



# EMPLOYMENT TRIBUNALS

**Claimant:** Rachel Woodcock

**Respondent:** David Middleton

**Heard at:** Lincoln

**On:** 20,21,25 and 27 February 2019

**Before:** Employment Judge Hutchinson

**Members:** Mrs J Bonser  
Mr M Pavey

## Representation

**Claimant:** Ms Anderson of Counsel

**Respondent:** Mr Ahmed of Counsel

**JUDGMENT** having been sent to the parties on 9 March 2019 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

## JUDGMENT

The unanimous judgment of the Tribunal is: -

1. The claims of discrimination on the grounds of pregnancy and maternity fail and are dismissed.
2. The claim of breach of contract in respect of notice pay fails and is dismissed.
3. The claim that the Claimant has not been paid her holiday entitlement fails and is dismissed.

## REASONS

### Background to this claim

1. The Claimant presented her claim to the Tribunal on 25 January 2018. In the claim form she says that she was employed by the Respondent from 2 September 2017 until 5 November 2017 as an Assistant Professional. She claimed: -

- Discrimination on grounds of her pregnancy/maternity

- Notice pay
  - Holiday pay
2. At the time she presented her claim she was represented by solicitors and detailed particulars of claim were provided.
  3. She described being offered the position on 27 June 2017 with a start date of 1 October 2017. In the claim form she said that she worked her first shift on 2 September 2017 and had been asked to work on 22 September 2017.
  4. She said that she had told the Respondent that she was pregnant on 16 September 2017 and that on 23 September 2017, Mr Middleton had said that he had concerns about her being on maternity leave and would let her know what he had decided.
  5. She said that she had not worked for him again and that after a meeting on 2 November 2017 where she says that she had been offered a start date of 4 November 2017, she sent a letter on 5 November 2017 saying that she could no longer work for him.
  6. In the claim form she sets out a several complaints about Mr Middleton's behaviour and says that his behaviour amounted in each case to less favourable treatment because of her maternity or pregnancy. This was confirmed by her Counsel in her skeleton argument. The matters complained of were: -
    - 6.1 That the Respondent had said to her on 23 September 2017 that he had some "serious concerns" regarding her pregnancy and that he wanted to "nip this in the bud" before she was able to establish herself properly as his Assistant Professional. She said he said that he taken legal advice and that he was concerned that she may need to take time off due to morning sickness or other symptoms related to her pregnancy. That he could not afford for her to have 6 months off work after giving birth to her child and that he could not afford to have 3 people on his payroll while she was on maternity leave. That he no longer required her to work her shift that day and that he would give her his final decision regarding the status of her employment on Monday 25 September 2017.
    - 6.2 That he had informed members of the golf club over the period 23 September 2017 to early October 2017 that the Claimant would no longer be working for him.
    - 6.3 That Mr Middleton cancelled prearranged shifts/work sessions on 23 September 2017, 30 September 2017 and 1 October 2017 and thereafter delayed her starting date.
    - 6.4 The Respondent had refused to address issues that the Claimant raised in her e-mails of 26 September 2017, 1 October 2017, 2 October 2017 and 20 October 2017.
    - 6.5 That at the grievance meeting on 2 November 2017 the Respondent caused or permitted Christine Walker to ask confidential questions about the Claimant's history and pregnancy. That he told the Claimant's mother not to ask questions. That he did not produce notes that accurately reflected the meeting and failed to give the Claimant an opportunity to comment on their accuracy.

6.6 That Mr Middleton altered the relevant job description to make it difficult for the Claimant to maintain the role.

7. The Claimant's case is that the alleged unfavourable treatment described by her above pushed her to the point where she could no longer work for him and that she was constructively dismissed. She says that the reason for this unfavourable treatment was because of her pregnancy.

8. The Claimant also says now: -

8.1 That the Respondent treated her unfavourably because she was seeking to exercise her right to maternity leave and;

8.2 that she was constructively dismissed because of her maternity.

9. She claims also: -

- Holiday pay
- Notice pay

10. The claims were disputed by the Respondent who said that he had never expressed any doubt about the Claimant commencing her employment with him and simply required evidence relating to her previous employment. He says that the Claimant was never employed by him and is therefore not entitled to any notice pay or holiday pay.

## Issues

11. We satisfied ourselves that the Issues in this case were: -

11.1 Did Mr Middleton commit these acts of alleged unfavourable treatment?

11.2 Was the reason for any such treatment because she was pregnant or about to take maternity leave?

11.3 Did she commence employment and did he dismiss her or did she resign constructively in circumstances where she was entitled to notice pay?

11.4 If she commenced employment was she entitled to any holiday pay?

## Evidence

12. We heard evidence from: -

- The Claimant
- Her mother, Yvonne Woodcock
- The Respondent
- Christine Walker, notetaker at their meeting

13. There was conflict in the evidence and whilst some of the Respondent's evidence was inconsistent, the Claimant's evidence was inconsistent on crucial points in the case. An example of this was the e-mail of 25 September 2017 from the Respondent. It was a clear embellishment of what the Respondent is alleged to have said compared to the letter dated 23 September 2017. Further there is no mention of his response on 25 September 2017 and when she replied on 26 September 2017 she did not refer to his response at all. These are not the only inconsistencies in her evidence.

14. There was an agreed bundle of documents and where I refer to page numbers it is from that bundle.

### **The Facts**

15. The Respondent, David Middleton, is a self-employed golf professional. He is based at Lincoln Golf Club. He worked for the previous professional based there for ten years and became the resident golf professional at the club on 1 October 2017.

16. He is self-employed and the professional shop at the club is owned by the golf club and he provides a service to the club and reports to the golf club committee. He has control and independence in recruiting his staff.

17. Part of the service he provides is lessons and tuition to members of the golf club.

18. In October 2016 in anticipation of taking up the position as the head professional he started to put out feelers to recruit an assistant. He knew Rachel Woodcock through the Professional Golfers Association ("PGA") and he contacted her and other golfers who he knew might be potential candidates.

19. In January 2017 Mr Middleton posted a vacancy notice on the PGA website for an assistant (see page 69).

20. There was a Facebook exchange between Mr Middleton and Ms Woodcock at that time. Ms Woodcock enquired as to how soon the vacancy would be available because she was planning to go travelling for 3 months in the summer and would not be able to start until October (page 48).

21. Ms Woodcock and Mr Middleton met on 1 February 2017 and discussed the position. He had not received the Claimant's CV at that time. The claimant said she had had problems with the Internet. He had prepared a job description (page 70-1) which they discussed. He asked her for evidence such her PGA membership card, exam results etc to support her CV.

22. We have seen the Claimant's CV which she says she produced at that time (pages 73-4). The CV indicates that she had worked as a Trainee Assistant PGA at Woodhall Spa between March 2014 and March 2015 and held a similar position at Belton Park between March 2016 and October 2016 but made no reference to her working at Elsham Park at that time saying that her current position was as a Barista at Costa Coffee. It is inconsistent with the evidence she gave to the tribunal about her being employed at Elsham Park at that time.

23. On 17 May 2017 Ms Woodcock and Mr Middleton met for her interview. He felt that it went well and was impressed with her. He felt that she was ideal for the role and she hoped to complete her qualifications that year.

24. On 12 June 2017 Mr Middleton told Ms Woodcock that he was close to shortlisting candidates for a final interview and on 17 June 2017 sent her a text asking her when she would be back from her travels as he was keen to shortlist her and offer her a final interview. She said that she would be back around early mid-September and back in the UK at the end of August, so he asked her to call (pages 55-6).

25. On 19 June 2017 he messaged the Claimant to say that it was looking very likely that she would be offered the position subject to going through some final details. He asked her how much notice she needed to give at Elsham Golf Club where she said that she was working. She replied that she could start immediately (page 57).

26. They spoke again on the telephone on 27 June 2017. We are satisfied that at no time was a start date agreed. There was clearly though an understanding that all things being equal Ms Woodcock would become Assistant Pro at the Lincoln Golf Club working for Mr Middleton in October 2017 when he took up his role as the professional at the club.

27. On 25 July 2017 there was a further exchange between them. Ms Woodcock asked about a contract and whether there was a potential start date in mind. The response from Mr Middleton was:

“Rachael, the contract will be a PGA based contract. Also there are just a few details that I wanted to go over in person. When are you available?”

28. Mr Middleton asked her about her exam results and she said that she had got them a couple of weeks ago and that she had passed everything. Ms Woodcock said that she would be back around 20 August and they agreed to meet during that week.

29. On 13 August 2017 during another exchange Mr Middleton told her:

“I have not told anyone at the club, and I will do when we are both happy with the contracts and the role. Then we can set a start date etc.”

30. We are satisfied from this and other exchanges that a start date had not been set as the Claimant alleges in June 2017. This is inconsistent with the claimant’s position that by June 2017 she had been offered employment due to start on 1 October 2017.

31. On 14 August 2017 they met at Sleaford Golf Club. It is referred to in the Facebook messages at pages 63-4. Mr Middleton had still not told anyone at the club and asked her for her P45. They talked at the meeting about her starting on 1 October 2017 if everything was in place and discussed her coming to the club.

32. On 20 August 2017 they discussed her uniform and coaching juniors and Mr Middleton suggested her coming up to the club on 2 September to do some junior coaching (page 64).

33. On 21 August 2017 Mr Middleton asked her for her P45 because he wanted to sort out the payroll and believed he would need this because of advice he had received from his accountant (page 65).

34. Ms Woodcock told Mr Middleton that she did not have her level 2 qualification. She said that she had failed her first attempt but that she could re-sit it on 11 November at the Belfry. He did not raise any issue about this matter even though previously she had told him that she had passed all her exams.

35. By 6 September 2017 Mr Middleton decided to announce the appointment of Ms Woodcock as his Trainee Assistant Professional in the newsletter. It confirmed she would be joining him with effect from 1 October 2017. Although he had made the announcement the Claimant had not signed a contract of employment and had still not provided the P45 that Mr Middleton felt he needed. We are satisfied that he was keen to announce Ms Woodcock joining him and sincerely believed that the matters that need to be resolved would be in good time.

36. They had a further meeting on 18 September 2017. At this meeting they signed a declaration of existence of employment contract. It said regarding the Claimant's employment status:

"A PGA Professional Assistant has been appointed as an employee of the supervising PGA Professional, name below and signing this document; both the Assistant and the Professional are based at the golf establishment named below."

37. The declaration continues relating to the pay and hours of work and the training duties and obligations.

38. Ms Woodcock informed him at that meeting that she was pregnant. Mr Middleton did not have any issue with this at all. He was concerned though that having asked her to bring her P45, she hadn't done so. He still wanted Ms Woodcock to start on 1 October 2017.

39. We have seen the text exchanges between the Claimant and Mr Middleton at around that time (pages 68a-c). After she had told him that she was pregnant, arrangements were made for her to undertake her residential course and he was still chasing her about her P45. There is no hint that he is in any way concerned about the claimant's pregnancy. Until this time Mr Middleton believed the Claimant had been working at Elsham Golf Club under her PGA contract. He now found out (pages 68b-c) that she had been paid cash in hand, that she did not actually have a contract and said that the Pro at that club (Dave) would sort one out for her.

40. On 22 September 2017 the Claimant attended Lincoln Golf Club for the retiring professionals golf day. We are satisfied that she was not there to work but came to meet some of the members of the club and have some lunch with an administrator at the club.

41. The following day 23 September 2017 Ms Woodcock attended the club again. We are satisfied that he did not say that he had concerns over her pregnancy or that on legal advice she was to go home and he would advise her about her employment status. We are satisfied that he did speak to her that

morning to tell her that the PGA had responded to his queries and said that they would get back to him. He was still concerned that he had no evidence of her work with Elsham Golf Club and told her to go home and have a thorough look for any evidence, including her P45 so that she could verify that she had worked at Elsham so he could be reassured that she had worked the required hours there under the PGA Regulations ie 30 hours a week. We are satisfied that when he had this discussion with her Ms Woodcock then accused him of questioning this because of her pregnancy. We are satisfied that he had not mentioned her pregnancy at all and it was not a concern to him.

42. Later that day Ms Woodcock's mother visited Mr Middleton and asked him what was going on. He explained that since August he had been asking Ms Woodcock to provide him with her P45 and evidence of her working for Elsham Golf Club and it was necessary for him to know that she had complied with the PGA Regulations so that she was still eligible to continue with the PGA training.

43. Later he received an e-mail from the Claimant (page 89). In that e-mail she said:

"When I came into work at 8:30, you informed me that you believe I would not be able to continue to work for you due to my pregnancy. Again, I ask you to reconsider this decision. I understand that we will discuss this further on Monday, however please could you reply to this e-mail as acknowledgement of receipt."

44. Mr Middleton replied to this on 25 September (page 90), he said:

"I am acknowledging receipt of your email of 23<sup>rd</sup> September, as requested.

I am however perplexed by some of the statements made in your e-mail, please be assured that I remain supportive of your present condition and this has no bearing on your potential employment as my assistant.

The only issue I have, as discussed on Saturday, concerns your P45 and your qualifications for the position. I said I would contact the PGA to seek clarification in this regard. I have indeed contacted the PGA today and they have undertaken to look into this and advise me accordingly. I will let you know the outcome as soon as possible."

45. When Ms Woodcock wrote again on 26 September 2017 she made no mention of that but referred to a telephone conversation they had earlier that day (page 90). In that conversation Mr Middleton had again confirmed that his issue was to do with her evidence of working 30 hours per week during the last year in accordance with PGA Regulations. In this conversation he told her that he did not need her now to come in on 30 September and 1 October because the Pro shop was being fitted out. In that e-mail the Claimant further embellished her accusations against Mr Middleton as to what he had said on 23 September. She now said:

"You were concerned about me having time off due to morning sickness, however as I mentioned before, I have not had any symptoms of morning sickness or other pregnancy symptoms, therefore there is no issue with this. You were also concerned about me having 6 months off after giving

birth, where I had already suggested I could return to work in June as I already have the childcare in place for this to happen. However if this is still an issue I could return to work in May as to not affect your business as much. This way I will return to work at the start of summer which is obviously a busy period for the golf industry. You also expressed concerns of me being unable to deliver golf sessions in schools during this time, which will not be an issue due to me returning to work in May.”

46. On 29 September 2017 Mr Middleton confirmed that he did not require her to work on 30 September and 1 October (page 93) and the Claimant asked about shifts during the following week.

47. On 1 October 2017 she sent a further e-mail to the Respondent (page 94). She was chasing him for a response and suggesting he had ignored her telephone calls and e-mails. Later that day she sent him a further email (page 95). She again accused him of sending her home due to her pregnancy and accused him of ignoring her phone calls and emails. That was not true. She wanted to work what she regarded was” my organised shifts “and demanded a reply within 24 hours. That was not true. There were no organised shifts.

48. On 3 October 2017 Mr Middleton heard from his accountants. They told him that there was no longer a legal requirement for a new employee to give her P45 from her previous employer. That she could fill in a new starter form instead (page 97). Having received this advice Mr Middleton wrote to Ms Woodcock on 4 October 2017 (pages 98). In the letter he asked her to complete the HMRC form. It is clear that it was still his intention to employ the Claimant.

49. On 6 October 2017 the Claimant sent an e-mail asking for confirmation that she would be paid for the “shifts” that she had worked as well as those that she had been “rota’d in for” (page 102). There had never been any agreement that she would be paid for these “shifts”.

50. Mr Middleton wrote to the Claimant on 9 October 2017 (page 104). He was chasing for either the P45 or the completed HMRC starter check list he had forwarded to her on 4 October 2017. He asked that she should forward that documentation to him by 11 October 2017 so that her employment could commence. He warned that if he did not receive the documentation by that date he would revoke his employment offer.

51. The Claimant replied immediately to say:

“The form is in the post now. It shall be received this week.” (Page 105.)

52. The form was not in fact in the post and was received by Mr Middleton the following day when it was delivered by the Claimant’s boyfriend. The completed form is at page 105a-b. Rather surprisingly to Mr Middleton it said that she had another job. Ms Woodcock had not told him that she had already started working for American Golf. Mr Middleton raised this in his e-mail to the Claimant of 20 October 2017 (pages 106-7). In his e-mail he queried why she should believe that she had started work already for him when the 2 days that she had visited him in September had been “trial days”.

53. Ms Woodcock replied later that day (page 106). She demanded an answer by 25 October 2017 to why it was taking him so long to deal with the various issues concerning what she regarded as her continuing employment with



Mr Middleton. The letter though gave no explanation about her work with American Golf or when she had started that employment or how she proposed working for American Golf (a competitor to the Respondent) and the Respondent.

54. Mr Middleton sought advice about the correspondence and his complicated situation and on 25 October 2017 he wrote to Ms Woodcock to invite her to attend a meeting (page 113). He said that it was still his intention for the Claimant to commence employment with him and asked her to bring along with her, her CV and DBS certificate. They agreed to meet on 2 November 2017.

55. In a gesture of good will Mr Middleton then paid Ms Woodcock on 30 October 2017 the sum of £322.50 in respect of the two "trial shifts" she had undertaken at the club.

56. At the meeting on 2 November 2017 he attended with Christine Walker who was there to take notes of the meeting. Ms Woodcock attended with her mother. The notes of the meeting are at pages 124-5. We are satisfied that this is an accurate record of what was discussed. There was an initial discussion about the delays in her commencing her employment and they discussed the Claimant's CV. Her most recent work had been that she was working on a temporary part time basis at the American Golf Shop and also on a zero hours contract with Costa. Until that meeting Mr Middleton had not been aware of this job with American Golf.

57. They discussed her job description which was handed to her. It included a requirement to achieve level 2 PGA Coaching Award by December 2017. She said that she could not envisage achieving it by December. Mr Middleton did not raise any issue about that.

58. Ms Woodcock raised the question of her pregnancy and said that she felt "David might have an issue with this". Mr Middleton confirmed that he had "absolutely no issue with her being pregnant". He understood that Ms Woodcock would require time off in connection with her forthcoming baby and that he was able to get help in the shop and Ms Woodcock confirmed that she had childcare already in place.

59. At the conclusion of the meeting Mr Middleton invited Ms Woodcock to state what would now be her preferred start date. She said that she was unable to confirm such a date and she needed to sort out her current shift arrangements with American Golf. She said that she would provide a start date by 9 November 2017.

60. On 5 November 2017 Ms Woodcock wrote to Mr Middleton. The letter makes a number of allegations against Mr Middleton and his attitude towards her pregnancy. She said:

- That in July 2017 she had been offered the position with a start date of 1<sup>st</sup> of October. That was not true.
- That she had worked a nine-hour shift on 22 September. That was not true.
- That on 23 September he had told her that her employment with him was no longer viable due to her pregnancy and maternity leave she would need. That was not true.
- She accused Mr Middleton of bullying her at the meeting on 2 November. That was not true.

- She said that he had offered her a start date of Saturday 4<sup>th</sup> November which allowed her one working day to arrange her commitments. That was not true.
- She accused him of spreading rumours within the club and outside it about her. That was not true.

She went on to say;

“I am quite concerned as to whether or not your offer of employment is valid and genuine as you are certainly not making things easy for me...

However, in these circumstances I feel that our working relationship will be strained and untenable and therefore feel I can no longer accept your offer of employment. The decision has not been taken lightly.”

61. Having received the letter Mr Middleton took further legal advice and invited the Claimant to a grievance meeting to discuss the issues that she had raised in her letter. After a further exchange of e-mails Ms Woodcock declined to attend any further meeting and confirmed her position that she could no longer continue to work for Mr Middleton:

“Due to how I have been unfairly treated over the last 7 weeks, and how this has negatively impacted our working relationship.”

## **The Law**

62. The claim is of direct discrimination contrary to Section 18 of the Equality Act 2010 (EQA). This provides:

“(2) A person (A) discriminates against a woman if, in the protected period in relation to a pregnancy of hers, A treats her unfavourably: -

- (a) because of the pregnancy, or
- (b) because of illness suffered by her as a result of it.

(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.

(6) The protected period, in relation to a woman's pregnancy, begins when the pregnancy begins, and ends: -

- (a) if she has the right to ordinary and additional maternity leave, at the end of the additional maternity leave period or (if earlier) when she returns to work after the pregnancy;
- (b) if she does not have that right, at the end of the period of 2 weeks beginning with the end of the pregnancy.”

63. Section 136 of the EQA deals with the burden of proof:

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

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.”

64. This was most recently considered again in the case of **Ayodele v Citylink Limited and Another** [2017] EWCA CIV1913. The Court of Appeal confirmed the earlier authorities of **Igen Limited v Wong** [2005] IRLR 258, **Barton v Investec Henderson Crossthwaite Securities Limited** [2003] IRLR 332, **Madarassy v Nomura International Plc** [2007] IRLR 246; that the Employment Tribunal should go through a two-stage process. The first stage requires the Claimant to prove facts from which could establish that the Respondent has committed an act of discrimination, after which, and only if the Claimant has proved such facts, the Respondent is required to establish on the balance of probabilities that it did not commit the unlawful act of discrimination. The **Madarassy** case also makes it clear that in coming to the conclusion as to whether the Claimant had established a prima facie case, Tribunal is to examine all the evidence provided by the Respondent and the Claimant.

65. In considering a case such as this as Mr Ahmed says for the Respondent the case depends on whose version of events we accept. He referred us to guidance as to witness credibility set out in **Piper v Hales**, a judgment in the High Court of Justice, Queen’s Bench Division under claim number HQ11X01479 which is an unreported case.

66. Ms Anderson referred us to **Interserve FM Limited v Tuleikyte UK** EAT/0267/16. She reminded us that that case found that the unfavourable treatment must be “because of “the complainant’s pregnancy or “because” she is exercising or seeking to exercise, or has exercised or sought to exercise, the right to ordinary or additional maternity leave.

67. She went on also to refer us to: -

- **Shaw v CCL Limited** [2008] IRLR 284
- **Sarker v South Tees Acute Hospitals NHS Trust** [1997] IRLR 328

## Our Conclusions

68. We are satisfied that the Respondent did not make the comments that the Claimant alleges he made on 23 September 2017 about her pregnancy. We are satisfied that what he raised were concerns about her employment at Elsham Park and that he asked her to go home to get some evidence that she had been employed there. These concerns were genuine and are evidenced by the exchanges 2 days earlier where for the first time the Claimant said that she was being paid cash in hand and raised a doubt in Mr Middleton’s mind as to whether she was in fact employed under a contract of employment at Elsham Park. He had to be satisfied that she had been working for 30 hours per week as a PGA assistant who satisfied PGA regulations.

69. The Claimant's evidence as to what was said on 23 September 2017 is, we are satisfied, not credible. It is not consistent with her different versions of what she says was said during these meetings. We are satisfied in this case that the Claimant made unfounded allegations that Mr Middleton made those comments when he made no such comments whatsoever.

70. We are also satisfied that he did not inform any member of the golf club at she would no longer be working for him. That throughout the period he wanted to employ the Claimant right up until her letter on 5 November 2017. We are satisfied he had no reason to say to the members that he was not engaging her when it was always his intention to do so.

71. Our view is reinforced by the fact that such a statement is not referred to in Mrs Yvonne Woodcock's statement. There is no reference to any such discussion. It was only raised by her in examination at the hearing. It was surprising that the Claimant alleged in her ET1 that she had heard from a number of members that she was no longer working for him and this is referred to in her witness statement but not in her mother's statement.

72. We are satisfied that Mr Middleton did not cancel any pre-arranged shifts on 30 September and 1 October 2017. No such shifts were ever agreed. The delay in the Claimant starting her employment with the Respondent was not because of her pregnancy but was caused by the issue of whether he thought that he could employ her as she had not provided any evidence of her employment at Elsham Park. He was waiting for that because of advice he had received from his accountant which turned out to be incorrect. He was also awaiting advice from the PGA.

73. We are satisfied that he did not refuse to address the issues. Contrary to the Claimant's allegations in her witness statement he did respond to her e-mail of 23 September 2017 and did arrange a meeting with the Claimant on 2 November 2017 to discuss the matters raised and he did pay her on 30 October 2017 for the 3 occasions she attended in September. We are satisfied that he did not refuse to address any issue. That he still wanted to employ the Claimant as evidenced by the fact that he sent the starter form and it was the Claimant who delayed in returning it because by then she was working for a competitor of the Respondent, namely American Golf and had not told Mr Middleton about this.

74. We are satisfied that Christine Walker who was taking notes only asked appropriate questions to clarify the information that the Claimant was providing about her CV. Mr Middleton did not cause or permit Christine Walker to ask confidential questions about the claimant's history and pregnancy. The Claimant and her mother did not object at the time and we are satisfied that the Claimant's mother was not prevented from asking questions. The notes are accurate and no evidence of any inaccuracy has been produced to the Tribunal. The Claimant's mother was there to take notes herself but did not take any. We are satisfied that this meeting was a pleasant and amiable meeting held in public, in the coffee bar, in a David Lloyd club in a genuine effort to resolve any concerns that Ms Woodcock had and persuade her to start her employment with Mr Middleton.

75. We are satisfied that Mr Middleton did not alter the job description in order to make it difficult for Ms Woodcock to undertake the role. There were one or two small differences in the job description to the one earlier provided but these simply reflected their discussions about the Claimant resitting the exams and

doing the health and safety training. When the first job description had been prepared the Respondent had not been aware about the Claimant failing any exams. The Claimant had initially told him that she had passed all the exams. When the Claimant had said she would be doing the resit in November this was merely reflected then in the job description. The health and safety course could have been done at any time.

76. We are satisfied that the Claimant was never employed by the Respondent. The Claimant says that she commenced her employment on 2 September 2017. She did not. She was never employed in the position of Assistant Professional by the Respondent. It had been envisaged that she would start on 1 October 2017 to coincide with his appointment as the professional at the club. She could not commence her employment with him until he commenced in that position. We are satisfied that she knew that and that she knew that she was not going to be employed in September. Her attendance at the club was merely on a voluntary basis to do some junior coaching and to meet members of the club. I had never been any understanding that she would be paid for these days.

77. When she attended on 22 September 2017 it was to meet other professionals including the existing professional and to celebrate his retirement and to have lunch and get to know one of the administrators at the club.

78. We are satisfied that she did come in on 23 September 2017 to undertake a trial shift. She also came in to discuss her work at Elsham Park and that it was never envisaged that she would be paid or that she was engaged as an employee. This position is confirmed in the announcement that we saw made on 8 September 2017 where she was due to start on 1 October 2017. The purpose of her attendance at the club was for their mutual benefit; for her to be comfortable at the club and for the club to get to know her.

79. Her position was not changed by Mr Middleton. We are satisfied in fact that Ms Woodcock never regarded herself as being employed by the Respondent, hence the contents of her letter of 5 November 2017 when she described herself as not accepting his offer of employment.

80. We are satisfied that Mr Middleton did not commit the alleged unfavourable acts of treatment. The problems with her commencement of employment had nothing to do with her pregnancy or her taking maternity leave but were to do with her misrepresenting her employment with Elsham Park. The claimant was not discriminated against because of her pregnancy or because she was to take maternity leave. The claims of discrimination therefore fail and are dismissed.

81. We are satisfied that as she was never employed by the Respondent. He did not commence her employment as she alleged with Mr Middleton. She could not therefore be constructively dismissed and therefore is not entitled to any notice pay.

82. Again, because she was never employed by the Respondent she is not entitled to any holiday pay.

83. For these reasons the claims fail and are dismissed.

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Employment Judge Hutchinson

Date 22 May 2019

REASONS SENT TO THE PARTIES ON

FOR THE TRIBUNAL OFFICE