Case Number: 2500566/2017

THE EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		*Respondent*
Mrs S White	**AND**	**Newcastle Premier Health Ltd**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Held at:	**North Shields**	**On:**	**29 & 30 November 2017** **1 & 4 December 2017**
Before:	**Employment Judge Hargrove**	**Members:**	**Mrs C E Hunter** **Ms M Clayton**

Appearances

For the Claimant: **Ms H Hogben of Counsel**
For the Respondent: **Mr J Peel, Consultant**

JUDGMENT

The unanimous judgment of the Employment Tribunal is as follows:-

1 The principal reason for the claimant's dismissal was a reason related to redundancy. Accordingly the claimant's claims of a breach of section 99 of the Employment Rights Act 1996 and regulation 20(1)(a) of the Maternity and Parental Leave Regulations 1999 are not well-founded.

2 The claimant's claim of a breach of regulation 20(1)(b) of the Regulations is well-founded. The respondent failed to offer the claimant alternative employment in the post of Quality Assurance Manager in November/December 2016 to start at the end of her maternity leave on 8 May 2017, having made if necessary an interim fixed term appointment to that post if necessary.

3 The claimant's dismissal was an act of discrimination because she was exercising her right to ordinary maternity leave contrary to sections 18(4) and 39(2)(c) of the Equality Act 2010.

4 The claimant's claim of victimisation is not well-founded.

5 The parties having reached terms of settlement as to remedies, the respondent is ordered to pay £31,000 to the claimant.

REASONS

1 By an ET1 dated **26 May 2017** the claimant made complaints to the Employment Tribunal of her dismissal from her post of Operations Manager of the business, which is based at the Regent's Centre in Gosforth, whilst she was absent on maternity leave. She alleges that she was automatically unfairly dismissed contrary to section 99 of the Employment Rights Act 1996 and regulations 8 and 20(1) of the Maternity and Parental Leave Regulations 1999, hereinafter called the Regulations, and in breach of sections 18 and 39 of the Equality Act 2010. The respondent asserts that she was dismissed for redundancy. Since the claimant was only employed from **16 March 2015** up to her dismissal on **27 February 2017**, she had insufficient length of service to claim ordinary unfair dismissal, and the burden of proof of the claims under the 1996 Act and Regulations, and the initial burden of proof for the claims under the Equality Act, lay upon her.

2 The claimant gave evidence and called first Mr Mark Gray, Legal Executive, whose firm had represented the claimant since late **April 2017**. She gave evidence herself and relied upon the witness statement of Lesley Lock former Business Manager of the respondent who left in **December 2015**. The respondent called Mark Philpott (MP), Business Director, who was responsible for the initial dismissal; and Mark McCaldin (MC), Business Director, who dealt with the appeal. There was a bundle of documents to which additions were made during the hearing.

3 We first set out the essential background facts:-

3.1 The respondent's business commenced in 2013. It provides health services and advice to employers. The claimant started with the respondent in **March 2015**. The claimant's statement of terms and conditions is set out at pages 94-105. Its provisions included a right to 10 keep in touch days during maternity leave without deduction in the maternity pay. More importantly, her job description as Operations Manager is at pages 105A-C. This includes a bullet pointed list of her main duties and responsibilities. The claimant claims that it was added to during her employment and in particular when Ms Lock left as Business Manager in late 2015. There is an issue which arises from Ms Lock's witness statement whether MC made a remark about the chance of the claimant being pregnant within six months of her appointment, following her appointment by interview with MC and Ms Lock. We find that the remark probably was said but that finding does not materially alter our conclusions on any of the main issues.

3.2 The claimant received a 10% pay rise after her appointment, in **December 2015**. MP joined the respondent in **January 2016**. The claimant became pregnant in **December 2015** and notified MP she was pregnant in **March 2016**.

3.3 There is no organisation chart dating from this period, but the claimant managed the respondent's administration team including three Administrators, Kayleigh Bleach, Amanda Rice, Support Administrator, and Amy Harrison. There was also an apprentice and temporary typist.

3.4 The respondent is a relatively small organisation with a workforce of some 15 employees including directors and a number of doctors who we assume were independent contractors providing in particular occupational health advice.

3.5 The claimant went off on accrued holiday leave on **12 July 2016** prior to the commencement of her maternity leave on **8 August 2016**. MP's letter of **9 June 2016** (pages 109-110) indicates that the claimant was planning to take ordinary maternity leave and some additional maternity leave and was intending to return to work on **8 May 2017** after nine months. She was entitled to six weeks maternity pay at 90% of her salary followed by statutory maternity pay for a further 33 weeks. There was clearly some discussion about who was to take over her responsibilities prior to her leaving on holiday leave. In addition it was arranged that the claimant could continue to have access to the respondent's IT system at the expense of the respondent. This would allow her access if she wished to e-mails circulated to staff whilst she was absent. We have concluded that the claimant did not make use of that facility while on maternity leave. This is of some importance because the e-mail record shows that the claimant was included in the circulation list for the many updates which MP sent out during her maternity leave. These documents are contained at pages 112 onwards covering the period from **9 August 2016** to **27 January 2017**. They refer in detail to staff changes which were proposed and/or took place during this period.

3.6 There were the following material staff changes under consideration in those staff updates:-

8 August 2016 – notification of appointment of Dawn Mee to a new clinical manager post from October 2016.

Notification of appointment of Chelsea Reay as the new business systems administrator from 2 September 2016. Her role was to be instrumental in supporting the implementation of new business systems with reference in particular to the EMIS website.

The same day (see page 115) there was notification of the appointment of Hannah Barlow as business support administrator to cover the shortfall in reception hours and also to cover the reduction in capacity since the claimant's departure.

On 15 August MP notified the loss of the GE contract as from mid November. Somewhat optimistically that e-mail mentioned the possibility of picking up new contracts in the meantime. There is an issue as to

whether the respondent's operation of the GE contract was profitable in any event.

Two other staff appear to have left in September 2016. There is no evidence that their work impacted upon the claimant's job.

On 30 September there was an update to the effect that Amy Harrison, one of the administrators who the claimant had managed, had been offered football tickets because she had been particularly deserving since Sophie (the claimant) has left and given the responsibility she has taken on.

On 5 October in an update MP notified that he was finalising the business plan and budget for the year 2016/17 and would go to the board for it to be signed off the week commencing 17 October. MP says that he inserted that date in order to buy time for the implementation of the business plan, the draft having in fact being already signed off in August 2016 – see page 302. A profit and loss account shows quarterly sales down by £40,000.

On 20 October there was a further reference to a loss of the GE contract.

On 26 October PM asked staff to bullet point in five points only their key responsibilities, prior to a staff meeting on 3 November.

Significantly in our view on 12 November the very lengthy update contained the following reference under quality assurance manager. The text begins at page 169:-

> "Quality assurance manager. We have decided not to recruit an account/sales manager but instead Dawn and myself will be fronting this responsibility with Hannah Barlow picking up responsibilities in her existing role as business report administrator (development). This will put increased pressure on Dawn, me and Hannah to focus on business development and secure new work and as a consequence, we have decided that in order to maintain our quality management systems within this business without me or Dawn being drawn into this detail we are recruiting a quality assurance manager. This role is expected to start in January and will have overarching responsibility for maintaining CQC, IGSOC (EMIS/N3 accreditation – has to be submitted by 31 March and is not a light undertaking), ISO9001 and CEQOHS. This important role is business critical and one that we have had to consider very carefully given the financial pressures on the business.

3.7 We accept that MP had identified a particular task which had to be completed by a deadline of 31 March 2017. This required the introduction of IGSOC if the respondent was to be eligible to bid for NHS contracts. IGSOC stands for Information Governance Statement Of Compliance, and in summary it governs the handling of confidential information, including in particular patient information on EMIS stored on the NHS N3 network. MP had identified the need for this task to be completed sometime back in October 2016. He had consulted with Mark Jenkinson, an independent IT consultant who had previously worked with MP in a business called Connect. Also working there was Gill Reay, who we accept had been recently made redundant by Connect and had experience of IGSOC over

a number of years. Gill Reay was also the mother of Chelsea Reay. The respondent did not advertise the post internally or externally (apparently adopting the "refer a friend" policy) and after interview, sometime in early December, appointed her to the permanent position of QA manager to commence on 3 January. For GR's CV – see 179A-D. The claimant was not personally notified by MP of the post (although it was circulated in a staff update of 13 December 2016 at page 180, which the claimant did not read). The e-mail included the following:-

> "I have in previous e-mails explained what Gill's role will entail but to summarise again it will be to manage our obligations to ISO9001-2015, CQC, IGSOC (NHS N3 connection) …".
>
> "The role will also involve change management when processes need to evolve or new ones are introduced. The quality assurance manager role will dovetail with Amy Harrison who will continue to have responsibilities for day to day supervision of the daily tasking and forward planning of the support service."

It is of some significance that the claimant's name does not appear on the organisation chart for January to May 2017, at page 184, although it is mentioned in another organisation chart sent out on 21 December, page 188. The claimant's job was not mentioned in staff updates on 19 and 27 January 2017. It is noted that "GR will lead on the outline implementation plan (that relating to a new client Calsonic Kansei) closely supported by Amy Harrison". Amy Harrison had also been promoted with effect from 3 January 2017 as team leader also notified in the update of 13 December. GR was appointed at an annual salary of £28,000. On promotion Amy Harrison's salary increased from £16,000 to £18,500. The claimant's salary at the date when she went off on maternity leave was £33,000 per annum.

3.8 It is also material that MP was in direct communication with the claimant by personal text messages. These are helpfully set out in chronological order in the bundle at pages 271-294. They commence on 21 April 2016 before the claimant went off on holidays prior to maternity leave. On 27 April 2016 there is a reference to a meeting to take place next day with Mark J (query is this Jenkinson) and "Julie".

It is a matter of record that MP's texts with the claimant had very little to say about the management of the business or recruitment of staff in the admin team – other than the appointment of Chelsea Reay. He also told her of the loss of the GE contract. There is a gap in communication by text after October 2016 until 24 December. The texts recommenced (materially) on that date when MP proposes a "meet in January about intentions for 2017". The claimant responded with her confirmation of a return to work on 8 May. On 4 January 2017 MP texted her asking for the log in details for IGSOC – "I think you've set these up". However MP did not get back in touch with the claimant until 3 February to arrange a meeting at a coffee shop in Gosforth on 9 February.

3.9 There are no notes of that meeting. We accept that this was the first occasion that the claimant was notified that her job was at risk of redundancy; and that GR had been appointed to the new QA manager role; and that Amy Harrison had been promoted to team leader. The e-mail communications which followed and which refer to the discussion are at page 206. The next meeting took place on 17 February 2017, the notes are at pages 223-225. In summary MP notified the claimant of the possibility of an account manager role on a part time basis with a full time salary rate of £16,000, but a business decision had not yet been made to appoint that post. The claimant made it clear that she would only return full time – see the bottom of page 224. On the same day MP sent to the claimant the job description for the appointed QA role with the following significant comments in the email at page 227:

> "In all honesty, I didn't think for one moment that you would consider coming back fulltime just after Christmas and as discussed this morning it was a business imperative to bring this role on board. Whilst of course you would have been eligible to apply for the role IF you had been interested in coming back full time. Your experience although accomplished, would not have guaranteed that you could be appointed into role, as the skill set required was particular to the needs of the roles. In addition the salary was less than your current wage and may have been a dissuader".

These comments miss the points that the new appointee was to be permanent and included significant parts of the claimant's role. The claimant had a statutory right to maternity and to return to her role or another suitable role at the end of it, including one which now contained some IGSOC responsibilities.

3.10 There was a further telephone consultation at the claimant's request on 20 February the notes of which are contained at page 228. There followed a without prejudice discussion about possible settlement of terms upon which she was to leave. On 24 February the claimant asked three specific question by e-mail (page 237):

1. Can I return to work at NPH in my original role at the end of maternity leave on 8 May 2017?
2. Is there a part-time role for me at NPH from 8 May 2017?
3. Was I considered for the new QA Manager's position?

3.11 There was a third and final meeting on 27 February 2017 (see notes 244 to 245). In effect, the first two questions were answered in the negative. The third was a very qualified yes on the basis that the role was to be filled from early January; and the claimant was not considered to have the right skill set. The notification of the claimant's dismissal for redundancy was sent out by letter of that date (page 247).

The claimant appealed to Dr McCalding by letter of 28 February 2017. She made a series of complaints about the manner in which her proposed redundancy had taken place. A meeting was fixed for 9 March.

In the meantime there was a board meeting on 3 March when the fact of the claimant's redundancy and appeal were the subject of discussion. The claimant claims the decision on the appeal was pre-empted as a result of advice from the respondent's employment consultants that the respondent's position was strong. We do not consider that Dr McCaldin closed his mind to consideration of the appeal, but it was rejected, and he did not consider the essential issues which have arisen in this case.

That concludes a summary of the background facts.

4 **The relevant statutory provisions:-**

Automatically unfair dismissal

Section 99 of the Employment Rights Act 1996 – leave for family reasons – materially provides as follows:-

> "(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if –
>
> (a) the reason or principal reason for the dismissal is of a prescribed kind; or
>
> (b) the dismissal takes place in prescribed circumstances.
>
> (2) In this section "prescribed" means prescribed in regulations made by the Secretary of State.
>
> (3) A reason or set of circumstances prescribed under this section must relate to …
>
> (b) ordinary, compulsory or additional maternity leave."

The relevant regulations referred to in subsection (2) above are Maternity and Parental Leave Regulations 1999. The relevant regulation is regulation 20 which deals with unfair dismissal:-

> "(1) An employee who is dismissed is entitled under section 99 of the 1996 Act to be regarded for the purposes of Part 10 of that Act as unfairly dismissed if –
>
> (a) the reason or principal reason for the dismissal is of an kind specified in paragraph 3; or
>
> (b) the reason or principal reason for the dismissal is that the employee is redundant and regulation 10 has not been complied with.
>
> (2) An employee who is dismissed shall also be regarded for the purposes of Part 10 of the 1996 Act as unfairly dismissed if –
>
> (a) the reason or if more than one the principal reason for the dismissal is that the employee was redundant;
>
> (b) it is shown that the circumstances constituting the redundancy applied equally to one or more employees in the same undertaking who held positions similar to that held by the employee and who have not been dismissed by the employer; and

(c) it is shown that the reason (or if more than one the principal reason) for which the employee was selected for dismissal was a reason of a kind specified in paragraph 3.

(3) The kinds of reasons referred to in paragraphs 1 and 2 above are reasons connected with …

(b) the fact that the employee has given birth to a child …

(d) the fact that she took, sought to take or availed herself of the benefits of ordinary maternity leave or additional maternity leave".

Regulation 10 referred to under regulation 20(1)(b) above deals specifically with redundancy during maternity leave. Regulation 10 provides as follows:-

"(1) This regulation applies where, during an employee's ordinary or additional maternity leave period, it is not practicable by reason of redundancy for her employer to continue to employ her under her existing contract of employment.

(2) Where there is a suitable available vacancy the employee is entitled to be offered (before the end of her employment under her existing contract) alternative employment with her employer or his successor, or an associated employer, under a new contract of employment which complies with paragraph (3) (and takes effect immediately on the ending of her employment under the previous contract).

(3) The new contract of employment must be such that –

(a) the work to be done under it is of a kind which is both suitable in relation to the employee and appropriate for her to do in the circumstances, and

(b) its provision as to the capacity in which she is employed and as to the other terms and conditions of her employment are not substantially less favourable to her than if she had continued to be employed under the previous contract".

Reference should also be made in passing to the provisions in regulation 18 which define the right to return after maternity leave.

Provisions in the Equality Act

Pregnancy and maternity are one of the protected characteristics listed in section 4 of the Equality Act 2010. It is further defined in section 18 of the Act:-

"(1) This section has the effect for the purposes of the application of Part 5 (Work) to the protected characteristic of pregnancy and maternity.

(2) …

(3) …

(4) A person A discriminates against a woman if A treats her unfavourably because she is exercising or seeking to exercise, or

has exercised or sought to exercise, the right to ordinary or additional maternity leave".

The use of the word "unfavourably", as opposed to less favourably which is used in connection with discrimination on grounds of the other characteristics is deliberate. It is no defence for an employer to prove or to seek to prove that a person of whatever sex who was absent for a similar period would have been treated in the same way. Pregnancy and maternity is a specially protected characteristic. This is demonstrated in particular by the provisions in section 13 referring to direct discrimination:-

"(6) If the protected characteristic is sex –

(a) less favourable treatment of a woman includes less favourable treatment of her because she is breastfeeding;

(b) in a case where B is a man no account is to be taken of special treatment afforded to a woman in connection with pregnancy or childbirth."

Next, section 39 of the Act is material. Section 39(2) provides:-

"(2) An employer A must not discriminate against an employee of A's (B) –

(a) …

(b) …

(c) by dismissing B".

In addition, in relation to a claim under the Equality Act the burden of proof provisions in section 136 apply:-

(2) If there are facts from which the court could decide, in the absence of any other explanation that a person A contravened the provisions concerned, the court must hold that the contravention occurred.

(3) But the subsection does not apply if A shows that A did not contravene the provision".

This provision operates as follows in relation to the present case. If the claimant establishes either by her own evidence or other evidence called by her, or for example by cross-examination of the respondent's witnesses, or an examination of the documentary evidence in the case, that there are facts from which the Tribunal could reasonably conclude that she had been treated unfavourably and that the reason for that treatment was because of her protected characteristic, the burden of proof then shifts to the respondent to prove that the reason for the unfavourable treatment had nothing to do with the protected characteristic. It is to be noted that there is a fundamental difference between the provisions in section 99 of the Employment Rights Act and claims under section 39 of the Equality Act. In the former case, where a claimant has not been in employment two years so as to be able to claim ordinary unfair dismissal, the burden rests upon the claimant throughout to prove on the balance of probabilities that the reason or principal reason for the dismissal was her protected characteristic. In relation to the latter type of claim it is not necessary for the claimant to prove facts from which the Tribunal could conclude that the reason or principal reason for the dismissal was the protected characteristic. It is only necessary for her to

show at the first stage that the decision to dismiss was materially influenced by the protected characteristic.

5 The issues were thus as follows:-

5.1 Has the claimant proved that the reason or principal reason for her dismissal was not redundancy but because she was absent on maternity leave?

If yes the claimant succeeds on all the claims (except for the victimisation claim).

5.2 If no, has the claimant proved that the circumstances of the redundancy applied equally to someone else in the business who has not been dismissed (ie Gill Reay) and that the reason why she was dismissed was because she was absent on maternity leave? (Regulation 20(2)).

5.3 Alternatively, if it was not practicable by reason of redundancy to continue to employ the claimant was there a suitable alternative vacancy which the claimant was entitled to be offered at the end of her original contract? Was the work to be done under the new contract suitable in relation to the claimant and appropriate for her to do? (Regulation 10).

5.4 Has the claimant proved facts from which the Tribunal could reasonably conclude that the decision to dismiss was materially affected, consciously or subconsciously, because she was on maternity leave?

5.5 If yes has the respondent proved that the decision to dismiss was not materially influenced by the fact that she was on maternity leave?

6 **Conclusions**

6.1 **Issue 1 – what was the reason or principal reason for the claimant's dismissal?**

There were some indicators which supported the proposition that it was because she was on maternity leave, for example the failure of MP to contact the claimant by text when, as we find, the reorganisation of staff which gave rise to a redundancy situation was or should have been under consideration. There was a notable delay between October and 24 December before MP even proposed a meeting with the claimant; and thereafter there was a delay until February before MP took steps to arrange a date for it. Nevertheless, for us to decide that redundancy was not the reason or even the principal reason we would have needed to conclude that the redundancy was a sham concealing a long term plan from at least October 2016 to engineer the claimant's removal from her post by constructing a new post and distributing the claimant's roles to the new post holder and to Amy Harrison, who was promoted. Although we have doubts about PM's credibility – in particular that he did not even consider the redundancy of the claimant's post until sometime in January 2017 – we accept that PM had genuine reasons for the staff reorganisations that came into effect on 3 January 2017, including the urgency for implementing the IGSOC procedure.

6.2 **Issues 2 and 3**

We take these together. We find that regulation 10 was engaged because, in short, we recognise that MP had a reasonable basis for engaging someone else to implement the IGSOC process who had experience of that process while the claimant did not, that person also took over large parts of the claimant's role and, if the claimant had not been on maternity leave in the latter part of 2016 she would at least have been consulted about the IGSOC process. We conclude that with some training she would have been competent to have implemented IGSOC. More pertinently, however, MP appointed GR to a permanent quality assurance post. He appears not even to have considered a fixed term appointment to cover the period up to the deadline of 31 March 2017 and a handover period after the claimant's return on 8 May 2017 – or earlier if there had been proper consultation with the claimant at a formative stage – she might have considered returning a little earlier. Fundamental to our conclusions is the finding that by early December at the latest, the decision to appoint GR to the permanent post being made then, the claimant's role was clearly at risk of redundancy. The claimant should have been consulted before that appointment. Regulation 10 clearly has effect when a redundancy situation first arises, not when the employer belatedly recognises it. See **Sefton Borough Council v Wainwright [2015] IRLR page 90 EAT** and **Simpson v Endsleigh Insurance Services Limited [2011] ICR 75**.

If MP had commenced consultation with the claimant in November/December 2016, as he ought to have done, he could or should have appointed GR on a fixed term contract. Further, although we have not specifically had this section brought to our attention, section 106 of the Employment Rights Act specifically caters for the appointment and subsequent dismissal of another employee pending the return to work of another established employee who is absent on maternity leave. We are satisfied at the very least the claimant lost the opportunity of a return to work in the QA role albeit possibly at a lower rate of pay; that she was certainly competent with a handover period to have picked up the role of management of the IGSOC process once it had been introduced. In those circumstances the QA role was suitable alternative employment which the claimant was not offered. Alternatively, even if the claimant's redundancy was not recognised earlier, regulation 20(2) was engaged:- The circumstances of the claimant's redundancy applied equally to GR in February 2017, and the only reason why the claimant was dismissed then was because she was on maternity leave.

6.3 **Issues 4 and 5**

These relate to the provisions in the Equality Act. Having reached some relevant conclusions above, we can explain our reasons quite shortly. Accepting that MP believed that the reason for dismissing the claimant was redundancy, we nonetheless accept that his belief was materially influenced by the fact that the claimant was on maternity leave. There was also the consideration that GR's appointment on £28,000 and AH's promotion at a salary increase of £2,500 would still have effected a small saving in the claimant's salary. MP has failed to satisfy us that the circumstances in which he failed to commence consultation with the

claimant in November/December 2016 prior to the actually appointment of GR and the promotion of AH had nothing to do with the fact that the claimant was on maternity leave at the time. In these circumstances we find that the claimant's dismissal was a breach of section 39(2)(c) of the Equality Act. The result of that finding is that the claimant is entitled, in addition to other remedies for financial loss, to an award for injury to feelings.

7 **Conclusions on remedies**

Having announced our decision and given summary reasons, we also notified the parties that we had concluded that if proper consultation had taken place there was a 60% chance that the claimant would have returned to work at or soon after the end of her maternity leave. The 40% discount arises from the fact that the claimant has, since June 2017 chosen a different career path; and has not sought alternative employment in a similar field. She is already drawing some £225 per week from the franchise which she has taken on. This only partially mitigates her loss. One advantage of her choice is that she remains able to care for her young son, albeit with care costs of about 8 hours per week. Those costs would have been much greater if she had returned to full time work with the respondent which is what she wanted. There is also the consideration that, as she frankly volunteered to the Tribunal she is trying for another child. On consideration of these factors, there was a significant chance that she would not have returned to work. Furthermore we indicated to the parties that in view of the career change we are not minded to have allowed a continuation of her future loss of earnings claim beyond six months from the date of the hearing. On the receipt of these conclusions, the parties were able to agree a remedies package.

8 We finally deal with the claimant's claim for victimisation which arises in circumstances where on 3 May 2017 the claimant's representative Mr Grey telephoned MP having recently taken over conduct of the claimant's case apparently to notify her intention to actually commence proceedings in an Employment Tribunal for discrimination. During the telephone discussion MP stated to him that providing a reference for the claimant was "becoming more difficult the longer this goes on". The actual use of those words is not in dispute. What is in dispute is firstly whether or not those words were spoken in the course of what was a without prejudice discussion the contents of which were inadmissible unless the claimant is able to show that they were not protected by without prejudice because of manifest impropriety on the part of MP; and secondly whether the remark amounted to a detriment.. This also is to be looked at against the background that the claimant never actually asked for a reference and within a very short space of time decided to set up her new franchise business. In the view of the Tribunal, having regard to the fact that there had clearly been without prejudice discussions taking place when the claimant was unrepresented until only a short time before, and having regard to the fact that Mr Grey must have been hoping for an increased offer to settle as being a significant reason why he made the phone call on 3 May in the first place, we find that this was part of an ongoing without prejudice discussion. In any event it does not amount to manifest impropriety; and it was not a threat to refuse to give a reference at all, or to give a bad one if requested.

EMPLOYMENT JUDGE HARGROVE

JUDGMENT SIGNED BY EMPLOYMENT JUDGE ON
22 December 2017