



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs B Akther  
**Respondent:** Rhythmic Care Limited  
**Heard at:** East London Hearing Centre  
**On:** 11 and 12 March 2020  
**Before:** Employment Judge Burgher  
**Members:** Mrs K Freeman  
Dr J Ukemenam

## Representation

**Claimant:** In person  
**Respondent:** Mr Z Malik (Trainee Solicitor)

**JUDGMENT** having been sent to the parties on 16 March 2020 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013.

## REASONS

1. The Claimant brings claims for pregnancy and maternity discrimination and holiday pay arising from her employment with the Respondent
2. At the outset of the hearing the Tribunal the issues were clarified. A summary of the Claimant's complaints are as follows.
3. In June 2018 the Respondent did not provide the Claimant with work following notification of her pregnancy
4. In October 2018 Mr Amin laughed at the Claimant when she informed him that she was applying for maternity pay.
5. Between August 2018 and 1 November 2018 the Claimant was assigned heavy work lifting clients by Mr Amim and was threatened with dismissal if she did not do the job.

6. In January or February 2019 the Respondent's accountant, Mr Rahman, informed the Claimant's husband in a meeting that he would need to pay £200 for assistance in her claim for statutory maternity pay (SMP) from the government.

7. At about the end of August 2018 the Respondent failed to pay the Claimant holiday pay in respect of two weeks holiday taken from 28<sup>th</sup> of July 2018.

8. The legal issues relation to the matters were as follows.

### **Time limits**

9. Were the Claimant's claims presented within the time limit provided as set out in sections 123 (1) (a) and (b) of the Equality act 2010. This includes consideration of whether there was an act and/or conduct extending over a period. If not presented within the primary limitation period whether the claim was presented within such further time as was just and equitable

10. Whether the complaints of unlawful deduction of wages were presented within the time limit set out in section 23 (2) to 4 of the Employment Rights Act 1996

11. if not, whether it was really practicable to do so

12. if it was not reasonably practicable was the claim presented within such further time as was reasonable in all the circumstances

13. The issues for the claims under the Equality Act 2010 are

14. When did the Respondent first have knowledge of the Claimant's pregnancy. The Claimant states that this was in June 2018; the Respondent contends it did not have notice until mid September 2018

15. Did the Respondent treat the Claimant unfavourably as set out above

16. There was no issue as to whether the alleged unfavourable treatment took place it during the protected period

17. Was any unfavourable treatment (1) because of the pregnancy or (2) because she was exercising or seeking to exercise or had exercise or sought to exercise the right to ordinary or additional maternity leave.

### **Unauthorised deductions**

18. Did the Respondent make unauthorised deductions from the Claimant's wages in accordance with section 13 of the Employment Rights Act 1996 by failing to pay her for two weeks of holiday (which commenced on 28 July 2018), and if so how much was deducted.

## Evidence

19. The Claimant gave evidence. No witness statement had been prepared by her. Consequently, the Claimant was asked to confirm that the narrative of her ET1 at page 7, and the narrative provided at paragraphs 9 to 9.5 of the case management order of Employment Judge Ross dated 4 July 2019 as her evidence. She stated that that was true and that she relied upon it. The Claimant was assisted in giving evidence by Mr M Ahmed Bengali Sinhali interpreter.

20. Mr Uddin gave evidence on behalf of the Claimant, his wife. He gave evidence relating to the issue about Mr Rahman asking him to pay £200. No witness statement had been prepared by Mr Uddin but the Tribunal permitted him to give limited evidence in relation to this matter and matters that he had direct knowledge of.

21. It was evident that Mr Uddin sought to rely on detailed factual matters about the treatment of his wife for which there was no direct oral evidence given or any supporting documentary evidence. Consequently, the Tribunal was unable to accept the submissions that Mr Uddin made about factual matters for which there was no direct evidence and which had not been subject to cross examination. For example to closeness of the relationship between the Claimant and Mrs Mistry and whether or not “half of the workforce” knew the Claimant was pregnant from June 2018.

22. The Respondent called Ms Jyoti Limbu, HR admin officer, Ms Shahana Begum, Care coordinator, Mr Ruhul Mr Amin, company secretary and Mr Syful Haque, payroll assistant. All of the Respondent’s witnesses gave way of evidence by way of written witness statements that had been disclosed to the Claimant a day before the hearing.

23. All witnesses gave sworn evidence and were subject to cross examination and questions from the Tribunal.

24. The Tribunal was also referred to relevant pages in the agreed bundle consisting of 97 pages. Following an application by the Claimant to provide further disclosure of text messages to prove the involvement of Mr Amin in the running of the respondent further documents were submitted on the second day of the hearing for consideration.

## Facts

25. The Tribunal has found the following facts from the evidence.

26. The Respondent operates care homes and employed over 150 carers at the relevant time. It contracts with local authorities to provide carers to support vulnerable people.

27. The Claimant commenced employment with the Respondent as a care worker on 1 April 2017. Carers provide assistance with personal hygiene, grooming, cooking/preparing meals and snacks, providing assistance with toileting and general cleaning for service users.

28. The Claimant's contract was a zero hours contract and stated that she had no guaranteed hours of work and that payment will only be made for actual hours worked.

29. Her contract provided that the holiday year begins on 1 March and ends on the last day of February each year. She had a holiday entitlement 28 days inclusive of public bank holidays.

30. The Respondent allocates carers by trying to prioritise by what was the carers choice but if there is an issue with the carer it ensures that service users are happy receiving the quality of care.

31. During her employment the Claimant worked variable hours each month and was paid in four week intervals.

32. The record of hours and payments according to her payslips for 2019 for hours worked are as follows:

January 95 hours

February 2 hours

March 48 hours

April 46 hours

First payslip for May (in respect of April work) 97.25 hours

Second payslip for May (in respect of May work) 75.50 hours

June – 76.50 hours

July – 65.50

August – 10.25 hours

September – 74.25 hours

October – 76.25 hours

33. The Claimant commenced maternity leave on 1 November 2018.

34. The Claimant was provided authorisation for 7 days holiday from 11 March 2018 to 18 March 2018. She became aware that she was pregnant in April or May 2018.

35. Concerns were raised by Mrs M's daughter regarding the Claimant about timing and behaviour on 4 June 2018. The Claimant's line manager discussed this complaint with the Claimant on 8 June 2018 in a meeting. During this meeting the Claimant was informed that it was alleged she had an attitude problem with the client and that she refused to do certain tasks like emptying bins on her way out. The Claimant disagreed with this complaint and stated that she does all the tasks in the care plan and that she did not speak rudely to the client.

36. As an interim measure the Claimant was taken off the care package of Ms M but was subsequently reinstated. It is not noted at this meeting that the Claimant mentioned that she was pregnant at this time.

37. The Claimant denied the content of the meeting notes and stated that there was no complaint. She maintained that she had specifically told Mr Begum that she was pregnant in June. We do not accept the Claimant's evidence. It was uncertain and vague and unsupported by any contemporaneous documentation, the allegation was not mentioned in the ET1 or her grievance of 11 November 2018. We accept Mr Begum's evidence that she was not told by the Claimant that she was pregnant and had she done so she would have notified HR to have undertaken a risk assessment. This did in fact happen in October 2018.

38. Whilst we do not accept that the Claimant told Ms Begum that she was pregnant we are prepared to accept that other care workers including, Ms Anowara Khatun and some clients may have become aware that she was pregnant during her pregnancy. However, we find that the decision makers including Ms Begum and HR were not aware pregnancy of the Claimant's pregnancy until mid September 2018. We accept Ms Begum's evidence that when she heard about the Claimant's pregnancy mid-September 2018 and following this she informed HR about it.

39. On 24 June 2018, the Claimant applied for 14 days holiday in order to go to Scotland to see a sick relative. This was not approved. The Claimant states that she was informed of the refusal on 27 July 2018 the day before she was supposed to go. We find that there was a discussion between the Claimant and Mr Begum where the Claimant was informed that the holiday request was not authorised. The Claimant had not accrued sufficient amount of holiday days take 14 days by this stage. She had already taken seven days holiday earlier during in the holiday year. The Claimant stated that it was the emergency and she would be going anyway and Ms Begum informed her that it would be unpaid. We do not accept that this conversation took place the day before the Claimant's intended start of holiday. We accept Mr Begum's evidence that the Claimant was informed within a week or two following her request.

40. The Claimant took 2 weeks off and this caused a number of operational issues for the Respondent in arranging carers for service users.

41. The Claimant alleged that she had interaction with Mr Amin from the commencement of employment with the Respondent in April 2017. She alleged that she handed over documents to him and he showed her to the bus. Mr Amin is the husband of the owner of the Respondent. It was accepted that he attended the office from time to time to drop things off and picked things up and speak to his wife. He maintains that he had no involvement with the company until he was appointed company secretary on 19 November 2018. We also referred to a contract of employment for Mr Amin signed on 19 November 2018 employing him as Secretary on a salary of £30,000 per year. Mr Amin denied being involved in any operational way in respect of the claimant or any other care worker prior to that date.

42. There was therefore stark contrast in the factual positions of the parties. The Claimant makes a number of serious allegations against Mr Amin's conduct towards her in August 2018 and in October 2018 including laughing at her and threatening her with dismissal when trying to coerce her to do a shift, assigning her heavy work and threatening to call the police on her for leaving a vulnerable client unattended.

43. These allegations were clarified in the preliminary hearing before Employment Judge Ross on 4 July 2019. The Tribunal assessed the Claimant's grievance of 11 November 2018, which was more contemporaneous to events in her mind at the time. This grievance states that the Claimant was not given any jobs, and that the Respondent took jobs away from her for being pregnant; they refused to allow her holiday and did not pay her statutory maternity pay. There is no mention in this grievance of her serious complaints against Mr Amin. No explanation why has been proffered.

44. The Claimant ET1 which was submitted on 25 January 2019 states as far as Mr Amin is concerned:

*"In October I went to office and the manager name Amin was asking me did you get your statutory maternity pay and start laughing at me for no reason. Amin, the manager made my life hell during my pregnancy he made sure my hours was reduced. He made sure I didn't get my SMP. Amin used the threat me saying I would lose my job if I didn't listen to him. Amin owner husband of the owner of the company."*

45. Over the period rostered to work for 6 particular service users. The Claimant was unable to specify which service user she found challenging due to weight.

46. Mr Amin denied these allegations and stated he had no operational involvement with the Respondent. It was accepted by the Claimant that there was not a requirement for any care worker to do heavy lifting without the required equipment and support.

47. We do not find that Mr Amin was responsible for considering maternity pay and do not find that he would have been in a position to consider whether or not the Claimant would be entitled to it to laugh dismissively at the Claimant as alleged.

48. On balance we therefore do not accept that the Claimant has established her allegations against Mr Amin. She assumed that Mr Amin, as the owners husband, had power and influence in the company which he did not in fact have at the time.

49. By mid September 2018 Mr Shahid Begum became aware of the Claimant's pregnancy. Ms Begum referred the matter to HR. A maternity risk assessment was undertaken by Ms Limbu on 9 October 2018 and recommendations were made including no lifting.

50. The Claimant made enquiries about statutory maternity pay. These were passed to the Respondent's accounting staff. An eligibility assessment in accordance with the statutory guidance was undertaken and it was concluded that over the relevant period for calculation the Claimant had not established that she had an average weekly pay of £116 or more. She was therefore not eligible for statutory maternity pay and she was informed about this on 29 October 2018. She was subsequently sent an email on 3 November 2018 confirming this with the detailed breakdown as to why she was not eligible.

51. The Claimant was upset at the outcome of the not receiving maternity pay and we find this was the catalyst for her grievance on 11 November 2019. No previous complaints had been made by the Claimant about her working conditions.

52. Mr Uddin states that he attended the Respondent's office and gave Mr Rahman the sum of £135 in respect of the settlement of an overpayment that was made to the Claimant. Mr Uddin maintained that Mr Rahman informed him that he would need to pay £200 to assist the Claimant in claiming her maternity pay from the government.

53. The Respondent's evidence is that they do not employ Mr Rahman. Specifically Mr Haque stated that he in fact spoke to Mr Uddin in November 2018 when the Claimant came to collect to SMP1 form. Mr Haque stated that he informed Mr Uddin that the Claimant could go to a Citizens Advice Bureau or ask an accountant but they may charge between £150-£200 to resolve her concern.

54. Given that the decision had already been made that the Claimant was not going to be eligible for statutory maternity pay it is untenable to conclude that Mr Haque, or Mr Rahman as the case may be, informed Mr Uddin that if they paid £200 they the Claimant could claim SMP. The SMP was not due under the statutory rules. Therefore, we find that Mr Uddin was confused about who he spoke to and what was said.

55. The Claimant contacted ACAS on 5 December 2018 and was issued an EC certificate on 5 January 2019. She submitted her complaint to the Tribunal on 25 January 2019.

## Law

56. The Tribunal considered the provisions of section 18 and section 123 of the equality act and sections 13 and section 23 of the Employment Rights Act 1996

### Section 18 Equality Act 2010

#### Pregnancy and maternity discrimination: work cases

“(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 unfavourably —

(a) because of the pregnancy, or

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

(3) A person (A) discriminates against a woman if A treats her unfavourably because she is on compulsory maternity leave.

(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.

(5) For the purposes of subsection (2), if the treatment of a woman is in implementation of a decision taken in the protected period, the treatment is to be regarded as occurring in that period (even if the implementation is not until after the end of that period).

(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.

(7) Section 13, so far as relating to sex discrimination, does not apply to treatment of a woman in so far as—

(a) it is in the protected period in relation to her and is for a reason mentioned in paragraph (a) or (b) of subsection (2), or

(b) it is for a reason mentioned in subsection (3) or (4).”

## **Conclusions**

57. In order to establish maternity discrimination the unfavourable treatment must be because of pregnancy or because of illness suffered by her as a result of it.

58. Therefore the key consideration for the Tribunal was when the Respondent's decision-makers had knowledge of the Claimant's pregnancy. In view of our findings of fact outlined above we conclude that they became aware of the Claimant's pregnancy in mid-September 2018. The Claimant did not mention pregnancy in any supervision meetings prior to 9 October 2018 which following a risk assessment she was deemed a fit for work. Whilst some care staff and clients may have been aware of the Claimant's pregnancy earlier, without further evidence this is not sufficient to extend knowledge to the relevant decision-makers.

59. We do not conclude that the reduction in the Claimant's workload in June and July 2018 was due to pregnancy. There was a complaint made by the daughter of Ms M, this was discussed with the Claimant and she was taken off the care package and subsequently reinstated.

60. In respect of July/ August work, the Claimant had taken unpaid leave, this created issues for the Respondent in reallocating care packages and inevitably adversely impacted upon her shift allocation on her return.

61. We do not conclude that the allegations the Claimant made against Mr Amin in respect of August 2018 have been established. The absence of any indication of this in



her initial grievance 11 November 2018 combined with the lack of evidential support and the denial of Mr Amin leads me to conclude that the Claimant has not established her allegations in this regard.

62. We do not conclude that Mr Amin laughed at the Claimant in October 2018 when she enquired about an application to maternity pay. We conclude that Mr Amin would not have been in a position to have known whether or not the Claimant would have been eligible for SMP.

#### Holiday pay

63. The Claimant was informed that she would not be paid for the two weeks taken from 28 July to 11 August 2018. The refusal to pay her was due to the fact that she had not accrued sufficiently paid leave at that stage during the holiday year. No holiday pay was due at that stage.

64. In an event given our findings on the date of knowledge of pregnancy any acts that took place before mid September 2018, including alleged non payment of holiday pay in July/August 2018, could not have been because of the Claimant's pregnancy and her claims in this regard fail.

65. Whilst the Claimant accrued holiday pay during the subsequent months and during maternity leave, which she is able to claim for as appropriate, her claim before us related to non payment of holiday for 28 July to 11 August 2018. However, we observe that the Claimant accrued 37 days holiday pay which would be outstanding in respect of the period 1 March 2018 to February 2019 and 1 March 2019 to 1 November 2019 when she returned from maternity leave and there is no evidence that the Respondent in fact paid the Claimant her holiday entitlement for this period.

66. The Claimant has not established that a 'Mr Rahman' is employed by the Respondent.

67. We conclude that Mr Uddin was mistaken and he actually spoke to Mr Haque for a brief period of time and was upset and incensed that the Respondent had not paid the SMP to his wife. We find he was mistaken in what Mr Haque had said to him.

68. The Claimant's claims that were before the Tribunal therefore fail and are dismissed.

**Employment Judge Burgher**  
**Date: 2 July 2020**