EMPLOYMENT TRIBUNALS

Claimant: Miss S McNicholas

Respondent: MACH Recruitment Ltd

Heard at: **Leeds** **On:** **25 June 2019**
26 June 2019 (Reserved)

Before: **Employment Judge Keevash**

Representation
Claimant: In person
Respondent: Mr A Weiss, Counsel

RESERVED REMEDY JUDGMENT

The Respondent is ordered to pay to the Claimant compensation in the sum of £7,213.26.

REASONS

Background
1 By a Judgment dated 4 June 2019 the Employment Judge refused the Respondent's application for an extension of time for entering its Response. The matter was listed for this Hearing.

2 At the Liability Hearing the Respondent made an application for leave to participate in the liability issues and, if appropriate, the remedy issues. The Employment Judge refused the application in relation to liability but granted it in relation to remedy. After hearing the Claimant's evidence, he adjudged that the Claimant's complaints that the Respondent discriminated against her because of pregnancy and sex succeeded. The proceedings continued to determine the issue of remedy.

Hearing
3 The Claimant gave evidence on her own behalf. Michael Coupland, Area Manager, and Katie Barrett, HR Business Partner, gave evidence on behalf of the Respondent. With the Claimant's agreement, the Employment Judge also read the witness statement of Adam Gee, Operations Director, who did not attend the Hearing. He gave it appropriate weight. He also listened to a recording of a telephone conversation between the Claimant and Mr Coupland. He considered documents produced by the parties.

Facts
4 The Employment Judge found the following facts proved on the balance of probabilities:-

4.1 In October 2018 the Claimant was engaged by the Respondent as a recruitment resourcer on a temporary basis.

4.2 The Respondent is a temporary work agency which places temporary workers for manufacturing clients, mainly across the north of England. During September to December each year the Respondent's customers' demands for temporary agency works increases. In order to cope with the increase in demand and workloads it recruits temporary staff.

4.3 On 10 February 2019 during a telephone conversation Mr Coupland told the Claimant that the Respondent would not be able to retain her in her temporary role. He said that it probably re-engage her on a part-time basis towards the end of the coming March.

4.4 In or about February 2019 the Respondent and another agency successfully tendered for some work which had previously been undertaken by five agencies. Several employees employed by the unsuccessful agencies were transferred in to the Respondent which meant that there no longer any need for a temporary recruitment resource.

4.5 On or about 21 February 2019 the Respondent sent to the Claimant Form P45 which stated that her leaving date was 22 February 2019. Thereafter neither the Respondent nor the Claimant contacted the other about the possibility of work.

4.6 On or about 1 April 2019 the Claimant started work for Nexus.

Submissions
5 The Claimant made oral submissions. Mr Weiss made oral submissions and referred to the **Guidelines for the assessment of General Damages in Personal Injury Cases** Judicial College (14th ed) 2017 ("the Guidelines"). Where appropriate reference to them will be made in the Discussion section of these Reasons.

Discussion

Loss of earnings
6 The Employment Judge accepted the Respondent's evidence in respect of what would have been the outcome had it not discriminated against the Claimant. He found that the Claimant was engaged as a temporary worker. By February 2019 there was no longer any requirement for any temporary workers to be retained. There was also a reduction in the demand for internal resources. Success in the

tender did not create any demand for such resource because several people were transferred to the Respondent. There were no other available part time hours until May 2019. The Claimant did not complain in these proceedings about any failure to offer her some of these hours.

7 There was a conflict of evidence between the Claimant and Mr Coupland. She stated that she told him that she could be flexible but that she needed to know in advance so that she could make childcare arrangements. He stated that she told him that should could only work Mondays to Fridays 9.00 to 17.00 (if no part time work was available). The Employment Judge decided that it was unnecessary to resolve this conflict. He found that in any event the Claimant would not have accepted an offer of the two full time jobs which were available. The business of the two clients associated with these jobs was so volatile that it would not have been possible to give the Claimant notice of when she had to work sufficient to allow her to make childcare arrangements.

8 Accordingly the Employment Judge decided that the Claimant suffered no loss of earnings as a result of the unlawful action. For similar reasons she was not entitled to be compensated for any loss of statutory maternity pay or pension.

Holiday pay

9 The Employment Judge accepted Mr Weiss' submission that this head of loss was misconceived. There was no right to be paid for what would have accrued had the Claimant been retained. In any event she would not have been retained.

Mitigation

10 In view of the above decision it was unnecessary to make any decision in relation to mitigation.

Injury to feelings

11 The Employment Judge accepted the Claimant's evidence which was credible and reliable. He found that during her engagement with the Respondent the Claimant was highly rated. Mr Coupland wanted to retain her and he discussed this with her on several occasions. The Claimant gave evidence that on the strength of these conversations in December 2018 she and her partner decided place a deposit on a new build house. The purchase was completed in March 2019.

12. The Employment Judge found that on 10 February 2019 she was taken aback by what Mr Coupland told her. She was upset because there was no face to face conversation and she believed that the decision was made because of her pregnancy. Subsequently she felt disgusted, full of disbelief and stressed. She had to borrow money from family and friends which she found embarrassing. Her friendships with former colleagues became strained. She was further shocked when she received the P45 because she had hoped the Respondent would stick to its word. She did not consult her GP because she believed medication would be prescribed and that this would be harmful to the pregnancy. Blood tests showed that her iron levels had dropped. Her sleep was affected and her confidence was damaged.

13 The Claimant gave evidence that, when Mr Coupland told her that she would not be retained, it "came as a massive shock" because she had believed that she would be given a permanent position. Although that reaction was probably genuine, the Employment Judge found that no such promise had been given to her; at its highest she was told by Mr Coupland that he would like to retain her.

However, Mr Coupland was clearly not the final decision maker on this matter. In the Employment Judge's judgment, it followed that any injury to feelings attributable to the house purchase (insofar as that could be isolated) had to be discounted. The Employment Judge also accepted Mr Weiss' submission that, as there was no medical evidence, the Claimant had failed to show that the drop in iron levels was attributable to the unlawful action. Again this had to be discounted.

14 The Employment Judge considered the **First Addendum to Presidential Guidance Originally Issued on 5 September 2017** dated 23 March 2018 ("the Guidance")**.** He also kept in mind guidance given by the higher courts as to factors which should be taken into account when assessing awards for injury to feelings. Finally he considered the Guidelines.

15 In her revised schedule of loss the Claimant assessed the value of the claim under this head at £8,000. Mr Weiss submitted that such an award would be an affront to people with post traumatic stress disorder. The Guidelines suggest that an award of £5,310 to £16,720 would be appropriate for those with moderate psychiatric damage. The Claimant's injury was significantly less serious than an injury in this category. Any award should be limited in time so as to end on 22 February when C received her P45 and she knew that the relationship had come to an end. An award of £1,500 was appropriate.

16 The Employment Judge rejected Mr Weiss' submission because he regarded an award of £1,500 to be insulting. Parliament had empowered Employment Tribunals to compensate victims of discrimination and such awards should not be so low as to bring the legislation into disrepute. Although this was in effect an isolated one off incident, it did bring to an end a working relationship which the Claimant hoped would endure. The Employment Judge did not understand why any award should be assessed on the basis of such a limited period of time as submitted by Mr Weiss. The termination of the engagement and the failure to offer alternatives injured the Claimant' feelings beyond the date when she received her P45. She was still upset when giving her evidence and she understandably commented on the fact that she had received no apology for the discriminatory manner in which she had been treated. In the circumstances the Employment Judge decided that an award towards the upper part of the lower band (a less serious case) as set out in the Guidance was appropriate. This band was £900 to £8,600. He decided to order the Respondent to pay the sum of £7,000 under this head.

Interest

17 The Employment Judge decided that it was appropriate to make an award of interest under the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996. He assessed the amount due as follows:-

6 February 2019 to 25 June 2019 139 days

$$\frac{139}{365} \times £7{,}000 \times 8\% = £213.26$$

ACAS uplift

18 The Employment Judge accepted Mr Weiss' submission that the **ACAS Code of Practice 1 Code of Practice on Disciplinary and Grievance Procedures** (2015) did not apply in this matter. In the Foreword to the Code it states that it "provides basic guidance to employers, employees and their representatives and

sets out principles for handling disciplinary and grievance situations in the workplace". Such a situation did not arise in this case. The Employment Judge decided, therefore, that he had no power to apply a statutory uplift on the award of compensation.

Conclusion

19 The Employment Judge ordered the Respondent to pay to the Claimant compensation in the sum of £7,213.26.

Employment Judge **Keevash**

Date 10 July 2019