



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss E Page

**Respondents:** (R1) I 4 C Executive Search Limited (In Liquidation)  
(R2) Lee Hancock

**Heard at:** Lincoln

**On:** Monday 10 and Wednesday 12 June 2019

**Before:** Employment Judge Hutchinson

**Members:** Mrs J M Bonser  
Mr S Hemmings

## Representatives

**Claimant:** In Person

**Respondents:** (R1) No Appearance  
(R2) James Gilbert, Litigation Consultant

# JUDGMENT

The unanimous judgment of the Tribunal is that: -

1. The claims of pregnancy and maternity discrimination contrary to Section 18 Equality Act 2010 fail and are dismissed.
2. The claim of detriment contrary to Section 44 Employment Rights Act 1996 fails and is dismissed.
3. The Respondents' application for costs fails and is dismissed.

**JUDGMENT** having been sent to the parties on 27 June 2019 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals (Rules of Procedure) Regulations 2013, the following reasons are provided: -

# REASONS

## Background to this Claim

1. The Claimant presented her claim to the Tribunal on 22 December 2017. She was still employed at that time by the Respondents and had been since 3 April 2017 as a Recruitment Consultant. She was dismissed on 16 July 2018. She claims four acts of

discrimination contrary to Section 18 Equality Act 2010 ("EQA").

They are: -

- 1.1 Laughing at the Claimant regarding the pregnancy being high risk.
- 1.2 Announcing the pregnancy to the staff without her consent.
- 1.3 Saying to the staff that the Claimant was now pregnant and had a mortgage to pay and no income.
- 1.4 Insisting upon proof of pregnancy before a MATB1 form was due.

2. The Claimant also says that she had been subjected to a detriment contrary to Sections 44(1)(c) and (d) Employment Rights Act 1996 ("ERA") in that having refused to attend the workplace because her outstanding grievance and uncomfortable workplace environment would cause dangerous levels of stress to her because of her pregnancy, that absence was considered as unauthorised and her pay had been stopped.

### **Evidence**

3. The Tribunal heard evidence from the following: -

- The Claimant
- Faye Nasser, a former colleague
- Rachel Huckstep (formerly Rachel Wilson), Office Manager
- Lee Hancock, second Respondent and Director of the first Respondent

4. Where there was a conflict of evidence we preferred the evidence of Mr Hancock and Ms Huckstep. Their evidence was consistent and reliable. The Claimant's evidence was not. An example of this is her case regarding allegation 1.1 referred to above. She did not complain about that issue at all at the time. In fact, no mention was made of it until she appealed against the grievance outcome. Nor was the evidence of her witness reliable. She admitted that she had signed two witness statements which she has now said were both untrue.

5. Ms Nasser said that she had been coerced into giving those witness statements but there was no evidence to support such a contention. We believed Ms Huckstep's evidence that Ms Nasser had signed the statement willingly and then only changed her mind at a later date when she was no longer employed by the first Respondent.

6. Where I refer to page numbers it is from the agreed bundle of documents that was presented to the Tribunal.

### **The Facts**

7. Mr Hancock set up the first Respondent business in 2006. It is a recruitment consultancy. In 2017 Christian Golding and Caroline Adams became co Directors.

8. The Claimant commenced her employment with the Respondent as a Recruitment Consultant on 1 February 2017. Her contract of employment is at pages 81-104.

9. The Claimant was the partner of Christian Golding. He had told everyone at the office before the Claimant joined the company that they were undergoing fertility treatment. This can be seen in an e-mail that he sent to the whole office on 10 November 2016 at page 134.

The e-mail says:

“Hi Guys

I have booked a day’s holiday today as I have a fertility appointment with Emily at 1:30 pm in Notts. Catch up with everyone tomorrow. If you need me or if anyone calls for me I am on my mobile.”

10. During her fertility treatment the Claimant worked from home and this was known to everyone as was the fact that in May/June 2017 Mr Golding had made it known to the office that she was going for “harvesting” of her eggs.

11. On 16 August 2017 the Claimant attended hospital again this time for in-planting of the eggs and Mr Golding again openly discussed this in the office. We are satisfied that no attempt was ever made to keep these very personal matters private by Miss Page or Mr Golding.

12. When Miss Page returned to the office on 17 August 2017 Mr Hancock undertook a risk assessment. This was upon the advice received by him from ACAS. He had taken this advice because he was not sure what he should do as an employer and he was told by ACAS that he should treat her as being pregnant and carry out the risk assessment.

13. The risk assessment is at pages 157-9. It can be seen from the risk assessment document there is no mention anywhere on the form of high risk pregnancy. Mr Hancock recalls and we accept that during the conversation he and Miss Page did laugh together about a question over “handling raw meat”. Miss Page did not complain about it at the time or when she raised her grievance on 17 October 2017 (170-1) or at the grievance meeting.

14. This matter was first raised on 6 December 2017 when Miss Page made her appeal and raised her second grievance (page 220). She said; “on 17 August 2017, when completing a risk assessment form, about whether my pregnancy was high-risk or not; you laughed as you read this. I replied, “I may not even be pregnant “and I was very confused at as to what was so funny”

15. We were referred to a text exchange with Miss Page’s sister on 22 August at page 160. In the text she complains to her sister about one of the staff members talking about her having a baby. She indicates that she did not want to talk about her situation and refers to her telling her colleague Rachel not to talk about her pregnancy and that she wanted to tell family and friends only. We are satisfied that this is contrary to the behaviour of her partner Mr Golding who was talking openly about the IVF

treatment.

16. On 25 August 2017 Miss Page went on holiday with Mr Golding for a period of two weeks and they were due to return to work on 7 September 2017.

17. Whilst they were away Lee Hancock found some notes in Mr Golding's desk which led him to believe that Mr Golding was leaving the business, taking 2 of the recruitment consultants with him and setting up in competition with his company.

18. Mr Hancock decided to suspend them both and when they returned to work on 7 September 2017 that's what he did. He sent a letter on 8 September 2017 confirming that suspension.

19. On 11 September 2017 he had a meeting with staff other than Rachel Huckstep. They discussed the suspension. He told the staff about this and that they agreed that they would say to anyone outside the business that Miss Page and Mr Golding were still on holiday. We are satisfied that he said during the meeting that he felt sorry for Emily, for having to look after Christian. We are satisfied he made no mention about the Claimant's pregnancy.

20. We are satisfied that he did not make any mention about a pushchair or having no money or a mortgage or their dogs.

21. Discussions then took place with a view to resolving the legal issues between Mr Golding and Miss Page and the company but those discussions were unsuccessful and Mr Golding was dismissed in October 2017.

22. Immediately after his dismissal on 17 October 2017 the Claimant raised a grievance (page 169-71). The complaint by the Claimant at that time was that Mr Hancock had discussed her pregnancy with other members of staff and made negative remarks and statements in respect of her pregnancy. She said in the letter that she had advised that only Mr Hancock and Caroline Adams should be aware of the pregnancy and that her information should have been kept confidential.

23. The letter does not set out any negative or derogatory remarks that Mr Hancock was supposed to have made to any other members of staff, nor does it complain about the risk assessment. She threatened that after taking legal advice she would be "exploring a discrimination case against yourself and i4C Executive Search."

24. On 23 October 2017 there was a grievance meeting, the minutes of which are at pages 178-9. The meeting was between Emily Page and Lee Hancock, with Lyn Hancock in attendance taking notes. They discussed her pregnancy and the fact that Mr Hancock was treating her as pregnant at that time. She confirmed that her complaints were about discussions taking place in the office concerning her pregnancy and that she was unhappy that it was common knowledge within the business about her pregnancy.

25. During the meeting Miss Page complained that Mr Hancock had made negative remarks about her saying at page 184 ("you discussed that

we have got a mortgage to pay for and a baby on the way and no money and all of this. Why would you even have that conversation?”. She alleged that this was a negative remark about her pregnancy and Mr Hancock denied this. He said that this did not amount to a negative remark regarding her pregnancy.

26. Immediately after the meeting it appeared that Mr Hancock and Miss Page had reached a settlement agreement and as part of the settlement agreement she would not be returning to work on Monday 30 October 2017 when her suspension was due to expire. This is confirmed in Miss Page’s e-mail of 27 October 2017 at page 186. By 30 October 2017 the Claimant was due to return to work because her suspension had been lifted. But in the end no agreement was reached and as no agreement was reached Miss Page reluctantly returned to work on 24 November 2017.

27. The extent of her reluctance is clearly shown by the recordings that the Claimant made of her return to work at pages 197-204. Mr Hancock’s notes are at pages 194 – 6

28. It can be seen from the notes her discomfiture about coming back to work. Mr Hancock offered to do a further risk assessment but she declined. She had been allocated a different desk and she was not happy about this and that she had been assigned different duties.

29. Miss Page had seen other staff go into the kitchen and although she could not hear what they were saying she thought they were talking about her.

30. She had a further discussion with Mr Hancock and said that she should have been provided with a grievance outcome and he said that he would deal with this. The reason for the delay in this was simply because they were trying to agree terms for her to leave the business.

31. We are satisfied that both Mr Hancock and Miss Page agreed that they were uncomfortable about the situation and it must have been uncomfortable for all the other employees as well. The Claimant did not stay long and collected her things and left just after 9:30 am without any explanation.

32. Miss Page was paid to the end of the month but provided no sick note or explanation for her absence.

33. Mr Hancock wrote with the grievance outcome on or around 30 November 2017 (page 193).

34. Mr Hancock was still not sure of what Ms Page’s position was about returning to work and wrote to her on 30 November 2017 about undertaking a risk assessment (page 210). This would be carried out by Andrew Tomlinson of Nicholson’s HR services.

35. There then followed an e-mail exchange between Mr Hancock and David Ward, Miss Page’s solicitor. This is at pages 211-219. Mr Ward, the Claimant’s solicitor explained that her absence was due to the risk to her health caused by the stress that she was under by returning to work. During this e-mail exchange on 4 December 2017 Mr Hancock asked for

the MAT1B form (page 214). The response from Miss Page's solicitor was that she had not received her form yet because she had reached the requisite stage of pregnancy. Mr Hancock had no idea at what actual stage the Claimant had reached.

36. During this period the Claimant was off sick without a sick note and did not provide a sick note again until 15 December 2017. She had therefore been absent without a sick note and without authority between 30 November and 15 December 2017 and was not entitled to be paid during this period. On providing the sick note on 15 December 2017 she was then paid from that date.

37. Thereafter on 22 December 2017 she presented her claim to the Tribunal.

## **The Law**

### Pregnancy Discrimination

38. Section 18 Equality Act 2010 provides:

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

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

(a) because of the pregnancy, or

(b) because of illness suffered by her as a result of it.”

39. Section 136 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.”

40. The Claimant therefore has to show prima facie facts which could establish that she has received unfavourable treatment. If she can establish that she has received unfavourable treatment then the Tribunal goes on to consider whether the unfavourable treatment was because of her pregnancy or because of some illness suffered by her as a result of it.

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### Health and Safety Detriment

41. Section 44 Employment Rights Act 1996 (“ERA”) provides: -

“(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 on the ground that: -

...(d) In circumstances of danger which the employee reasonably believed to be serious and imminent and which he could not reasonably to have been expected to overt, he left (or proposed to leave) or (while the danger persisted) refused to return to his place of work or any dangerous part of his place of work.”

### **Our Conclusions**

42. We are satisfied that Mr Hancock did not laugh at or with the Claimant regarding the pregnancy being high risk. We are satisfied that there was no mention of high risk pregnancy on the risk assessment form at all or anything relating to it and there was no reason for them to have a discussion that the claimant alleges.

43. We note that the Claimant did not complain about this at the time nor until much later when she was already in dispute with Mr Hancock.

44. We are satisfied that the only laughter that there was related to a question about raw meat.

45. We are satisfied that there was nothing derogatory about Mr Hancock’s behaviour. He was simply doing his best with the situation and taking advice from ACAS who suggested to him that he should undertake the risk assessment to comply with good practice.

46. We are satisfied that he was genuinely pleased about the Claimant’s pregnancy and did not have any negative thoughts about that at all.

47. The dispute and the allegation arose after he had dismissed Mr Golding, the Claimant’s partner, for setting up in business competition with him and we are satisfied that that was the cause of the grievance.

48. We are satisfied that he did not announce the pregnancy without her consent. We are satisfied that all the staff had been aware, mainly through Mr Golding, about the treatment and what had happened. They all knew about the harvesting of the eggs and that she had an appointment for the implantation. Mr Golding and Ms Page had made no secret of it and she had told most of the staff about her pregnancy and they were all supportive of her.

49. We are satisfied that at a meeting on 11 September 2017 Mr Hancock did not say that the Claimant was now pregnant with a mortgage to pay and no income or the different allegation that she made in her statement that he said:

“They are going to have 4 dogs, no jobs and a pushchair to pay for.”

50. Miss Page’s case is riven with inconsistencies such as this and makes her story difficult for us to believe. For these reasons we prefer the evidence of Mr Hancock and Ms Huckstep that he said no such thing. We are satisfied that at the meeting he did express sympathy for Miss Page because she now had the added responsibility of looking after Mr Golding at home. That did not relate in any way to her pregnancy.

51. We are also satisfied that he did not insist on proof of pregnancy in his discussions on 23 October 2017. He simply said that he would need the MATB1 form at some stage. It can be seen from the notes of the meeting that he repeatedly accepted that she was pregnant and she would be treated as such unless she had proved to the contrary. We are satisfied that the claimant has not been treated unfavourably as she alleges and her claim that she has suffered discrimination on grounds of her pregnancy/maternity fail and are dismissed.

52. We are satisfied that the Claimant was not paid for the period between 1 and 5 December 2017 because during that time she was absent without leave. She had walked out of work on 24 November 2017 without explanation and although she provided a sick note to the end of the month she did not provide a sick note during this period and that's why she was not paid. It had nothing to do with her pregnancy. Her claim that she has suffered a detriment contrary to section 44 ERA fails and is dismissed.

### **Costs Application**

53. At the end of the hearing the Respondents made an application for costs under Rule 74 of the Employment Tribunal Rules of Procedure 2013. Rule 76 provides that we may make a costs order if we are satisfied that the Claimant had acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings or the way the proceedings had been conducted or that the claim had no reasonable prospect of success. The making of a costs order is discretionary

54. Mr Gilbert says that the Claimant had acted unreasonably by pursuing her case and that she had sought to mislead the Tribunal in these proceedings and that she had no reasonable prospect of success. In that respect we do not agree with his submissions. Having heard the evidence we were satisfied that the Claimant's evidence was unreliable and that of her witness the same. It does not follow from that that we think that the Claimant acted unreasonably or that she had no reasonable prospect of success. All discrimination cases turn on the evidence and we have made our findings on the basis of the evidence we have heard. We are satisfied in this case that it would not be right to make an order for costs because we are not satisfied that the Claimant acted unreasonably or that she had no reasonable prospect of success when she started out with these proceedings. The costs application therefore fails and is also dismissed.

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Employment Judge Hutchinson  
Date 28 August 2019  
JUDGMENT SENT TO THE PARTIES ON

FOR THE TRIBUNAL OFFICE