



EMPLOYMENT TRIBUNALS

Between:

Mrs Z Ashraf
Claimant

and The Priestley Academy Trust
Respondent

Heard at: Leeds **on:** 24 and 25 February 2021

Before: Employment Judge Cox
Members: Mrs N Arshad-Mather
Mr T Downes

Representation:

Claimant: In person
Respondent: Miss Mellor, counsel

REASONS

1. Mrs Ashraf worked at the Margaret Macmillan Primary School (“the School”) as a lunch time supervisor. The School is one of five schools that make up the Respondent Trust. She was dismissed on 13 January 2020. The decision to dismiss her was made by Mrs Martin, the School’s Headteacher. She appealed against her dismissal and her appeal was considered by Mr Holland, Chief Executive Officer of the Trust. Her appeal was unsuccessful.

The issue

2. Mrs Ashraf claimed that Mrs Martin dismissed her because she was pregnant or because she intended to take maternity leave. If that was the case, that would be an unlawful act under Section 39(2)(c) read with Section 18 of the Equality Act 2010. The School, on the other hand, said that Mrs Martin dismissed Mrs Ashraf because she had taken unauthorised absence and that her pregnancy and maternity played no part in the decision. The issue the Tribunal had to decide was therefore whether Mrs Ashraf was dismissed because of her pregnancy or her intention to take

maternity leave, that is, whether either of those matters was a substantial and effective cause of the School's decision to dismiss her, or had a significant influence upon that decision (Nagarajan v London Regional Transport [1999] ICR 877).

The facts

3. At the Hearing, the Tribunal heard oral evidence from Mrs Ashraf and from her husband, Mr Israr. It also accepted in evidence a witness statement from her daughter, Miss Afzal, which the Trust did not challenge. For the Trust, the Tribunal heard oral evidence from Mrs Martin and Mr Holland. It also read the documents referred to by the witnesses in the Hearing file.
4. On the basis of that evidence, the Tribunal made the following findings of fact, most of which were not in dispute.
5. Mrs Ashraf began working at the School in September 2005. She had one period of sickness absence of around 3 weeks in 2019, due to high blood pressure. She had a clean disciplinary record.
6. The School has over 100 staff, of whom eight are men. A significant number of the School's staff have taken maternity leave whilst Mrs Martin has been Headteacher. At the time of the Hearing, seven of the School's staff were pregnant or on maternity leave, including the School's current lunchtime supervisor. Mrs Ashraf herself had a period of maternity leave in 2017. She accepted at the Hearing that no issues had arisen in relation to that period of leave.
7. Mrs Ashraf's contract of employment stated that: "it is expected that you will not take leave, other than for sickness and compassionate leave, during term time". She accepted at the Hearing that she understood at the time that she would not normally be granted leave to be absent from work during term time.
8. On 16 May 2019, the Trust emailed staff with another copy of its Leave of Absence Policy. The re-issuing of the policy was prompted by a case handled by Mrs Martin the previous year involving an employee, SK.
9. SK had taken unauthorised absence from work. She was subjected to a disciplinary process and her disciplinary hearing was conducted jointly by Mrs Martin and the Chair of the Board of Governors. They were both satisfied that SK was guilty of serious misconduct but disagreed about the

appropriate sanction. Mrs Martin wanted to dismiss SK, the Chair did not. In the end, they agreed that SK would be issued with a final written warning, but this would stay on the employee's file for 18 months rather than the usual 12 months. Mrs Martin spoke to Mr Holland about the case after the sanction had been imposed because she was not comfortable with the result. As a result of that conversation, Mr Holland concluded that the Trust needed to ensure that all five of its schools were adopting a consistent and rigorous approach to the management of unauthorised absence and he discussed this with the Trustees. They decided that the existing Leave of Absence Policy was satisfactory and that the problem was that it was not being consistently and firmly applied. Eventually, the Chief Operating Officer of the Trust sent the Policy out again to all the schools for them to distribute to their staff. Although the Trust intended to draw a line in the sand in reissuing this policy, to make clear that the rules on absence would be firmly and consistently enforced in future, the covering email to staff did not say anything about this.

10. The Policy sets out the procedure for applying to take leave of absence in term time. The application must be submitted to the Headteacher and give full details. The School must be given as much notice as possible of the request. The Policy states: "Staff should not under any circumstances make arrangements (bookings, flights etc) until approval for absence has been given." The Policy also states that unauthorised absence from work "may lead to disciplinary action resulting in a formal warning being issued, or dismissal where the circumstance would justify such action. Overstaying and late returns will be considered as unauthorised leave of absence. Staff must preserve any documentary evidence which shows that a late return was unavoidable (tickets, sick-notes etc)."
11. The Trust's Disciplinary Policy gives unauthorised absence as an example of misconduct, not gross misconduct.
12. The School's summer holiday began on 19 July 2019. On 21 July, Mrs Ashraf's brother-in-law informed her husband that their mother was seriously ill in Pakistan with sickness and diarrhoea, had been admitted to hospital and might not survive. Mrs Ashraf and her husband were worried and upset and they decided to travel to Pakistan to see her mother-in-law. They decided to take their three-year-old son with them because her mother-in-law wanted to see him.
13. Mrs Ashraf booked her air tickets on around 23 July. The earliest return flights available were for 6 September, arriving in Manchester on 7

September, whilst the next school term would begin on 2 September with a training day and Mrs Ashraf would be due back at work on 3 September. All flights before this date were fully booked because July and August are a busy holiday period. Mrs Ashraf intended to move the return flights forward while they were in Pakistan, the booking agent having told her that this should be possible because cancellations come up quite often.

14. At around the end of July 2019, Mrs Ashraf became aware that she was pregnant.
15. Mrs Ashraf and her family arrived in Pakistan on 25 July 2019. After her arrival, she tried to move the return flights forward but was unsuccessful. Her mother-in-law was in hospital from 21 July to 15 August.
16. Towards the end of August Mrs Ashraf began to worry that she would not be back in the UK by the beginning of the school term. She did not have a SIM card for her mobile 'phone and did not telephone the School. On 30 or 31 August, she tried to email the School office to let them know that she would not be back in the UK on time, using the email address on the School's website. These messages bounced back as undeliverable. On 31 August she contacted the School through its website to explain her absence, and that she had tried to bring her return flight forward. She said she was happy to take unpaid leave. For around three days at the end of August the School was unable to receive emails due to problems with its computer system. As a result, this email was not received.
17. On the same day, Mrs Ashraf 'phoned her daughter using WhatsApp and asked her to ring the School to tell them why she was absent and that she expected to be back at work on Monday 9 September. Her daughter 'phoned the School on the next working day, Monday 2 September, and spoke to Mrs Smith, the School's Business Manager. She explained that her mother had had to go to Pakistan because her mother-in-law was critically ill and that she was unable to get a flight back until 7 September. She would be at work on 9 September. She explained that her mother had tried to email the School but her emails had bounced back. Mrs Smith told Miss Afzal to let Mrs Ashraf know that she should keep hold of her tickets and the matter would be dealt with when she got back via the Governors. Mrs Smith's reference to the Governing Body dealing with the matter was in fact inaccurate and was probably based on her understanding of the procedure that would have been followed before the School became part of the Trust.

18. Mrs Ashraf returned to the UK on 7 September and attended for work on 9 September. That meant that she had been on unauthorised absence for four working days. One of the office assistants asked her to complete a Leave of Absence form. She had not seen the form before and asked for his guidance in completing it. She explained that she had travelled to Pakistan and had been unable to move her return flight to get back to the UK in time for the start of term. The assistant told her to put down that she had been taking holiday, which she did.
19. On 12 September Mrs Martin met Mrs Ashraf to discuss the reason for her absence. She told her it would be investigated in line with the School's policy.
20. On or around 23 September Mrs Ashraf informed the School that she was pregnant and agreed to provide her MAT B1 form once she received it. She handed in the form on around 5 December. This confirmed that her expected week of childbirth was the week beginning 15 March 2020. She planned to take her maternity leave from 1 March.
21. On 9 October, Ms Iqbal, the School's Special Educational Needs Co-ordinator, conducted an investigatory meeting with Mrs Ashraf. Mrs Ashraf apologised for her absence and explained why she had travelled to Pakistan and how she had tried to bring the date of her return flight forward. She confirmed that her mother-in-law had been hospitalised for three weeks, but she had no evidence to confirm this. She also said that her travel agent had been unable to provide a letter confirming that she had been trying to change her return flights.
22. Ms Iqbal completed her investigation report at the end of October but it was not until 13 December that Mrs Martin wrote to Mrs Ashraf inviting her to a disciplinary hearing on 10 January 2020. This delay was due to the School and the other schools in the Trust being the subject of an OFSTED inspection and the work involved for Mrs Martin in preparing for that.
23. The disciplinary hearing was conducted by Mrs Martin. Mrs Ashraf alleged that Mrs Martin should have considered her case jointly with the Chair of the School's Governing Body but had kept it to herself to deal with on her own because she wanted to dismiss Mrs Ashraf because of her pregnancy or maternity. The Tribunal accepts that the Trust's disciplinary procedure is unclear as to whether a disciplinary hearing that could lead to dismissal should be conducted by the Headteacher alone or by the Headteacher and the Chair of Governors. Nevertheless, the Tribunal accepts that Mrs Martin

genuinely believed that she had authority to conduct the hearing on her own, and that was Mr Holland's understanding of the procedure also. The Tribunal does not accept that Mrs Martin's decision to conduct the hearing on her own was due in any way to her desire to be free to dismiss Mrs Ashraf because she was pregnant and intended to take maternity leave.

24. The disciplinary hearing was adjourned until 13 January to allow Mrs Martin time to reach a decision. On that day she informed Mrs Ashraf that she was dismissed for gross misconduct and she followed that up with a letter to Mrs Ashraf on 15 January confirming the dismissal and the reasons for it. Mrs Martin noted in that letter that Mrs Ashraf had known when she booked her flights to Pakistan that she would not be back in the UK until 7 September, but had made no attempt to contact the School to inform Mrs Martin about that when she booked the flights and she had provided no evidence that she had attempted to return earlier. (In evidence to the Tribunal, Mrs Martin explained that the School is often open during the school holidays. Mrs Ashraf could have left a message on the office answerphone, from which messages were collected from time to time, or emailed her line manager or Mrs Martin, or dropped a note round to the School.) Mrs Martin viewed this as a flagrant disregard for the School's policies.
25. In the letter, Mrs Martin also stated that the School's disciplinary policy provides that unauthorised absence is viewed as gross misconduct. This is not the fact the case; the policy cites it as an example of misconduct only. The Tribunal accepts that this was a simple error on Mrs Martin's part. Mrs Martin confirmed that she had taken into account Mrs Ashraf's length of service and clean disciplinary record and that this was her first offence. She considered whether a warning of some description might be the appropriate sanction. She had concluded, however, that Mrs Ashraf's conduct in deliberately taking unauthorised absence in term time was so serious that any sanction short of dismissal would not reflect the seriousness of her actions. She had lost trust in Mrs Ashraf attending work and following the reasonable instructions of senior staff.
26. On 26 January, Mrs Ashraf appealed against the decision to dismiss her. She wrote the letter of appeal after receiving legal advice. She said that the decision to dismiss her was unreasonably harsh and that her treatment was not consistent with the way in which the School had handled the cases of other employees, SK and KH (whose cases are discussed further below). She provided a letter from the hospital in Pakistan confirming her mother-in-law's illness, a letter from the travel agency where she had booked the

flights to Pakistan saying that no earlier return flights were available and a letter from the travel agency in Pakistan explaining that she had attempted to move her return flights forward.

27. Mrs Ashraf was invited to an appeal hearing on 26 February which was to be conducted by Mr Holland. This had to be re-arranged because of complications in Mrs Ashraf's pregnancy and the premature birth of her baby. The meeting was re-arranged for 31 March but Mrs Ashraf agreed with Mr Holland that, in the light of the restrictions caused by COVID-19, her appeal would be considered on the papers. She emailed him to highlight the matters she considered needed to be addressed.
28. On 6 April Mr Holland wrote to Mrs Ashraf to inform her that he had upheld the decision to dismiss her and explained why.
29. At no point in the disciplinary process did Mrs Ashraf allege that she had been dismissed because of her pregnancy or maternity.

The treatment of others

30. Mrs Ashraf alleged that she had been treated more harshly than three other employees who were not pregnant or needing to take maternity leave. She said that this was evidence that Mrs Martin had in fact dismissed her because of her pregnancy or intention to take maternity leave and was using her unauthorised absence as a "smokescreen".
31. The Tribunal was satisfied, however, from Mrs Martin's evidence about these other cases that the circumstances surrounding them was different.
32. In the autumn of 2015, employee SK took time off to perform the Hajj Pilgrimage and then was on sick leave. The Tribunal accepted Mrs Martin's evidence, which was fully supported by the documentary evidence, that SK was given 20 days' authorised leave to attend the Hajj Pilgrimage but not the 22 days she had requested. She did not return to work on the due date but 'phoned the School on that date to notify it that she was ill. Mrs Martin carried out an investigation. Once she had established from a travel agent's letter giving SK's flight dates that SK was back in the UK on the date she was due back at work, she decided to take the matter no further. SK's absence during term time, unlike Mrs Ashraf's absence, was in fact authorised, first as authorised leave for the Hajj Pilgrimage, then as sick leave.

33. In the summer of 2018, employee SK booked a holiday starting on a date before term ended, having been mistaken about the date that the School's summer holiday began. She asked for leave for the three days leading up to the end of term. The Governors refused that request and Mrs Martin warned SK that if she was absent it would be unauthorised and could amount to gross misconduct. She took those days off work anyway. As explained above, Mrs Martin would have dismissed SK on this occasion had she been the sole decisionmaker. In the end, she reached a joint decision with the Chair of Governors to issue SK with an extended final written warning. This case and the discussion Mrs Martin had with Mr Holland about it prompted the Trust's decision that a more rigorous and consistent approach needed to be taken to unauthorised absence. SK had made a genuine error when booking her holiday; Mrs Ashraf had deliberately bought tickets for a date after term had begun. SK had followed the School's procedure of applying for leave in advance; Mrs Ashraf had made no attempt to contact the School before booking her tickets. SK's unauthorised absence had occurred before the School's management decided that a firmer and more consistent approach was required. For all these reasons, the circumstances of SK's case were different to those of Mrs Ashraf.
34. In January 2019 an employee HK handed in a letter to the School saying that her father was ill in Pakistan and she would be flying out to see him. The documentary evidence before the Tribunal supported Mrs Martin's evidence that HK had made a request at the beginning of her absence for this leave to be authorised and Mrs Martin had referred it on to the Governors to decide whether to approve it. The leave was then approved. HK's absence had not, therefore, been unauthorised.
35. In October 2019 an employee NS made a request for leave during term time to go to Pakistan where her father was having an emergency heart bypass. Mrs Martin referred this request to the Chair of Governors who approved the request. NS's absence was not, therefore, unauthorised.

Conclusions

36. The Tribunal accepts that Mrs Ashraf genuinely believes that she has been unfairly treated. Had her claim been one of unfair dismissal, the Tribunal would have needed to consider whether Mrs Martin's decision was reasonable in all the circumstances, given Mrs Ashraf's length of service, her clean disciplinary record and the fact that SK had not been dismissed for her unauthorised absence. But even if the claim had been one of unfair

dismissal, the Tribunal would have taken into account the fact that the Trust had decided to adopt a more rigorous and consistent approach to unauthorised absence since the last incident involving SK, as it was fully entitled to do. Mrs Ashraf had deliberately decided to book her flights knowing that it was at least possible that she would not be back in the UK in time for the start of term and without attempting to discuss the situation with the School.

37. The claim is not, however, one of unfair dismissal but of discrimination. The Tribunal has heard and seen no evidence to indicate that Mrs Martin was influenced in any way by Mrs Ashraf's pregnancy and intention to take maternity leave in reaching her decision to dismiss. A large majority of the School's staff are women. Employees frequently take maternity leave. Mrs Ashraf had herself taken maternity leave without any issues arising during the time of Mrs Martin's tenure as Headteacher. The School would not have had to pay Mrs Ashraf statutory maternity pay because her pay rate was not high enough to qualify her for it.
38. On the other hand, Mrs Ashraf had deliberately taken unauthorised absence and had made no attempt to discuss this with the School until very late in the day. The School took this very seriously, as it was entitled to do. The Tribunal is satisfied that Mrs Martin's decision was rational and based on the circumstances of Mrs Ashraf's unauthorised absence only.
39. Mrs Ashraf's claim of pregnancy and maternity discrimination therefore fails

Employment Judge Cox
Date: 8 March 2021