuing days while Ms Richardson kept him up to speed as to her situation.

8. On 5 September she indicated a great deal of uncertainty about her pregnancy. She perceived that there then came about a change in the tone of the messages from Mr Wilden,. She spoke to Mr Wilden on 9 September and there was a conflict between the parties as to what she said. She referred in that conversation to an ovarian cyst but it was her case that she informed him that she was pregnant. It was Mr Wilden's evidence that she indicated precisely the contrary.

9. In any event she did return to work on 12 September and she was told by Mr Wilden that she was dismissed. She suggested in evidence to us that she had indicated to him that she believed her dismissal was by reason of pregnancy but we considered that was unlikely.

10. She appealed against that dismissal. The appeal was actually disposed of on the papers and was rejected.

11. Under s18 of the Equality Act 2010 a person discriminates unlawfully against a woman if, in the protected period in relation to her pregnancy, that person treats her unfavourably because of her pregnancy. Ms Richardson simply said that the real reason for her dismissal was not her performance or behaviour but because she was pregnant. The Company said that the decision to dismiss was taken on 31 August. It was common to the parties that the Company had no idea Ms Richardson was pregnant at that date. If

that evidence was accurate, then it had to follow that the reason for dismissal was not pregnancy and therefore that the claim failed.

12. There were clearly grounds on which Ms Richardson might reasonably have entertained doubts about the truth of the Company's case. Firstly, if the decision was taken on 31 August and given that she was in work that day, why was she not told of it then? Secondly, the tone of the exchanges between herself and Mr Wilden after that date seemed more consistent with an expectation that she would continue in employment than that it would terminate. Thirdly, in an email dated 13 September from Mr Wilden he refers to Ms Richardson having indicated that she did not intend to have children. The email was explaining his rationale for her dismissal and there was no obvious reason to refer to any such discussion in it.

13. As to the first of those matters, we were told that the agreement reached on 31 August was that Ms Richardson would be informed of her dismissal the following day. As it happened, Ms Richardson was taken ill and so did not attend work on 1 September but there was no reason for Mr Wilden to expect that she would not be in on that day and therefore no reason for him to bring that meeting forward. There was therefore nothing suspicious in the failure to notify her on 31 August

14. We could certainly see how Ms Richardson would be suspicious of the Company in the light of the exchanges she had with Mr Wilden for the first few days of September. Mr Wilden is being friendly in those exchanges and there would have been no reason for Ms Richardson to anticipate what was to happen on 12 September.

15. We were given an explanation by Mr Wilden for that state of affairs, namely that he was indeed being somewhat disingenuous. He had very recently had a conversation with Ms Richardson's former employer who had informed him that when her employment with them finished, they had had great difficulties recovering her company car. He did not want to alert her to the possibility of her dismissal in case the Company had a similar problem with her. We accepted that that was the explanation for the tone of his messages, rather than a decision having been taken later than 31 August to terminate her employment.

16. It is correct that there was no reason for Mr Wildon to refer to Ms Richardson's intentions in relation to children in his email of 13 September but at the heart of this case was a simple issue of credibility. Three of the witnesses for the Company gave direct evidence to the effect that the decision to dismiss was taken on 31 August – Mr Wilden and Mr Heldgaard, who said they had had the discussion in question, and Ms Knox who said she was informed of the decision on that day. We had to decide if they were perjuring themselves. We did not believe they were. Ms Richardson could not know the reason for her dismissal. Only the witnesses for the Company could. As we say above, there was a dispute between the parties as to whether on 9 September Ms Richardson indicated she was pregnant or precisely the opposite but nothing turned on that for our purposes. Ms Richardson's dismissal was the implementation of a decision that was taken on 31 August. It followed that it could not be by reason of her pregnancy and that her claim therefore failed.

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Employment Judge Reed

17 July 2017