EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: S/4105572/17 Held at Aberdeen on 17 & 18 May & 12 & 13 November 2018

Employment Judge: Mr N M Hosie
10 Members: Miss L A MacDonald
Mr A N Atkinson

Miss S Kulikauskaite — Claimant
15 Represented by:
Miss K Fraser – CAB

20 Graham Rose & Pamela Rose t/a R & B Services — Respondents
Represented by:
Mr G Rose - Partner

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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The unanimous Judgment of the Tribunal is that: -

1. the claimant was unlawfully discriminated against by the respondents on the
35 grounds of her pregnancy and maternity;
2. the claimant was unfairly dismissed by the respondents by reason of her pregnancy;
3. the respondents shall pay the claimant compensation of Four Thousand and Seventy-Seven Pounds (£4,077); the prescribed element is Two Thousand,
40 Three Hundred and Seventy Pounds (£2,370) and relates to the period from

11 August 2017 to 13 November 2018; the award of compensation exceeds the prescribed element by Two Thousand, Two Hundred and Seventy-Seven Pounds (£1,707); and

4. the respondents shall pay the claimant the sum of Six Thousand, Six Hundred and Thirty-Seven Pounds (£6,637) in respect of injury to feelings.

REASONS

Introduction

1. The claimant brought complaints of automatic unfair dismissal (dismissal by reason of "pregnancy, childbirth or maternity"); sex discrimination; pregnancy and maternity discrimination; and a failure to provide a written statement of terms and conditions of employment. The respondents denied the claim in its entirety. They admitted the dismissal but claimed that the reason was redundancy and that it was fair.

The Evidence

2. On behalf of the respondents we heard evidence from:

- Graham Rose, one of the respondents' partners
- Bozena Zdolska, one of the respondents' employees
- Lorna Ritchie, Office Manager
- Keith Meldrum, Operations Manager
- Catherine Pinho, Supervisor

We then heard evidence on behalf of the claimant from her partner, Valdaz Ziurna, and then from the claimant.

3. A joint inventory of documentary productions was also lodged ("P"). This included a letter from the respondents dated 30 January 2018 with details of the alleged basis for the claimant's selection for redundancy (P.60/61). This was produced by the respondents, after the claim had been raised, in response to a Tribunal Direction (P.52, para 11).

The Facts

4. Having heard the evidence and considered the documentary productions, the Tribunal was able to make the following material findings in fact.

5. The claimant commenced her employment with the respondents on 8 February 2017. She was employed as a Cleaner. She worked a total of 15 hours per week, comprising 3 hours every evening from Monday to Friday. She was dismissed *"with immediate effect"* on 4 August 2017 (P129).

6. She was not provided with a written statement of her terms and conditions of employment.

Pregnancy

7. The claimant discovered that she was pregnant in June 2017. She first advised the respondents that she was pregnant when she sent an e-mail to Lorna Ritchie, the respondents' Office Manager, on 22 June (P.121). In that e-mail, she asked if she could be moved from the offices she was cleaning at the time because of the heat there which was making her unwell. The respondents agreed, and she was moved to work at other offices.

Dismissal

8. On 1 August 2017, the claimant was handed a letter by the respondents' mini bus driver who took her to and from work. It was from Lorna Ritchie, the respondents' "HR Manager", and was addressed "To All Employees". The letter stated that she was at risk of redundancy (P.127).

9. On 3 August, the claimant sent an e-mail to Lorna Ritchie to advise her that she would not be able to attend work as she was at hospital for a scan which had been delayed and she was still waiting to be taken (P.128).

10. On 4 August, at the end of her shift, the claimant was handed another letter by the mini bus driver. It was from Lorna Ritchie again. The letter stated that her employment had been terminated *"with immediate effect"*, due to redundancy (P.129). The letter was in the following terms: -

"*Due to a downturn in our business we have no alternative but to decrease our staff in order to reduce our costs. We therefore have had to make operational changes within our organisation.*

It is with regret that we will have to terminate your employment with immediate effect. Please accept this letter as 1 week notice.

We do not need you to work your notice period therefore please do not return to work but your notice period will be paid to you, with your final wage being paid into your bank on Friday 18th August. This will be paid into your bank as normal and your P45 sent out as soon as possible after this.

We take this opportunity to thank you for your services and wish you well in the future."

11. As she had not been informed why she had been selected, later that day the claimant sent an e-mail to Ms Ritchie. It was in the following terms (P.130): -

"*Lorna*

Can you let me know why I was choosed to be redundant while you get new worker few weeks ago and people like Gabija who came in company after me had a lot of complaints are safe, please? As I see it you paid me off because

I'm pregnant, I would like to get your answer before I go any further about this situation, thank you I guess."

5 12. The claimant did not receive a reply to this e-mail, or to two further e-mails which she sent on 8 August in which she asked again why she had been selected (P. 131) and why she had not received any warnings (P.132) and alleged she had been dismissed because she was pregnant.

10 13. On or about 16 August, on the advice of the CAB, the claimant sent a letter, by recorded delivery, to Lorna Ritchie (P.133). It was in the following terms:-

"*I write to you with regard to your letter dated 04.08.17, in which you informed me that my employment was terminated with "immediate effect" due to reasons of redundancy.*

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I am writing to formally appeal against this decision. I believe that my employment was terminated as I informed you that I was pregnant, by e-mail on 22.06.17 and not because of a downturn in business as you state.

20 *In your letter you do not provide reasons for my dismissal other than the statement "Due to a downturn in our business we have no alternative but to decrease our staff", nor do you provide details of how I was selected for dismissal. You have not responded to my e-mail, also dated 04.08.17, asking for this information.*

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Please respond to my appeal within 10 working days."

14. Ms Ritchie replied, some two weeks later, by letter on 30 August (P.134). It

30 was in the following terms: -

"*I refer to your letter undated and regret that you feel that your termination was due to your pregnancy but as stated you were terminated due to a downturn in our business. Please note that you were not the only employee who was advised of termination on the 4 August.*

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It is our right as employers to run our business to the best of our ability, but if you wish to come and discuss your grievances with us please feel free to make an appointment and we will be happy to talk to you. If you should wish to have a friend or representative with you we would also be happy with this.

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We do not need you to work your notice period but we did pay you for this period.

We take this opportunity to thank you for your services and if required would be happy to supply any employers with a reference if required."

5 15. The claimant did not wish to attend a meeting with the respondents. She said in evidence that she had no confidence that they would address her concerns properly and a meeting would just cause her more stress. She thought there was little point in a meeting because of the way she had been treated. We believed her. She gave her evidence in a measured, consistent and 10 convincing manner and, in the unanimous view of the Tribunal, presented as entirely credible and reliable. Her evidence was also consistent with, and corroborated to an extent, by the evidence we heard from her partner who also presented as credible and reliable. This was in marked contrast to the evidence of the respondents' witnesses, and Mr Rose in particular, which, in 15 a number of respects, was inconsistent, evasive, not supported by any documentation existing around the time of the claimant's dismissal, and neither credible nor reliable in our view.

16. On 7 September, the claimant sent another e-mail to Ms Ritchie (P.135). It 20 was in the following terms: -

"*I still believe that I was dismissed/selected for redundancy because I am pregnant. As far as I am aware I was the only person dismissed as redundant within the area that I work in on the 4 August (the dismissal of another was after she had been advised she was safe from redundancy and my e-mail).* 25 *The letter she received was also incorrectly dated as 4 August.*

I still await my P45. Please advise when you will send this. I would appreciate a copy by e-mail in the meantime."

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17. The other employee she referred to in her letter was "Gaby". Based on the evidence which we heard from Ms Ritchie, which was consistent with the evidence which we heard from the respondents' other witnesses, we were satisfied, and we find in fact, that the respondents were minded to dismiss 35 "Gaby" on the grounds of misconduct. Ms Ritchie met her around 8 August and gave her two letters, with the same dates. One was a dismissal on the ground of redundancy (P.139). The other was a dismissal where no reason

was given, but this related to the alleged misconduct (P. 140). The reason for this was to conceal the true reason for her dismissal which was likely to prejudice her future employment prospects.

5 18. It was rather confusing, but nevertheless for the purpose of the issues with which we were concerned, we were satisfied that Gaby was not dismissed by reason of redundancy, despite being given a letter to that effect.

Claimant's Submissions

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19. The claimant's representative spoke to written submissions which are extensive and comprehensive. They are referred to for their terms. She set out the background facts first and then submitted, so far as the discrimination complaints were concerned, that the claimant had established a "*prima facie*"
15 case which had the effect of shifting the burden of proof to the respondents for the following reasons: -

"*The dismissal of the claimant (the only pregnant employee employed by the respondent at the time of dismissal) on alleged grounds of redundancy, the short timescale between advising of pregnancy and dismissal (a little more*
20 *than a month), the lack of consultation, the dismissal of the claimant's colleague following the claimant questioning the reason for her dismissal when others with less service had been retained, the respondents' failure to respond to e-mails alleging discrimination but willingness to respond to concerns of claimant's colleagues regarding dismissal and the number of new*
25 *hires shortly before (7 in 5 weeks prior to announcing redundancy risk) and after the claimant's dismissal.*

20. It was further submitted that the respondents had failed to discharge the
30 burden of proof which transferred to them and this meant that they had discriminated against the claimant.

21. It was submitted that the true or primary reason for the claimant's dismissal was because she was pregnant. The respondents were unhappy that the
35 claimant had not advised them earlier that she was pregnant.

“<u>Consultation and the alleged pool</u>”

22. The respondents accepted that they had not consulted the claimant, their position being that the ‘warning letter’ which was given to all the cleaners on 1 August was sufficient (P.127).

23. It was further submitted that the respondents’ witnesses gave inconsistent evidence regarding the “selection pool” and that, in reality, there was no pool for selection.

24. It was only after the Employment Tribunal claim had been raised that the respondents provided details of the selection process (P.60/61) and only when they were ordered to do so by the Tribunal at a Preliminary Hearing (P.52).

25. It was submitted that: “*The respondent concocted the selection process following receipt of the Tribunal claim, evidenced by the contradictory and inconsistent documentary and oral evidence provided by the respondent.*”

“<u>Decision maker</u>”

26. It was submitted that the respondents’ position concerning who took the decision to make the claimant redundant was inconsistent and that when he gave evidence Mr Rose, “*was on numerous occasions, unable to answer questions about processes or employees (e.g. absences of other employees, employees accepting the claimant)*”.

“<u>Alleged to know employees well</u>”

27. The claimant’s representative reminded the Tribunal that the respondents’ business is not a small one, with around 40 part-time and around 10 full-time cleaners and sub-contractors being hired to do joinery work.

28. The respondents maintained that they were able to select certain employees who they dismissed as redundant because: "*we are close to our employees and can make formal decisions*" (P.24). However, the number of new starts in the six months prior to the claimant's dismissal (P.153), without any notes or records, suggested that that was not so. The claimant never met Mr Rose; only discussed her hours of work with Keith Meldrum, the respondents' Operations Manager; only had contact with Ms Ritchie by e-mail on her first day of work; and there was confusion over the identity of "Anna" who the claimant maintained had taken over her position (P.48, 153, 159 and 100).

29. Further, at the Tribunal Hearing Mr Rose was unable to tell who Victoria Smith was, despite her being employed 5 weeks after the claimant's dismissal (P.156).

"<u>New starts/employees with less service</u>"

30. The claimant's representative also challenged whether there was a genuine redundancy situation. She referred to the details of the *"new starts (at least 6 in the 4 weeks prior to the claimant's dismissal – P.152)* and *"at least 21 new hires since the claimant's employment began in February" (P.152/153).*

31. In addition, new employees were hired shortly after the claimant's dismissal (P.156) and the respondents were unable to provide accurate information in respect of certain employees (P.153).

32. Also, when asked about the claimant's contention that other employees with less service had been kept on (P.131), Mr Rose stated: '*that's all speculation despite confirming in evidence and documents that other employees with less service were retained over the claimant. As such, Mr Rose confirmed that this aspect of the claimant's suspicions was not speculation*'.

"Assessing workmanship"

33. It was submitted that the respondents did not have a means of assessing workmanship, given that Mr Rose admitted in evidence, "*there is no process for recording disciplinary warnings or reporting or recording absences, despite the respondent's handbook requiring records, and consultation in respect of absences*".

34. Although the respondents' Supervisor, Ms Phino, gave evidence about the standard of the claimant's workmanship, it was submitted that: *"there was no suggestion by the respondent (Mr Rose) in documentary evidence, in the ET3 or oral evidence, that Ms Phino was involved and consulted in respect of the redundancy selection"* and the claimant denied that Ms Phino had ever discussed concerns with her.

"Absences"

35. It was the respondents' position that the claimant was selected for redundancy due to "*timekeeping and work ethic".*

36. However, Mr Rose accepted that the respondents did not follow their Handbook in that the absence procedure was not followed and lateness was not recorded (P.186/187).

37. The claimant's representative referred to the claimant's five *"pregnancy related and/or care related absences"* and submitted that these *"were at the forefront of the respondent's mind at the time of the claimant's dismissal. Indeed, Mr Rose cited to in evidence as having been considered by the respondent when selecting for redundancy; as did Miss Ritchie. Mr Rose gave evidence that the decision was made between 1 August and 4 August; the day after the claimant advised her pregnancy scan was running late (P.128)."*

38. She submitted that the evidence from the respondents' witnesses concerning the claimant's absences and those the respondents alleged were relied upon when selecting the claimant, were not credible given the numerous inconsistencies.

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"Gaby"

39. The claimant's representative then addressed "Gaby's" dismissal and drew a comparison with the claimant's dismissal, in that the respondents were prepared to give her a dismissal letter without identifying the true reason. It was submitted that: "*the claimant's dismissal is the same in that she was dismissed because of her pregnancy and/or because of absences relating to her pregnancy and/or care for a dependant but was told that it was because of redundancy."*

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"Other"

40. The claimant's representative submitted that the claimant's request for a move, as she was pregnant, and it was too hot where she was working, was *"a nuisance"* for the respondents.

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41. Further, both Mr Rose and Ms Ritchie, it was submitted, were unhappy that the claimant had not advised them beforehand that she was going for a scan, even though she had scheduled the appointment out with working hours.

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42. Finally, it was submitted that: -

"*Rather than hold off from making employees redundant, because the claimant was going on maternity leave, the respondent dismissed citing redundancy whilst also hiring new employees. The respondent confirmed in evidence that they had not made others redundant in the past or since the claimant's dismissal…..the close proximity of the claimant advising of pregnancy and her dismissal should be considered significant by the Tribunal given the respondent is not a small business and the respondent stated in*

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evidence it never had to make employees redundant in the past or since the claimant's dismissal."

43. The claimant's representative then went on to deal with remedy. This is dealt with below.

Respondents' Submissions

44. Mr Rose, one of the respondents' partners, submitted that he had produced five witnesses to speak to the claimant's redundancy and the reason for it namely, "*timekeeping and work ethic"* and their evidence should be accepted.

45. He submitted that the claimant had *"colluded"* with her partner and had not told the truth.

The Issues & The Tribunal's Decision

Pregnancy Discrimination

46. S.4 of the Equality Act 2010 ("the 2010 Act") lists "pregnancy and maternity" as one of the "protected characteristics" covered by the Act.

47. S.18 concerns pregnancy and maternity discrimination. It provides that an employer discriminates against a woman if it treats her unfavourably:

- during the 'protected period' of her pregnancy because of the pregnancy or an illness resulting from the pregnancy – s.18(2)
- because she is on compulsory maternity leave – s.18(3), or
- because she is exercising or seeking to exercise, or has exercised or sought to exercise, the right to ordinary or additional maternity leave – s.18(4).

48. This special protection accorded to a woman who is pregnant or has a pregnancy-related illness under s.18(2), is confined to *'the protected period'*. This is defined as beginning at the start of the woman's pregnancy and ending on the expiry on her maternity leave period, or when she returns to work after pregnancy, if that is earlier.

49. In the present case, the alleged unfavourable treatment (the claimant's dismissal) occurred within the *'protected period'*. Accordingly, s.18 of the 2010 Act is the relevant statutory provision.

50. Whenever a claim can be brought under s.18, it should and must be: s.18(7) provides that no claim of direct sex discrimination based on treatment of a woman may be brought under s.13. The effect of this is that claims of discrimination, based on pregnancy and maternity leave during the protected period of the woman's pregnancy, *must* be brought under s.18 and cannot be brought instead as direct sex discrimination under s.13.

51. The key difference between s.18 and s.13 claims is that s.18 does not require a claimant to compare the way she has been treated with the way a male comparator has been or would have been treated. S.18 simply requires the claimant to show she has been treated "*unfavourably*".

Burden of Proof

52. When assessing whether discrimination has taken place, an Employment Tribunal is bound to consider the provisions of s.136 of the 2010 Act which sets the burden of proof – which party is required to prove what. These provisions, which apply to s.18, recognise that discrimination is often covert.

53. The correct approach to the application of these provisions was recently confirmed by the Court of Appeal in **Ayodele v. Citylink Ltd [2017] EWCA Civ 1913**.

54. S.136 requires a two-stage approach. As a first stage, a claimant is required to establish facts from which an Employment Tribunal could decide that an unlawful act of discrimination has taken place. This is commonly known as a "*prima facie* case". Once that has been established, the onus shifts to the respondent, at the second stage, to prove a non-discriminatory explanation. According to the Court of Appeal in **Igen Ltd & Others v. Wong [2005] IRLR 258**, the respondent must at this stage prove, on the balance of probabilities, that its treatment of the claimant was "*in no sense whatsoever*" based on the protected ground.

55. When considering these provisions, we remained mindful that the case law makes it clear that the claimant is required to establish more than simply the *possibility* of discrimination having occurred, before the burden will shift to the employer (**Madarassy v. Nomura International Plc [2007] IRLR 246**, for example).

56. Also, unreasonable treatment of a claimant cannot itself lead to an inference of discrimination, even if there is nothing else to explain it (**Bahl v. The Law Society & Others [2004] IRLR 799**).

"*Prima Facie* Case"?

57. Turning now to the present case, we considered whether the claimant had established a *prima facie* case.

58. The claimant was dismissed when she was pregnant but that is not enough to enable the inference to be drawn that her dismissal was because of her pregnancy. Something more is required.

59. In our unanimous view, the timing of the dismissal was a relevant factor. The claimant was dismissed just over a month after she had informed the respondents she was pregnant and the day after she was unable to attend

work as she had been delayed at hospital waiting for a scan. There was some irritation on the part of the respondents as the claimant had not informed them that she had a hospital appointment, but she had arranged it out with working hours and the delay could not have been anticipated.

60. There was no consultation whatsoever with the claimant prior to her dismissal and this must be viewed in light of the fact that the respondents have been in business for over 30 years and at the time had a total of some 50 employees.

61. The claimant's dismissal was presented to her as a *fait accompli*, communicated in an offhand manner by the driver of the minibus who took her to and from work.

62. The failure to consult rendered the dismissal unfair, but she could not bring a "standard" unfair dismissal claim, as she did not have the requisite two years' continuous service.

63. The evidence which the respondents' witnesses gave about how they went about selecting the claimant was inconsistent, not documented in any way and in our unanimous view neither credible nor reliable. The submissions by the claimant's solicitor in this regard were well-founded.

64. It was not surprising that her dismissal and the manner of it came as a shock to the claimant and understandably she asked the respondents by way of e-mail why she had been selected.

65. It was significant that although the claimant had made the serious allegation that she was dismissed because she was pregnant, the respondents did not respond at first and when they did they still did not explain why she had been selected, but simply maintained that it was "*due to a downturn in business*" and: "*it is our right as employers to run our business to the best of our ability*" (P.134).

66. The ECJ's decision in **<u>Meister v. Speech Design Carrier Systems GmbH [2012] ICR 1006</u>**, suggested that, depending on the circumstances, an employer's refusal to provide information capable of constituting facts from which it may be presumed that there has been discrimination could, itself, assist the claimant to establish a *prima facie* case of discrimination.

67. It was not until 30 January 2018, some six months after the claimant's dismissal and after the Employment Tribunal claim had been raised, that the respondents gave the reasons for the claimant's selection (P.60/61), but only after a direction by the Tribunal. In our unanimous view, that letter was an afterthought.

68. We were of the view that this information provided was neither credible nor reliable. It was inconsistent with the evidence of the respondents' witnesses. The claimant's solicitor highlighted in her submissions the inconsistencies in the evidence concerning the claimant's absences, at least some of which were related directly to her pregnancy and others because of childcare arrangements.

69. Such was the inconsistency of the evidence about the basis for the claimant's selection, that we remain unclear as to which absences the respondents maintain were taken account of by them.

70. Mr Rose, one of the respondents' partners, maintained in evidence that the reasons for her selection were *"timekeeping and work ethic/work rate"*, but there was no contemporaneous supporting documentary evidence whatsoever and we remained unclear as to the basis for him having that view. Ms Phino, the Supervisor, gave evidence that she expressed her concerns about the claimant's work to Mr Rose, but there was no detail, that was not Mr Rose's evidence, there was nothing at all about this in the ET3 response form (P21-27) and the claimant had not received any warnings about her work, formal or informal.

71. As we recorded above, we also believed the respondents were unhappy that the claimant had not advised them earlier that she was pregnant, and that the claimant had not advised them of her hospital appointment the day before she was dismissed. Ms Ritchie said in evidence that her absence from work that day (P128) was probably taken into account, even though it was through no fault of the claimant.

72. For all these reasons, we had little difficulty deciding, unanimously, that the claimant had established a *prima facie* case.

73. This meant that the onus shifted to the respondents to prove that the way the claimant had been treated was "*in no sense whatsoever*" because she was pregnant. The lack of supporting documentary evidence prepared at the time, such as absence records and the basis for selecting the claimant was a major problem for the respondents.

74. As the respondents maintained that redundancy was the reason for the claimant's dismissal, we first considered whether there was a genuine redundancy situation.

75. The definition of redundancy is found in s.139(1) of the Employment Rights Act 1996 ("the 1996 Act"). The definition includes a diminished need for employees to do the available work which was the respondents' position in the present case.

76. There was some evidence of a loss of contracts but little evidence of how this impacted on the respondents' business, either by way of oral or documentary evidence. Further, as the claimant's solicitor reminded us in her submissions, there were a number of *"new starts"…..at least six in the four weeks prior to the claimant's dismissal"* (P.152); …..and *"at least 21 new hires since the claimant's employment began in February"* (P.152/153). The respondents also hired new employees shortly after the claimant's dismissal (P.156).

77. We were not satisfied, therefore, that this was a genuine redundancy situation.

78. The respondents also failed to establish why the claimant, rather than someone else, was selected. As we have already recorded, the document they submitted, long after the claimant's dismissal, was an "afterthought" (P60/61); such evidence that we did hear about why the claimant had been selected was inconsistent and neither credible nor reliable; there was no documentary evidence, prepared at the time, to explain how the respondents had gone about selecting the claimant; they refused to explain to the claimant why she had been selected, despite requests from her on a number of occasions and her allegation that it was because she was pregnant; although the respondents claimed that her absences were a factor in her selection, these were never recorded

79. We were of the unanimous view, therefore, that the respondents failed to prove a non-discriminatory reason for the claimant's dismissal and failed to discharge the onus on them in this regard.

80. In terms of s.136(2) of the 2010 Act, therefore, we *must* find that the respondents unlawfully discriminated against the claimant by reason of her "pregnancy and maternity".

Unfair Dismissal

81. It is automatically unfair to dismiss an employee for reasons related to "*pregnancy, childbirth or maternity leave*", in terms of s.99 of the 1996 Act and Reg. 20 of the Maternity and Parental Leave etc. Regulations 1999.

82. The respondents failed to establish that redundancy was the reason for the claimant's dismissal, as they maintained. They also failed to respond to the claimant's understandable request for an explanation of why she had been

selected and her allegation that it was because she was pregnant. We were of the unanimous view that she was dismissed because she was pregnant. It follows, therefore, that her dismissal was automatically unfair.

5 **Written Statement of Terms & Conditions of Employment**

83. It was accepted by the respondents that they had failed to provide the claimant with a written statement of her terms and conditions of employment.

Remedy

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84. There is an overlap between the awards of compensation for discrimination and unfair dismissal. We decided to award the claimant compensation under the discrimination legislation, which also includes an award for injury to feelings.

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85. We decided that we should order the respondents to pay compensation to the claimant, in terms of s.124(2)(b) of the 2010 Act, which would reflect her financial loss.

20 86. There was included with the documentary productions a Schedule of Loss, which had been prepared by the claimant's representative, with supporting documentation in respect of the claimant's attempts to find suitable alternative employment (P.205-276).

25 87. We were satisfied that the claimant had taken reasonable steps to mitigate her loss.

88. When she was employed by the respondents, she earned, on average, £112.50 per week. Her financial loss, therefore, for the 16-week period from
30 11 August 2017, when her notice pay expired, to 1 December 2017 when she had intended taking maternity leave, is **£1,800**.

89. After her dismissal the claimant has derived some modest income from selling cakes which she bakes. Based on her evidence, which we considered to be credible and reliable, her income from that activity is around £55 per week which, compared with her earnings with the respondents is about £57 less per week.

90. Accordingly, her loss of earnings for the 10-week period from 1 September 2018 when she planned to return to work to the final date of the Tribunal Hearing on 13 November 2018 is **£570**. Her total loss of earnings, therefore, from the date of dismissal to the Tribunal Hearing is **£2,370**.

Future Loss

91. We were also of the view that it is likely to be some time until she is able to regain the level of earnings she enjoyed when she employed by the respondents. We decided that the period would be at least 26 weeks and it would be appropriate therefore, to award her compensation to reflect future loss of earnings at the rate of her continuing loss of £57 per week, a total of **£1,482** making a total of **£3,852**.

Statement of Employment Particulars

92. It was not disputed that the respondents failed to provide the claimant with a written statement of her terms and conditions of employment. We decided, having regard to the terms of s.38 of the Employment Act 2002, and the fact that the claimant had brought other successful substantive claims, that the claimant should be awarded two weeks' pay in respect of this failure, a total of **£225**.

93. Accordingly, the total award of compensation is **£4,077**.

94. However, the claimant received jobseekers' allowance when unemployed and this award is subject to recoupment in terms of The Employment (Recoupment of Benefits) Regulations 1996

5 **Injury to Feelings**

95. We were also of the view that it would be appropriate, in the circumstances, to make an award to the claimant in respect of injury to feelings. In this regard we had regard to the guidance in such cases as: -

10 **Prison Service & Others v. Johnson [1997] ICR 275**;
Vento v. Chief Constable of West Yorkshire Police [2003] ICR 318.

96. We were also mindful that the focus is on compensating the claimant, rather
15 than on punishing the respondents.

97. The dismissal caused the claimant considerable distress, not only the dismissal itself but the manner of it. She was stressed, unable to sleep, had difficulty eating and as she was pregnant she was unable to take medication.

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98. The family relied on her wage. Her partners' work was irregular. She was pregnant, they already had a young child and the loss of a steady wage caused her understandable concern. Her distress was aggravated by the respondents' failure to respond to her enquiries and to explain why she had
25 been selected. As she said in evidence, "*we wouldn't be here if you'd explained*".

99. Looking at the matter broadly, as we are entitled to do, we were of the view that the appropriate award fell within the lowest band in **Vento** and that the
30 claimant should be awarded the sum of **£6,000** in respect of injury to feelings.

100. Interest also falls to be applied on that award at the rate of 8% for the 66-week period from the date of discrimination which in this case was the

claimant's dismissal on 4 August 2017, until the 'day of calculation' which was 4 December 2018, a total of 69 weeks. This amounts to £637. Accordingly, the total award for injury to feelings, inclusive of interest, is **£6,637**.

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Employment Judge:	**Nicol Hosie**
Date of Judgment:	**17 December 2018**
Entered in Register:	**18 December 2018**
And copied to parties	

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