Case No: 2302570/2018

THE EMPLOYMENT TRIBUNAL

SITTING AT: **LONDON SOUTH**

BEFORE: **EMPLOYMENT JUDGE K ANDREWS**

MEMBERS: **Ms M Hazzard**
Mr N Shanks

BETWEEN:

Ms I Fitzgerald

Claimant

and

The Financial Times

Respondent

ON: **7-9 May 2019 &**
23 May 2019 in chambers

Appearances:
For the Claimant: **Mr B Jones, Counsel**
For the Respondent: **Ms L Farris, Counsel**

JUDGMENT

1. The respondent did not breach regulation 18 & 18A of the Maternity and Parental Leave etc Regulations 1999.

2. The respondent did however subject the claimant to a detriment and maternity discrimination in respect of some but not all of the detriments claimed.

3. An award of injury to feelings is made to the claimant in the sum of £9,000 plus interest of £793.91, making a total of **£9,793.91** payable forthwith.

REASONS

1. In this matter the claimant claims pregnancy discrimination and breaches of the Maternity and Parental Leave etc Regulations 1999 ('the 1999 Regulations'), arising out of her return to work from maternity leave in April 2018. The specific claims brought and issues arising are as follows:

   Regulation 18 and 18A breach:

   1.1 Is this a separate legal claim in its own right?

   1.2 If so, what was the Claimant's substantive /contractual role immediately prior to her commencing maternity leave?

   1.3 Has the Respondent allowed the Claimant to return to that role?

   1.4 Was it reasonably practicable for the Respondent to return the Claimant to that role?

   1.5 If it was not reasonably practicable to do so, did the Respondent offer another job to the Claimant which was both suitable for her and appropriate for her to do in the circumstances?

   Detriment/Maternity discrimination

   1.6 Was the Claimant subjected to the following acts (disputed by the Respondent):

      1.6.1 not being allowed to return to her role of Main News Desk Production Journalist on her return to work?

      1.6.2 being moved away from the Main News Desk and given diminished roles and responsibilities?

      1.6.3 being told that her former desk was no longer hers?

      1.6.4 not having any allocated desk to sit at?

      1.6.5 being told that she would be moved to the Digital Publishing team without any prior communication or consultation?

      1.6.6 being advised that her maternity cover had been given her role on a permanent basis?

      1.6.7 not being allowed to return to her role as Chief Production Journalist on Sunday shifts?

      1.6.8 being demoted to Production Journalist on Sunday shifts?

1.6.9 a failure by the Respondent to communicate the above changes with the Claimant and to ensure that she was aware of any developments and changes that affected her?

1.6.10 not being given any guidance and support on her return?

1.6.11 not being offered any retraining?

1.6.12 not being allocated a maternity buddy?

1.6.13 not being offered the opportunity of a return to work consultation meeting.

1.7 Did they amount to unfavourable treatment by the Respondent?

1.8 Was the unfavourable treatment because she exercised her right to ordinary and additional maternity leave?

1.9 Alternatively, did they amount to detriments?

1.10 Was the Claimant subjected to the detriments because she took, sought to take or availed herself of the benefits of ordinary and additional maternity leave?

1.11 The Respondent confirmed no issue is taken with time limits.

Evidence & Submissions

2. We heard evidence from the claimant and also from her union representative Mr S Bird. For the respondent we heard from Ms L Jones, executive editor and section chief, and also Ms A Scott, deputy managing editor.

3. There was an agreed bundle of documents before us, to which various additions were made during the hearing by both parties. Both Counsel made helpful closing submissions which were fully considered.

Relevant Law

4. The relevant statutory provisions are:

<u>from the Maternity and Parental Leave etc Regulations 1999 ('the 1999 Regulations'):</u>

Reg 18:
[…]
(2) An employee who returns to work after—
(a) a period of additional maternity leave, or a period of parental leave of more than four weeks, whether or not preceded by another period of statutory leave, […]
is entitled to return from leave to the job in which she was employed before her absence or, if it is not reasonably practicable for the employer to permit her to return to that job, to another job which is both suitable for her and appropriate for her to do in the circumstances.

[…]
(4) This regulation does not apply where regulation 10 [Redundancy during maternity leave] applies.

(By regulation 2 job is defined in relation to an employee returning after maternity leave as the nature of the work which she is employed to do in accordance with her contract and the capacity and place in which she is so employed.)

Reg 18A:
(1) An employee's right to return under regulation 18(1) or (2) is a right to return—
(a) with her seniority, pension rights and similar rights as they would have been if she had not been absent, and
(b) on terms and conditions not less favourable than those which would have applied if she had not been absent.
[…]

Reg 19:
"(1) An employee is entitled under section 47C of the 1996 Act not to be subjected to any detriment by any act, or any deliberate failure to act, by her employer done for any of the reasons specified in paragraph (2).
(2) The reasons referred to in paragraph (1) are that the employee–
[…]
(d) took, sought to take or availed herself of the benefits of, ordinary maternity leave or additional maternity leave.
[…]

<u>from the Employment Rights Act 1996 ("the 1996 Act"):</u>

Section 47C:
(1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done for a prescribed reason.
(2) A prescribed reason is one which is prescribed by regulations made by the Secretary of State and which relates to—
[…]
(b) ordinary, compulsory or additional maternity leave,
[…]

<u>from the Equality Act 2010 ("the 2010 Act"):</u>

Section 18:
(1) This section has effect for the purposes of the application of Part 5 (work) to the protected characteristic of pregnancy and maternity.
[…]
(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.
[…]

Section 136:
(1) This section applies to any proceedings relating to a contravention of this Act.
(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.
[…]

5. In Blundell v Governing Body of St Andrew's Roman Catholic Primary School and Anor [2008] IRLR 652 the EAT gave guidance on the meaning

of job for the purposes of regulation 18 and set out the following principles considering nature, capacity and place:

"the contract is not definitive" and "the phrase 'in accordance with her contract' qualifies only the 'nature' of the work";

"Capacity is more than 'status', though may encompass it"; and

"[Place] too is not purely contractual".

6. Further, that:

'The Regulations aim, as we see it, to provide that a returnee comes back to a work situation as near as possible to that she left. Continuity, avoiding dislocation, is the aim.

The level of specificity with which the three matters 'nature', 'capacity' and 'place' are to be addressed is likely to be critical. Does the secretary to the boss return to the job she did before maternity leave if she returns to the typing pool? At one level, the work is secretarial: the capacity is as a secretary. At another, it is more specific: personal secretary to the boss. Whereas the 'nature of the work' is to be as provided for by the contract, which will thus within its terms (if written) tend to indicate the level of specificity there is to be about it, this will not be so where the contract is an oral one, or where nothing which is written indicates clearly the job to be done. So far as 'capacity' and 'place' are concerned, much will depend upon the level to which specificity is taken. For someone working on a conveyor belt, is the place of work to be the particular position at the belt (which may, if she is particularly friendly with those immediately beside her, be a matter of some importance to her)? Or at that section of the belt? In that workroom? On that floor of the factory? The central question is how the level of specificity should be determined, and by whom.

It seems to us that the answer to this question is essentially one of factual determination and judgment, and hence for the tribunal at first instance.'

7. In Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337 the House of Lords held that a detriment exists under discrimination legislation where there is 'treatment of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment' and will be determined by considering the issue and the point of view of the victim. The EAT confirmed in Secretary of State for Justice v Slee (unreported 19 July 2007, UKEAT/0349/06) that the Shamoon approach to 'detriment' also applies to the use of that term under regulation 19.

8. In the event that any of these claims succeed, the relevant remedy will be an award to compensate for injury to the claimant's feelings (plus if appropriate interest at 8% on such award pursuant to regulation 3 of the Employment Tribunal (Interest on Awards) Regulations 1996).

9. In Vento v. Chief Constable of West Yorkshire Policy (No. 2) [2003] ICR 318, CA, the Court of Appeal identified three broad bands for assessing injury to feelings (enhanced by 20% to reflect inflation in Da'Bell v NSPCC [2010] IRLR 19):
    a. between £900 and £8,800 in 'less serious' cases where the unlawful act is an 'isolated' or 'one-off' incident (awards of less than £750 are unlikely to be made);

b. £8,800 and £26,300 in 'serious cases which do not merit an award in the highest band';
c. £26,300 to £44,000 in the 'most serious' cases – for example where there has been 'a lengthy campaign of discriminatory harassment'. Awards of more than £25,000 should only be made in the most exceptional cases.

Findings of Fact

10. Having assessed all the evidence, both oral and written, we find on the balance of probabilities the following to be the relevant facts.

11. The respondent, a household name, is an internationally recognised news organisation publishing print and online news. It is a large, unionised employer with a well-organised professional HR department. Its maternity & adoption policy reflects the statutory scheme together with certain non-contractual enhancements. In particular it states:

> **'Returning to work after Additional Maternity/Adoption Leave**
>
> You have the right to return to work in the same job in which you were employed before your absence and with the same conditions of employment or, if it is not reasonably practicable to come back to that job, you have the right to return to the job which is both suitable and appropriate for you in the circumstances.

The respondent also runs a returners programme headed by Ms F Thomas of learning & development. As part of this programme maternity buddies had previously been offered but at the time of the claimant's return none was available. This had not been identified in advance and no alternative put in place.

12. The news industry is undergoing a transition from print to digital media. This has resulted in, as set out in Ms Scott's statement:

> '…the decline in subscriptions for the FT's printed newspaper and publications and the vast increase in demand for the FTs online subscriptions. As at 2018, our printed newspaper subscriptions were 188,543 whereas our total digital subscriptions for FT.com were 796,396. By contrast, our subscriptions for the year 2008 were 435,000 print subscriptions and… 109,609 B2C online subscriptions. It is very clear that the transition from print to digital media will continue for years to come. This shift has led to a growing necessity for the FT to respond to the demands of its subscribers; publication patterns have changed over the past few years so that articles and publication schedules have been adapted stories are now released online during the day at times of day which our analysis shows suit our readers, as opposed to when they might happen to be ready for print. Work volumes have shifted towards digital publishing and the FT has, like many newspapers, responded by growing its digital based teams and reallocating resources where appropriate… Most recently, in 2017, the FT accelerated its prioritisation of digital, and branded it the 'Digital First' strategy, with the simplification of the newspaper to a single edition and introducing the broadcast schedule to align online publication times to match the audiences.'

13. The newspaper and FT.com sit within the Editorial department of the respondent. Both journalists and production journalists (formerly known as sub-editors) work in Editorial. As part of the Digital First strategy, production journalists are typically designated as either Day Production (DayProd),

covering print articles, or Digital Publishing (DigPub) (known as Web Revise until July/August 2017), covering digital media. Both DayProd and DigPub came under Ms Jones's management as section chief until October 2015 when DigPub became its own section under Mr T Stokes. Both Ms Jones and Mr Stokes report to Mr Alderson, Assistant Editor.

14. The claimant commenced full time employment with the respondent in June 2007. Her contract of employment included a reservation by the respondent of the right to transfer her to other work or departments if required (having been given reasonable notice) as well as a general mobility clause. She transferred in June 2008 to Editorial as a production journalist. In February 2014 she transferred to the DayProd team reporting to Ms Jones. Prior to her first maternity leave the claimant was full-time and generally working night shifts.

15. The claimant returned to work from her first period of maternity leave in September 2015. She requested and was granted a reduction to 3 days per week and she also volunteered to work the early shift, from 7am to 3pm. As a result of that change of shift, the focus of her work started to change and as time went by increasingly changed, from working on the print edition of the paper to its online presence. By this time there was only one daily edition of the print version of the newspaper and accordingly at 7am that day's edition had been published but there were peak times during the day for online activity. The claimant continued however to be managed by Ms Jones. At this point of the claimant also started to consistently sit at a particular desk described in more detail below. She also however frequently worked from home during which times someone else wold sit at the desk.

16. In December 2016 the claimant returned to full time hours, again at her request, although still doing the early shift. On 20 March 2017 the claimant commenced her second period of maternity leave.

17. The claimant was also required to work ten Sundays per calendar year. This work was on the print edition as a production journalist but prior to her maternity leave she would frequently act up as chief or deputy chief production journalist on that shift, overseeing other production journalists and being the last pair of eyes before printing.

18. <u>The layout of the newsroom.</u>

19. In the centre of the respondent's newsroom are two banks of roughly semi-circular desks at which the main news team sit; a high profile and high-quality team with whom employees would generally like working. It is clear that there is some status attached to working at these desks. Ms Jones occupies one of them. At the end of one of these banks is the desk at which the claimant sat on Mondays, Tuesday & Wednesdays from 7am-3pm in her production journalist role, after she returned from her first maternity leave. On Thursday and Fridays another production journalist would sit at the desk during the early shift (Ms D Prince, Mr Stokes's deputy and at a higher grade and salary than the claimant) and every day someone else would sit there on the night shift. Very nearby this central bank of desks is a further bank

of desks occupied by the DigPub production journalists including Mr Stokes and, when she was not sitting at the main news desk, Ms Prince.

20. When the claimant first started sitting at that desk in January 2016 she was the only production journalist on the early shift and was immediately available, and physically close, to the news editors when they wanted assistance in finalising copy. By time of her return to work from maternity leave in April 2018, however, the number of production journalists working on the early shift had increased to three or four.

21. Events during claimant's maternity leave

22. The claimant commenced her second period of maternity leave on 20 March 2017. No formal maternity cover was put in place by the respondent for the claimant's role; her work was absorbed into the DigPub team. In the claimant's absence however, Ms Prince – who worked the early shift full time - took to sitting at the desk the claimant would otherwise sit at throughout the whole week making it likely that she absorbed a significant amount of the work that would otherwise have been done by the claimant.

23. During her leave the claimant attended the office on ten 'keep in touch' days; the last two were on 2 & 9 January 2018 (Ms Jones was on leave on the 2nd). On at least two of the KIT days, possibly three, she had meetings with Ms Jones. She was not informed of any intended changes to her role.

24. As stated above, the Web Revise team was renamed DigPub in the summer of 2017. The respondent's case is that during 2017, their strategy, as part of Digital First, was to move away from hybrid DayProd/DigPub teams into distinct, separate departments. The claimant does not accept that. Both parties rely on the same comment by the Editor in a strategy note of December 2017 to support their position. Whether there was a formal strategy or not, it does seem more likely than not that the respondent was moving towards a stricter separation of teams although that process was still very much in hand in 2017 and at the time of the claimant's return.

25. As part of that process, in November 2017, Ms Jones emailed Mr Stokes asking him to add her and the DayProd team to the DigPub email group. In the exchange that follows it is not entirely clear where she regards the claimant as sitting – DayProd or DigPub. The exchange can be read either way and Ms Jones's evidence did not clarify it. However, by 18 December 2017 when Ms Jones tells Mr Stokes that the claimant is returning in April, he replies:

'Has it been confirmed that she will join Digital Publishing (if that is still what you think is most appropriate)?'

Ms Jones replies:

'I think it makes sense that she is in Digital Publishing – Mon, Tues, Wed at 7am is what we agreed. I'll follow it up.'

The natural reading of this exchange – in particular the use of the word 'still' by Mr Stokes – is that there has been discussion between them as to the designation of the claimant on her return and that it would be to DigPub.

26. Later that day Ms Jones emailed Mr Stokes again saying

'iseult – PS remember she is on dayprod Sunday rota tho! It's a struggle…'

This seems to accord with an agreement having been reached by mid-December 2017 at the latest that the claimant would move to DigPub.

27. There was then an exchange of emails between the claimant and Ms Jones starting 31 January 2018 regarding her return to work. In summary:
    a. 31 January – claimant: 'Will I basically pick up from where I left off?'
    b. 1 February - Ms Jones: 'It might be easier to discuss work when you're in next. Please let me know when you want to use a KIT day and we can arrange to catch up.' (The fact Ms Jones does not just say yes suggests there is going to be some form of change.)
    c. 22 February – claimant: says she cannot come in for a KIT day before she starts but 'Is there anything I should know before I start? Will I resume where I left off with the early morning team and social media?'
    d. 23 February – Ms Jones: 'You will be still be starting at 7am and work with digital publishing.' (This does not explicitly say that she will change teams.)
    e. 23 February – the claimant: '…Will I be sitting where I was too?'
    f. 23 February – Ms Jones: 'That's what we need to talk about. Probably sitting with Digital Publishing but near the main news desk – because you will still be revising those stories.' (The fact that Ms Jones says they need to talk about where she will be sitting suggests that she realised it was a matter of some significance for the claimant.)
    g. 23 February – exchanges about when to speak ending with an arrangement to speak on 1 March.

28. Ms Jones's evidence was that at the time of this exchange it was 'an idea' that the claimant would move desks and that she wanted to discuss it with her. In reality the decision that the claimant would not return to the desk on the main news banks had been made and the purpose of the exchange/call was to tell the claimant of it rather than to discuss it which might suggest some leeway. (This is supported by the fact – referred to below – that when Ms Jones later intended to reverse the arrangement she felt she had to discuss it first with Mr Alderson.)

29. The claimant's and Ms Jones's accounts of their conversation on 1 March 2018 differ. We find that there was one principal conversation between them (Ms Jones thought there may have been more) during which the claimant was told that she would be moving desk on her return and would sit opposite Mr S Gohil who was covering for Mr Stokes who was in Japan until the summer. The claimant objected and Ms Jones agreed to discuss the matter with the morning editors who the claimant felt would want her to

stay where she had been. Ms Jones did not do that however. Instead she spoke to Mr Alderson whose view was that the morning editors did not have jurisdiction over his team and the decision to move the claimant would stand. Unfortunately Ms Jones did not then confirm the position to the claimant who emailed her on 13 April 2018 seeking clarification. Ms Jones also failed to tell the claimant that she would be on leave on the claimant's return (perhaps because the claimant's date of return was changed).

30. Ms Jones's evidence was that she had told Mr Gohil in advance that the claimant would be returning on 16 April 2018 and that she should sit at the desk opposite him. Even if that was correct, unfortunately it transpired that Mr Gohil was not in the office on that day.

31. Return to work

32. The claimant's maternity leave ended on 12 February 2018 and after a period of annual leave she returned to work on 16 April 2018. Her request to revert to working 3 days per week and the days she would work, was agreed by the respondent (even though the business preference would have been for her to work different days).

33. When the claimant attended work at 7am on 16 April 2018 she was not sure where to sit. This was not surprising given that Ms Jones had not returned to her to clarify the issue and Mr Gohil was not present. Accordingly the claimant sat at her previous desk but when Ms Prince arrived she asked the claimant to move as it was now her desk. The claimant did move and tried to find another vacant desk at which to sit without any guidance or support. On 17 April 2018 the claimant had a similar experience in that she sat at a different desk and then was asked by another colleague to move as she was sitting at her desk. The claimant understandably found this experience to be humiliating and upsetting. She was advised by another member of the team where he thought she was meant to set but she told us, and we have no reason to disbelieve it, that that desk had no chair.

34. At the beginning of the claimant's second week of return, on 23 April 2018, she requested a meeting with Ms Jones. They had two meetings that day and the issue of where the claimant should sit had obviously become a topic of concern more generally and generated a lot of strong feeling. Ms Jones spent a considerable amount of time on that day dealing with the issue. She formed the view overnight that the claimant ought to be given her old desk back that felt that she needed to confirm that with Mr Alderson (as referred to above).

35. On the morning of 24 April 2018 a meeting was held between the claimant, Mr Bird, Ms Jones and Ms O'Leary from HR. Ms Jones attended but felt somewhat ambushed and underprepared. It is clear that the fact the claimant, who she knew was upset, attended with her union representative escalated the matter in her eyes especially as she had already come to the view that the claimant should be given back her old desk. Both the claimant and Ms Jones, who found the situation very stressful, became emotional and visibly upset during the meeting. The meeting concluded with Ms Jones

confirming that she was keen to find a resolution and that she was considering allowing the claimant to return to her old desk. The claimant expected there to be some further communications that day and she remained in the office hoping for a follow-up meeting. There was no further contact that day, however, despite Ms O'Leary promising at least a phone call by the end of the day.

36. The claimant left the office at 2pm to attend a prearranged medical appointment and at that appointment was signed off work due to stress. The claimant's evidence was that in addition to stress she suffered various related physical complaints. Although there was no independent medical evidence to confirm her evidence, we have no reason to dispute its genuineness.

37. An email exchange followed between the claimant and Ms O'Leary where the respondent encouraged the claimant top attend a further meeting with Mr Alderson to reach a resolution. The claimant was un willing to do so unless it was confirmed in advance that she would resume her role at her old desk. The respondent was unable to guarantee this by email.

38. On 27 April 2018 at 10.02 Mr Alderson emailed the claimant advising that return to work have not met expectations and had caused her distress. He said that the process could and should have been better and that they had learnt from it. He suggested talking to her direct in the absence of Ms Jones. The claimant replied saying that she preferred to involve HR and the union in all further communications and that as she had been advised to avoid any stressful situations and wants to take legal advice, she was not available for a meeting at that time but that Mr Bird was available to speak informally.

39. Mr Alderson met Mr Bird later that afternoon, together with HR, and said that when she was ready the claimant should feel able to 'come back and do that role on the desk'. Further that there would be a discussion of future arrangements when Mr Stokes was back in early July. Mr Bird confirmed this in an email to the claimant at the end of that day.

40. On 30 April 2018 Ms O'Leary emailed the claimant asking if there was anything that would help support her return to work in addition to the confirmation that she would return to the same role and desk. She also confirmed that Ms Thomas ran return to work coaching sessions and that this could be arranged for the claimant on her return. The claimant did not reply and Ms O'Leary emailed her again on 2 May 2018 suggesting that it would be good to talk through how the respondent could help with the claimant's return to work and any support she needed. She stated:

    'I know your return caused a lot of distress but I would like to reassure you that you will receive the support you need.'

41. Ms O'Leary also had an exchange of emails with Mr Bird on the same day in which she repeated the apology and sought another meeting to discuss a way forward. She repeated that the claimant could come back to her previous position on the desk and that they would do all they could to make

the return as comfortable as possible including support for Ms Thomas who would provide one-to-one coaching and a buddy.

42. On 11 May 2018 Ms Wilson of HR emailed the claimant referring to the fact that early conciliation had started and reiterating that the respondent was open to discussion. She said:

> 'I understand that you have asked for some level of guarantee on your current role. You have also asked that this be reflected in your job title.
>
> While we completely understand the anxiety that this return to work has caused you… we cannot ever guarantee that any role in the Company will not change… That said, we have agreed that you should come back to the role you have been doing and be based at the desk you are seated at before you went on maternity leave. Any discussions around the roles… will only take place in a consultative way when Tom Stokes returns from his assignment… and is certainly not something that we want you to be anxious about…'

43. Eventually the claimant undertook a phased return to work starting 30 July 2018 to 'perform substantially the same role', at her original desk but line managed by Ms Scott.

44. The claimant submitted her claim form to the Tribunal on 10 July 2018. Therefore the claim before us can only be based on events up to that date. Between her return to work on 16 April 2018 and when she went sick on 24 April 2018 there was only one Sunday and although the claimant had offered to work it at home it seems reasonable that the respondent would not roster her immediately - indeed, it could be that they would be criticised for requiring a Sunday attendance so quickly on her return. After that the claimant was on sick leave until the time she submitted her claim. Therefore there was no opportunity to roster the claimant for Sunday work at CPJ or otherwise. There was correspondence between the claimant and the respondent regarding the number of Sunday she would work and they agreed to reduce them to reflect her absence on sick leave (thus confirming that she would not be expected to work Sundays during sick leave). Therefore shifts worked and at what level by various people, none of that evidence is relevant to events between 16 April 2018 and 10 July 2018. (Neither are Ms Jones's various and changing explanations as to why the claimant was not given CPJ shifts.)

Conclusions

45. On the issue of whether the respondent breached the claimant's right to return from her additional maternity leave to the job in which she was employed before her absence, we conclude that it did not. Having had regard to the guidance given in Blundell, we find that the 'job' that the claimant had before her maternity leave was a production journalist working in the DayProd section primarily doing DigPub work, 7am to 3pm, three days a week. The place where she carried out that job was in the newsroom of the respondent. She had for some time been located at a particular desk, which other people sat at other times of the week, and although location at that desk undoubtedly went to her job satisfaction, it did not, on the facts,

amount to being part of that job. Rather, it signified a particular shift which was times described as 'main news desk 7am'.

46. When the claimant returned from her maternity leave there was no change in that job. She was still doing the same work but sitting at a different desk. Although the change in desk would have some practical impact on the way she carried out that job, in that it would result at times in less immediate interaction with the main news team, this was not sufficient to make location of her desk an integral part of her job not least because she had frequently performed her role before her maternity leave from home. Accordingly, when she returned from her maternity leave she did return to the same job on all the same terms and conditions of employment as previously and there was no breach of the 1999 Regulations.

47. Turning to the overlapping claims of detriment and maternity discrimination, we find as follows by reference to the numbering adopted above.

48. 1.6.1: we have found that this was not the claimant's role and therefore this detriment is not proved on the facts.

49. 1.6.2: the claimant was moved away from the main news desk but even though, as stated above, this resulted at times in less immediate interaction with the main news team, we do not find that this resulted in a diminution of her roles and responsibilities again not least because she had frequently performed her role before her maternity leave from home. Therefore this detriment is not proved on the facts.

50. 1.6.3: the claimant was told by MS Jones in February 2018 that her former desk was no longer hers (and accordingly where this claim is made pursuant to the 2010 Act, we find the burden of proof has passed to the respondent). Considered from the point of view of the claimant this was clearly, and reasonably, a detriment. The respondent's explanation is that this was as result of their change in strategy regrading demarcation of teams but we agree with the claimant that the more obvious reason was that Ms Prince had started using the desk 5 days a week during the claimant's absence on maternity leave, and wanted to continue to do so. This was clearly either because of or at the very least related to the claimant's maternity leave and accordingly these claims succeed.

51. 1.6.4: the claimant had no desk allocated to her on her return to work (and accordingly where this claim is made pursuant to the 2010 Act, we find the burden of proof has passed to the respondent). Considered from the point of view of the claimant this was clearly, and reasonably, a detriment. The respondent did not offer a valid reason. It accepts (and did so very quickly) that the claimant's return had not been handled well. The absence of an allocated desk was clearly either because of or at the very least related to the claimant's maternity leave and accordingly these claims succeed.

52. 1.6.5: the claimant was told by Ms Jones in an email on 23 February 2018 that she would probably be sitting with DigPub but near the main desk (i.e. clearly not at the main desk) and there was consultation in that Ms Jones

attempted to talk to her about it in person in February but the claimant was (reasonably) unable to attend and they then had a conversation about it on 1 March 2018, some weeks in advance of the claimant's return on 16 April 2018. Therefore this detriment is not proved on the facts.

53. 1.6.6: we have found that there was no maternity cover for the claimant and she was not told this. Therefore this detriment is not proved on the facts.

54. 1.6.7&8: These detriments are not proved on the facts.

55. 1.6.9: where we have found on the facts that 'the above changes' had indeed been made, we also find that the claimant was informed about them by Ms Jones as described in relation to detriment 1.6.5. Admittedly Ms Jones did not do a very good job in managing this communication and did unnecessarily leave a lack of clarity but on the facts, this does not amount to a detriment.

56. 1.6.10-13: as at 16 April 2018 the claimant was not given appropriate guidance and support on her return, was not offered retraining or allocated a maternity buddy or a formal return to work consultation meeting all of which were required by the respondent's own policy as well as clearly being good practice one would expect from an employer of the size and reputation of the respondent. The claimant's return was handled very poorly (and accordingly where this claim is made pursuant to the 2010 Act, we find the burden of proof has passed to the respondent). Considered from the point of view of the claimant all these matters were clearly, and reasonably, detriments. The respondent did not offer a valid reason. It accepts (and did so very quickly) that the claimant's return had not been handled well. Clearly these were all matters either because of or at the very least related to the claimant's maternity leave and accordingly these claims succeed.

Remedy

57. The parties agreed that for any part of her claim that succeeded, the claimant was only entitled to any appropriate award for injury to feelings and interest.

58. Submissions for the respondent were that in essence this case concerns a one-off error that was then carried through and therefore it equates to a single isolated incident and should fall within the lower band of the Vento guidelines attracting a maximum figure of £1500. In contrast, the claimants submitted that given the impact on her of the events in the weeks of 16 and 23 April together with the continuing uncertainty, the appropriate award would be in the middle of the middle Vento band.

59. We do not agree with the respondent that the circumstances of this case relate to a one-off or isolated incident. It is clear that there was a catalogue of errors particularly in the first week of the claimant's return and these were compounded to a certain extent in the first two days of the second week leading to the claimant going sick on 24 April and that absence continuing to the end of July 2018. Returning to work from maternity leave is often a

difficult exercise for women and can lead to feelings of vulnerability and insecurity. The claimant clearly and not unreasonably found the way she was treated on her return to be extremely upsetting. It is particularly disappointing that such a large, well-known employer allowed this situation to arise in direct conflict with its own policies. The claimant gave compelling evidence of the impact of events on her physical and mental well-being.

60. We are also mindful, however, that the respondent quickly took steps to seek to resolve the situation and this was first acknowledged by Mr Alderson at 10.02 on 27 April 2018 in an email to the claimant. Those efforts were then continued in later correspondence both between the respondent and the claimant and Mr Bird on her behalf. We are also mindful that as the claimant had been told prior to her return on 16 April 2018 that it was not intended that she would sit at her old desk, the fact that she was not doing so would not in itself has come as a complete surprise to her on that day.

61. Fixing a monetary level to compensate for injury to feelings is always a difficult task. In our view the circumstances of this case were serious and fall into the middle band of Vento but at the very low end of that band. We assess the appropriate level of compensation to be £9,000 in respect of the claimant's injury to feelings as a result of the detriments/discrimination identified above.

62. We also consider it appropriate to award interest on that amount at 8%. The relevant daily rate is £1.97 and the number of days between the commencement of the act of discrimination (16 April 2018) to the assessment of compensation (23 May 2019) is 403 making the total award of interest of £793.91.

63. Clearly we are critical of the respondent with regard to the handling of the claimant's return to work. We do note however that in many other respects prior to the events of the week of 16 April 2018 it, and Ms Jones in particular, had responded to the claimant's two periods of maternity leave well and in many ways they were particularly flexible. They agreed at the claimant's various requests different working patterns, different days of the week (even when not particularly beneficial to the respondent), flexible use of holiday, flexible working and sabbatical around her statutory maternity leave to help her meet her needs.

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Employment Judge K Andrews
Date: 3 June 2019