



# EMPLOYMENT TRIBUNALS

**Claimant**

Miss A Plewa

**Respondent**

v Homefield Grange Retreat Limited

**Heard at:** Norwich (by CVP)

**On:** 26 & 27 August 2021  
24 September 2021 (Discussion Day – no parties present)

**Before:** Employment Judge Postle

**Members:** Mr R Allan and Ms S Blunden

**Appearances**

**For the Claimant:** Miss B Suwalska (Friend).

**Assisted by an Interpreter:** Miss Krasuska (Translation: Polish).

**For the Respondent:** Mrs S Peck (Director).

## RESERVED JUDGMENT

1. The claimant was treated less favourably because of her pregnancy by being dismissed.
2. The claimant's dismissal was automatically unfair due to her pregnancy under the Employment Rights Act 1996.

## REASONS

1. The claimant brings two claims to the Tribunal, a claim for automatic unfair dismissal by reason of pregnancy under s.99 of the Employment Rights Act 1996 and a claim for pregnancy discrimination under the Equality Act 2010. The respondent resists the claims on the grounds that the requirement for the claimant to carry out the work she undertook for the

respondent was no longer required when two machines that the claimant used to undertake various treatments were sold by the business as they were no longer cost effective.

2. In this Tribunal we heard evidence from the claimant through a prepared witness statement and on behalf of the respondent Mrs Peck also through a prepared witness statement.
3. The Tribunal did have a number of bundles from both parties which to put not too finer a point on it were in a complete mess. The parties had not co-operated with each other in preparing a joint bundle.
4. The claimant's bundle appeared to have the main bundle which was not properly paginated, there was a supplemental bundle again not properly paginated and a third bundle, then during the course of the hearing attempts were made to provide further documents on behalf of the claimant.
5. The respondent's bundle consisted of 609 pages or thereabout and again this bundle had not been properly sequentially numbered and was also in a mess.
6. The state of the bundles did not assist the Tribunal.

### **Findings of Fact**

7. The claimant was employed from 7 February 2017 until 14 July 2018. It is unclear as to the exact hours worked by the claimant each week as her contract states 7.5 hours to be worked flexibly. In the ET1 provided by the claimant states 20 hours per week. What the Tribunal noticed was that in the respondent's response they had confirmed that 20 hours per week worked by the claimant was in fact correct.
8. The claimant was employed as an Aesthetic Beauty Therapist which involved using a hydrafacial machine and a DEKA Motus AX hair removal laser machine both those machines the claimant had previous experience. The machines (both) had recently been purchased by the respondent and the plan was that the claimant was to promote these services for the clients of the respondent. The claimant was also trained in March 2018 in the Zo Medical Obaji complementary skincare range which ran in conjunction with the hydrafacial machine. The claimant could also undertake G5 lymphatic massages, Decleor facial peel and other facial treatments. The claimant could also undertake aromatherapy, body massages and was trained in bamboo massage. The claimant was not trained to do holistic therapies such as Reflexology, Reiki, Rahanni healing and Acuapressure.

9. Claire Bogus a holistic therapist left on 8 May 2018 and a Rachel Porter was recruited in June 2018 was experienced in some areas that Claire Bogus undertook but would require some additional training. This would enable her to be up and running much quicker than if the claimant was trained in these areas.
10. During the early part of 2018 it appears there had been a number of redundancies within the respondent's organisation particularly:
  - 10.1 Weekend Housekeeper Suzanne Porter left in January 2018;
  - 10.2 General Manager Louise Austin left February 2018; and
  - 10.3 The Duty Manager left in June 2018 Rebecca Lennon.
11. None of these employees were replaced and their work was covered by Mrs Peck and her partner apparently as a cost cutting exercise when the respondent was facing severe financial difficulties. Indeed earlier in the year the spa was closed for a week and at the same time staff were asked to take holiday given apparently the downturn in business and further their hours might have to be reduced and possible redundancies.
12. Unfortunately the machines that were being used by the claimant were not generating income as was hoped by the respondent given the financial outlay which was considerable. It is clear sometime in May or June a decision was taken by Mrs Peck to cut the respondent's losses on these machines and the laser machine (hair removal) was sold in June 2018 and no more bookings were taken for the hydrafacial machine after July as it was hoped that this machine could be re-assigned as it ultimately was in February 2019.
13. At some stage prior to 2017/2018 the respondent had embarked upon a major new capital expenditure to build a new spa wellness centre facility at the respondents. It is clear this project experienced a number of problems and extensive delay causing major financial pressure together with additional costs that had not been originally planned for. The spa was originally due to complete by June 2018 and as a result of the problems it was not finally completed and ready for use until January 2019. The respondent having received final confirmation from the contractors in August/September that the spa would be completed in January 2019. It is clear that the respondent had incurred substantial borrowing to ensure this project was completed.
14. As a result of the two machines being no longer required by the respondent and being sold on that in effect put the claimant's position in jeopardy as a major reason it appears for the claimant's employment was the delivery of the aesthetic treatments these machines provided.
15. On 3 July the claimant notified Mrs Peck that she was pregnant.

16. On 5 July Mrs Peck carried out a risk assessment. It is clear from the risk assessment at page 104 there was still a number of treatments that the claimant could undertake notwithstanding her pregnancy.
17. On 7 July (R103) Mrs Peck sends an email to the claimant which read as follows:-

“Dearest Agata, firstly I would like to say I am so thrilled for you and your fiancé that you’re going to be parents. I know it’s something you have worked so hard at and both Hans and I are thrilled for you both.

Further to our chat today I think that I need to clarify a few areas so you are aware of how things stand.

1 Homefield has and continues to see a down turn in business since September 2017. In our 14 years of business we have not experienced this situation before.

As a result of this we have had to let team members go namely our manager, skin specialist and our weekend duty manager. Hans and I have been covering many of the night sleeps to help the financials of the business and I am working every weekend to cover reception as we cannot afford to recruit. It has been a real struggle. It is not a situation that any business owner likes to face.

2 You are a valued member of our team and as I mentioned today a brilliant therapist. However I cannot guarantee that this short term lay off situation will now last, or whether it will get worse before it gets better. There is no guarantees on your hours and most of the team are still on short term layoffs.

Overall I think it is time for you to decide what is best for you and your family. I will respect of course any decision you make.

Assuring you of our best intentions as always.

Suzanne and Hans”

18. Then on 14 July the claimant is informed that she is to be made redundant with one month’s notice, this was confirmed in an email from Mrs Peck to the claimant of 14 July (R231) which read:-

“Dear Agata as per our meeting held today at Homefield’s General Office at 4.30 it is with regret that Homefield has to terminate your employment.

Due to our continued downturn in business since September 2017 we find ourselves in the position where we cannot afford to employ you or be in a position to offer you secure hours.

As promised you will be paid an additional 4 week’s pay commencing today (75 hours as per your contracted monthly hours) this I hope will take you the time to find alternative part time employment replace the hours you have been working for Homefield. You’ll also be paid for your timesheet hours from 25 June through to today July the 14<sup>th</sup>. Any accrued holiday entitlement will also

be included in your July wage slip. Please note wages will be paid on 27<sup>th</sup> July as noted in my previous email.

You have been an absolute pleasure to work with and a true professional. The standard and delivery of your therapies is first class. I would not hesitate to recommend you highly for any future employer that may request a reference from me.

On behalf of both Hans and I we sincerely wish you health, success and happiness in whatever you do in life.

Kind regards  
Suzanne Peck, Director.”

## **The Law**

### *Direct pregnancy/maternity discrimination*

19. Section 13(1) of the Equality Act 2010 provides that:

“A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.”

20. Both sex and pregnancy and maternity are among the protected characteristics listed in section 4 of the Equality Act 2010.

21. Section 18 of the Equality Act 2010 contains specific provisions for the purpose of the application of part 5 of the Act for the protected characteristic of pregnancy and maternity. Section 18(2) provides that:-

“A person (A) discriminates against a woman if, in the protected period in relation to a pregnancy of hers, A treats her unfavourably —

(a) because of the pregnancy

...”

22. Section 99 of the Employment Rights Act 1996 provides that:-

#### **“Leave for family reasons**

(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if—

(a) the reason or principal reason for the dismissal is of a prescribed kind, or

(b) the dismissal takes place in prescribed circumstances.

(2) In this section “prescribed” means prescribed by regulations made by the Secretary of State.

- (3) A reason or set of circumstances prescribed under this section must relate to—
  - (a) pregnancy, childbirth or maternity,...”

23. For the avoidance of doubt the protected period begins when the pregnancy begins.

### Conclusions

- 24. It is common ground that the claimant was an exceptionally good employee and was well thought of by Mrs Peck a director. It is also true that the respondent employed a number of therapists on a part time and full time basis covering a wide range of either beauty treatments or therapies and it is also true that the claimant originally was employed to promote the two specialist machines referred to earlier in this Judgment. However the claimant it is clear had other qualifications in relation to various treatments which she could provide to the respondent’s clients.
- 25. It would also appear that although the respondents were suffering financial difficulties they nevertheless at a time when the claimant was to be made redundant were recruiting whether part time or full time further beauticians/therapists.
- 26. The claimant announces she is pregnant on 3 July, we then have very strange email from Mrs Peck on 7 July effectively asking the claimant what she wants to do and by 14 July without any warning the claimant is made redundant.
- 27. There is no suggestion that any of the other beauticians/therapists are to be made redundant, none of which were currently pregnant and there was no pool for selection. Given what Mrs Peck described was severe financial difficulties the respondents were facing it is difficult to see how making one part time employee redundant would go anywhere in assisting the respondent’s financial difficulties. That is also set against the respondents at the same time as the claimant was being made redundant taking on certainly an additional beautician/therapist.
- 28. The Tribunal therefore unanimously concludes that the only inference that can be drawn for the respondent’s decision to make the claimant redundant was her announcement that she was pregnant on 3 July, that is clearly less favourable treatment because of her pregnancy and equally the Tribunal was satisfied that the decision to dismiss by reason of redundancy was automatically unfair for a reason connected to the claimant’s pregnancy.

29. There will now have to be a Remedy Hearing and dates for that will be sent to the parties in due course.

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Employment Judge Postle

Date: 9/12/2021

Sent to the parties on:12/1/2022

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For the Tribunal Office