



EMPLOYMENT TRIBUNALS

Claimant: Miss C Hollowday

Respondent: Impact Sales Recruitment Limited (in liquidation)

Heard at: Croydon via CVP **On:** 7/10/2020

Before: Employment Judge Wright

Representation:

Claimant: In person

Respondent: Ms L Cullen - Liquidator

RESERVED JUDGMENT

The respondent contravened the Equality Act 2010, it withdrew a job offer made to the claimant when it discovered she was pregnant.

The sums of £5,292 (net representing loss of salary) and £4,000 (representing injury to feelings) are awarded to the claimant.

REASONS

1. On 20/9/2019 the claimant presented a claim to the Tribunal. She made a claim of pregnancy/maternity discrimination contrary to the Equality Act 2010 (EQA). It was agreed this hearing would be conducted via CVP.
2. The claimant provided a witness statement and bundle of documents.

3. The facts are largely not disputed. The respondent saw the claimant's CV and approached her regarding a vacancy it had. The claimant was interviewed on 24/7/2019 and she attended a second interview on 29/7/2019.
4. On 29/7/2019 the claimant was offered a position in a recruitment role on a salary of £18,000. She was told she would be on probation until December 2019 and that she would be trained by a Director (Ms Mandy Faithfull). A start date of 15/8/2020 was proposed once the Ms Faithfull had returned from holiday. A contract was to be sent to the claimant on the 30/7/2019.
5. The claimant was excited to finally be offered a job. She told her parents and partner. The claimant was 18 weeks pregnant and she asked her family and partner what she should do as she was not at this stage legally obliged to inform the respondent. She was encouraged to be open with the respondent and to inform it of her situation. The claimant emailed Ms Faithfull and they had a conversation. The claimant followed that up with another email, saying:

'Hi Mandy

Apologies for not telling you from the get go. I got too nervous to tell you then and earlier as well and I completely understand that it is inconvenient as a business and even more so as a smaller business.

I just want you to know I am a hard worker and would continue to be throughout this pregnancy and after and I am so grateful that you wanted to give me this opportunity.'

6. Ms Faithful replied the next day:

'Mike's¹ not in today, but he feels the same as me.

We have no issue whatsoever employing someone who is expecting.

However, we really hate the fact that you were not upfront with us right at the start.

Honesty is everything to us.

I'm really sorry.'

7. The claimant replied that she was 'really upset' that Ms Faithfull had 'insinuated' she had 'lied or misled' her. She referred to the protection of the EQA and said she was considering taking legal advice.

¹ Mr Mike Strutton a fellow director.

8. Ms Faithfull responded that she was an ardent feminist and denied the job offer was withdrawn because the claimant was pregnant; the issue was the claimant had not revealed her pregnancy 'right at the start' of the application and that she should have informed the respondent at the start of the process.
9. Ms Faithfull invited the claimant to come and meet with her and her fellow director 'rather than just closing the door'. Ms Faithfull sent two further emails to the claimant offering to meet with her. The claimant decided not to take up Ms Faithfull's offer to meet as she felt she had been misjudged by Ms Faithfull. She had also been accused of dishonesty.
10. The respondent also contends that due to Mr Strutton's brother's illness, it put all recruitment on hold as it was not sure how much time the directors would be spending in the business. Mr Strutton says his brother was diagnosed on 26/7/2019, prior to the second interview. This stance is however undermined calling the claimant for a second interview in these circumstances and by Ms Faithfull's two emails on 30/7/2019 and one on 31/7/2019 asking the claimant to come in and have a discussion. If the respondent had decided not to proceed with the recruitment, it would not have called the claimant for a second interview or invited her to come in for discussions on three further occasions.
11. The claimant went onto Universal Credit shortly before the job offer. As a result of that, she had weekly meetings, attended three or four interviews per week and a workshop to help her in her job search. Eleven weeks before her due date (24/12/2019, with her baby being born on 22/12/2019) she was told that she no longer need attend the weekly meetings or look for work.
12. The discrimination directed at the claimant caused her 'lots of upset and stress'. She was anxious at job interviews and despite trying, she was not able to find another job. She has only recently found another role which she is due to start on the 8/10/2020. The withdrawal of the job offer also had a 'significant impact' on her life.

The Law

13. The prohibited conduct is under Section 18 of the EQA, which 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 unfavourably —

- (a) because of the pregnancy, or
- (b) because of illness suffered by her as a result of it.

...

- (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.

14. The complaint falls under section 39 EQA:

39 Employees and applicants

- (1) An employer (A) must not discriminate against a person (B)—
- (a) in the arrangements A makes for deciding to whom to offer employment;
 - (b) as to the terms on which A offers B employment;
 - (c) by not offering B employment.

15. The respondent says it did not discriminate against the claimant as the reason for withdrawing the job offer was not the pregnancy, but (on its case) the claimant's dishonesty.
16. The reason the claimant was accused of being dishonest was revealing her pregnancy to Ms Faithfull during a telephone call after the interview on 29/7/2019 and not during the interview. The respondent says the claimant had the perfect opportunity to do so when commitments (such as pre-booked holidays and in the claimant's case, her graduation ceremony) were discussed.
17. The respondent also refers to other employees its employs; such as single mothers and a recovering addict. A claim under s. 18 EQA is not a comparative exercise and therefore the respondent's other staff are not relevant. The respondent also misses the point that (the claimant being in the protected period) it treated the claimant unfavourably (by withdrawing the job offer) because of the pregnancy. If the claimant had not been

- pregnant, she would not have had the telephone conversation with Ms Faithfull to inform her of the pregnancy. There is a causal link between the pregnancy and the unfavourable treatment. Or, to put it another way, but for the pregnancy, the telephone call later on the 29/7/2019 would not have taken place and the respondent would not have withdrawn the job offer.
18. The Tribunal therefore makes a declaration that the claimant was subjected to unlawful discrimination contrary to the EQA. For the sake of completeness, the Tribunal finds that the claimant was not dishonest or lacking in integrity in the information she provided (or did not provide) to Ms Faithfull.
 19. Turning then to the issue of compensation, the claimant seeks four months loss of salary and an injury to feelings award.
 20. The proposed salary was £18,000, the claimant was due to start work on the 15/8/2019 and she says she would have worked for four months, which would have taken her to mid-December (which accords with her due date, the completion of her probation period and the conclusion of her training). Her loss is the net salary, not the gross salary and therefore the net monthly pay is £1,323 x 4 = £5,292.
 21. The Tribunal has taken into account all of the authorities, considered that an injury to feelings award is financial compensation for non-monetary losses and the fact that it should not be punitive, whilst fully compensating the claimant. The award should not be too low as to diminish respect for the policy underlying the anti-discrimination legislation. The claimant seeks an award in the lower Vento² (as updated) band. The lower band at the applicable time was £900 to £8,800 and the Tribunal agrees this act of discrimination does fall within the lower band. Although the respondent's decision was distressing at the time for the claimant and it was exacerbated by the accusation of dishonesty, it was a single act and an isolated one-off occurrence. The Tribunal therefore makes an award of injury to feelings in the mid-point of the lower band and awards £4,000 to the claimant.

8/10/2020

Employment Judge Wright

² Vento v Chief Constable of West Yorkshire Police [2003] IRLR 102 CA

