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EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4111019/2021

Held in Glasgow on 23 and 24 February 2022

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Employment Judge: P O'Donnell

Tribunal Member: Ms P McColl

Tribunal Member: Mr A Grant

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Miss D Smith

Claimant

Represented by:

Ms L Smith –

Sister

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Home Appliance Engineers Ltd

Respondent

Represented by:

Mr Iqbal –

Representative

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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The unanimous judgment of the Employment Tribunal, given orally at the hearing, is that the Claimant's claims of unfair dismissal under s99 of the Employment Rights Act 1996 and of discrimination under ss18(2)(b) and 39(2)(c) of the Equality Act 2010 are well founded and are upheld. The Claimant is awarded the sum of £6,479.30 (Six thousand four hundred seventy nine pounds and thirty pence) as compensation in respect of these claims.

REASONS

Introduction

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1. The Claimant has brought complaints of unfair dismissal under s99 of the Employment Rights Act 1996 and a complaint that her dismissal amounts to

unlawful discrimination on the grounds of pregnancy contrary to ss18 and 39(2)(c) of the Equality Act 2010.

2. The claims are resisted by the Respondent. They say that they did not know that the Claimant was pregnant when the decision to dismiss was made and that the reasons for the Claimant's dismissal were a lack of work and the Claimant's alleged unreliability (a reference to the alleged issues with the Claimant's timekeeping and attendance).

Evidence

3. The Tribunal heard evidence from the following witnesses:-

a. The Claimant.

b. Syma Iqbal, who made the decision to dismiss the Claimant.

4. There was an agreed bundle of documents prepared by the parties.

5. The Respondent had proposed to call evidence from the Claimant's manager in her previous job with a different employer. The Tribunal asked the Respondent's representative what evidence this witness would give and he explained that she would speak to alleged issues with the Claimant's timekeeping and attendance in her previous employment.

6. The Tribunal considered that this evidence was wholly irrelevant to the issues to be determined in this case; the witness could not speak to whether the Respondent knew the Claimant was pregnant nor could she speak to the reasons why the Respondent decided to dismiss the Claimant. In these circumstances, the Tribunal decided that it would not admit the evidence of this witness and she was not called.

7. The Respondent had also included three witness statements in the bundle; one from Syma Iqbal, one from the Claimant's manager in her previous job and one from the Respondent's representative. The Tribunal explained that, in Scottish procedure, evidence-in-chief is given orally unless the Tribunal had ordered this evidence to be given by witness statements. No such Order had been made in this case. In these circumstances, the Tribunal explained that it would not be reading the witness statements and if there was any evidence in those statements which the Respondent wanted the Tribunal to take into account

then it would need to be given orally by a witness under oath or affirmation. In the event, the Respondent only led evidence from Ms Iqbal.

Findings in fact

8. The Tribunal made the following relevant findings in fact.
- 5 9. The Claimant commenced employment with the Respondent on 20 July 2021. She carried out administrative office work. The Claimant worked with Syma Iqbal.
- 10 10. The Claimant was not provided with a written contract or any other document setting out the terms and conditions under which she was employed. She was paid £250 a week after tax. She worked 9am to 5pm, Monday to Friday with a lunch break of half an hour to an hour.
11. In July 2021, the Claimant discovered that she was pregnant. She could not recall the precise date.
- 15 12. On 16 August 2021, the Claimant informed Ms Iqbal that she was pregnant. The Claimant had booked a holiday to get a tattoo but was unable to do so because of her pregnancy. Ms Iqbal asked the Claimant on 16 August 2021 to see the tattoo and the Claimant explained that she had not gone ahead with this because she was pregnant. Ms Iqbal congratulated the Claimant and asked if her family was pleased with the news
- 20 13. On 18 August 2021, the Claimant showed Ms Iqbal a picture from a scan she had had of her unborn child. This was on the Claimant's phone. She had attended the scan outside of office hours and had not taken any time off for this.
- 25 14. The Claimant had been absent due to ill health on 2 and 3 August 2021. On these dates, she contacted Ms Iqbal to advise that she would not be attending for this reason. The Claimant also left work early on 18 August 2021 as she felt unwell.
15. On each occasion, the Claimant was not asked to provide any form of self-certification regarding her absence.

16. On 23 August 2021, the Claimant was unwell and unable to attend work. Ms Iqbal had a pre-booked holiday on that date and so the business was unable to open.
17. At 7.39am on 23 August, the Claimant's mother sent a text to Nadeem Iqbal advising him that the Claimant was not fit for work (p67). The text states that
5 *"as you already know she [a reference to the Claimant] is expecting"*. It goes on to explain that the Claimant cannot stop being sick and cannot even keep water down. A doctor is being contacted as they are unsure if this is being caused by the Claimant's pregnancy or a bug. The text also states that the
10 midwife is to see the Claimant on Wednesday. It concludes by stating that it is hoped the Claimant will be back to work the next day if the doctor can give her an anti-sickness tablet,
18. Mr Nadeem replies (p68) stating that the Claimant's mother should be texting his daughter as the Claimant works for her.
- 15 19. At 8.42am, the Claimant's mother sends an identical text to Ms Iqbal (p97) with an added comment that she had already sent the text to Ms Iqbal's father who had told her to contact Ms Iqbal.
20. At 7.49am on 24 August 2021, the Claimant sent a text to Ms Iqbal informing her that the Claimant was unfit to attend work that day. It was on receiving
20 this text that Ms Iqbal made the decision to dismiss the Claimant.
21. At 10.26am on 24 August, Ms Iqbal sends a text (p62) to the Claimant informing her that *"I would need to let you go"* because there was not enough work for two people and that the Claimant was not *"very reliable"*.
22. The Claimant replies to this at 10.57am (p63) alleging that she is being
25 dismissed because she is unwell due to her pregnancy and that this is unfair dismissal. The text goes on to allege that Ms Iqbal informed her father of the Claimant's pregnancy and that he told "John" (a reference to the person who employed the Claimant's sister).
23. Ms Iqbal replies to this at 11am (p63) stating *"Am not sacking you because
30 your (sic) pregnant my dad has every right to know. The reason is that ur (sic)*

not reliable turning up to work and there not enough work for 2 people working at my office so please don't take this out of context".

24. There follows a further exchange of texts on pp63-66. The Tribunal was taken to these in evidence and finds that these say what they bear to say. However, the Tribunal does not consider that the detail of this exchange, which becomes increasingly acrimonious on both sides, is relevant to the issues to be determined.

25. The Claimant attended her doctor and was diagnosed with hyperemesis. She was provided with a series of certificates from her doctor (pp76-78) stating that she was unfit to work. These state that the Claimant was unfit for work from 26 August to 26 November 2021.

26. The Claimant has not looked for work or taken any other steps to find alternative employment since her doctor's certificates ceased.

Claimant's submissions

27. The Claimant's representative made the following submissions.

28. Reference was made to the evidence of Ms Iqbal; she denied receiving the text at p97 but this was added to the bundle by the Respondent so she must have received this text.

29. The reference to Ms Iqbal's father having a right to know at p62 is a reference to the Claimant's pregnancy.

30. It was clear from the evidence that the Respondent knew that the Claimant was pregnant.

31. There were other matters raised in the submissions which were not relevant to the issues before the Tribunal.

Respondent's submissions

32. The Respondent's representative made the following submissions.

33. There was no reason to dismiss the Claimant if her timekeeping and attendance had been better.

34. If they knew the Claimant was pregnant then they would not have dismissed her; they had a protocol in place to deal with pregnant employees.

35. The Respondent was never notified, in any text message, that the Claimant was pregnant.

5 36. Ms Iqbal was not an employee of the Respondent and just helped out there now and again.

37. The Claimant never clarified that she was pregnant.

38. She was dismissed because she was constantly late and constantly absent. The Claimant never sent in sick notes and not explain why she was absent.

10 **Relevant Law**

39. Section 99 of the Employment Rights Act 1996 states:-

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

15 (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.*

20 (3) *A reason or set of circumstances prescribed under this section must relate to—*

(a) *pregnancy, childbirth or maternity,*

...

40. It was held in *Maund v Penwith District Council* [1984] IRLR 24 that the burden of proof regarding the reason for dismissal lies with the employer unless the employee does not have the requisite length of service to pursue a claim of "ordinary" unfair dismissal. If that is the case then the onus is on the employee.

41. Section 18 of the Equality Act 2010 provides as follows:-

(1) *This section has effect for the purposes of the application of Part 5 (work) to the protected characteristic of pregnancy and maternity.*

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

5 (a) *because of the pregnancy, or*

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

42. These provisions do not stand on their own and any discrimination must be in the context of the provisions of the Act which makes it unlawful to discriminate in particular circumstances. The relevant provision in this case is:-

10 **39 Employees and applicants**

(2)(c) *An employer (A) must not discriminate against an employee of A's (B)—*

by dismissing B

15 43. The question for the Tribunal in a claim under s18 of the Equality Act whether an employee's pregnancy was an 'effective cause' of the treatment complained of (*O'Neill v Governors of St Thomas More Roman Catholic Voluntary Aided Upper School* [1996] IRLR 372).

44. The burden of proof in claims under the 2010 Act is set out in s136:-

136 Burden of proof

20 (1) *This section applies to any proceedings relating to a contravention of this Act.*

(2) *If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.*

25 (3) *But subsection (2) does not apply if A shows that A did not contravene the provision.*

45. The burden of proving the facts referred to in s136(2) lies with the claimant. If this subsection is satisfied, however, then the burden shifts to the respondent to satisfy subsection 3.

46. It is a well-established principle that Tribunals are entitled to draw an inference of discrimination from the facts of the case. The position is set out by the Court of Appeal in *Igen v Wong* [2005] ICR 931 (as approved by the Supreme Court in *Hewage v Grampian Health Board* [2012] IRLR 870):-

5 '(1) Pursuant to s 63A of the SDA 1975[now s136 of the Equality Act 2010], it is for the claimant who complains of sex discrimination to prove on the balance of probabilities facts from which the tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an act of discrimination against the claimant which is unlawful by virtue of Part II or which by virtue of s 10
10 41 or s 42 of the SDA 1975 is to be treated as having been committed against the claimant. These are referred to below as "such facts".

(2) If the claimant does not prove such facts he or she will fail.

15 (3) It is important to bear in mind in deciding whether the claimant has proved such facts that it is unusual to find direct evidence of sex discrimination. Few employers would be prepared to admit such discrimination, even to themselves. In some cases the discrimination will not be an intention but merely based on the
20 assumption that 'he or she would not have fitted in'.

(4) In deciding whether the claimant has proved such facts, it is important to remember that the outcome at this stage of the analysis by the tribunal will therefore usually depend on what inferences it is proper to draw from the primary facts found by the tribunal.

25 (5) It is important to note the word 'could' in SDA 1975 s 63A(2). At this stage the tribunal does not have to reach a definitive determination that such facts would lead it to the conclusion that there was an act of unlawful discrimination. At this stage a tribunal is looking at the primary facts before it to see what inferences of secondary fact
30 could be drawn from them.

- (6) *In considering what inferences or conclusions can be drawn from the primary facts, the tribunal must assume that there is no adequate explanation for those facts.*
- 5 (7) *These inferences can include, in appropriate cases, any inferences that it is just and equitable to draw in accordance with s 74(2)(b) of the SDA 1975 from an evasive or equivocal reply to a questionnaire or any other questions that fall within s 74(2) of the SDA 1975.*
- 10 (8) *Likewise, the tribunal must decide whether any provision of any relevant code of practice is relevant and if so, take it into account in determining, such facts pursuant to s 56A(10) of the SDA. This means that inferences may also be drawn from any failure to comply with any relevant code of practice.*
- 15 (9) *Where the claimant has proved facts from which conclusions could be drawn that the respondent has treated the claimant less favourably on the ground of sex, then the burden of proof moves to the respondent.*
- (10) *It is then for the respondent to prove that he did not commit, or as the case may be, is not to be treated as having committed, that act.*
- 20 (11) *To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of sex, since 'no discrimination whatsoever' is compatible with the Burden of Proof Directive.*
- 25 (12) *That requires a tribunal to assess not merely whether the respondent has proved an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that sex was not a ground for the treatment in question.*
- 30 (13) *Since the facts necessary to prove an explanation would normally be in the possession of the respondent, a tribunal would normally expect cogent evidence to discharge that burden of proof. In particular, the tribunal will need to examine carefully explanations*

for failure to deal with the questionnaire procedure and/or code of practice."

47. The *Igen* case was decided before the Equality Act was in force but it is submitted that the guidance remains authoritative, particularly in light of the *Hewage* case.

Decision

48. The Tribunal notes that there is no dispute that the Claimant was in her "protected period" (as defined in s18(6) of the Equality Act) when she was dismissed. In any event, on the facts of the case, the Tribunal would have no hesitation in making a finding to this effect.

49. The first issue in dispute is whether or not the decision-maker knew that the Claimant was pregnant when they made the decision to dismiss.

50. On the Respondent's own evidence, and this was not contested by the Claimant, the decision-maker was Syma Iqbal. It was also Ms Iqbal's evidence, which is again not in dispute, that she made the decision to dismiss on 24 August 2021.

51. The Claimant primarily relies on the conversation between her and Ms Iqbal on 16 August 2021 as establishing knowledge on the part of the Respondent and there is a sharp dispute of fact as to what was said during this conversation; the Claimant states that she expressly informed Ms Iqbal that she was pregnant in the context of explaining that she had been unable to get a tattoo because of this; Ms Iqbal states that the Claimant merely said she thought she might be pregnant because her period was late.

52. For the reasons set out below, the Tribunal prefers the evidence of the Claimant and finds that she did inform Ms Iqbal that she was pregnant on 16 August 2021.

53. The Tribunal found the Claimant to be a credible and reliable witness who gave clear evidence that was both inherently consistent and consistent with the limited documents which were spoken to in evidence.

54. On the other hand, the Tribunal, for the following reasons, found that Ms Iqbal was not credible or reliable:-

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- a. There was a contradiction in Ms Iqbal's evidence that the Claimant was employed because of the amount of work to be done with the assertion in her text dismissing the Claimant that there was not enough work for the Claimant to continue in employment. Although Ms Iqbal asserted that the amount of work fluctuated (which can be true in any business), the Tribunal found that it was implausible for the amount of work to have reduced by such a significant degree in the short period of the Claimant's employment.
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- b. In the text exchange at p62, the Claimant asserts that she is being dismissed because she is pregnant. If Ms Iqbal was unaware that the Claimant was pregnant then the Tribunal considers that the natural and obvious first response to this assertion would have been for Ms Iqbal to have said she was not aware of this but she did not.
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- c. In the same text exchange, the Claimant asserted that Ms Iqbal had informed her father of the Claimant's pregnancy and, again, if Ms Iqbal had not known the Claimant was pregnant then the Tribunal would expect this to be the obvious response. Instead, Ms Iqbal stated that her father had a right to know. In her evidence, Ms Iqbal sought to say that this was a reference to her father having a right to know what was going in the business in relation to the Claimant's absences. The Tribunal does not consider that this is the plain and natural reading of that response in the context of the exchange and, rather, that Ms Iqbal's assertion in her evidence was nothing more than a transparent attempt to explain away a comment which she knew caused difficulty with the Respondent's denial that they knew the Claimant was pregnant.
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- d. Ms Iqbal denied that she was involved in running the business when asked about the terms under which the Claimant was employed. She also gave evidence to the effect that she just helped run the business. This stands at complete odds with her own evidence that she made the decision to dismiss and that it was her who terminated the Claimant's employment.
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e. When asked who employed the Claimant, Ms Iqbal said that she was not entirely sure. There followed a series of questions from the Judge about who ran the business and whether anyone else other than Sohail Iqbal (who Ms Iqbal said was the director) was involved. The Tribunal found Ms Iqbal's answers to be evasive in that she suggested that Sohail Iqbal might not be the one who employed the Claimant but could not identify anyone else who was involved in running the business who might have recruited the Claimant.

f. Ms Iqbal denied receiving the text at p97 from the Claimant's mother which clearly states that the Claimant was pregnant. However, it was said in the Claimant's submissions that this document was added to the bundle by the Respondent and this was not disputed by the Respondent. The text must have been received by Ms Iqbal for the Respondent to add it to the bundle.

55. The Tribunal also notes that the texts from the Claimant's mother sent on 23 August 2021 (pp67 & 97) are couched in terms which either expressly say that the recipient knows that the Claimant is pregnant or implies that there is a prior knowledge. The Tribunal considers that these contemporaneous documents raise the inference that there has been a prior disclosure of the Claimant's pregnancy. This is consistent with the Claimant's oral evidence given at the hearing.

56. In these circumstances, the Tribunal prefers the evidence of the Claimant and finds that the Claimant told Ms Iqbal that she was pregnant on 16 August 2021. Ms Iqbal was, therefore, aware of the Claimant's pregnancy at the time at which she decided to dismiss the Claimant.

57. In any event, the Tribunal notes that the Respondent concedes in their ET3 that they had received a text from the Claimant's mother on 23 August 2021 which confirmed that the Claimant was pregnant. This can only be a reference to one or both of the texts at pp67 and 97. Given that the text at p67 is a text to Mr Nadeem Iqbal who, in reply, says that he is not involved with the Respondent then the plain reading of the concession in the ET3 must be a reference to the text at p97 which was sent to Ms Iqbal.

58. Although Ms Iqbal denied receiving this text, the Tribunal does not find this denial credible or reliable; as set out above, p97 was put into the bundle by the Respondent so it must have been received for it to be in their possession; for the reasons given above, the Tribunal has not found Ms Iqbal to be a reliable and credible witness and consider that her denial in this instance is another matter on which it cannot accept her evidence.
59. The Tribunal, therefore, finds that Ms Iqbal did receive the text at p97 which clearly informed her, if she had not already known been informed by the Claimant on 16 August 2021, that the Claimant was pregnant before she made the decision to dismiss.
60. The Respondent has placed reliance on the text exchanges produced at pp87-95 in relation to their denial of knowledge of the Claimant's pregnancy. It is correct that these exchanges do not contain anything from the Claimant saying she is pregnant until after she is dismissed but all that that proves is that she did not tell them of her pregnancy in those exchanges. It does not prove that she did not do so at another time. In any event, those text exchanges are about a range of topics, none of which the Tribunal considers would inherently or naturally involve a discussion of the Claimant's pregnancy.
61. The next question for the Tribunal is whether the Claimant was dismissed because she was pregnant or for a reason relating to her pregnancy. The Respondent denies this and advances alternative reasons for the Claimant's dismissal, that is, that there was not enough work and that the Claimant was unreliable.
62. The Tribunal bears in mind that, in cases, such as this it is very rare for a Respondent to admit to an unlawful reason for dismissal. The Tribunal, therefore, has to consider what inferences, if any, it can draw from the facts of the case.
63. The Tribunal has taken into account the following matters:-
- a. It has found Ms Iqbal's evidence (which was the only evidence led by the Respondent) to be unreliable and lacking credibility.

5 b. The Respondent has sought to deny that they were aware of the Claimant's pregnancy before making the decision to dismiss in circumstances where their own ET3 concedes that they were aware of this as a result of the text of 23 August 2021. Further, the Tribunal has found that the Claimant informed Ms Iqbal of her pregnancy on 16 August 2021.

10 c. As set out above, the Tribunal considers that there is a significant contradiction in the evidence from Ms Iqbal that the Claimant was employed because there was too much work and the reason for dismissal given on 24 August 2021 that there was not enough work.

15 d. It was asserted in Ms Iqbal's evidence that the Claimant was late to work "mostly everyday" but other than that bald assertion no evidence was led regarding the Claimant's timekeeping. Nothing about timekeeping was put to the Claimant in cross-examination and she cannot be taken to have accepted that this assertion was correct .

e. The Claimant did accept that she was absent due to ill health on the days which the Respondent said she had been absent.

f. No warning, either formal or informal, had been given by Ms Iqbal to the Claimant regarding her attendance or time-keeping prior to her dismissal.

20 g. It was asserted by Ms Iqbal that Sohail Iqbal (the director of the Respondent) had spoken to the Claimant about her attendance and time-keeping. Sohail Iqbal did not give evidence and this was not put to the Claimant in cross-examination. Given the Tribunal's view of Ms Iqbal's credibility and reliability, it gives no weight to this hearsay evidence and
25 finds that the Claimant was not spoken to by Sohail Iqbal as asserted.

64. The Tribunal bears in mind that the initial burden of proof in both of the claims advanced does not lie on the Respondent although the burden can shift to the Respondent in the discrimination claim in terms of s136 of the Equality Act. However, the lack of a credible explanation for the Claimant's dismissal is a
30 matter which the Tribunal can take into account in drawing any relevant inferences when considering whether the Claimant has discharged her burden.

65. In light of the issues highlighted above, the Tribunal is not satisfied that the Respondent has led sufficient reliable and credible evidence that the reason for the Claimant's dismissal was those asserted by the Respondent.
66. It was clear from the evidence that it was the Claimant's absences on 23 and 24 August 2021 which triggered Ms Iqbal's decision to dismiss. There was no evidence to suggest that the Claimant's employment was in jeopardy prior to this and the immediate proximity of those absences to when the decision to dismiss was made leads the Tribunal to conclude that, on the balance of probabilities, it was these absences which were the operative cause of the decision to dismiss the Claimant and she would not have been dismissed if she had not been absent on those dates.
67. The Tribunal concludes that those absences were as a result of a pregnancy related illness. The text messages from the Claimant's mother sent on 23 August describe the Claimant as being sick and unable to keep anything down. They also attribute this to the Claimant's pregnancy although it is indicated at the time that this is not certain. However, on 27 August 2021, the Claimant is issued with a sick line (p76) from her GP confirming that she was unfit for work due to hyperemesis. This is the medical term for severe nausea and vomiting which can be experienced during pregnancy more commonly known as "morning sickness".
68. The Tribunal finds that, on the balance of probabilities, the vomiting which the Claimant was experiencing 3-4 days before this diagnosis was more likely than not caused by hyperemesis especially given the proximity of the symptoms to the diagnosis and the lack of any evidence of some other cause for these.
69. This is a pregnancy related condition and where the Claimant was dismissed because she was absent due to this condition then the Tribunal finds that she was dismissed for a reason relating to her pregnancy or because of illness suffered as a result of her pregnancy. In reaching this conclusion the Tribunal has taken into account all the factors outlined above
70. In these circumstances, the Tribunal finds that the Claimant was unfairly dismissed in terms of s99 of the Employment Rights Act 1996 and was

discriminated against contrary to ss18(2)(b) and 39(2)(c) of the Equality Act 2010. These claims are well founded and are upheld.

- 5 71. Turning to the question of remedy, the Claimant does not have the necessary length of service for the Tribunal to make a basic award under s119 of the Employment Rights Act.
- 10 72. The Tribunal does consider it appropriate to make a compensatory award in terms of s123 of the Employment Rights Act and an award of compensation under s124 of the Equality Act in respect of loss of earnings. The Tribunal should be clear that it is making the same award, calculated on the same basis, under both of these provisions on a “belt and braces” basis but, to avoid double counting, there is only one sum being awarded.
73. The Claimant was declared unfit for work from 26 August to 26 November 2021, a total of 13 weeks.
- 15 74. There was no evidence led before the Tribunal that the Claimant was entitled to be paid any enhanced contractual sick pay from the Respondent and so, on the balance of probabilities, the Tribunal concludes that the Claimant, if she had not been dismissed, would have been paid Statutory Sick Pay by the Respondent during the period she was unfit for work.
75. The Claimant received no earnings during this period.
- 20 76. The amount of Statutory Sick Pay during the Claimant’s absence was £96.35 a week. The Tribunal, therefore, awards the Claimant a sum of £1,252.55 (One thousand, two hundred fifty two pounds and fifty five pence) as compensation for loss of earnings during the period she was unfit for work.
- 25 77. It was the Claimant’s own evidence that, after the end of the period for which she was unfit for work, she had not taken any steps to look for work. In these circumstances, the Tribunal considers that the Claimant has failed to discharge the duty to mitigate her loss and that it is not just and equitable to make any further award for loss of earnings.
- 30 78. To the extent that sum awarded as compensation for loss earnings relates to a claim of discrimination under the Equality Act, the Tribunal considered that it was appropriate to award interest on this sum in terms of the Employment

Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996. In this case, the date of the contravention is 24 August 2021 (that is, the date of dismissal) and the “day of calculation” is 24 February 2022 when the Tribunal made its award.

5 79. Applying the formula in the Regulations, the Tribunal awards the sum of £25.24 (Twenty five pounds and twenty four pence) as interest on the compensation for loss of earnings.

80. In relation to the discrimination claim, the Tribunal does consider that an award of compensation for injury to feelings should be made. Given the nature of the act of discrimination being the one-off act of dismissal and the Claimant’s relatively short period of employment, the Tribunal considers that an award in the first Vento band is appropriate.

81. Taking account of the Presidential Guidance on awards for injury to feelings and all the factors of the case, the Tribunal finds that the sum of £5,000 sought by the Claimant is an appropriate award in this case. It, therefore, makes an award of injury to feelings under s124 of the Equality Act of £5,000 (Five thousand pounds).

82. The Tribunal considered that it was appropriate to award interest on this sum in terms of the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996. In this case, the date of the contravention is 24 August 2021 (that is, the date of dismissal) and the “day of calculation” is 24 February 2022 when the Tribunal made its award.

83. Applying the formula in the Regulations, the Tribunal awards the sum of £201.51 (Two hundred one pounds and fifty one pence) as interest on the compensation for injury to feelings.

84. The Tribunal, therefore, makes a total award to the Claimant of £6,479.30 (Six thousand four hundred seventy nine pounds and thirty pence).

30 **Employment Judge: P O’Donnell**
Date of Judgment: 04 March 2022
Entered in register: 08 March 2022
and copied to parties