



EMPLOYMENT TRIBUNALS

Claimant: Mrs E Wilcox

Respondents: (1) Print Inc & Design Limited
(2) Ms A A Windsor

Heard at: Cardiff **On:** 30 and 31 October 2019

Before: Employment Judge D Reed
Members:
Mr A Fryer
Ms C Lovell

Representation:

Claimant: Mr R Leong (Solicitor)
Respondent: Ms C Urquhart (Counsel)

JUDGMENT having been sent to the parties on 19 November 2019 and reasons having been requested by the claimant in accordance with Rule 62(3) of the Rules of Procedure 2013:

REASONS

1. In this case the Claimant Mrs Wilcox said she had been unfairly dismissed by her former employer Print Inc & Design Limited (“the Company”). She also said that she had been unlawfully discriminated against on the ground of pregnancy by the Company and by Ms Windsor, its owner.
2. We heard evidence from Mrs Wilcox and from Ms Windsor and we were shown certain documents, upon which we reached the following findings of fact.
3. The Company is involved in the business of garment and merchandise printing. It is a small organisation which at the relevant time had some three or four employees. Mrs Wilcox was recruited on 1 May 2018 to work

- for the Company as sales manager. The intention was that she would increase the sales of the Company and make it more profitable and indeed in the first part of her employment those hopes appeared to bear fruit. The Company did well. In the ensuing months, however, that was not maintained and the Company lost money.
4. Over that early period of her employment – roughly May to July - there were discussions between Mrs Wilcox and Ms Windsor about the performance of the company and sales in particular. These were the two people in the Company responsible for sales and they worked in close proximity so it would have been most surprising if such discussions did not take place. However, very rarely were those matters dealt with on any formal basis and, with the exception of a meeting on 19 July, documents were not produced that recorded what was said.
 5. In the week commencing 13 August 2018 Mrs Wilcox was away from the office on holiday. Two things occurred during that week that were important to our considerations. Firstly Ms Windsor registered with Indeed, a recruitment organisation, with a view to advertising for a sales executive, that is someone who would work self-employed and on a commission only basis, and therefore not at any cost to the Company. The other thing that occurred was that she took advice from two advisers, Croner and DAS, in relation to Mrs Wilcox herself and the way the Company should treat her in the light of the by then parlous financial situation the Company was in. That advice was carried into action the following week, the week commencing 20 August. Ms Windsor had decided that Mrs Wilcox would concentrate more on sales, and to that end she was moved to a different desk.
 6. A meeting took place on 22 August at which Mrs Wilcox disclosed to Ms Windsor that she was pregnant. There was then a meeting the following day, at which more detailed discussions (that is in comparison to the discussions that had taken place earlier in the year) took place in relation to sales and the performance of the business. Indeed over the course of the next three weeks there were a number of meetings at which sales were discussed, together with the performance of the Company generally. Targets were set and Mrs Wilcox was told her performance would be monitored. In general, she was more closely managed in various respects, which are detailed below.
 7. On or about 13 September, Ms Windsor met her accountant. She was left in no doubt that the financial situation of the Company was very poor and that urgent action was required to address it. That urgent action occurred on 13 September. She called Mrs Wilcox to a meeting, without any warning and simply told that she was being dismissed. Her dismissal was confirmed in a letter sent to her the following day.

8. Under s108 of the Employment Rights Act 1996 the right to claim unfair dismissal is not usually enjoyed by an employee unless she has been continuously employed for a continuous period of not less than 2 years, ending with the effective date of termination of her employment. However, s108 goes on to provide that that does not apply where s99 of the Act applies.
9. S99 provides that an employee who is dismissed shall be regarded as unfairly dismissed if the reason or principal reason for dismissal is pregnancy.
10. Under s13 of the Equality Act 2010 a person discriminates unlawfully against another if, because of a protected characteristic, she treats that other less favourably than she treats or would treat others. Pregnancy is a protected characteristic.
11. Under s110 of the 2010 Act, an employee of a respondent is personally liable if, as a consequence of her behaviour, that respondent has committed an unlawful act of discrimination.
12. Mrs Wilcox's principal claim was one of unfair dismissal. She was employed by the Company for less than 2 years but said she could still take such a claim forward, since the reason for her dismissal was her pregnancy.
13. She also claimed that various aspects of her treatment by the Company after she announced her pregnancy (including her dismissal) amounted to unlawful discrimination, for which both the Company and Ms Windsor were liable.
14. The question for us, then, was the motivation of Ms Windsor. That was an issue that turned solely on the credibility of Ms Windsor. Her evidence was that pregnancy played no part in the decision to dismiss and indeed did not impact on her treatment of Mrs Wilcox at all.
15. We firstly address the unfair dismissal claim.
16. A number of matters were raised by Mrs Wilcox that she said gave rise to a reasonable belief on her part that Ms Windsor was motivated to dismiss her by reason of her pregnancy. Essentially, she said that there appeared to be a step change in the way she was being treated by the Company after she disclosed her pregnancy on 22 August.
17. It was quite clear that performance issues, and sales in general, were being addressed on a more formal basis after that date; that more

frequent formal meetings were taking place after that date; and that the Company was being more specific and more demanding about matters such as targets. What she invited us to conclude was that the reason for that state of affairs could only be because she was pregnant and therefore we should infer that the reason for her dismissal was so motivated.

18. However what, it seemed to us, that ignored was the largely unchallenged evidence of Ms Windsor in relation to the advice she took and how her behaviour was affected by it. She took advice in the week commencing 13 August and her evidence, which we accepted, was that what she did thereafter in relation to Mrs Wilcox amounted to its implementation. She was advised to deal with matters on a different basis from the way she had before and she simply carried that advice into effect. In part – namely in relation to the relocation of Mrs Wilcox’s work station - implementation had been undertaken even before the disclosure of pregnancy.
19. It was clear that the Company was in a very difficult financial situation at the time. Ms Windsor saw her accountant very shortly before the meeting on 13 September and we accepted her evidence to the effect that she was told that there was every possibility that the company would cease to exist unless steps were taken to address its financial situation. If she was to reduce the manpower of the establishment, what options did she have? The only person realistically that could go in those circumstances would be Mrs Wilcox. Ms Windsor could hardly dismiss herself (and she had not been drawing wages anyhow, so there was no saving to be made there even if she did). The only other employee was the person actually doing the embroidery work that constituted the Company’s business. She clearly could not be dismissed.
20. The dismissal of Mrs Wilcox was a direct result of the advice Ms Windsor received, and in particular her accountant’s warning of the dire consequences if she did not cut the Company’s costs. That advice would have been given and taken regardless of the pregnancy of Mrs Wilcox.
21. In short, we accepted Ms Windsor’s evidence as to her motivation in dismissing Mrs Windsor. In the light of all the considerations to which we have referred, we concluded that the sole or principal reason for dismissal of Mrs Wilcox was not pregnancy and therefore, since she was employed for less than 2 years, her claim of unfair dismissal had to fail.
22. We then turn to the claims of discrimination, ie unfavourable treatment by reason of pregnancy. We remind ourselves in this context that the question for us is not whether the sole or principal reason for the treatment was by reason of pregnancy: if pregnancy played a material part in the decisions in question it would amount to unlawful discrimination. In order

- for the claims to fail, we would have to be satisfied that the relevant treatment was in no sense whatsoever on the ground of pregnancy.
23. Mrs Wilcox asserted that there were a number of respects in which she had been more closely and rigorously managed following the announcement of her pregnancy and that each respect amounted to an act of unlawful discrimination. Although we address each individual claim below, the essence of her allegations was that Ms Windsor was “on her case” following the pregnancy announcement in a way she had not been before. She claimed, and we accepted, there was a change in the approach of Ms Windsor who more closely, rigorously and formally managed her but for the reasons we have set out above, we believed the reason for that change was not pregnancy.
 24. Mrs Wilcox was informed that she would be put on a performance plan and that she would be subject to a performance review. In our view, the implementation of these steps was something that was put in place as a combination of the financial situation of the Company and the advice that Ms Windsor was getting from her advisers, all of which existed and in respect of which decisions were taken before 22 August.
 25. Ms Windsor directed that the pre-existing “team” sales target should be changed to a personal target for Mrs Wilcox. However, that direction was a consequence of the advice that Ms Windsor had and was unrelated to the Claimant’s pregnancy. Mrs Wilcox further complained that her personal target was unrealistic. That might or might not have been the case, but again we did not believe its level was tainted by considerations of her pregnancy.
 26. Mrs Wilcox’s said her role was advertised while she was still in post. We were satisfied that there was an advert published for a sales position within the Company. However, this was not the role of Mrs Wilcox but rather a commission only position for a non-employee. In any event, the process of recruitment was put in train before the Company was aware Mrs Wilcox was pregnant and would have gone ahead whether or not she was pregnant.
 27. Mrs Wilcox was allocated a different computer to work at. However, that was something that occurred before 22 August so clearly could not be the result of information that was only imparted to Ms Windsor on that date.
 28. Mrs Wilcox said her access to the shared drive of the computer system was restricted. However, what had actually happened was that there was a problem in relation to that drive which was resolved. We were satisfied that there was no decision to so restrict her. There was no treatment in that regard that related to pregnancy.

29. Finally we turn to the dismissal again. For the reasons set out above, we were satisfied that the reason for dismissal was solely the commercial considerations relating to the running of the Company. Pregnancy paid no part in that decision and it followed that that claim also failed

Employment Judge D Reed
Dated 3 December 2019

REASONS SENT TO THE PARTIES ON 3 December 2019

.....
FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS