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EMPLOYMENT TRIBUNALS

Claimant		***Respondents***
Miss Cara Smith	**AND**	The Feel Good Group Ltd

Heard at: London Central **On**: 18-20 December 2018

Before: Employment Judge Wade
Members: Mr G Bishop
Mr J Ballard

Representation
For the Claimant: Ms K Liebert, Solicitor
For the Respondent: Mr P Clarke, Consultant

RESERVED JUDGMENT

The unanimous Judgment of the Tribunal is that the Respondent did not discriminate against the Claimant and did not unfairly dismiss her. The respondent is ordered to pay the claimant £67.13 in respect of time off for antenatal care.

REASONS

1. Miss Smith worked for the Respondent as a tanning consultant in its salon called "The Tanning Shop" in Islington. She was dismissed from her job not long after she told her manager that she was pregnant. She says that the dismissal was because of her pregnancy and was discriminatory and automatically unfair, and that there were a few other acts of discrimination as set out below. We

entirely understand why the Claimant thought that her dismissal could have been caused by her pregnancy but have found that it was not.

The Evidence

2. We heard evidence from the Claimant and read on her behalf a statement from Kelly Beauchamp, a former shop manager.

3. For the Respondent we heard from a Director, Mr Ciaran Mooney; Head of HR, Jill Purves; the Shop Manager, Ms Emma Burrowes and the Area Manager, Kristina Veiksa.

4. We struggled with the documentation; there were three bundles arranged in no particular order and the Respondent also provided, on our orders, some late disclosure. The Respondent had organised the bundles badly and the new documents should have been provided in the normal course of disclosure. This disorganisation would have put the Claimant at a disadvantage had her representative not been very competent. We worked hard to achieve a just result, which meant that we had to make allowances for the poor preparation. Whilst it was tempting to find that the Respondent's disorganised approach signified attempts to hide incriminating evidence, but as will be seen, late disclosure produced an email from the Respondent which significantly assisted its case, so we have not drawn inferences.

The Issues and the Applicable Law

5. The core of this case is the Claimant's assertion that the only or principal reason for her dismissal was her pregnancy; this would result in an automatically unfair dismissal under s.99 of the Employment Rights Act.

6. She also says that an effective cause of her dismissal with her pregnancy; this would lead to a finding of direct maternity discrimination under s.18 of the Equality Act.

7. The Claimant also says that the employer followed an unacceptable process leading up to her dismissal, subjecting her to an investigation hearing without prior notice, failing to give her proper notice of a disciplinary hearing and failing to conduct any, or any proper, disciplinary investigation. Further, the she says that the Respondent failed to respond to her appeal letter. This is all part and parcel of the dismissal and these individual accusations could also lead to an inference that the dismissal was discriminatory.

8. The Claimant also alleges that the Respondent failed to conduct a risk assessment adequately and/or in a timely manner. This is a separate allegation of discrimination. It is well known from the cases that failure to conduct risk assessment can be discrimination where there is a detriment, either physical harm or mental distress as a result of the failure, see for example *Hardman v Mallon* [2002] IRLR 516.

9. We allowed an amendment which was an allegation that the Claimant was not paid for her time off for an anti-natal appointment in breach of s.55 of the Employment Rights Act. This had been discussed at the Preliminary Hearing and the Claimant had continued to pursue it having not received adequate information from the Respondent to reassure her that she had been paid.

10. We did not allow a second amendment which the Claimant applied for. She sought to argue that a comment made by a work colleague, Libby, was an act of maternity harassment or discrimination. This had not been discussed at the Preliminary Hearing, the Claimant had had time to make the application earlier but had not done so and since it involved a witness who was not present at the Hearing it was not proportionate or in the interests of justice to postpone to allow the Respondent to call the necessary evidence.

The Facts

11. The Claimant started working for the Respondent on 21 July 2016. She received two days' training and was then deployed to its Fulham shop where she was trained on the job for two weeks. At that point she was working part-time, 16 hours a week, and being paid £7.20 per hour.

12. She then moved to the Chiswick shop but at the same time moved home to Islington which was a long way to commute and she was often slightly late for work. Her manager at Chiswick, for two months between March and May 2017, was her witness Kelly Beauchamp. Ms Beauchamp says that the Claimant was a good employee and the only problem of any kind was that she was sometimes late for work.

13. Meanwhile, the Claimant would visit the Islington shop for staff privilege tanning sessions, she found the Manager there, Emma Burrowes very friendly and through a combination of conversations, including a request from Emma Burrowes to the Area Director, John Lewis, it was agreed that Miss Smith could move to the Islington Tanning Shop.

14. The shop was run by Emma Burrowes. On her day off which was a Monday the Claimant ran the shop all day on a twelve-hour shift. They were supported by a junior called Libby, aged 17 and by another part time worker called Paul.

Customer care

15. Ms Burrowes and the Claimant had the job of booking in clients. Tanning was a potentially hazardous process and customers needed to be talked through the potential risks (were they pregnant, were they allergic to certain things etc), told how to operate the equipment, that eye protection should be worn and asked to tick a general disclaimer box on a registration I-pad. It was very important that new customers knew that they should wear eye protection because of the strong tanning lamp shining on their bodies. Customers were handed goggles or eye pads although apparently some did not choose to wear them because they wanted a perfect all-over tan.

16. Libby and Paul did not book customers in and the general maintenance of the salon, including cleaning fell to them although both Ms Burrowes and the Claimant also did a lot of cleaning. It was of course important that the tanning beds were cleaned after every session to make sure that they were in pristine shape for the next customer.

17. As discussions about the Claimant's move from Cheswick to Islington were concluding the Claimant discovered that she was pregnant, she went for a hospital scan on 27 May and discovered that she was sixteen weeks pregnant.

18. The Claimant started at the Islington salon on 29 May, her average hours were to be 40 per week and could be more, the rotas were done by Emma Burrowes one month ahead.

The claimant tells her manager she is pregnant

19. On her first day in the new shop the Claimant told Ms Burrowes that she was pregnant. She says that Ms Burrowes responded saying "what are you going to do about working here". Ms Burrowes denies that whatever she said was hostile although she cannot accurately remember what she did say; she says it was all very friendly and that within a few weeks they were discussing the Claimant coming back part time and the fact that her mother would be looking after the baby. Ms Burrowes says she was used to managing staff who worked reduced hours and that it did not worry her as she was used to covering additional hours herself.

20. It seems that although Ms Burrowes was not shocked or upset by the pregnancy, she did feel that it could have been mentioned sooner and she thought that the Claimant's former Manager, Ms Beauchamp should have told her. All the witnesses agree that Ms Burrowes rang Ms Beauchamp and remonstrated that she should have been told, Ms Burrowes says that this was so that she could have had arrangements in place, but Ms Beauchamp suggests that Ms Burrowes would have blocked the move had she known.

21. Ms Beauchamp did not attend to give evidence and had sent an email saying that she had a family emergency which meant that she could not attend. This meant that her evidence could not be tested out and the Claimant of course did not experience the conversation between Ms Burrowes and Ms Beauchamp directly. We find that although Ms Burrowes was not happy with Ms Beauchamp's lack of candour, she did not take it out on the Claimant, Miss Smith lived nearby which was useful for being available to cover shifts, she was very

chatty and keen and Ms Burrowes thought that she would be a useful member of staff. She had not particular problem with what might happen as the pregnancy progressed because she was used to staff not staying long and also to bringing staff in from other shops to cover where necessary; the situation was one which she could accommodate. We found it strange that given that nearly all the Respondent's three hundred or so staff are women, Ms Burrowes had not recently managed a pregnant employee and wondered whether this was sinister. She did remember managing one pregnant employee in the shop in the twenty years that she had been there and said that there had not been a problem.

22. On balance we do not think that Ms Burrowes made life difficult for the Claimant and, although the Claimant says that her attitude changed when she said she was pregnant, this is explained by the fact that the Claimant moved from being a client to being employee at the shop. Whilst the Claimant made general assertions that she was treated in a hostile manner by Ms Burrowes, she provided no tangible examples whereas Ms Burrowes did provide us with examples of treating the Claimant in a considerate and helpful manner.

23. Ms Burrowes rang Jill Purves for advice. Jill Purves had been Head of HR since 2008 but she seemed to be very reliant upon the legal advisors and she remembered very little which, accompanied by the fact that her statement was very thin, meant that she was not able to give us much useful evidence.

24. Ms Burrowes says that Ms Purves explained to her that the employee would need to provide a MatB1 form in the fullness of time and also that there needed to be a health and safety risk assessment. If Ms Burrowes had not remembered this then there would have been no evidence because there are no written maternity policies, an extraordinary fact given the number of female staff of child bearing age working for the Respondent. Moreover, the company does not write a letter of congratulation or advice to pregnant staff and so they have no written advice.

25. Jill Purves cannot remember telling the Claimant that she was entitled to paid time off for ante-natal care and says that most staff found out and knew their

rights anyway, however Ms Burrowes says that she was told by Ms Purves that the Claimant was entitled to time off with pay for ante-natal care.

Adjustments

26. There was no generic risk assessment in place. Employers with employees of child bearing age are meant to know what the potential risks are so that they can start to make adjustments, particularly if employees are working with dangerous substances etc, before individual risk assessment takes place. The Claimant says that there were such hazards at work for example, fatigue and having to stand for long periods of time and Ms Purves agreed with this.

27. Luckily the good sense of Emma Burrowes prevailed, and she provided a chair for the Claimant. She told us that she also discussed dropping the Claimant's hours, but the Claimant was adamant that she wanted to keep up her working hours because she needed to earn money at that time. Ms Burrowes agreed under questioning that perhaps she should have stopped the Claimant working very long hours, the longest being a twelve-hour day on a Monday, but there is no evidence that the claimant was unhappy about working these hours at the time.

28. A low point of the Claimant's evidence was that she was adamant when being questioned that she was not even given a chair, emphasising that until the risk assessment took place some weeks later, no allowances had been made for her at all. By contrast Ms Burrowes was clear that she had provided a chair and then, to the Claimant's embarrassment we found in the Claimant's statement confirmation that she had indeed been provided with a chair. When questioned the Claimant could not explain the discrepancy and unfortunately this led us to conclude that the Claimant was taking the opportunity somewhat to over egg the pudding.

29. Also, before the risk assessment took place, Ms Burrowes took over the hoovering. She said she went in at noon every day before her shift and hoovered, sometimes with the help of Libby. This meant that all the Claimant needed to do was sweep downstairs. This shop was on several stories which meant that the hoover had to be carried upstairs and Ms Burrowes realised that

she could not ask the Claimant to do this. Ms Burrowes made light of this, saying that she enjoyed cleaning and was happy to do this for the Claimant. By contrast, the Claimant asserted that she was not helped at all and that the cleaning took place at the end of the shift. On balance we think it very unlikely that Ms Burrowes made up the detailed account of what she did, and we found this to be more likely than the Claimant's rather vague allegations.

30. We note in passing that this shop was on several floors and it may well have been that the practical problems of having a pregnant employee who could not carry hoovers upstairs was the focus of Ms Burrowes conversation with Ms Beauchamp. This could have been an acceptable reason for keeping the Claimant at the Chiswick store during her pregnancy although of course the travel to and from work could have been hard for her.

Customer complaints

31. On 12 June 2017 a customer called Riona complained via a formal email to customer services about the disgusting state of some of the tanning beds. She also complained about seeing the Claimant with Libby smoking on the doorstep on 9 and 11 June when she was meant to be on duty. This was an unsolicited complaint from a customer about the poor standards in the salon and we found no evidence that she had been encouraged to complain by Emma Burrowes, although this was a suggestion. Such a complaint would of course not have reflected well on Ms Burrowes as Manager of the shop, so it would have been a strange strategy.

32. The Claimant agrees that at least one of the beds was dirty and says that she could not clean it properly in between customers because it had baby lotion all over it. Customers were discouraged from using the lotion because it was very hard to clean off and staff really struggled to clean the beds. However, Ms Burrowes says, and it is common sense to us, that it would never be appropriate to put a customer on a dirty bed, particularly one which was sticky so that evidence of previous occupation was very visible. The Claimant says that she had not been trained to know what to do, but surely this was common sense. The Claimant could not see that it was better to keep a customer waiting for a

sunbed than to put them on a dirty bed; she thought that complaints would happen either way, but handled correctly the two problems seemed to us to be very dissimilar. The Claimant does not give any suggestion that the problem she had with cleaning the bed was connected to her pregnancy.

33. The Claimant hotly denied that she had been seen smoking outside although she agreed she had been there whilst Libby smoked and thus away from the reception desk. She produced a carbon monoxide report that showed that her lungs did not have much carbon monoxide in them as proof that she was not smoking. However, not only did the customer see her smoking but Ms Burrowes also said that she had witnessed this. Ms Burrowes brought the situation off the page by saying that Miss Smith was terrified that her mother would see her outside smoking because she had said that she had given up when she discovered her pregnancy. We think it probable that the customer did see Miss Smith outside smoking and that Miss Smith is protesting that she did not smoke because she had vastly reduced her smoking by that time. The fact of Miss Smith smoking or not smoking is not in itself particularly central to this case but it is another example of the Claimant not giving particularly reliable evidence and exaggerating.

Lisa's complaint

34. On 13 June a Senior Director, Mr Moone, was in the Islington shop. A customer called Lisa came in, in a state of distress. Following a visit to the shop on 5 June she had been having trouble with her eyes, seeing things floating across them when she opened them. Mr Mooney knew about this symptom and that it was UV burn from the sun lamps. He believed that it was temporary but of course he was very worried. Lisa was a new customer and she was spontaneously making this complaint; there is no evidence that it was triggered internally by Ms Burrowes or anybody else in an attempt to discredit the Claimant.

35. She told Mr Mooney that about eye protection had not been explained and not having used a sunbed before she did not know what to do. Ms Burrowes talked to her and it turned out that she had not been properly inducted with a full

customer consultation and assessment which included allergies, assessment of skin type etc nor had she been shown how to use the stop button on the bed. After the conversation Mr Mooney and Ms Burrowes were both convinced that she had not been given a proper induction and that she was genuine.

36. It was worrying not just from a customer satisfaction but also from a safety point of view and Mr Mooney immediately suggested that she should go to the doctor and that he would meet any of her expenses. He was in no doubt that the Respondent was potentially liable and he wanted to head off any possible litigation (which did not in the end transpire). He raised the problem with the Area Director, John Lewis as a course it was very serious and he wanted the perpetrator found and appropriate action taken.

37. There was much talk about the CCTV and whether it might have shown that the Claimant was correct when she said that she had offered eye protection to the Lisa. There was no CCTV available and this was due to the disorganisation of the Respondent which is not impressive. However, the problem was not just that eyewear had allegedly not been offered but that the client had not been given the correct general induction.

38. Following the visit of the customer on 13 June Ms Burrowes looked at the computer and saw that there was no proper record of the induction. The induction records were disclosed piecemeal by the Respondent during the course of the Hearing. It would have been much better for the Respondent had they been disclosed at the beginning because they did indeed indicate that the Claimant had not carried out a full consultation and that what she had done had gaps in it. The Claimant herself admitted this during the disciplinary process. This was worrying, particularly with a new customer.

39. John Lewis the Retail Director emailed Jill Purves about the Claimant at 8:20pm that evening, a measure of how serious the problem was. He said “the above staff member processed a new client over the weekend which created two issues. No registration/consultation – could have resulted in injury as contraindications were ignored. Client was not given or offered eyewear – client

has returned complaining of dizziness and headaches. Whilst I appreciate she is pregnant can we seek to remove on grounds of misconduct?".

40. This email was not disclosed by the Respondent during the normal disclosure process which was an omission and contrary to the rules. However, luckily for the Respondent, the email turned up in response to a disclosure order by us during the Hearing. There is no question of it being a convenient forgery and what it shows is that the Respondent was well aware that the Claimant was pregnant but none the less wished to dismiss her for misconduct. They were aware of the risks involved in dismissing a pregnant employee but what she had done was very serious quite apart from her pregnancy.

41. As instructed Ms Burrowes emailed Ms Purves with a summary of what had happened. Ms Purves was obliged to use the assistance of their legal advisors Avensure because the Claimant was pregnant and therefore the risk on dismissal was high. In her email Ms Burrowes mentioned that she had received ten other customer complaints about the Claimant in one day. When questioned Ms Burrowes played this down and suggested that the complaints had been received across a week and did not seem to think they were particularly notable. The Respondent did not dismiss the Claimant because of these complaints and so they are to that extent a red herring.

42. There followed a largely inadequate dismissal process. This could be seen as a sham designed to dismiss a pregnant woman, and we are not surprised that the Claimant saw it as that. However, our view is that this was a sketchy process because the two Senior Directors had decided that the Claimant was guilty of misconduct, she did not have two years' service. Therefore, whilst the Respondent was attempting to go through a process to head off allegations of pregnancy discrimination, the failings in the process were due to poor advice and poor understanding rather than being a sham.

43. On 14 June the new Area Manager, Ms Veiksa, spoke to the Claimant. She says that there was a meeting and her timesheet corroborates this. The Claimant says that they had a telephone conversation, presumably in an attempt

to support her argument that this was just a routine telephone call and that she had no way of knowing that it was an investigation meeting.

44. Ms Veiksa sent Ms Purves an email at the time which was a record of the conversation and it was clear that the Claimant had not simply been asked generally about customer care procedures as she alleges, but had been asked about the problem that had occurred with Lisa, the new customer. She was asked "do you understand the seriousness of this complaint?" and the Claimant said, "yes I understand" so she could have been in no doubt that there was an allegation that she had failed to give Lisa a new customer consultation and eyewear. Her only response was that she automatically gave everybody eyewear, but she could not remember the consultation with Lisa or provide any specific evidence.

45. Following this conversation, which on balance we do consider was an adequate investigatory meeting, the Claimant was sent a letter inviting her to a disciplinary meeting with the same Ms Veiksa, the Area Manager. This was not the correct procedure according to the ACAS Code where it is encouraged that the disciplinary is carried out by someone different from the investigator.

46. The Respondent has proof of posting of the invitation letter but no proof that it arrived. However, there is some evidence that the Claimant knew about the meeting because she corresponded with Ms Burrowes by text message about moving it. It was to take place on 20 June but in the end, seems to have taken on 22 because the Claimant was absent from work with poor health.

47. The allegations against the Claimant were to do with the complaints of Riona and Lisa, poor customer service, dirty bed, breach of health and safety and customer service procedure, leaving the store unmanned to smoke outside and bringing the company into disrepute because of a formal complaint.

Ante-natal appointment

48. The Claimant had a midwife appointment for anti-natal care on 19 June. She says that the Respondent did not want to give paid time off and made her

swap shifts so that she did a full day's work on another day and went to the ante-natal in her time off. Moreover, she was not paid.

49. Ms Burrowes by contrast described how she had managed to find cover from another shop and had agreed that the Claimant could take the morning off and come back in to work on the Monday afternoon after the appointment. This account is much more detailed and on balance we prefer it, it matches with what would be expected given that Ms Burrowes did know that the Claimant had the right to paid time off for anti-natal care.

50. In the end the Claimant did not attend work on either Monday 19 or Tuesday 20 because she was unwell and having some trouble with her child's father. Therefore, the situation is rather murky but it is clear that the Claimant was not paid for her ante-natal appointment. The only way that staff get paid is if "ante-natal appointment" is written on the timesheet which triggers payroll to pay for it. This was not done and therefore the Claimant was not paid. She is entitled to a morning's wages for her ante-natal appointment. The Respondent asserts that she was paid but the basis of that is entirely unclear and there is no evidence whatsoever that she was.

The disciplinary meeting

51. The Claimant's evidence relating to the disciplinary meeting is unfortunately not very reliable. She says in her statement that she was summoned to a meeting on 20 June by Ms Veiksa which she had no prior knowledge of, and she had no seen the invitation letter. Whilst this may be true, there is evidence of text messages between the Claimant and Ms Burrowes indicating that the Claimant knew that there was a meeting, but it had to be moved to 22 June. There is no doubt at all that the disciplinary meeting did not take place on 20 June and the Claimant produced a text message from Ms Veiksa confirming the meeting the following day, so she did have some notice.

52. It does seem that the meeting, conducted by Ms Veiksa, was quite sketchy to say the least. Ms Veiksa had not been properly trained and did what she was told by the legal advisors which was ask a series of questions and then record

the answers. It transpired that although Ms Veiksa was held out to be the decision maker, and told the Claimant that she would let her have a decision in a few days, she was in fact just a scribe and was not going to make the decision which accounts for the rather detached way in which she carried out the meeting.

53. For example, whilst the Claimant was being told she had the right to be accompanied in the invitation letter, Ms Veiksa did not ask her where her companion was and indeed did not know that this was a question she should have asked.

54. However, the important thing is that the notes of the meeting do disclose that the Claimant admitted that she had not carried out a proper consultation, she said she would have provided eyewear but she had no memory, that she did go out to smoke, that she did not clean the bed properly because it was so difficult and that sometimes she cleaned properly only after every other customer.

55. Ms Veiksa says that she showed the notes to the Claimant, she had been told to do that, and that the Claimant agreed they were correct. Miss Smith now says that a number of the points in the record are untrue but, unfortunately for her, and tellingly, she only that the points which against her were recorded inaccurately. This was a poor attempt on her part to distance herself from admissions which would entitle the Respondent to dismiss her.

56. In its disorganised way, the Respondent was able to show that the Claimant did know about the allegations and the meeting, admitted to some quite serious failings and did not really put up a defence. She may not have known that she faced dismissal although it would not have been hard to have deduce that.

57. After the disciplinary meeting the Claimant was told that she would be told the outcome in two days, but Ms Veiksa did not make the decision. This went through the legal advisors, who advised that the employer was entitled to dismiss, to Mr Lewis who made the decision. Perhaps the decision was not in doubt given Mr Lewis' email of 13 June.

The individual risk assessment

58. On the same day, 22 June, Ms Veiksa carried out a risk assessment.

59. She said that the Claimant was to be given a chair in reception. This had already been provided although the Claimant asserted in her live evidence that she was expected to stand up throughout. She also said that other staff could carry the hoover upstairs, which was already happening. Finally, she said that there should be no heavy lifting which had also already been avoided. Because the shop was on several floors Ms Burrowes had also discussed with the Claimant the possibility of her moving to the Holborn store which was an easier shop to work in, but Ms Smith did not want to go.

60. Finally, the risk assessment identified that the Claimant should work shorter and earlier shifts, 25-30 hours per week in all.

61. On 26 June the Claimant still worked a long 12-hour shift but she did not work a long week overall. Ms Burrowes has already told us that she would have shortened the shifts in the rota once it expired and of course the Claimant had said that she still wanted to work the hours to earn the money.

The claimant is dismissed

62. On 28 June the Claimant was dismissed, she was paid notice pay. The dismissal was communicated to her by Ms Veiksa but Ms Veiksa did not make the dismissal decision. The dismissal letter said, “due to the serious breach of the company’s internal policy, the fact that you failed to consult with a new customer and show them how to use the equipment, along with admitting to failing to clean beds thoroughly which is a serious health and safety concern due to lack of hygiene being demonstrated, the business has made a decision that dismissal is warranted”. The failure to provide eyewear was not communicated in the key reasons for dismissal but Ms Purves said that it was one of the factors. She also said that the hygiene problem alone would not have led to the dismissal.

63. Libby, who was not pregnant but who had also been complained about by Riona received a verbal warning but her misdemeanours mainly consisted of

smoking outside the store and were not comparable in their seriousness to the Claimant's so this disparity is not suspicious.

The appeal?

64. The Claimant says that she appealed as advised by the Citizen Advice Bureau (CAB). The Respondent denies getting the letter and there is no evidence that it was sent because the Claimant has not retained a copy. Unlike the Respondent which as least has proof of posting of the invitation to the disciplinary meeting, there is no circumstantial evidence at all that the Appeal was sent. The Claimant says that when she did not receive an acknowledgement to the Appeal she gave up.

Deductions from pay

65. The Claimant says that the Respondent made unauthorized deductions from her pay of £67.13 and that her final pay check was thus inadequate. The Respondent has not provided any articulate defence to this claim. The Claimant's baby was born, and she has returned to work elsewhere, but only 16 hours a week part time as she had told Ms Burrowes was her plan.

Conclusions

The dismissal

66. We entirely understand why the Claimant thinks that she may have been dismissed because of her pregnancy, but we have found that not to be the case. Essentially the Claimant's employment was doomed the day the customer Lisa walked in to the shop and complained to Mr Mooney and Ms Burrowes. Lisa was a customer who had no ulterior motive to complain, had not been encouraged to do so by Ms Burrowes and was considered by Mr Mooney to be as genuine as they come. What she told Mr Mooney was taken very seriously by the business which decided to take the risk of dismissing the Claimant even though she was pregnant.

67. There is little evidence of Ms Burrowes having a negative view of the Claimant and she worked hard to assist by doing the cleaning upstairs etc. She

does seem to have had words with Kelly Beauchamp, but we were unable to explore this much further because Ms Beauchamp was not available for cross examination. Other than an assertion that attitudes changed, an assertion which is hardly warranted given that the Claimant announced her pregnancy on day one of her employment in Islington, there really is no evidence of a negative attitude towards the Claimant's pregnancy. Further, it does seem that staff employed at the tanning shop, paid the minimum wage, working a variety of hours, came and went regularly and that it was not likely that the Respondent would want to dismiss the Claimant because she was pregnant, there was just no business case for doing so.

68. Therefore, we find that although the Respondent's disciplinary process was far from satisfactory, particularly the truncated disciplinary meeting, the process leading up to the dismissal and the dismissal itself was neither discriminatory nor automatically unfair.

69. In terms of the appeal letter, there is no evidence that it was ever sent.

The risk assessment

70. The Respondent was indeed slow in carrying out the risk assessment. This was only done on 22 July, the Claimant having informed the Respondent that she was pregnant on 27 May. However, perhaps more by luck than judgment, Ms Burrowes had put in place adjustments which addressed the problems which the claimant complained to us about. She had a chair, she did not have to do heavy cleaning or heavy lifting and she did not have to hoover upstairs. Moreover, the Claimant was not worried by the fact that the risk assessment was delayed and the reason for the delay was that Ms Veiksa was a new Area Manager and not fully up to speed so that there was no question of the risk assessment being withheld for improper reasons which might have upset the Claimant. The claimant did not suffer a detriment.

71. The Claimant did work long shifts on a Monday which was Ms Burrowes's day off. However, Ms Burrowes had discussed reducing her hours and the Claimant had said that she wanted to carry on working them because she needed the money. Ms Burrowes had also suggested moving the Claimant to

another store which she had turned down because this one was much nearer home. Therefore, again, although the long hours were not desirable the Claimant did not suffer any physical or psychological detriment from working them and was working according to her choice.

72. We also have to say that the Claimant's evidence in relation to health and safety failings was not reliable, see the example of her assertion about the chair and the hoovering.

73. The case law clearly shows us that there is only discrimination where there is both less favourable treatment and detriment. A detriment need not be physical, and it can occur where an employee is denied a risk assessment by an unhelpful employer and is distressed by that, this will be a discriminatory detriment. Also, if an individual is suffering mentally or physically because an employer is insisting on them carrying out work which they do not feel is safe or which is doing them harm this will also be discriminatory detriment. These situations do not apply here because although there were failings in the risk assessment process, there was no detriment.

74. It is not our function to enforce the Management of Health and Safety at Work Regulations or the health and safety aspects of the Pregnant Workers' Directive and as we have found that the claimant did not suffer discrimination, that is the end of our jurisdiction. However, we would comment that the respondent would do well to take its health and safety obligations more seriously in the future and carry out prompt, suitable and sufficient risk assessments (see Regulation 3 of the *Management of Health and Safety at Work Regulations 1999);* both a general risk assessment which is in place for when a pregnancy is notified and individual assessments shortly after that. *The risk assessments should* look not just at manual handling but also at the possible risks of a sunbed's ultra-violet light (non-ionising radiation) upon pregnant employees. The risk assessment we were taken to in evidence specifically excluded non-ionising radiation as a possible risk to be assessed which was probably because the respondent did not understand that this definition includes ultra violet light.

Antenatal care

75. The Claimant was not paid for time off for anti-natal care and therefore we order the Respondent to make her a payment equivalent to her morning's work of approximately 4 hours.

Unlawful deductions

76. The Claimant also suffered unlawful deduction from pay and we order the Respondent to make her a payment of £67.13.

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Employment Judge Wade

Dated:. 4 February 2019

Judgment and Reasons sent to the parties on:

6 February 2019

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For the Tribunal Office