EMPLOYMENT TRIBUNALS

Claimant: **Mrs E Dulewicz**

Respondent: **AEP Compressed Air Technologies Ltd**

Heard at: **Exeter on: 14, 15, 16, 17, 18 June 2021**

Before: **Employment Judge Smail**
Members Mrs S Long
Mrs S Scadding

Representation
Claimant: **In Person**
Respondent: **Mr C Johnson, Consultant**

JUDGMENT having been sent to the parties and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. By a claim form presented on 17 December 2018, the Claimant claims pregnancy and maternity discrimination, victimisation and constructive unfair dismissal. She was employed by the Respondent between 9 January 2006 and 20 November 2018.

2. The Respondent provides compressed air plant sales and service and is a distributer for compressed air ancillary equipment. The Claimant was employed latterly as a Sales Co-ordinator.

3. The Claimant informed Mr Hill, her then line manager, informally of her pregnancy on 27 July 2017. Mr Horton, the Managing Director, became aware on 5 September 2017, when he also communicated congratulations to Mr Harris, the Claimant's partner. The was not the Claimant's first pregnancy. We understand she had an ectopic pregnancy previously.

4. It is a background fact in this case that Mr Harris was the former Managing Director of the Respondent and left the company in 2017. They met after the

Claimant had been appointed to the Respondent. The Claimant, rightly, has shied away from any personal criticism that Mr Harris may have had of Mr Horton on the basis that it was not relevant.

5. The issues in the case have been further refined. At the end of the case the Claimant made it clear in her submissions precisely what she relies upon. There had been an earlier case management in front of Employment Judge Goraj. The Claimant has not run all the arguments that she mentioned in front of Employment Judge Goraj, and we endeavour below to make reference to the paragraph numbers of the issues identified in the Preliminary Hearing that the Claimant has developed.

The Issues

6. First of all, the Claimant submits she was purposely excluded from three job opportunities during her pregnancy/maternity. The three job opportunities were:

   6.1 A purchasing role following the promotion of Mr Hill to Operations Director, which the Claimant maintains she was promised by Mr Hill before going on holiday in July 2017. (10.1.3)

   6.2 The Claimant was not promoted to Sales Supervisor when Michelle Hancock was promoted to Service Supervisor in November 2017. (10.1.8)

   6.3 The Claimant was not considered and/or able to apply for the role of Office Supervisor given to Michelle Hancock on 12 February 2018. The Claimant learned about this appointment formally at the Keeping In Touch (KIT) meeting on 5 October 2018 having learned informally of it shortly beforehand. (10.1.15C)

7. Secondly, inappropriate comments about her pregnancy are alleged to have been made by the directors of AEP. This involves specifically being asked by Mr Hill before the end of November 2017 not to talk about her pregnancy with members of staff. (10.1.9)

8. Thirdly, it is alleged that the Respondent failed to communicate with the Claimant effectively on maternity leave. This involves the allegation that the Claimant was not informed about Michelle Hancock's appointment to Sales Supervisor. This is a separate point from her not being able to apply for that role and it also includes the further specific allegations of not being informed and invited to the AGM and not being informed originally about the Christmas party and only being invited to that late. It also includes being removed from email distribution lists. (10.1.15)

9. Fourthly, that whilst on sick leave the Claimant was threatened with being paid statutory sick pay as opposed to contractual sick pay for any further absences and also being threatened with forced early maternity leave. (10.1.13)

10. Fifthly, failure by the company to pay employees' pension contributions during maternity leave. This allegation is admitted by the Respondent.

11. Sixthly, an untimely and unfavourable appraisal. (issue 10.1.10)

12. Seventhly, in that appraisal the Claimant raised allegations of being micromanaged and victimised.

13. Eighthly, in a meeting on 10 November 2017, upon asking for redundancy perceiving her role no longer being desired, the Respondent gave the reason for not granting her redundancy the fact that she was pregnant. (10.1.6)

14. In the grievance hearing dated 16 November 2018, the meeting was held in the conference room AEP from which the Claimant could see through a window in the door, the Managing Director Mr Horton passed the conference room on five or six occasions, the Claimant believing that, ninthly, to be intentional intimidation. (10.1.16B)

15. The Claimant has sought to add an allegation of breach of confidentiality based upon new evidence not in her witness statement given in the course of the hearing. The contention is that Michelle McStravick, who conducted the grievance hearing and who is the Group Operations Director, told her brother, the Group Managing Director, that the Claimant's maternity leave had been handled poorly and her brother had told the Claimant's partner, Mr Harris, of this at a party. On analysis, and on the balance of probability, the Claimant only learned of this material and so able to turn it into an allegation after she resigned. This may have happened, but it is not relevant to the case and we do not therefore add it as an allegation.

16. These matters, further alleges the Claimant, are not only incidents of pregnancy discrimination but also amount to breaches of the implied term of trust and confidence entitling her, as she did, to resign on 20 November 2018, claiming a constructive dismissal.

17. We note that the Claimant has not run all the arguments that were mentioned at the preliminary hearing. She has endeavoured to run her most important arguments and we note that the Claimant has not included in her final submission complaints she made about the difficulty in obtaining extra days holiday following an error in booking holiday in June 2017. The Claimant had argued that around that time she was exposed to undue hostility from Mr Horton. We agree with the Claimant that it was sensible not to pursue that point. First of all, the Respondent did not know she was pregnant at the time. Secondly, the matter has been long affirmed by the passage of time. The Claimant did not develop this in her final submissions and so we do not address it; we think that is the right course.

The Law

Discrimination

18. By Section 18(2) of the Equality Act 2010 a person discriminates against a woman if in the protected period in relation to a pregnancy of hers s/he treats her unfavourably:

(a) Because of the pregnancy or

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

19. By Section 18(6) the protected period in relation to a woman's pregnancy begins when the pregnancy begins and ends -

(a) if she has the right of 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.

20. In respect of all the allegations pursued, the Claimant was within the protected period on the facts of this case.

21. The burden of proof is important in discrimination cases. By section 136(2) of the 2010 Act, if there are facts from which the court could decide in the absence of any other explanation that a person contravened the provision concerned, the court must hold that the contravention occurred. However, by subsection (3), subsection (2) does not apply if the employer shows that it did not contravene the provision.

22. In practice what this means is the Claimant must show a prima facie case that an unfavourable matter was because of pregnancy. If she does that, the burden transfers to the Respondent to show that pregnancy plays no role whatsoever.

23. As to discrimination time limits: by Section 123 of the Equality Act 2010 proceedings may not be brought after the end of three months starting with the date of the act to which the complaint relates, or such other period as the Employment Tribunal thinks just and equitable.

24. By Subsection (3) conduct extending over a period is to be treated as done at the end of the period.

<u>Constructive Unfair Dismissal</u>

25. It is an implied term of the contract of employment that an employer will not conduct itself in a manner likely or designed to destroy the relationship of mutual trust and confidence between employer and employee, without reasonable cause. A constructive dismissal consists of:

(1) one or more breaches of a contractual term by the employer.

(2) Which are individually or cumulatively sufficiently serious to justify a resignation.

(3) The employee as a matter of fact resigns for that reason.

(4) There is no undue delay whereby the breach could be deemed to be waived.

Findings of Fact

26. **The allocation of the purchasing role to Dave Fisher with effect from September 2017**. The Claimant knew that Mr Hill was going to become the Operations Director from 1 September 2017. She knew that when she was taken into his confidence in July 2017. They had been colleagues working closely together over a long time and had a good relationship. It seems entirely possible to us that Mr Hill discussed with the Claimant the implications his promotion would have for the reallocation of some of the work that he was doing. The Claimant may as a result have had an expectation that some roles would be coming her way. In the event, IT was transferring from AEP to the Group of Companies. There was the possibility that Dave Fisher, a valued employee, would be facing redundancy. To avoid that, when appointed Operations Director, Mr Hill wrote a job description for a new role of Purchasing Stock Control and IT which was designed to keep Mr Fisher in the company. That was how this function was reallocated. It was allocated to Mr Fisher to stop him being redundant. It was not diverted from the Claimant because the Claimant had told Mr Hill at the end of July, on return from holiday, that she was pregnant. We accept the Respondent's explanation here as being non-pregnancy related.

27. **The appraisal**. The Claimant had the appraisal in September/October 2017. Mr Hill signed the appraisal record on 3 October 2017 and the Claimant on 12 October 2017. The Claimant makes several points in respect of the appraisal. The first is that it was not an appropriate time to have an appraisal with her, bearing in mind she was pregnant, and taking into account she was more hormonal, as she put it, than at other times. Further, she suggests that the appraisal was unfavourable.

28. We accept from the Respondent that Mr Horton had introduced annual appraisals for all staff when he became Managing Director following Mr Harris. The Respondent had not in recent times observed the desirable practice of holding annual appraisals; indeed had not had them for an extended period of time.

29. The Claimant had her appraisal over the same time period as all employees of the Respondent. She was treated equally in that regard; she was not singled out because she was pregnant.

30. We reject the second suggestion she makes that the appraisal was unfavourable. The Claimant received a good score overall on the appraisal. It is right that the Claimant does record her view in the appraisal that she was being micromanaged and expressed her fear that soon she would no longer be required. She did record her belief that she was going to get an increased purchasing function.

31. There are passages written by Mr Hill, for example when recording the fact that the Claimant would be processing a far greater number of quotations than she had in the past, suggesting in contrast that there was a continued role for the Claimant. The Tribunal sees nothing out of the ordinary in this appraisal and nothing suggesting it could fairly be described as unfavourable. The appraisal was a typical operational one and does not give rise to a prima facie case of pregnancy discrimination.

32. **Service supervisor.** We note that on 2 October 2017, the Respondent advertised on Facebook and on the internal notice board for a sales coordinator and service administrator, two separate roles. The Sales Coordinator appointed was Joanna Marker. She started on 27 November 2017 and was to be trained by the Claimant.

33. In or around early November 2017, Michelle Hancock was awarded an increased role, namely Service Supervisor, with supervising responsibility for the service side of the business. The Claimant maintains that she similarly should have acquired a sales supervising responsibility, bearing in mind that she was going to have to train Joanna. She suggests that the reason she did not acquire a supervisory role was pregnancy-related in that she was going to go on maternity leave.

34. We accept from the Respondent that it was restructuring the service side of the business and wanted a senior service administrator with a supervising role to make a stronger service administrative team. The sales team was still reporting to the sales manager and accordingly there was not a need for a mirror sales supervisor reflecting the development on the service side.

35. In short, there was a specific arrangement for the service side which did not generate or could not be regarded as generating an expectation that there would be a similar development on the sales side. Again, there is no prima facie evidence that the Claimant's pregnancy played any role here.

36. **Micromanagement.** As to micromanagement the Claimant felt she was being micromanaged by Mr Horton. The Tribunal did hear some evidence about this. Mr Horton told us that he was concerned that the Claimant was overcharging "in respect of the customers for whom he was responsible" that is to say some key customers. We note on the appraisal that it was acknowledged that the Claimant had an acute understanding of profit. Mr Horton wanted the Claimant to run past him proposals "in respect of his customers" so that he could be sure that his customers were not being overcharged. The explanation, which we accept, is operationally related, it is not pregnancy related. There was an operational reason, totally independent of any issue of pregnancy.

37. **The meeting on 10 November 2017 and refusal of redundancy**. The Claimant asked for a meeting with Mr Horton and Mr Hill on 9 November 2017 which they had the following day. We know from the appraisal comments that the Claimant was concerned that the expectation of having the purchasing role allocated to her had been dashed. She had not been promoted unlike Michelle Hancock. She had concerns that there was no role for her. The Claimant did go into the meeting and asked for redundancy, perceiving that she was being pushed out; if that was to be the case, she wanted to negotiate a package. She felt that Mr Hill had not responded to the concerns that she had raised in the appraisal. The Claimant alleges that Mr Horton said "we cannot offer you redundancy because you are pregnant" as though that was the principal reason for not granting her redundancy.

38. The Claimant also raised that Joanna Marker had been appointed on a permanent basis and not as maternity cover. The Claimant did not believe

that there was sufficient work for two people. Mr Horton and Mr Hill said to the Claimant that they were not going to make her redundant because her role was needed. They were expecting an expansion in sales. They needed both her and Joanna Marker. It may be that Mr Horton said that additionally the fact that the Claimant was pregnant meant that they could not make her redundant, but the principal reason for why they said she was not going to be made redundant was that her role would be needed on return from maternity leave. We do note that it was unfortunate that no letter was sent to the Claimant after this meeting, reassuring her of what the Respondent said; but we do find that there was no pregnancy-related discrimination here. The reason for them not making the Claimant redundant was not simply to avoid a liability; the reason was because her role was required.

39. **Instruction from Mr Hill on the stairs**. The Claimant alleges that around this period in or around November 2017, she was told by Mr Hill not to talk about her pregnancy to other members of staff. Mr Hill did tell the Claimant not to discuss non-work-related matters with colleagues on an occasion. He had come across the Claimant talking with Michelle about non-work-related matters in the middle of work time. We accept that he told the Claimant not to talk about non-work matters in work time. He did not single out the fact of her pregnancy as something she was forbidden from talking about. That may have been the Claimant's interpretation or perception, but we accept Mr Hill's account that he was not singling out pregnancy; he was trying to ensure that during work time conversations were about work.

40. **SSP and return to work and the possibility of an acceleration of maternity leave**. The Claimant was absent with non-maternity-related reasons for six days between 12 and 20 December 2017 and then for eight days between 2 and 12 January 2018. The first absence was down to an elbow injury, having fallen on ice. The second was down to a combination of a chest infection and a pulled muscle resulting from the fall on the ice.

41. On 12 January 2018, the Claimant was written to by Mr Hill to the effect that she had exhausted her twenty days entitlement to contractual sick pay and that any future absence, predicting the following Monday, would be paid by statutory sick pay only, which of course would be significantly less. In the event there was no further absence. The Claimant says she was forced to return to work before being fit to. The Claimant challenged the twenty-day calculation stating that in fact she had only had eleven non-maternity-related absences. It is common ground that maternity-related absences could not be counted. At the same time Mr Hill and the Claimant were texting each other about the absences, Mr Hill sought to justify his calculation of twenty days by reference to his belief, having come from HR, that the twenty-day entitlement was rolling over any twelve months. That is to say, at any given time one goes back twelve months and counts up how many days absence there had been.

42. The Claimant had consulted her contract and noted that the sickness year is fixed, not rolling. It is fixed to twenty days between 1 September and 31 August of any year. It is not rolling.

43. We find the following arising from this incident. First, the Respondent had failed to understand that the Claimant's sick pay entitlement was fixed and

not rolling. This was only accepted by Mr Middleton, the Group Chair in a meeting the Claimant asked for on or around the 16 January. She went upstairs to see him about it. Secondly, she did not get confirmation in writing about this, notwithstanding emailing Mr Hill nine days later on 25 January 2015, seeking written confirmation that the matter had been resolved. She had an unfortunate encounter with Mr Hill on 16 January, the day she came back to work, very possibly before a formal return to work meeting, when she in blunt terms put her contract under his nose and forcibly made reference to the concept of fixed sickness year and Mr Hill responded saying "I don't know I don't care". He gave the explanation that that was a tone reflective of the manner of challenge from the Claimant. It is entirely possible, we do not know for sure, whether then the Claimant went off to see Mr Middleton and Mr Middleton intervened. There was a formal return to work meeting later that day which the parties were behaving perfectly cordially and there is a written record of the meeting.

44. There is confusion on the face of that written record as to what was maternity-related and what was not. In fact, all the absences the subject of that return to work meeting were not pregnancy-related. Despite that, the record of the meeting suggests that they were. In answer to the question was the absence related to a previous absence. It seems to be a set question on the return to work form. It was answered "yes maternity/illness injury plus slipping on ice injury". In fact, there was no maternity element to these absences and this confusion resulted in a passage at the end of the record to which the Claimant took exception.

45. The passage said - "due to recent significant absence from work and that Ewelina is struggling to attend work, it is being advised that any further pregnancy-related sickness after 21 January 2018 and the company would look to invoke the start of maternity leave in accordance with UK law".

46. The Claimant did not want to accelerate maternity leave she found this comment unfavourable for that reason.

47. We understand that it is the law by statute that any pregnancy-related absence within four weeks of the expected week of confinement will automatically trigger the start of maternity leave the following day. However, these absences were not pregnancy-related; accordingly, the Respondent's confusion had led to the Claimant reasonably perceiving, we find, that she was to be exposed to the risk of an acceleration of her maternity leave. She reasonably perceived this as unfavourable treatment in the nature of a threat, and we do find that the formulation in the return to work letter, as written and in context, amounted to unfavourable treatment related to pregnancy.

48. Further, there was a failure to confirm the entitlement to sick pay in writing for non-pregnancy-related absence in answer to the Claimant's email of 25 January 2018. This was the fixed year point. Whilst this was not of itself pregnancy-related, it was conduct which could go to breaching the implied term of trust and confidence. The Claimant had pointed out that the Respondent misunderstood its sick pay policy. She had raised it with Mr Middleton who appeared to agree with her. She had not had the matter clarified in writing, notwithstanding having to email some nine days afterwards on 25 January 2018.

49. In the chronology of events, these two matters are the first two matters which we find the Respondent acted unlawfully.

50. The Claimant took holiday from 5 February 2018 and started maternity leave on 25 February 2018. The baby was born on 27 February 2018, a baby girl.

51. **Office Supervisor.** On 12 February 2018, Michelle Hancock was appointed to Office Supervisor. This was a promotion with an increase in salary. She had a meeting with management to discuss the role the week before. The Claimant was on holiday then, prior to starting her maternity leave. The Claimant discovered that Michelle Hancock had been promoted to this role in June 2018 four months later and it was confirmed officially to her at the KIT day in October 2018. The Claimant did not know of the recruitment to the role of office Supervisor. Mr Horton acknowledged in evidence that the Claimant would have been interested in applying for this position had it been advertised and had she known anything about it. He also accepted that it had not been advertised, and as far as there was a practice of the Respondent not advertising vacancies, that was undesirable. Mr Hill in answer to a question from the Tribunal accepted that the Claimant was not considered for the role - in part, not wholly but in part - because she was about to embark upon maternity leave. Both Mr Horton and Mr Hill were of the view that they thought Michelle Hancock was the ideal candidate for the role and the Claimant was not. They sought to make the point that they had followed the Respondent's practice, observed also during Mr Harris' time as MD, of appointing internal employees to promotion without advertising. The defence they were seeking to invoke was that this was the reason there was a practice of not advertising posts; it had nothing to do with pregnancy, they argued.

52. In light of the comments from both Mr Horton and Mr Hill, there is a prima facie case that the Claimant was not considered for this role in part because she was embarking upon maternity leave. It is acknowledged that the Claimant would have been interested in the role. The burden of proof therefore, transfers to the Respondent on this matter. Does the Respondent show that pregnancy played no role whatever in the failure to consider the Claimant for this role?

53. The Respondent primarily tries to hide behind its practice - which they otherwise acknowledge is undesirable - of not internally advertising roles. In our judgement, the Respondent fails to discharge its burden of showing that pregnancy played no role whatsoever. It was Mr Hill's evidence that it was part of the reason the Claimant was not considered for this role, that she was starting maternity leave, that is to say is a pregnancy-related matter. It does seem to the Tribunal that the internal HR practices of this Respondent in terms of recruitment and promotion are far short of what is now commonly regarded as basic acceptable practice. In the event, that this is a learning event for the Respondent then so be it. The Tribunal does find that the failure to consider the Claimant for this role amounts to pregnancy-related discrimination.

54. That is *considering* the Claimant for this role. It is also unfavourable treatment related to pregnancy that the Claimant was not *informed* of Michelle

Hancock's promotion whilst she was on maternity leave. An employee should learn of significant developments to that employee's role when on maternity leave as though she were at work. Michelle Hancock was going to have a supervisory role of the Claimant. Michelle Hancock was going to become one of the Claimant's managers. The Claimant only learnt of this, four months after the appointment. That is an independent act of discrimination in our judgment.

55. **Communication during maternity leave. AGM. Xmas Party.** The Claimant makes a general point about a lack of communication during maternity leave, claiming the lack of communication was unfavourable to her specifically; she was not informed of important matters as though she remained at work. The non communication in respect of Michelle Hancock's promotion is a clear example of this. We will come shortly to further examples.

56. There was a discussion between Mr Hill and the Claimant about communication during maternity leave. It is difficult for us to make findings as to the content of that discussion because nothing concrete appears to have been agreed; nothing was agreed reflective of best practice, that seems clear. It seems to have been understood that the Claimant might dip into emails but, as we say, there was nothing structured.

57. Further, on the balance of probability, the Claimant's email address was removed from the all users' distribution list so she would not get the information that was sent to that list. As a direct consequence of that, she was not invited to the AGM and further, she received late an invitation to the Christmas party. The Christmas party has taken up some considerable time of analysis in this case. Mr Horton the new Managing Director wanted to hold a special Christmas event that year, requiring employees to stay in a hotel. The invitation went out to all users in May; the Claimant was not on that list, she did not know about it. We do accept from Mr Horton that once he saw from a specific email list - not a generic all users' email list - that the Claimant was not named as a recipient on a reminder on or about 24 October 2018, he immediately arranged for the Claimant to be invited to the Christmas party by Mr Hill. It was a matter of coincidence, and we accept that it was coincidental only, that the Claimant's grievance had been delivered that same day to the Respondent. We accept Mr Horton's explanation that he read the grievance after spotting for himself that the Claimant had not been invited. To be fair to Mr Horton, we know Mr Harris and the Claimant that year were invited to his own personal wedding.

58. Although we acknowledge her point on dates, we do not say that she was invited to the Christmas party only because of her grievance. She was invited to the Christmas party late because she had been removed from the all users' email address, but Mr Horton had sought to rectify it as soon as he was aware. Nevertheless, viewed from the Claimant's perspective there was unfavourable treatment in the form of a failure properly to communicate with the Claimant during her period of maternity. First and foremost, the failure to tell her about the appointment of Michelle Hancock. Secondly, the failure to invite her to the AGM. Thirdly, the removal of her from the all users' mailing list without making any adequate alternative and lastly, although we acknowledge she was ultimately invited to the Christmas party in good time, nonetheless she received late notice of the Christmas party.

59. **Keep in Touch (KIT) days.** The Claimant did ask for a KIT day in August 2018 and one was arranged for early October 2018. There is no statutory obligation, we note, on an employer to arrange for regular KIT days however good or desirable that best practice is. We do not make a finding of liability about the fact there was only one KIT day in October 2018.

60. **Pension contributions.** One of the significances of the KIT day that did take place is that at that KIT day that the Claimant discovered that pension contributions were not being paid to her during her maternity leave. That was the employer's pension contribution. She queried this with Mr Hill who also discovered this fact with her when they sought to access her payroll. The Claimant queried why it was she was not getting paid her pension entitlement. Mr Hill consulted HR and came back with the view, now acknowledged to be erroneous, that when on maternity leave an employee does not get paid employer's pension contributions.

61. **Grievance.** On 23 October 2018, the Claimant raised a grievance. The handling of the grievance was given to Michelle McStravick, the Operations Director of the Group. The Claimant sent in further information expanding on her grievance. She attended a grievance meeting on 16 November 2018. The grievance was sent into Mr Horton. He clarified that he was implicated in the grievance and so could not chair it. The invitation to the grievance hearing indicated that Mr Horton would be present. Mrs McStravick assumed that were he present, they might be able to sought matters out. She acknowledges that may have been a misjudgement by her. The Claimant objected to Mr Horton's presence and that was accepted.

62. The grievance outcome came after the Claimant resigned. Mrs McStravick upheld parts of the grievance without directly addressing whether they were pregnancy-related. Her findings were general in nature, nonetheless, Mrs McStravick partially upheld the following points.

63. First, the Claimant's complaints surrounding the failure to confirm SSP and the threat to accelerate maternity leave. Secondly, the Claimant's concerns about failure to communicate with her during the maternity leave and thirdly, in respect of failures to make pension contributions. Mrs McStravick discovered indeed that two other women on maternity leave had also not had their pension contributions paid.

64. Interestingly, Mrs McStravick's conclusions mirror to some extent our own. There are common findings between Mrs McStravick's and ours although we are attributing matters more directly to pregnancy.

65. The Claimant did not await the outcome of the grievance and Mrs McStravick was disappointed with that. She hoped that she, together with the Respondent more generally, could work with the Claimant so as to rebuild the employment relationship and keep it preserved.

66. **Resignation.** The Claimant resigned prior to receiving the grievance outcome because the experience of the grievance hearing and process had brought home to her, her belief that the employment relationship had been destroyed. A particular feature of the Claimant's experience of the grievance

as emphasised by her was that she had seen Mr Horton, who was the subject of part of the grievance, walk past the conference room in which the grievance meeting was being held on five or six occasions during a meeting which lasted one to one and a half hours. The Claimant was sat opposite a window through which one could see passers-by and she saw Mr Horton pass the conference room on five or six occasions. That unnerved and upset her. The Claimant has described this as the last straw.

67. We find that she reasonably regarded it as such. We do not find that Mr Horton intentionally sought to intimidate the Claimant by glaring at her through the doors of the conference room - that did not happen - but the fact that he passed the room where confidentially she was bring her grievance on five or six occasions understandably unnerved and upset her, and it was not entirely innocuous in terms of last straw resignation dismissal law. It was unnerving to her. It caused her stress and she decided to resign.

Conclusions

68. Outstanding as at the date of resignation at the very least was the unpaid pension. That was not resolved until December 2018. The Claimant resigned by letter dated 20 November 2018, claiming fundamental breach of contract, breach of trust and made a reference to the last straw doctrine. That was all general in nature. We do of course have her specific concerns in the grievance material. In summary, we find, that the Claimant rightly claims that she was treated to unfavourable treatment because of pregnancy in respect of the following matters:

69. First, the unnecessary threat to accelerate the maternity leave period; unnecessarily gratuitous because the absences the subject of the return to work meeting were not pregnancy related.

70. Secondly, not being considered for the office supervisor role, a role which it is acknowledged she would have been interested in, even if ultimately, she may not have got it.

71. Thirdly, the failure to communicate with her appropriately during the course of the pregnancy and maternity period by -

    (1) Failing to inform her of Michelle Horton's promotion to the office supervisor role which would have had supervisory responsibility over the Claimant.

    (2) Not inviting her to the AGM.

    (3) Removing her from the all users' email distribution list without making any other adequate alternative arrangements for the purposes of the communication.

72. Fourthly, not paying her pension contributions during maternity leave.

73. Further, those matters all amounted to breaches of the implied term of trust and confidence.

74. In addition, in respect of breaches of the implied term of trust and confidence, the Respondent had failed to clarify the SSP entitlement in writing following the Claimant seeking confirmation as to whether the matter had been resolved by email on 25 January 2018.

75. As at the date of resignation, the pension failure was in operation, meaning in terms of discrimination time limits law that there was an operative act of discrimination within three months of the resignation. All the other pregnancy related discrimination matters linked into that and there was therefore a continuing state of affairs. If it were necessary to extend time for just and equitable reasons, we would extend time because there is no evidential or other prejudice to the Respondent in defending the claims. The prejudice to the Claimant would take the form of frustrating an otherwise meritorious claim.

76. Further, as at the date of resignation, the outstanding problem with pension meant there was an operative breach of contract justifying resignation taken together with the other breaches of contract. If it were necessary to invoke the last straw doctrine - and because of the pension payment failure we are not sure that it is - then Mr Horton's controversial passing of the grievance conference room on five or six occasions within sight of the Claimant during her grievance meeting was more than innocuous, even if it was not an intended act of intimidation.

77. Accordingly, in short, the Claimant succeeds in her claim for pregnancy related discrimination. She succeeds in her claim of constructive unfair dismissal. Her claim of victimisation for having raised matters with Mr Middleton fails.

Award for Injury to Feelings

78. It has been agreed that in the time available we should assess the injury to feelings part of remedy. There will of course be a basic unfair dismissal award which calculates itself and a claim for past and future loss of earnings. If necessary, we will have a one-day remedy hearing on that but all concerned have agreed it will be sensible to assess injury to feelings today. We have read the Claimant's witness statement, her Schedule of Loss and we had helpful submissions from Mr Johnson.

79. Whilst it is true that we have not found all the alleged acts of discrimination well-founded, we have found significant acts of discrimination in a series which will have contributed effectively to the Claimant's injury to feelings.

80. We find - and we have seen for ourselves in the Tribunal proceedings - that the discrimination found has undermined the Claimant's self-confidence. She has suffered, and continues to suffer, from regular tearfulness contemplating losing a career she enjoyed. There have been periods of aggravation of a pre-existing Psoriasis condition which is a condition relating to stress and anxiety.

81. We do take Mr Johnson's point that the Claimant did start in bar work for seven months, one month after resigning, and that will have provided some

social interaction and relief. That said the effects of this discrimination are still visible today, four years on. It is to be hoped that this case should provide closure.

82. Given the effects on the Claimant, and the series of incidents of discrimination, and the cumulative effect of those, the case is more serious than the lower Vento band; it is not a case in the upper band; it is essentially in the middle band, around the centre of it. We have found that £19,000 is the appropriate figure for injury to feelings.

Employment Judge Smail
Date: 11 September 2021

Reasons sent to the parties: 13 October 2021

FOR THE TRIBUNAL OFFICE