EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Miss S Cousins	**v**	(1) The Nannery Ltd (2) Mrs Maria Noble

Heard at: Norwich (by CVP)

On: 15, 16, 17, 18, 22, 23, 24 and 26 March 2021.
25 March 2021 (In Chambers – no parties present)

Before: Employment Judge Postle

Members: Ms S Elizabeth and Ms L Davies

Appearances
For the Claimant: Miss L Emery, Solicitor.
For the Respondent: Mrs M Noble, Managing Director.

COVID-19 Statement on behalf of Sir Keith Lindblom, Senior President of Tribunals.
This has been a remote hearing on the papers which has not been objected to by the parties. The form of remote hearing was by Cloud Video Platform (V). A face to face hearing was not held because it was not practicable during the current pandemic and all issues could be determined in a remote hearing on the papers.

JUDGMENT

1. The claimant's claim that she was subjected to unfavourable treatment contrary to s.18 of the Equality Act 2010 is well founded.

2. The claimant's claim that she was subjected to harassment contrary to s.26 of the Equality Act 2010 is well founded.

3. The claimant's claim that she was victimised contrary to s.22 of the Equality Act 2010 is well founded.

4. The claimant's claims that she was subjected to a detriment connected to her pregnancy under s.47 of the Employment Rights Act 1996 are well founded.

5. The claimant was automatically unfairly dismissed for reasons connected with her pregnancy contrary to s.99 of the Employment Rights Act 1996.

6. The claimant was unreasonably refused time off for antenatal care contrary to s.55 of the Employment Rights Act 1996.

7. The claimant's claim that she was dismissed for asserting a statutory right under s.104 of the Employment Rights Act 1996 is not well founded.

8. The first and second respondents are jointly and severally liable for the injury to feelings and aggravated damages award in the sum of £17,000.

9. The first respondent shall pay compensation to the claimant in the sum of £39,535.08.

REASONS

1. This is a claim by Miss S Cousins against the first and second respondents, the issues were set out in a case management hearing before Employment Judge Tynan which we find in the bundle at pages 56a-56n. The case can be summarised as follows:

   1.1 There are seven allegations of unfavourable treatment under s.18 of the Equality Act because of the claimant's pregnancy identified in the case management summary 5a-g;

   1.2 There is a claim again under the Equality Act s.26 for harassment relating to sex, the claimant relies on acts of unwanted conduct set out in the same paragraphs 5a-g;

   1.3 There is a further claim under the Equality Act s.27 for victimisation relying on the detriments set out in paragraphs 13a-f again of the case management summary;

   1.4 There is a claim under s.47 of the Employment Rights Act, detriment connected to pregnancy and/or taking maternity leave. The claimant relies on the same incidents as set out at paragraphs 5a-g again of the case management summary;

   1.5 There is a claim under s.99 of the Employment Rights Act, automatic unfair dismissal for reasons connected with pregnancy;

   1.6 A claim under s.55 of the Employment Rights Act, unreasonable refusal to allow time off for antenatal care on the dates set out again in paragraph 18 of the case management summary; and finally

   1.7 A claim under s.104 of the Employment Rights Act, dismissal due to asserting a statutory right.

2. All those claims are defended by the respondents.

3. In this Tribunal we heard evidence from the claimant via a typed witness statement together with a supplemental witness statement.

4. For the respondents we heard live evidence from:

   4.1 Miss Sophie Leakey the office manager;

   4.2 Mrs Maria Noble (nee Botterill-Barnes) the Managing Director of the first respondent;

   4.3 Miss Jade Winfield a nursery nurse;

   4.4 Miss Sarah Coles an area manager;

   4.5 Mr Andrew Noble described as a Works Director; and

   4.6 Miss Elizabeth Broadbent who at the time the claimant was employed was assistant manager at Dovecote's.

5. The respondents had a number of further witness statements from a Miss Long, Miss Edwards, Miss Sample, Miss Hill, Miss Carmichael, Miss Hart, Miss Stanciu and Miss Baxter, all of whom the Tribunal did not hear evidence from as a result of the claimant's solicitor confirming as they were witnesses more of character rather than also working with the claimant at Dovecote's nursery where the claimant was the manager, they had limited evidential value and therefore it was not necessary for them to be tendered for cross examination.

6. The Tribunal also had the benefit of a bundle of documents consisting in the end of 516 pages and the Tribunal also had the benefit of closing submissions on behalf of the claimant from her solicitor and on behalf of the respondents from Mrs Noble.

7. Insofar as credibility is concerned, the Tribunal found that the claimant was a straightforward and credible witness whereas the Tribunal found the evidence of Mrs Noble somewhat evasive and on many occasions she found it difficult to answer simple questions, but one example of this is the claimant was deducted wages, Mrs Noble simply would not accept the deduction had been made despite the overwhelming evidence that a deduction from her wages of 95 or 98 hours had been made originally although subsequently paid thereafter.

8. Another example was the 4 September 2017, the rota showed that the claimant should have worked until 3pm, she signed out at 4pm and claimed an extra 30 minutes in wages. If the claimant was seriously falsifying her wages, she would have claimed the extra 60 minutes in wages but Mrs Noble simply would not accept the proposition that the claimant was not being dishonest. In fact, the extra 30 minutes was due to the claimant showing parents around the nursery backed up by the names of the parents included in the signing in and out book (page 414).

9. A further example is when put to Mrs Noble that the signing in and out book is very important one accepts for Health & Safety and Fire Regulations it simply cannot be an accurate record of the hours worked by an employee as it merely shows when someone arrives at the building and when one leaves, and clearly one could arrive much earlier than one is rostered to work may be because it suits the individual employee because of either bus timetables or being dropped off by a partner. Simply signing in when one arrives and signing out when one departs clearly cannot be an accurate record of the hours worked and Mrs Noble simply when this was put to her would not accept that as a proposition and the reality.

10. Finally, if one needs further examples at page 202 the claimant provided appointment cards for her antenatal dates to Mrs Noble by way of attachment jpegs, despite this Mrs Noble for reasons best known to herself simply would not accept they were provided at the time despite the evidence in front of her that they were appointment cards for the dates made for antenatal and clearly the evidence showed that they had been provided to her.

Findings of Fact

11. Moving on to the facts, it has to be said that on the evidence of Mrs Noble herself described the claimant as a person who was meticulous with their paperwork, one of the best people in the whole of the company, honest and trustworthy.

12. The claimant had been employed by the first respondent from 15 February 2016 until she was summarily dismissed on 15 January 2018. The first respondent provides nursery care for children and at the time of the claimant's employment there appeared to be four nurseries in total, all of which are based in Northampton. The second respondent is the registered Director and owner of the first respondent nurseries.

13. The claimant worked at what is called the Dovecote Nursery. It was a term of her employment as indeed with other employees that they would be expected to work at other nurseries. The claimant worked as an assistant manager and shortly after her appointment was promoted to manager around about May 2016. Her normal hours of work were 45 hours per week to be worked at times between Monday to Friday, 7.30 am to 6.00 pm.

14. The claimant notified the second respondent that she was pregnant on 4 September 2017, the claimant was early into her pregnancy, it is believed about 4-5 weeks and was suffering quite badly with early pregnancy symptoms and initially the second respondent appeared to be positive about the claimant's news.

15. On 12 September 2017 the claimant emailed (page 200) the second respondent to request time off for two antenatal appointments as follows; Wednesday 4 October at 9.00 am and Tuesday 7 November at 8.30am. The claimant added that her midwife only worked on Tuesday and Wednesday mornings and that both appointments would probably take no longer than 45 minutes.

16. In relation to the appointment on 4 October the second respondent replied fairly quickly within 4 minutes and stated:

> "… Unfortunately because I may be the only one who can cover I cannot do the 4th as there is no Michelle, Kate or Tina already. Please could you re-organise this."

17. The claimant agreed and re-arranged the appointment that was scheduled for Wednesday 4th to Tuesday 3rd at 8.30am. The claimant informs the second respondent of this change on 13 September and added that it is blood tests so literally be in and out and we see that at page 201. Later that day the second respondent stated that this appointment on 3 October could not be granted "as they are away all that week so can it be next week please", again at page 201.

18. The claimant managed to change yet again the appointment for a second time to Wednesday 20 September at 8.30am, the second respondent granted the claimant the time off for this appointment, again at page 201.

19. The claimant emailed the second respondent on 12 October and stated as follows:

> "At my scan today they couldn't get a nuchal measurement and have made me an appointment for Tuesday 31st October. I also have my 20 week scan on Monday 11th December at 3.30pm. I know Tuesday's are busy days but I didn't get an option on either the appointments.
> I have attached the letters for both dates for you." (Page 202)

20. The second respondent replied fairly quickly within the hour and stated:

> "Not the 31st as Jade and Liz are off, sorry!
>
> The 11th is fine."

21. The claimant spoke to the hospital and managed to re-arrange the Nuchal measurement appointment to Friday 3 November at 9.00 am, she informed the respondent of this on the 12 October.

22. In the meantime on 13 October during a telephone call to the claimant the second respondent asked how much longer she would need to reduce her working hours because she felt that the reduction in hours had gone on long enough. This apparently was reference to the fact the claimant had been suffering from fatigue and nausea related to the pregnancy and as a result of that the second respondent had temporarily allowed some leeway

with the working hours when there were sufficient staff. The claimant responded to the second respondent by saying that she would go back to her normal hours as she felt somewhat pressurised to do so.

23. On 15 October (page 203) at 19:56 the second respondent replied in relation to the appointment for the Nuchal Measurement and stated:

> "Jade is also off then so I cannot guarantee this,"

Because of reference to a bank holiday, which clearly there was not.

> "we have Liz, Jo Marika and Jade off. I can tell you the week before if you like?"

24. The claimant replied the same day and stated that:

> "I know Jade is off that week but the hospital have said they need to see me that week for the nuchal measurement scan as they couldn't get it on the 12 week scan. I did try moving it too the week after but they said it needs to be that week so i booked it for the Friday as it is a quiet day." (Page 203)

25. It would then appear that the claimant and the second respondent spoke about the appointment booked for the 3 November and the second respondent confirmed in an email on 17 October that:

> "… after 3 Monday to Friday is ideal or the week before or after." (Page 203)

26. The claimant replied on the same day, 17 October (page 203) and stated:

> "I rang the hospital today and they won't let me change the appointment as i have already changed it once."

27. The second respondent replied on 18 October at 2.06am and stated:

> "Hi Simone
>
> Your pregnancy is really important to me.
>
> You are not following procedure with providing proof of appointments and I would really appreciate you doing this. Please attach this to the wages so we can allocate the appropriate time and pay for them. Also when you are booking the time. All of this is in the Employee handbook.
>
> As employer I need to accommodate reasonable time off for medical appointments, this I am doing. As Manager you have organised and re-organised the appointment on a time where you know we have not got cover. If I could cover it I would.
>
> We will accommodate reasonable time off, the week before or the next week or those times after 3 on those days.
>
> Please rearrange and perhaps look at the planner before making the appointments and changing them."

28. The claimant responded on 22 October and stated:

> "I would like to say that I have provided you with proof of my appointments, I have attached previous emails to clarify this.
>
> As far as the appointments that have been made for me. I have these made for me as a request of the hospital and midwives and I do not really have the say over the times and dates.
>
> As you say my pregnancy is important to you, then you as a mother will understand that these appointments cannot be made to suit the needs of our business all the time. And the requests you are making are causing me to feel stressed which is not good for the baby or me.
>
> The appointment that I have on the 3rd November you asked me to change which I did, although the hospital wasn't keen on doing this they did this but this time still doesn't suit. I can't keep changing the appointments.
>
> I have read the Employee Handbook and have been onto the Government sites to check and I am not being unreasonable in the requests that I have made."

29. In fact the claimant clearly had been providing evidence of the appointments by way of attachments to her emails of the 12 & 16 September, 12 October at pages 200, 201 and 202 and resends them again on 22 October at page 204.

30. At this stage it appears that four requests for antenatal; one was agreed, the 12 October took a days holiday, two repeatedly asked to be re-organised, not the response expected of a caring and supportive employer within a very short time period given how flexible the claimant had been trying to re-arrange appointments and given the notice that the claimant gave each time for those appointments.

31. The second respondent maintained that the claimant had to re-arrange the appointment on 3 November for a third time even though she was aware that the hospital could not grant this request. The claimant was upset at the second respondent's approach, there was no attempt to consider whether temporary cover could be provided for the time the claimant was at the hospital, a couple of hours at most or to ask another member of staff who did not work Friday's whether she could work a couple of hours. The claimant had not asked for the whole day off just a couple of hours to enable her to go to the hospital, have the scan and return to work.

32. It was usual that the second respondent would not provide the rota for the following week until the Wednesday or Thursday the week before. From August 2017 she did not provide the rota until the Sunday before so that staff would not know what they were working that week until the day before the week started. Therefore the second respondent could have and should have time to adapt rotas before publicising them to the staff.

33. On 23 October the claimant was signed off with stress related problems, she self-certificated and remained off work until her dismissal. The respondent was informed of this on the day and thereafter fitness for work certificates were provided (pages 352 and 356).

34. On 26 October the claimant emailed the second respondent and stated as follows:

> "After speaking to my midwife this week she feels the way I have been feeling is caused by stress and the stress is being brought on by the issues I am having over the appointments that have been made for me.
>
> I feel that you really need to support me in the requests that I have made now and the up and coming appointments that I will need to request.
>
> Whilst I have been off I have contacted my midwife, ACAS and Citizen's Advice for advice on my ante-natal appointments and I have been told by all that you requesting me to rearrange appointments is unacceptable.
>
> I would like a solution to this going forward so that I am not going to get into feeling like I am at the moment, which is very unhealthy for my baby.
>
> As for the request that had been made for Jade and anybody else I do not have a say in authorizing their holidays, so I feel that is a bit unfair you have put that one on to me.
>
> I really want to be able to resolve this issue that we have as I enjoy my work at the nursery and feel you need to support me in my requests." (Page 206)

35. There is no reply to that email and having consulted advisors eventually Mrs Noble emails the claimant on 30 October (page 207) requesting a welfare meeting without explaining the agenda or the purpose of that meeting.

36. Now whilst there is an exchange of emails on 2 November concerning the welfare meeting, the second respondent then adds that the 'other letter' is coming out shortly which will offer 2pm for a meeting. This other letter was in fact an email requiring the claimant to attend a disciplinary hearing to face allegations that amounted to gross misconduct and that she could potentially be dismissed without notice.

37. Now prior to the claimant's announcement of her pregnancy and arranging antenatal appointments the claimant had not been the subject of any disciplinaries. There had been an email to the claimant on 11 September (page 209) which the respondent had questioned the claimant over an on-call staff issue. The respondents rely upon this as a first letter of concern, but viewing that email of the 11 September and the response of 11 September there is no reference in the head note of it being a letter of concern. However, on 25 September the second respondent had raised concerns with the claimant at an informal meeting. This was confirmed in a first letter of concern at page 212 of 25 September. The issues were over a new starter not being followed up by the claimant, that a disciplinary

process had been started but the papers had not been sent over to the office. There were other minor procedural paperwork matters and also allegations of complaints from persons unknown none of which the second respondent was able to evidence in the bundle.

38. On 12 October (page 208A) the second respondent emails the claimant stating there were issues over the claimant's hours and staff asking her to confirm the hours she has worked over the last 2 months. However there was no specific dates or hours were included in that email. The claimant responds the same day within the hour confirming that she will check the next day that the hours put down in the wages sheet are ones recorded each day.

39. The second respondent's response, again on the same day, is there are three weeks wages sheets missing which is the problem when we were sent the rotas. The claimant responds on the same day almost immediately saying, "I send the wages sheets every other week with the Asda receipts" (page 208B).

40. On 18 October the second respondent confirms they have now been found.

41. In the meantime without warning the claimant is requested to attend the meeting on 17 October. In attendance at that meeting was the second respondent, her then fiancé Mr Noble and Michelle Toms the office manager, which took place at the second respondent's home which is also the office for the respondent's business. The claimant was not pre-warned of the purpose of the meeting or that it was a formal meeting to be minuted. At this meeting the issue of the signing in and out book or register was raised as the claimant and other staff had not been signing in and out which was a requirement for Health & Safety, fire evacuations and an Ofsted requirement, and clearly a requirement in the Employee's Handbook. However what is clear, it is not reliable in terms of an employees' wages and hours actually worked for reasons previously canvassed.

42. The claimant was accused of claiming wages for hours not worked which the claimant denied. However no details were provided at this meeting as to what hours or wages had been claimed that were not due to the claimant. The minutes wrongly record the date of the meeting as 12 October as does the letter following the meeting (page 227) and the meeting we know was 17 October. The meeting in fact lasted 30 minutes. The letter following the meeting as I have said wrongly dated 12 October refers to large discrepancies between the hours recorded as worked on the wages sheets and hours recorded as started and finished in the signing in and out book despite the fact that no details were provided at the meeting and further no evidence had been provided at the meeting. The letter simply recorded nine occasions which the claimant had either failed to sign in or out but was nevertheless in work. Clearly the children's register shows when staff are in and the hours they are recorded as

working. Those disclosed by the respondents (the children's register) is clearly the evidence of staff being present and hours worked.

43. The claimant was informed in a letter that there was 58.5 difference between the hours the claimant had claimed and worked. The claimant maintained that the failure to sign in and out was simply an oversight on her part. The claimant is asked to provide the hours worked between 14 August and 6 October and again paperwork for the antenatal appointments which in fact had already been provided previously.

44. Clearly if the claimant had not been in work on those days staff would have been aware and would clearly have contacted the second respondent to arrange cover. Oddly the letter regarding the meeting was not received by the claimant until 3 November.

45. Shortly after the meeting on 17 October as we know the claimant was signed off with stress and then on the 3 November 95 hours worth of pay was deducted from the claimant's pay. That deduction was made without prior warning to the claimant or her authority and no explanation was given as to how those 95 hours were arrived at.

46. The claimant questioned the deductions by email of 4 November (page 232). Michelle Toms responded, (the office manager) by email of 6 November suggesting the deduction of 95 hours had been made as a result of discussions on 12 October. In fact we know that she really means the 17 October. In fact the claimant had made no such agreement and no discussions had taken place about deducting 95 hours from the claimant's pay.

47. On the 3 November (page 230) the claimant received an email inviting her to a disciplinary hearing to take place on 6 November. The contents of that invitation appeared to be an extension of the discussions that had taken place on 17 October but it was now clear that these issues were being escalated on a formal basis. The allegations were:

    47.1 Taking part in activity which causes the company to lose faith in your integrity, namely alleged falsification of timesheets between 21 August 2017 to date. You claimed payment of up to 95 hours and falsely represented/purported to the company that you had worked these hours.

    47.2 Secondly, taking part in activities which caused the company to lose faith in your integrity, namely alleged breach of company Health & Safety rules and procedures and your duties as manager. You failed to correctly use the sign in book and ensure your staff were also doing this every day and correctly.

    47.3 Thirdly, letter of concern discussing the standard issues with your work practice.

48. The email also stated that the allegations amounted to gross misconduct and as such the claimant's employment could be terminated without notice. The hearing was to be conducted by Michelle Toms with the second respondent present as a note taker.

49. In the invite letter it also referred to non-attendance at the disciplinary hearing as a separate issue of misconduct, this was despite the fact the claimant was off work with stress related problems and in the early stages of her pregnancy. The claimant confirmed that she would not be attending as she was on sick leave to which Michelle Toms stated that the sick note did not say she was not well enough to attend a disciplinary hearing. In response the claimant sent a new sick note that confirmed that she was not well enough to attend, the respondents having read the wrong sick note replied insisting that the meeting went ahead and when the claimant pointed out the second respondent was wrong the meeting for the disciplinary hearing was finally cancelled.

50. Attached to the email (page 230) was a document entitled 'Simone's hours discrepancy' and which set out the alleged discrepancies which added to the 95 hours deducted from the claimant's pay. It was presumed that the purpose of this document was to substantiate the deduction made from the claimant's pay on 3 November however it is clear when looking at it the calculations do not tally for the 95 hours deducted. In fact, whichever way you add it up they do not arrive at 95 hours, the calculations are very unclear and clearly muddled.

51. On 1 December (pages 243-244) the claimant raises a grievance in writing to Michelle Toms. Within that grievance the claimant outlined stress that she had suffered since announcing her pregnancy, she referred to the unreasonable manner that the second respondent had dealt with her requests for antenatal appointments and the constant emails she had received while she had been off sick including disciplinary threats for allegations that to the claimant's mind were completely untrue.

52. The grievance was acknowledged in an email from Miss Coles which was forwarded to the claimant oddly by the second respondent, the very person whom the grievance was against. To say that was intimidating is frankly an understatement.

53. Now the money that had been deducted from the claimant's pay on 3 November oddly was credited back to her account on 1 December without any explanation being provided by the first or second respondent as to why this had now been refunded. In spite of the claimant's grievance against the second respondent, the fact that the claimant had raised allegations of pregnancy discrimination and had called into question the motivation of the heavy handed disciplinary process, and the fact the grievance process against the second respondent was ongoing, the second respondent notwithstanding this proceeded with the disciplinary matter rather than put on hold to deal with the grievance first.

54. On 4 January 2018 (page 253) the second respondent emailed the claimant inviting her to what was described as an investigatory hearing to take place on 5 January with less than 24 hours' notice and that related to the same allegations for which the claimant had previously been invited to a disciplinary hearing. The second respondent did not explain why she now had downgraded the matter from a disciplinary hearing back to an investigatory meeting. The claimant responds by email of 4 January (page 254) at 12:05 that she is unable to attend, it's too short notice. There was then an exchange of emails about the dates with the second respondent wanting the meeting to go ahead without delay and they wanted the 5th or the 8th of January, the claimant wanted the 12th. The respondent also emailed the claimant to say she could not be accompanied at the investigatory meeting and suggested she could provide questions rather than hold the meeting and that is at page 255. The claimant agrees to the questions rather than attend a meeting.

55. In the meantime, the grievance outcome was delivered on 9 January (page 257). The claimant's grievance was not upheld and it is apparent when you look at the outcome of that grievance it clearly was not investigated properly or at all. There is no indication that anybody was spoken to by Miss Coles. Further she did not even have a correct analysis of the antenatal appointments for which the claimant needed to request time off prior to going on sick leave. Miss Coles also made a completely illogical finding that 95 hours deducted from the claimant's salary was done "based on the discrepancy and the Employee Handbook". There was simply no explanation whatsoever and oddly enough by this stage the money had already been credited back to the claimant's account on 1 December and it would be reasonable to assume that Miss Coles would have known. More importantly would have explained how the 95 hours came to be deducted in the first place.

56. The claimant having received the questions as part of the investigation, the claimant replied to the allegations in writing rather than attend the hearing. Those questions amounted to 90 questions that Mrs Noble wanted answering. The questions were emailed on 9 January at 16:58 and Mrs Noble had unreasonably given the claimant only until 10.00 am the following day to respond with her answers. That is set against the background that the claimant was off work with stress and was pregnant. In the end the second respondent only gave the claimant an extension of 5 hours to respond to the questions, her reason being that if the claimant had attended a hearing, an investigatory hearing she would have no preparation for the questions put and therefore should be able to answer so would not need an extension of time to answer the questions. Ultimately the second respondent only gave the claimant 5 hours further extension despite being asked for further time and the claimant explaining that because she was pregnant she found it difficult to sit for long periods in front of a computer. Nevertheless the claimant provided the answers to the questions in the time permitted.

57. Having considered the questions the second respondent posed and the answers the claimant gave it is clear that the allegations levied against the claimant were patently untrue and the claimant was able to respond in some detail to each and every allegation. In fact the claimant was being asked about matters that could readily have been answered by the respondent from their own records. For example on 22 August the question had been posed why the claimant had left the office at 3.30 but had claimed wages until 6, the claimant was in fact at a meeting with the second respondent at one of the other nurseries, St George's – a fact that would have been known to Mrs Noble. There are other occasions on 23 August, 1 September, 4 September, 13 September, 19 September, 20 September and 28 September where the claimant was asked to cover staff sickness to assist with a 'show round' or leave early as she was not required. Again information that could have been obtained by the first and second respondent's own records.

58. Furthermore in respect of the 18 September, 26 September and 10 October the second respondent complained that the claimant had signed out later than she had claimed wages for. The claimant had explained she could have taken a telephone call or gone to the toilet or been tidying up – all reasonable explanations. In any event why would that be an issue, that the claimant left work marginally later than she had in fact claimed wages for. That is totally illogical.

59. Furthermore going through the allegations the claimant was able to respond to every allegation. The claimant also admits in relation to the allegation of not signing in and out, the claimant accepted she had not done so and explained it was not intentional, it was not blatant and she had previously already admitted this at the meeting on 17 October. The fact that other staff also do not sign in and out properly yet other staff have not been hauled through the disciplinary process or had any sanctions imposed upon them.

60. The suggestion that the claimant had not been at work for 95 hours and she claimed for, that appeared to be inconceivable not only because the claimant was the keyholder so again if she had not been at work questions would have been asked where in fact she was. In relation to a further allegation that on 17 September the claimant signed in at 10.00 am rather than 7.30 when she was rostered to start work and when she claimed wages from, the claimant was able to point out that the second respondent had not checked the book, the signing in book clearly showed the claimant had signed in at 7.10, twenty minutes before her start time. Again the second respondent does not appear to acknowledge that they made mistakes.

61. So putting it bluntly, the allegations seemed rather trumped up and does beg the question, why suddenly this meticulous employee, trustworthy and honest and careful with her paperwork had suddenly lapsed so very badly.

62. The disciplinary hearing eventually takes place on 15 January, the notes of that are at pages 466-485. In attendance was the second respondent Mrs Noble, Mr Noble Mrs Noble's now husband, the claimant and the claimant's colleague Sophie Leakey. Despite the second respondent stating that Mr Noble was there only as notetaker, the meeting was clearly recorded as the transcript shows so it does beg the question why in fact Mr Noble was there at all.

63. Again the explanations the claimant gave, twenty in fact, none appear to have been explored specifically except the 4 September although there was no real discussion about what was alleged to have happened on that date and likewise the 11 October. In fact there was little or no reference to the questions posed by the second respondent which the claimant had provided clear explanations. The claimant had equally accepted there were occasions when she had failed to sign either in or out. There was clearly no comparison by the respondents with the children's register being explored at that meeting, the claimant was consistent in her evidence at the meeting that the wages sheet came from the children's register and not from the signing in book (page 474).

64. The meeting only lasted 1 hour 25 minutes and the second respondent clearly reached a decision fairly quickly to dismiss the claimant within a short period after the meeting as the claimant was emailed with the decision at 15:53 on the same day and the letter of dismissal seems to provide three grounds to support the dismissal and that is; claiming payment up to 95 hours and falsely representing or purporting to the company that you had worked these hours and then oddly the letter goes on to say the company alleges that these matters if proven represent a gross breach of trust. Odd wording for a letter that purports to be dismissing somebody. The second ground is the blatant breach of Health & Safety which is reference to the signing in and out book and third allegation appears to be failing to train the staff. The letter goes on to give the claimant the right of appeal.

65. In the meantime the claimant had lodged her appeal against the grievance outcome (page 279) on 15 January. The claimant set out that she did not consider that her grievance had been considered properly. She emphasised that the second respondent had made it difficult for her to attend antenatal appointments and, she believed that the second respondent had harassed her about attending a welfare meeting and a disciplinary meeting following the claimant being signed off work with stress. The claimant further pointed out that she considered that she had been discriminated against due to her pregnancy and should not have been deducted monies without warning or her prior consent.

66. Now although the appeal was said to have been dealt with by Mr Noble it is odd that the invitation to the grievance appeal meeting was sent by Mrs Noble, again the very person whom the grievance was about. The second respondent sent various emails to the claimant concerning the arrangements for the appeal hearing, ultimately it was agreed that the

grievance would be dealt with, without the need for a meeting and thus in writing. There were clearly problems in arranging the appeal hearing and Mrs Noble emails on 29 January at 8.30 requiring the claimant to attend the next day. The claimant was away at the time and suggested the following week. The second respondent emails the claimant on 29 January at 11:54 (page 316) requesting the claimant provide her full appeal and relevant documents by 6.00 pm on 30 January, the next day. The claimant again responds on 30 January explaining she is away, she has limited access to the internet and cannot get a response by 6pm that day. The second respondent emails the claimant on 30 January stating the meeting had to be that week, she needed to expedite matters. Mrs Noble then requests that the claimant's appeal be done by "handwritten and photographed and sent by picture via mobile phone", quite unreasonably. It would appear that the second respondent wanted the matter expedited because apparently on the respondents' own evidence before this Tribunal their contract with Peninsula whom were advising them was about to expire.

67. The claimant sends details of her further appeal grounds by email on 2 February and they are fairly detailed (page 318).

68. The grievance appeal outcome was sent to the claimant by the second respondent on 15 February, the very person the grievance was about (page 324). The outcome clearly when looking at it by any objective assessment simply does not deal with the points raised in the claimant's original appeal letter of 15 January. It merely deals with the additional grounds of the appeal provided by the claimant on 2 February. Mr Noble concluded that there had been some evidence to suggest that alternatives were considered, i.e. in the context of finding cover for the claimant's appointments but he does not give any evidence as to the alternatives and then goes on to say that getting staff at the nursery had been difficult. Notably he does not explain why members of staff could not have been temporary transferred to provide temporary cover from another nursery or reasons why the second respondent could not have provided temporary cover. Then suggests antenatal appointments when requested were granted. He does not explain why it was reasonable for the second respondent to insist that the claimant avoid Tuesday and Wednesday mornings for her antenatal appointments when the claimant had already confirmed that they were days and times when her midwife worked. Mr Noble in relation to the appointment of 31 October said there was another issue they had a member of staff on long term sick leave. However by that stage it appears that that member of staff had returned. Mr Noble goes on to refer to a list of appointments that the second respondent had granted the claimant in an attempt to suggest that they were accommodating her antenatal appointments. However, included in that list were appointments before the claimant was even pregnant and as such were not linked to her pregnancy. He referred to a statement taken from the second respondent on 12 December but again had not provided that in the outcome even though copies had been requested. Mr Noble went on to state that the claimant's point about discrimination and

victimisation were new and again this was at odds with the evidence provided that the claimant had referred to the pregnancy discrimination not only within her appeal letter dated 15 January but she alluded to this quite clearly prior to it in letters complaining about the way she had been treated and in her original grievance. Mr Noble tried to justify the deduction from her wages being based on the fact that the claimant could not claim wages when she was not at work. However he clearly missed the point that the deduction was made before any disciplinary process had been started and also without any explanation as to how that figure was arrived at.

69. Oddly enough after the claimant received the outcome on 15 January the claimant received a second version of the grievance outcome from Mr Noble on 20 February, a number of amendments had been made to the original grievance outcome, notably a paragraph relating to not being able to use agency staff had been removed completely.

70. Mr Noble indeed admitted during the course of this Tribunal had not dealt with the appeal in its entirety stating it may have been his naivety. The fact he had not dealt with grievances before and that the procedure may have been lacking at times throughout the process.

71. The claimant had now lodged her appeal against dismissal on 22 January (page 287) on the basis that there were no grounds to dismiss her. That the dismissal was due to pregnancy discrimination and the fact that the disciplinary had been addressed without a meeting the claimant also provided further information on 26 January (page 304). Once again the respondents were difficult in placing obstacles in the claimant's way regarding the time and date for the appeal hearing (pages 302-303), the dates offered by the respondents were dates the claimant had appointments for antenatal. Mr Noble was clearly reluctant to change the dates resulting in the appeal again proceeding without the claimant's attendance.

72. Mr Noble sent the appeal outcome to the claimant on 20 February, again the appeal was not upheld (pages 334-339). In relation to the claimant's view that she had simply not been listened to, his response was the evidence was considered and taken into account as a part of the appeal process. It is clear that Mr Noble did not re-investigate the claimant's responses to Mrs Noble's 90 questions posed at the investigation stage and the responses provided by the claimant. Had he done so and looked at the children's register he would have realised there simply was no discrepancies in the hours or wages claimed. In fact no explanation has ever been provided by the respondents as to how or why the original 95 hours were deducted and then subsequently repaid to the claimant.

The Law

73. Now the law is well set out and is a correct analysis in the claimant's solicitor's closing written submissions which I will not rehearse, they are at pages 1-4.

Conclusions

74. It has to be said right at the start prior to the announcement of the claimant's pregnancy on 4 September there simply were no problems by Mrs Noble with the claimant whether it be over signing in or out, timekeeping, wages, falsification, blatant disregard for Health & Safety or training of staff. Matters only become difficult for the claimant after the announcement of the pregnancy and one repeats, this is set against a background in which Mrs Noble's own evidence is that the claimant was a meticulous person with her paperwork, entirely trustworthy and honest, and one of the best.

75. So looking at the unreasonable handling of the claimant's request for time off, there were five appointments actually requested:

    75.1 4 October – refused by the second respondent and the claimant re-arranged it to 3 October. That again was refused and re-arranged to 20 September when time off was finally granted.

    75.2 12 October – had to be taken as holiday. Clearly the claimant was trying to be reasonable which Mrs Noble under cross examination simply would not accept.

    75.3 7 November – was granted.

    75.4 31 October – this was the measurement of the Nuchal and a scan. Here quite unreasonably it was refused, it was re-arranged for 3 November, Mrs Noble's reasoning was that she could not guarantee the time off for the appointment and offered to advise the claimant the week before if it was ok to attend the appointment. Hospitals do not work like that. Mrs Noble in fact informed the claimant on two occasions she should re-arrange the appointment for the week before or after or after 3pm. This was despite the fact that the claimant had made it clear that the Nuchal measurement needed to be done that week. Ultimately time off was agreed on 29 October and that appears to have occurred only after the claimant emailed Mrs Noble on 26 October (page 206) registering her concerns having spoken to the Citizen's Advice Bureau and ACAS, and effectively warning Mrs Noble of the error of her ways.

76. After the claimant went off sick on 23 October the claimant did not need to request time off as she remained off sick until her dismissal. Notably there was no proper or correct analysis of the requested appointments in the grievance concluded by Miss Coles or indeed at the appeal which was said to be conducted by Mr Noble.

77. There was never any question the claimant was not following procedure when requesting time off for her antenatal appointments as each request for time off was clearly accompanied by a jpeg attaching the appointment details and this was further reiterated to Mrs Noble on 22 October when

again Mrs Noble had requested evidence of the appointments which the claimant duly provided (page 204).

78. The claimant's evidence is entirely consistent with her handling of the requests for time off for antenatal appointments supported by documentary evidence. The respondents' evidence was totally inconsistent, flawed and muddled, and to suggest as Mrs Noble did the needs of the business come first is entirely at odds with modern employment law where the respondents have clear legal obligations to provide reasonable time off. The respondent had to do and manage the rotas and change at short notice to cover sickness and given the respondents at the time employed 60 full and part time staff should have and could have been able to accommodate the claimant particularly as the claimant gave reasonable notice of all such appointments. These heads of claim are therefore well founded.

79. The heavy handed and unnecessary manner in which the formal disciplinary process was handled against the claimant, Mrs Noble's evidence was that the claimant as I have said before was meticulous with her paperwork, she wanted the claimant to stay when the claimant had previously resigned in July 2017, she clearly had been an excellent employee and to use Mrs Noble's words "one of the best". In fact Mrs Noble acknowledged the claimant was honest and trustworthy.

80. The claimant as we know announces her pregnancy on 4 September and at the time informs Mrs Noble she was suffering with early pregnancy symptoms. Prior to the 25 September (page 212) there were no letters of concern sent to the claimant. The first is sent on 25 September, there were three bullet points of concern, the fourth was a minor issue, they were perhaps just normal everyday matters needed to be addressed by a manager. The claimant produced an action plan (pages 212-213) and that was the end of the matter.

81. The second letter of concern issued on 9 October (page 223) was in relation to the fact that the claimant omitted to tell Mrs Noble about a routine staff matter until 10.00 am rather than 9.00 am. What in fact was a simple explanation was the claimant had prepared the email dealing with the staff matter but had simply omitted to press the send button and in fact no further action was taken regarding these issues.

82. Then on 17 October the claimant quite out of the blue was asked to attend a meeting, no written request or details of what it was about and when the claimant arrived she was met with Mrs Noble, Mr Noble and Michelle Toms the office manager all present, minutes were taken unbeknown to the claimant and the claimant was not aware it was a formal meeting. The meeting was to discuss what Mrs Noble described as a large amount of discrepancies between wage sheets and sign in books, and on ten occasions when the claimant did not sign in or out. Mrs Noble accepted in cross examination there was no detail of the discrepancies provided and the meeting lasted for 30 minutes. Notwithstanding all the above, without

warning or consent 95 hours were deducted from the claimant's pay in October. When the claimant raised this by email of 4 November (page 232) the claimant was then invited to a disciplinary hearing on 6 November. At this time the claimant had been signed off sick from 23 October. The claimant was then asked to provide medical evidence that she was unable to attend because of her illness and despite this being provided to the respondents, the respondents still wanted the meeting to go ahead and that was because they simply did not read the evidence provided in the GP note.

83. We then have on the 4 January the claimant receiving an invite to an investigatory meeting to take place the following day at 10.00 am at Mrs Noble's house (page 253), the claimant did not attend the investigatory meeting. Instead Mrs Noble sent 90 questions at 16:58 on 9 January to be responded to by the next day at 10.00 am. The timing was never agreed as Mrs Noble tried to maintain. Clearly this was unreasonable, heavy handed and intended to harass the claimant.

84. On 10 January at 10:20 Mrs Noble chasing for a response to the questions, the claimant requested further time to 10.00 am on 11 January, Mrs Noble merely extended time to 3.00 pm on 10 January which was utterly unreasonable. This was despite the claimant advising the difficulty sitting at a computer for long periods given she was pregnant, no response from Mrs Noble.

85. The claimant on 11 January quite reasonably responded with a very detailed response as set out earlier in this judgment to each allegation. Where it was said that the claimant had falsified wages the claimant showed wage sheets cross referenced with children's register which was the way the claimant maintained she had always calculated the wages. What was left in the allegations was the claimant's own admission that she had failed to sign in and out on ten occasions as indeed other members of staff it was acknowledged had done so without any disciplinary sanction being imposed. Clearly the signing in and out book was not an accurate record or a way of calculating wages for the reasons canvassed in this judgment earlier. The claimant maintained that the wages were calculated from the children's register which shows the staff in and the times they worked not the signing in book.

86. Notwithstanding the above the claimant was invited to disciplinary hearing the following day, repeating the same charges the investigatory meeting had done and notwithstanding the claimant's clear response to all the allegations. Again, there was quite unreasonably timed constraints and restrictions put on the time of the disciplinary hearing. The disciplinary hearing took place on 15 January, quite extraordinary none of the claimant's explanations to the 20 incidents were discussed except a cursory look at the 4 September and 11 October though there was no real discussion about what was alleged to have happened on those days. The disciplinary hearing was no more than a tick box exercise going through the motions by Mrs Noble. The Tribunal therefore wholeheartedly

concludes there were no proper grounds to dismiss the claimant and the clear inference to be drawn given the respondent and Mrs Noble's behaviour was that the decision to dismiss was due to the claimant's pregnancy, it was automatically unfair and an act of direct discrimination.

87. The Tribunal do acknowledge the claimant was failing to sign in on occasions but this was mostly following her pregnancy when she forgot or was distracted by parents when entering the building. Other staff had failed to do so and yet no disciplinary sanctions had been imposed. At the most the proper sanction would have been to issue the claimant with a written warning about signing in in the future and making sure other staff signed in, in future. Given also that Mrs Noble's evidence again we repeat that the claimant was an honest and trustworthy employee, meticulous with her paperwork the dismissal simply does not stand up and the Tribunal are left with the inevitable conclusion that the reason for the claimant's dismissal was her pregnancy.

88. The inadequacy of the grievance, Miss Coles clearly failed to address the claimant's issues (pages 245-246), that was made worse by the fact that the invite to the meeting was sent by Mrs Noble the very person whom the grievance was against, clearly that was intended to intimidate and was intimidating behaviour. The failure by Miss Coles to properly investigate it, she only spoke to the claimant, she made no proper analysis of the requests for time off for the antenatal appointments. The suggestion by Miss Coles that the claimant should have been aware that the meeting on 17 October would be minuted and was a formal meeting is totally bizarre. A totally incorrect finding about the deduction of the 95 hours pay and as this had now been repaid at the time of the grievance outcome, again simply a tick box exercise.

89. As was indeed the appeal conducted by Mr Noble against the grievance outcome, the original appeal against the grievance was the 15 January and the letter had five points plus the further points raised by the claimant in her email of 2 February (pages 318-319). Again the invite to the meeting was sent by Mrs Noble, again clearly an intimidating act given the grievance was against her. The problems caused by the respondent over the timings of the meeting and their intransience and time limits placed on providing information were thoroughly unreasonable, unnecessary and intimidating given the claimant had said she was away at the time and had limited access to the internet. The pressure put on the claimant by Mrs Noble for a deadline to reply. The two outcomes of the grievance appeal which Mr Noble was unable to properly explain why both were sent to the claimant on 15 February and 20 February, the first having been sent by Mrs Noble and the Tribunal questioned who actually wrote the outcome, and the second (pages 329-333) the fact that Mr Noble admitted he sought advice from Mrs Noble over the outcome of the grievance is simply not acceptable, it is a clear failure by Mr Noble to carry out any proper in depth independent investigation.

90. To finally conclude, the treatment as set out at 5a-g contained in the case management hearing list of issues at page 56 does clearly amount to unfavourable treatment due to the claimant's pregnancy [s.18 of the Equality Act]. There clearly were facts from which the Tribunal could conclude when looking at all of the events that discrimination occurred, the burden of proof passed to the respondent to show an adequate explanation and they have patently failed to do so.

91. In relation to the harassment claim, again the Tribunal concludes from the evidence that we have heard and the findings we have made, that the treatment at 5a-g as well as the direct discrimination is unwanted conduct since pregnancy is a condition only applicable to women and the treatment afforded to the claimant on the facts we have found clearly had the purpose and effect of creating an intimidating and hostile atmosphere for the claimant. It is reasonable to conclude the respondents conduct could reasonably be considered to have that effect.

92. In relation to the victimisation claim, it is clear to the Tribunal that the claimant's protected acts are raising complaints of discrimination on 26 October and the 1 December grievance. The Tribunal concludes on the facts that the claimant was subjected to the detriments as set out again in the list of issues at 13a-f because the claimant made the protected acts. The Tribunal also conclude on the facts above she was subjected to detriments set out in paragraph 5a-g again in the list of issues and the reason for that was the claimant's pregnancy.

93. In relation to the automatic unfair dismissal, if it is not already clear, there was a dismissal. What was the reason for the dismissal? Well the respondents appeared to assert the blatant failure to sign in and blatant disregard for Health & Safety and falsifying of timesheets, however none of these stack up on the evidence. It clearly was not a blatant failure to sign in and if the respondents/Mrs Noble in particular stood back and looked at the evidence and applying Mrs Noble's own assessment of the claimant being honest, trustworthy and meticulous with her paperwork she would not have come to the conclusion. Likewise when considering the responses the claimant gave to the 90 questions, which the claimant was capable of explaining all the discrepancies that the respondents thought existed. The other employees not signing in the signing in and out book, again no sanctions were taken against them. The claimant fully accepted that she had failed to sign in, it was an oversight set against the claimant was pregnant and there was no evidence whatsoever that there was any falsification of wages. Mrs Noble simply did not look at the evidence that was staring her in the face and the fact that the wage sheets were taken from the children's register the way they had always been done and had not been questioned prior to the claimant's pregnancy. So the Tribunal is left with no doubt that the only conclusion is the reason for the dismissal was the claimant's pregnancy and that dismissal is automatically unfair.

94. In relation to dismissal for asserting a statutory right under s.104 of the Employment Rights Act 1996, the Tribunal were not persuaded that the dismissal was wholly or partly due to the claimant raising such matters in her complaints to Mrs Noble on 22 October or 26 October, or the grievance, or that the reason for dismissal was wholly or partly due to those factors.

Remedy

95. Following the liability hearing the Tribunal then in the afternoon went on to deal with remedy. The claimant had provided a witness statement to deal with remedy. Particularly the reasons why the claimant has put on hold looking for alternative employment and that was due to the fact the claimant's daughter was born with complex medical issues, particularly two holes in her heart and had to undergo open heart surgery the claimant then having to spend 13 days in Great Ormond Street Hospital in London.

96. Sadly since then the claimant's daughter has been in and out of hospital and has had to undergo a number of operations thereby necessitating the claimant to spend considerable time at hospital with her daughter. As a result of this the claimant has not come back to work as it would be impossible to attempt to juggle a new job with a new employer asking for considerable time off to look after her daughter.

97. It is for that reason in the claimant's Schedule of Loss they halt their immediate loss at 23 March 2018 which is to the benefit of the respondents. Then when the claimant is ready to look for alternative work she has limited future loss to 26 weeks, again not unreasonable.

98. Mrs Noble for the respondents did not question the claimant's evidence on remedy or the contents of the claimant's additional witness statement to deal with remedy.

99. Clearly the claimant is entitled to compensation. Such compensation should be just and equitable and in relation to the discrimination the claimant is clearly entitled to and an award for injury to feelings.

100. The general principles that apply to assessing an appropriate injury to feelings award have been set out by the EAT in Prison Service v Johnson [1997] IRLR 162 and particularly paragraph 27:

> "• Injury to feelings awards are compensatory and should be just to both parties. They should compensate fully without punishing the discriminator. Feelings of indignation at the discriminator's conduct should not be allowed to inflate the award;
>
> • Awards should not be too low as that would diminish respect for the policy of the anti-discrimination legislation. Society has condemned discrimination and awards must ensure that it is seen to be wrong. On the other hand, awards should be restrained, as excessive awards could be seen as the way to untaxed riches;

- Awards should bear some broad general similarity to the range of awards in personal injury cases not to any particular type of personal injury but to the whole range of such awards;

- Tribunals should take into account the value in everyday life of the sum they have in mind, by reference to purchasing power or by reference to earnings;

- Tribunals should the bear in mind the need for public respect for the level of awards made."

101. The matters compensated for by an injury to feelings award should encompass such matters as upset, frustration, worry, anxiety, mental distress, fear, grief, anguish, humiliation, unhappiness, stress and depression.

102. Vento in the Court of Appeal identified three broad bands of compensation for injury to feelings and gave guidance which is reviewed on an annual basis. There is a top band to around £44,000, middle band up to £26,300 and the lower band up to £8,800.

103. The Tribunal is able to award interest on awards of compensation made in discrimination claims brought under s.124(2)(b) of the Equality Act 2010 to compensate for the fact that compensation has been awarded after the relevant loss has been suffered.

104. The interest rate is now 8% and the interest is awarded at the date of the act of discrimination complained of until the date on which the Tribunal calculates the compensation.

105. There are also potential awards in discrimination cases for aggravated damages, they are an aspect of injury to feelings and are awarded only on the basis and to the extent that the aggravating features have increased the impact of the discriminatory act on the claimant and thus the injury to her feelings. They are compensatory not punitive.

106. The appropriate acts included high handed, malicious, insulting or oppressive behaviour. Discriminatory conduct that is evidently based on prejudice or animosity or which is spiteful or vindictive or intended to wound is likely to cause more stress than if done without such a motive for example as a result of ignorance or insensitivity.

107. In this case the Tribunal are satisfied the threshold for an award of aggravated damages has been reached particularly given that Mrs Noble on behalf of the respondents had maintained the claimant was an honest and trustworthy employee, one of the best and meticulous with her paperwork. However, following the announcement of the claimant's pregnancy the claimant was accused of falsifying wages without any evidence to support this claim and was then deducted 95 hours without warning or explanation and then when the claimant complained about it

the hours and money were subsequently re-instated again without any explanation. That was oppressive and high handed.

108. The Tribunal has assessed injury to feelings in the middle band, £15,000 together with an award of £2,000 for aggravated damages. The interest on the award runs from 15 January 2018 when the claimant was dismissed which up to today's date is 1163 days, the daily rate is £3.72 which makes the interest on the award £4,326.36.

A	**Employment Details**			**Totals**
1.	**Income earned with Respondent**			
a.	Remuneration	£10 per hour (see payslips 426 – 430) Average weekly hours - 45 Gross weekly pay = £450.00 Net weekly pay = £371.45		
2.	**Dates of Employment with Respondent**	15th February 2016 to 15th January 2018		

B	**Loss of Earnings (loss of salary from commencement of sick leave to dismissal)**			
	Loss of earnings from 23rd October 2017 to 15th January 2018 (12 weeks)	Difference between full pay and SSP 12 weeks @ £282.10 = £3,385.20		
	Total			**£3,385.20**

C	**Loss of earnings (loss to commencement of what would have been maternity leave)**			
	Loss of earnings from 16th January 2018 to 9th February 2018 (4 weeks)	4 weeks @ £371.45 = £1,485.80	£1,485.80	
				£1,485.80

D	**Loss of Maternity Pay (future loss)**			
	Loss of earnings from 12th February 2018 to 23rd March 2018 (6 weeks @ 90% of earnings)	6 weeks @ £371.45 = £2,228.70 x 90% = £2,005.83	£2,005.83	

	Less mitigation of earnings from receipt of Maternity Allowance	6 weeks @ £140.98 = £845.88	£845.88	
	Total			**£1,159.95**

E	**Loss of Holiday Pay that would have accrued during Maternity Leave**			
	Loss of holiday pay	28 days @ £90 per day	£2,520.00	
	Total			**£2,520.00**

F	**Future loss of earnings**			
	Loss of earnings from commencement of job search	26 weeks @ £371.45 Net per week	£9,657.77	
	Total			**£9,657.77**

G	**Compensatory Award for Injury to Feelings & Aggravated Damages**			
	Injury to feelings (middle band (£8,400 - £25,200) of the Vento Guidelines applying the Joint Response to the Vento Bands Consultation) [See Voith Turbo Ltd v Stowe (2005) IRLR 228]		£15,000.00	
	Aggravated damages		£2,000.00	
	Interest on the Award – Compensatory Award and Aggravated Damages From 15 January 2018 when the claimant was dismissed up to today's date is 1163 days at a daily rate of £3.72	1163 days x £3.72 =	£4,326.36	
	Total			**£21,326.36**

Total **£39,535.08**

H	**Uplift for failure to comply with the ACAS Code of Practice on disciplinary and grievance procedures**			
	Uplift on B, C, D, E and G not on the interest element	**£26,550.95@25%**		**£6,637.74**

Total £46,172.82

Application for costs

109. At the end of the Tribunal's Judgment on Remedy, Miss Emery made an application for costs limited in relation to 2 days of the hearing which she argues that given the number of witnesses the respondents proffered elongated the hearing by 2 days and therefore the award for costs should be limited to the sums unnecessarily incurred in connection with those 2 days of £1,125 including VAT per day.

110. The power to award costs arises under rule 76 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 which state that:

> "(1) A Tribunal may make a costs order or a preparation time order, and shall consider whether to do so, where it considers that—
>
> (a) a party (or that party's representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted; or
>
> (b) ...
>
> (c) ..."

111. The Tribunal effectively there is a two-stage test; Have any of the factors above come into play? If they have, the Tribunal may exercise its discretion.

112. The Tribunal were not persuaded given the fact that the case had always been listed for an 8 day hearing and in fact all matters were concluded within 7 days. This was a case that warranted an order for costs as applied for by the claimant. The application for costs was declined.

_____
Employment Judge Postle

Date: 30/9/21

Sent to the parties on: .....

.....
For the Tribunal Office