



EMPLOYMENT TRIBUNALS

Claimant: Mrs J Zerne
Respondent: Fiona Cairns Ltd
Heard at: Leicester
On: Monday 15 October to Thursday 18 October 2018
Before: Employment Judge Brewer
Members: Mrs B Tidd
Mr A Wood

Representation

Claimant: Mr M Gordon of Counsel
Interpreter: Gintare Balciuniene
Respondent: Mrs E Hodgetts of Counsel

JUDGMENT

The judgment of the tribunal is that:

1. The claims under section 57 Employment Rights Act 1996 are dismissed.
2. The claims under section 18 Equality Act 2010 are dismissed.
3. The claim for automatic unfair dismissal under section 99 Employment Rights Act 1996 is dismissed.

REASONS

Introduction

1. In this case, we heard oral evidence from the Claimant and for the Respondent we heard from Mr Rushin Patel, Ms Jatinder Pandit, Mrs Pat Bills and Mrs Elaine Watkiss. We also heard from the Chairman of the business, Mr Vrajkishore Patel. All of the witnesses have provided written witness statements, which they adopted as their evidence-in-chief. We also had a witness statement from Nicola Brown, although she was not present and

was not cross-examined. We have given that appropriate weight. We had an agreed bundle.

Issues

2. The parties have agreed a list of issues as follows:
 - 2.1 Was the Claimant unreasonably refused permission to take time off for an antenatal visit contrary to section 57 Employment Rights Act 1996?
 - 2.2 Did the following amount to unfavourable treatment because of pregnancy contrary to section 18 Equality Act 2010?
 - (a) The words spoken by Pat Bills and Elaine Watkiss on 17 July 2017.
 - (b) The imposition of a verbal warning and what was said on 18 July 2017.
 - (c) Words spoken to the Claimant by Elaine Watkiss in late July 2017.
 - (d) The dismissal of the Claimant.
3. Was the Claimant automatically unfairly dismissed because of pregnancy contrary to section 99 Employment Rights Act 1996?

The law

4. It is not necessary to set out the law extensively and we are grateful to both representatives for their careful submissions and exposition of the law, with which we entirely agree. The statutory provisions are straightforward. These are:
 - 4.1 Under section 55 Employment Rights Act 1996, a pregnant woman has the right to time off for antenatal care and the claim under section 57 is that the Respondent unreasonably refused to allow that time off.
 - 4.2 The claim under section 18 Equality Act 2010 is of unfavourable treatment because of pregnancy and in this case the applicable provisions are section 18(1) and 18(2)(a). Because this is a claim of unfavourable treatment, no issue of any comparator arises.
 - 4.3 The claim under section 99 Employment Rights Act 1996 is that the dismissal was automatically unfair because the reason why the Claimant was dismissed was pregnancy or, if more than one reason, that was the principal reason. That provision is to be read alongside regulations 20(1) and 20(3) of the Maternity and Parental Leave Regulations 1999.

Findings of fact

5. Having considered the evidence, we make the following findings of fact.
- 5.1 The Claimant was employed by the Respondent as a QA Supervisor and Technical Assistant with effect from 2 November 2016.
- 5.2 The Respondent is a Company supplying cakes to retail customers. The Company has a turnover of around £7m per annum and employs around 120 people. The Respondent's most significant customer is the supermarket chain Waitrose, which accounts for some 87% of their business.
- 5.3 The Claimant was part of the technology team, which consisted of four people. These were the Claimant, her manager (Mrs Watkiss) and two junior members of the team, being Nicola Brown and Jatinder Pandit.
- 5.4 Ms Brown and Ms Pandit worked solely in the bakery whereas the Claimant and Mrs Watkiss dealt with issues relating to production but also dealt directly with customers and dealt with queries of a more technical and potentially more difficult kind.
- 5.5 Customer queries with which the team has to deal can arise at any time and are received fairly regularly, although they can peak when for example they relate to a new product. The key point is that they are not predictable.
- 5.6 The Claimant had a written contract of employment and that appears from page 35 of the bundle. There is a job description describing the Claimant's job. The Claimant was not given a hard copy of that, however, she was told that it was on the Company's intranet, she knew where to find it and she had access to the intranet so that she could find a copy should she have wished.
- 5.7 In the job description, a number of responsibilities and key requirements are set out. One of the responsibilities is to work as a team with the production supervisors and NPD (new product development). The Claimant is also required to provide technical support to the operations team. There are some 32 key requirements of the Claimant's role set out in the job description, which need not detain us, but there are two general requirements, one of which is as follows:
- "To carry out any reasonable request made of you by your manager."*
- 5.8 The Claimant has an impressive CV. She says she speaks four languages. She has excellent IT skills and various formal qualifications.

- 5.9 The Claimant's contract of employment includes, unusually, a disciplinary procedure. The key points for our purposes are paragraph 13A which states that: "*In the case of minor offence, the manager will give you a verbal warning*"; At paragraph 13E which sets out a number of examples, although clearly in a list not intended to be exhaustive, of what the Company would consider to be gross misconduct, including "*Refusal to carry out duties or reasonable instruction*" and clause 14, which is the right to appeal.
- 5.10 There is a clause at 13F which is somewhat ambiguous. It does say that gross misconduct will result in immediate dismissal without notice or payment in lieu of notice. It goes on to say that "*the decision to dismiss will not be taken without reference to at least one Director.*" It goes on to say that a disciplinary process, including a hearing, will be put in place before anyone is dismissed "*except for employees with less than 2 years complete service*". It remains unclear whether that is a reference to dismissal only for gross misconduct or is a reference to all disciplinary dismissals. However, for reasons which follow, we do not consider that we have to make a determine on the meaning of clause 13F.
- 5.11 On 7 June 2017, the Claimant told Mrs Bills that she was going to leave work early and would not be in the next day because of family issues. Mrs Bills pointed out that Mrs Watkiss, who was the Claimant's line manager, was on holiday and therefore the Claimant would be needed as technology cover all week. The Claimant shouted at Mrs Bills, both in her office and later outside the building. Mrs Bills told the Claimant that she would make a note about what had occurred and place it on the Claimant's file. That note appears at page 46 of the bundle. Although we will discuss the facts we are finding below, we pause to note that it was an issue in this case, not just in relation to this note but elsewhere, that the Claimant was not sent a copy. We find as a fact that there was no reason why the Claimant should have been sent a copy of this note. She was told it was going to be on her file, she could have seen it if she had wished.
- 5.12 On or around 12 July 2017, the Claimant was given her first antenatal appointment and this was scheduled for 9 am on 31 July.
- 5.13 On 17 July 2017, the Claimant showed the appointment letter to her manager, Mrs Watkiss. This was the first time Mrs Watkiss (or as far as we can determine anyone in the Respondent) knew that the Claimant was pregnant. Mrs Watkiss went to speak to Mrs Bills about this. The reason that she had to speak to Mrs Bills was that Mrs Watkiss knew that she would be on holiday on 31 July. She wanted to speak to Mrs Bills about what to do about the request for time off. It transpired that Mrs Bills, who although not part of the technologist team, could have provided cover, was in any event out at a Waitrose conference on that day and for reasons which we can understand that was not something she would have wanted to miss. Mrs Bills

therefore asked Mrs Watkiss to ask the Claimant if she could change the appointment. Mrs Watkiss did this. The Claimant was unhappy about that. Later that day, the Claimant went to see Mrs Bills. The Claimant reiterated that she was unhappy about being asked to change the date of the appointment and Mrs Bills reiterated the difficulty they had with cover and she again asked whether the Claimant could change the appointment. We find as a fact that the Claimant shouted at Mrs Bills. In the event, the Claimant did manage to change her appointment and indeed the delay was only 24 hours.

- 5.14 The Claimant says that she asked Mrs Bills for a letter stating that she would not be allowed to go to the appointment on 31 July. Mrs Bills says that she was not asked for such a letter. We shall return to this point below.
- 5.15 As a result of being shouted at by the Claimant, Mrs Bills invited the Claimant and Mrs Watkiss to a meeting on 18 July 2017. The invitation to that meeting (which appears at page 47A of the bundle) clearly refers to it as a review meeting. It is not referred to as a disciplinary meeting.
- 5.16 In the event, that meeting went ahead and the notes appear at pages 48 and 49 of the bundle. We note that at no point during that meeting is there any reference to it being a disciplinary meeting. Nevertheless, the Respondent, through Mrs Bills, told the Claimant at the end of that meeting that she was being issued with a formal verbal warning for attitude and behaviour towards "*a Director and Manager of the business*", which we take to be Mrs Bills. That of course was a reference to the previous day. The Claimant was also told during that meeting that her behaviour towards other members of staff had to be "*amended*".
- 5.17 Sometime in late July, it is unclear precisely when, a conversation took place which included Mrs Watkiss, Ms Pandit and the Claimant. Part of that was an enquiry by Mrs Watkiss of the Claimant about her plans for the future.
- 5.18 On 2 August 2017, there was a dispute about a response to be given to a query from the Export Department of Waitrose. An enquiry had been received and the Claimant had responded to that twice in precisely the same way. She had essentially sent a screen shot of a technical response. However, this did not satisfy the person making the request and they sent a third email seeking further clarification. This clearly frustrated the Claimant. She said she needed assistance from Mrs Watkiss. Mrs Watkiss gave the Claimant two response to four of the questions. Those responses were fairly straightforward; they were that there were not transfats (presumably in the product) and to tell the person asking the question precise weight of the product. Mrs Watkiss also said that in relation to the other two

questions, if the Claimant did not know the answer, she should speak to Matt, who is a technologist in the new product development team. She said expressly that he would be able to assist. We find as a fact that there was a heated discussion or argument between the Claimant and Mrs Watkiss about this. It would appear that as a result of this, Mrs Watkiss walked out of the Respondent's workplace at around 15:25 that afternoon. The argument was witnessed at least by Nicola Brown, Ms Pandit and Mr Rushin Patel. They produced notes which appear at pages 50, 51 and 57 of the bundle. Elaine Watkiss made her own notes and these appear at page 52 of the bundle. We shall return to these below.

- 5.19 On 3 August 2017, the Claimant sent a text to Mrs Watkiss saying that she would not be available for work that day as she was going to see her doctor because she was feeling stressed and not very well. She refers to what had happened the day before and accused Mrs Watkiss of shouting at her and mentally abusing her. The Claimant says she did the best job she could as she had always done. She said that she would let Mrs Watkiss know what the doctor said later. That appears at page 53 of the bundle. A copy of that text was sent by Elaine Watkiss to Mrs Bills at 08:32 on 3 August 2017. Around 10 minutes later Mrs Bills forwarded that email (and therefore the text of the Claimant) to the Claimant, Mr Patel. In Mrs Bills email she says this:

“Can you please support Elaine with following this up when Jurgita appears. On 17 July I gave her a verbal warning for shouting and being rude to me. This was not the first time I had spoken to her about being rude and disrespectful. She apparently exploded and was shouting yesterday and there was a bit of an argument which both Nikki and I think Rushin saw some of.”

- 5.20 Mr Patel had a telephone conversation with Mrs Bills at some point on 3 August 2017 when Mrs Bills was on the ferry on her way to France. Mrs Bills informed Mr Patel of the earlier incident in June and July.
- 5.21 Mr Patel says he carried out an investigation. He says he spoken to Nicola Brown, Elaine Watkiss, Rushin Patel and Jatinder Pandit. Mr Patel says that he made notes of those conversations but he did not keep copies. Mr Patel says that he did not read any documentation.
- 5.22 Following that investigation, Mr Patel decided to dismiss the Claimant and he wrote the letter of dismissal which appears at page 56 of the bundle. It is agreed that the Claimant received, or at least read, the letter on 7 August 2017 and that is the effective date of termination. The Claimant was dismissed without notice or payment in lieu of notice and the reason given is:

“Your behaviour on 2 August 2017 in the technical office amounted to a refusal to carry out a reasonable request which we consider to be a matter of gross misconduct. That was further aggravated by an unacceptable level of insubordination in an open office directed at the person you report to (Elaine Watkiss). This and other such incidences make it impossible to have a constructive working relationship with you. Regrettably we have no choice but to dismiss you without notice and with immediate effect.”

5.23 Those then are the material findings of fact in this case.

Discussion

6. We have considered carefully the credibility of each of the witnesses we heard. The tribunal is mindful that credibility is not all or nothing, it is perfectly possible for a witness's evidence to be credible in part and not credible in part. Save in the case of Mrs Bills whose evidence we accept, we have found elements of each witness's evidence to be lacking in credibility and we accept the rest. What we accept and reject will become apparent as we go through each of the acts complained of.
7. The Claimant, notwithstanding how the list of issues are structured set out her complaint in five acts and we will deal with our findings in respect of each of those acts.
8. The first act is the purported refusal of time off for the antenatal visit.
 - 8.1 In short, we do not find that the Respondent's act amounted to a refusal in this case. We accept the evidence of Mrs Bills that she asked the Claimant if she would change the date of the appointment. It is possible, and we do not criticise the Claimant for this, that the Claimant understood that she was being refused the appointment but as I have indicated we do not find that that was the case. We find that Mrs Bills' language was clear and further we find that even if those words could or did amount to a refusal, given the circumstances which pertained at the time, that is to say the unavailability of Mrs Watkiss and Mrs Bills, such a refusal was not unreasonable.
 - 8.2 We considered the point made by Mr Gordon about whether queries could be dealt with remotely and we have no doubt that some could. For example, if an email needed a response or somebody needed to take a 'phone call, that could easily have been done out of the office. But the evidence from Mrs Watkiss (which we accept) is that some just could not be dealt with in this way and given that the requests could arrive at any time, the nature of them would be unpredictable, we can understand entirely why the Respondent would require cover at all times when they might be receiving such queries, particularly

bearing in mind as Mrs Watkiss said that sometimes that could result in the shutdown of the bakery which would obviously be a bottom line issue for the Respondent.

9. Turning to the second act, this is the alleged unfavourable treatment in Mrs Bills not writing a letter confirming her decision to, as the Claimant put it, refuse her the time off.

9.1 It follows from what we have said above that we do not consider that there was such a refusal. However, we have considered in any event whether there was a request for a letter confirming whatever it was that was said. In oral evidence, the Claimant said that she asked for the letter because she said in answer to a question from the tribunal she felt she might need this as evidence in case "something emerged later" in her pregnancy. As we have indicated, Mrs Bills simply denies ever being asked for this.

9.2 We note that in the original Claim Form at page 7 of the bundle there is no reference to this allegation whatsoever. We also note that there is no reference to this allegation in the lengthy letter which the Claimant wrote threatening litigation on 24 October 2017. Further, we note that in cross-examination the Claimant said that Mrs Bills had asked her to change her appointment. Whilst in the heat of battle that is not necessarily definitive, we consider that, taken with all the other evidence, it is more likely than not that Mrs Bills was not asked to provide a letter and therefore did not refuse to do so.

9.3 We also take into account that had the Claimant felt that she needed something in writing because she feared that something might occur later in her pregnancy in respect of which she might need evidence and having been, as she sees it, denied a copy of the letter by Mrs Bills, she would have simply gone back to her desk and emailed Mrs Bills and said 'we just had a conversation, I asked you for a letter and you failed to provide it, this email operates as a note of that fact'. However, she does nothing of the sort. Furthermore, she did not for example raise a grievance and she certainly did not make any claim about that at the time.

9.4 Therefore, in short, we find that the Claimant did not ask Mrs Bills for a letter as she suggests.

10. Turning to the third act, which is the verbal warning given on 18 July, we set out our findings as follows:

10.1 There is no dispute between the parties that the Claimant received a warning. She was invited to the meeting by email and she was told that Elaine Watkiss would be present. We have said in our findings of fact there was no reference in the invitation and indeed no reference at any point in the meeting to the fact that it was disciplinary in nature. Procedurally, that is a significant failing but this case, save

in relation to Mr Gordon's point about what inferences we may draw from this, is not about procedure.

- 10.2 Of course, we are required to determine what took place at the meeting on 18 July.
- 10.3 We have noted that in essence, throughout her evidence, the Claimant simply issued a blanket denial that she ever shouted or raised her voice. She does say that she comes from what she describes as a loud culture and she did say in evidence that whether somebody is shouting or raising their voice is a matter of perception.
- 10.4 The Respondent's evidence on this point is broadly, and certainly in all material aspects, consistent with the document that appears at pages 48 and 49 of the bundle. In her evidence in cross-examination, the Claimant said that she never raised her voice. We find that surprising particularly given that at some point later on on 2 August she quite clearly is talking to Elaine Watkiss loudly across a room because at some point she is at her desk and we think it unlikely that a person literally never raises their voice.
- 10.5 Further, if the Claimant is to be believed, then the logical conclusion to draw from her evidence would be that the Respondent's evidence about what took place on 17 July is fabricated and indeed to a large degree that would appear to be the Claimant's case. But the Respondent has created a reason for dismissing the Claimant and that the real reason for her treatment (including her dismissal) is her pregnancy.
- 10.6 However, the Claimant was warned for a similar issue to that which occurred on 17 July, more than a month earlier on 7 June 2017 and this was before the Respondent knew, or could have known, that she was pregnant. If it is the Claimant's case that the Respondent's attitude to her changed when they knew she was pregnant, it would make the warning on 7 June rather curious. We find that the warning given on 7 June was given for the reason said in the notes of the meeting of 7 June. We cannot find on the evidence that we have heard that the Respondent's attitude changed because the Claimant was pregnant, the better view (and we will expand on this below is that the Respondent's attitude changed because they had run out of patience with the Claimant.
- 10.7 As we have said, what the Respondent says happened on 17 July is consistent with the documents. In oral evidence, there is an agreement that at the meeting on 18 July Mrs Bills did say to the Claimant that she, the Claimant, had shouted at Mrs Bills on 17 July. When cross-examined on the detail of the 18 July meeting, the Claimant again simply denied shouting. She also said that she could not recall Mrs Bills saying that she had raised her voice previously,

which is to say that she could not say that Pat Bills did not say that and she could not say that she did, she could not recall.

10.8 The Claimant also said that she could not remember if they spoke about the incident on 7 June. Again, she is not saying that that did not happen or that it did happen, she said she cannot remember. However, she does recall saying that she was mentally abused. Her memory has been very selective of this meeting whereas the Respondent has been as we have said in material respect, consistent. We note that in cross-examination the Claimant said that the notes at pages 48 and 49 are "*quite accurate*" and the Claimant agrees that Mrs Bills did say that she (the Claimant) would have to consider "*the team and the business*". That would be an odd thing to say outside a meeting dealing with the Claimant's behaviour. It is also agreed that Mrs Bills said something to the effect that the Claimant would have to amend her behaviour towards colleagues although to be fair to the Claimant, she did not agree that those were the exact words used.

10.9 In short, therefore, for all those reasons we accept the Respondent's evidence about what took place at the meeting on 18 July and that that is a reasonable description of what occurred on 17 July.

11. We turn now to item 4. This really is a short point. The allegation made is essentially that Elaine Watkiss asked the Claimant whether she was going to come back from maternity leave indicating that Mrs Bills was looking to hire a replacement.

11.1 Again, this does not appear in the Claim Form. We note that in evidence, the Claimant said that she had spoken to a solicitor before she completed the ET1 and she also said that she sent the completed ET1 to her solicitor who filed it for her. We do take Mr Gordon's point that at a closed preliminary hearing, the Claimant's solicitor indicated that he had not been involved in completing the Claim Form and therefore we do not make too much of that point. The allegation appears for the first time in the Claimant's effectively amended ET1, which is called the statement of case.

11.2 We note that the Respondent has a workforce which is approximately two-thirds female. By any standards that is a significant proportion of the workforce. We accept their evidence that at any one time, there are a number of staff pregnant or on maternity leave and it is something that they have to deal with on a regular basis. We also note Mr Patel's refreshing honesty when he said that dealing with this could be inconvenient but nevertheless the Company does deal with it as they must.

11.3 We also accept that at the time of this alleged conversation in late July 2017 Jatinder Pandit, who took part in the conversation, was also pregnant. We accept Mrs Watkiss's evidence on this that this

was simply a conversation between a number of people including herself, Mrs Pandit and the Claimant to the effect of people's plans around their pregnancy. It may have included words to the effect suggested by the Claimant in relation to her plans about returning to work but we reject her allegation that anything was said about Mrs Bills looking for a replacement.

- 11.4 The reason for rejecting that is because it is wholly illogical as the Claimant puts her case. If Mrs Watkiss had said during this conversation that Mrs Bills was looking for a replacement, and was asking the Claimant about her plans in some way to help Mrs Bills plan for the future, that would mean that Mrs Bills had started looking for a replacement before Mrs Watkiss asked her (the Claimant) about her plans for the future. We understand what the Claimant is trying to imply in this evidence: it is that I got pregnant and the Company was trying to get rid of me. That would explain, and indeed that is probably the only explanation, as to why Mrs Watkiss would have said Mrs Bills was looking for a replacement.
- 11.5 But the illogicality is this, that if the Company was bent on dismissing the Claimant simply because she had got pregnant, the last thing they would do would be to flag that up by saying 'by the way we are looking for a replacement, what are your plans'. That would make no sense whatsoever. That is not to say that employers do things that make no sense but we do not find that Mrs Bills is in that category. She came across as careful and thoughtful. We therefore do not find that the words attributed to Mrs Watkiss in relation to the replacement were said.

12. We turn to the final act, which is the act of dismissal.

- 12.1 We have no hesitation in saying that if this was an ordinary unfair dismissal claim, this would be an unfair dismissal if only in relation to process. No semblance of a reasonable process was followed, indeed it is difficult to find any semblance of any process whatsoever in this case. But again, save for Mr Gordon's point about the inference to draw from the lack of process, we are not required to decide whether the Respondent acted reasonably in dismissing the Claimant. We are required to say what the reason for the dismissal was and only if the reason, or principal reason, was because of the pregnancy, does the Claimant get home. Any other reason means that she cannot succeed. We also note that we are not bound to accept the reason given by the Respondent for dismissal.
- 12.2 Therefore, we have had to consider the documents and the oral evidence to try and work out what, on the balance of probabilities, is most likely to have happened in this case. The first point we would note is that the email from Mrs Bills to Mr Patel of 3 August 2017 in no way asks him to do anything by way of investigation or dismissal. It says, as we have quoted above, "*Can you please support Elaine*

with following this up when Jurgita appears". We consider support and follow up to mean supporting Mrs Watkiss when she tackles the Claimant upon her return from sick leave. It is a far cry from suggesting there needs to be an investigation and dismissal. Nevertheless, there was apparently an investigation and there certainly was a dismissal. We have asked ourselves how that came about.

- 12.3 In analysing this, we have looked at the statements given by Ms Brown, Mrs Pandit, Mr Patel and of course Mrs Watkiss. We note that all four of them made notes on the morning of 3 August, the day after the events for which the Claimant was dismissed. We cannot be sure of the time Mr Patel made his diary entries because we have not seen these and we accept that he typed his statement on 8 August, but we accept his evidence that he made notes.
- 12.4 Nicola Brown's handwritten notes appear at page 50 of the bundle. She describes a heated conversation about responding to a client and she confirmed that Elaine Watkiss left early.
- 12.5 Mrs Pandit's handwritten note which appears to have been made on 3 August, appears at page 51. She says that she heard a bit of a conversation and then she refers to the Claimant's raised voice and then she goes on to say that "*still Jurgita keeps shouting*". It is not a particularly detailed note and it is very unclear what Mrs Pandit meant by raised voice and shouting and whether there was any difference between those.
- 12.6 What is curious about this note is that it seems, for no apparent reason, Mrs Pandit says "*Elaine's attitude was not bullying*". We are not clear why Mrs Pandit would have referred to Mrs Watkiss not having a bullying attitude but we can surmise and we can reach conclusions about that, which I shall refer to below.
- 12.7 Before that, we note the notes of Mr Rushin Patel and these appear at page 57 of the bundle. He refers to overhearing a conversation between the Claimant and Mrs Watkiss. He confirms that the Claimant said she did not understand the content of an email and that she was asking Mrs Watkiss for clarification. He described the Claimant as getting more irritated and frustrated and then arguing with Mrs Watkiss. He says that the Claimant spoke in a rude and aggressive tone but he says "*it felt to me that it was directed at Elaine*", he does not say that it was. He describes the Claimant as getting angrier and arguing aggressively with Mrs Watkiss and at that point he left the office.
- 12.8 Mrs Watkiss's note appears at page 52 of the bundle and that was made at 7:30 in the morning of 3 August. Obviously, this is the most detailed account. It is not necessary to repeat all of that in this judgment but the key points are, as we understand it, the Export

Department at Waitrose had asked the question to which the answers, at least from Mrs Watkiss's perspective, were quite straightforward. The Claimant had responded in a way that the person asking did not understand. The Claimant said on a number of occasions that she did not understand what she was being asked to do. Mrs Watkiss made it clear that instead of sending a copy of the specification (what we have referred to above as a screen shot) she should respond, as it were, narratively and the responses were straightforward and we have set them out in our findings fact. She also referred the Claimant to the new product development team for answers to two of the four questions. It is difficult to understand why the Claimant did not understand what Mrs Watkiss was saying but she did continue to say that she did not understand. Part way through the conversation, Mrs Watkiss says that the Claimant said words to the effect that since you were copied into the email, then why don't you respond.

- 12.9 The Respondent's case is that amounted to a refusal to respond. The conversation continued thereafter and eventually, as we have said, Mrs Watkiss was frustrated enough or angry enough to leave early.
- 12.10 Turning to the Chairman, Mr Patel, his evidence was that he did speak to the witnesses we have referred to above but he did not read any documentation. He also said that he did not know the Claimant and he had certainly not worked with her. For that reason, we found his evidence (in part) somewhat surprising. He made a conclusion that if he only believed half of what he had been told about the Claimant, he would not, as he put it, get any sense out of her and he described her as extremely aggressive, argumentative and belligerent. He could not possibly have drawn that conclusion reasonably. He could only have learned that from others. We note, in case it is not clear, that he did not in fact speak to the Claimant before he dismissed her. His reason is, as we have just described, he thought it would not be productive to do so because of her attitude, an attitude which he had clearly only been told about.
- 12.11 Therefore, we have asked ourselves how did he reach the conclusion that the Claimant was as he described. Our conclusion is that he obtained that from Mrs Watkiss. Indeed, we would go further and say on balance the statements we have looked at from Nicola Brown, Rushin Patel and Jatinder Pandit were procured by Mrs Watkiss. They were designed to convince Mr Patel to dismiss the Claimant almost certainly, and certainly on the balance of probabilities because Mrs Watkiss did not want to work with her. In her witness statement, Mrs Watkiss says in terms that she would have found it *"very difficult and extremely stressful to work with her in view of her complete disrespect for me and her continuous argumentative and aggressive behaviour when asked to do something she did not want to do"*.

12.12 Turning to the letter of dismissal, it is entirely apparent that Mr Patel was not in the least interested in what the alleged refusal was to carry out a reasonable request which he considered to be a matter of gross misconduct. The letter sets out no detail whatsoever. That he found that there was a refusal to carry out a reasonable instruction is extraordinarily surprising. The reason it is surprising is that on the morning of 3 August 2017, nobody in the business knew whether the Claimant had responded to Waitrose, they did not know whether the Claimant had spoken to Matt and was waiting for a response and we reach that conclusion because given the size of this client to this business and its sheer importance, almost certainly to the survival of the Company, we would have imagined that checking whether the Claimant had responded and if she had not responded doing so, would have been top of Mrs Watkiss's list of things to do on the morning of 3 August 2017. In our judgment, on balance, Mrs Watkiss neither knew or cared whether the Claimant had responded to Waitrose and neither did Mr Patel. This is simply something thrown at her as a reason for dismissal. It is different in relation to the insubordination. The Claimant has a history, and from a documented basis a relatively short history, of behaviour which this Respondent considered unacceptable.

12.13 In our judgment, Mrs Watkiss felt that she could no longer work productively or at all with the Claimant. She found her impossible to manage and as Mr Patel puts it, it was impossible to have what he describes as a constructive working relationship with her. We find that that is the reason for dismissal. It follows from what we have said that we do not find that the reason for dismissal was because of, or even related to, the Claimant's pregnancy.

13. For those reasons, the claim under section 57 Employment Rights Act 1996 is dismissed.
14. The claim under section 18 Equality Act 2010 is dismissed.
15. The claim for automatic unfair dismissal under section 99 Employment Rights Act 1996 is dismissed.

Employment Judge Brewer
Date 13 December 2018

JUDGMENT SENT TO THE PARTIES ON

.....
.....

FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.