



EMPLOYMENT TRIBUNALS

Claimant

Miss Bianca King

v

Respondent

(1) Mr George Dodds; and
(2) Mortgage Compare Limited

Heard at: Cambridge

On: 13 and 14 January 2022
8 March 2022

Before: Employment Judge M Bloom

Members: Mrs A Carvell and Mr C Grant

Appearances

For the Claimant: In person

For both the Respondents: Mr J Munroe, Solicitor

JUDGMENT

The unanimous decision of the Employment Tribunal is:-

1. The Claimant's Claim for Discrimination based on the protected characteristic of pregnancy and maternity succeeds.
2. The Claimant is awarded compensation in the total sum of **£15,009.84** to be paid to her by the First and Second Respondents.
3. The Claimant's Claim of Breach of Contract / Unlawful Deduction of Wages succeeds and the Second Respondent is ordered to pay to her the sum of **£83.00**.

REASONS

1. In these proceedings the Claimant represented herself. The Respondents were represented by Mr Munroe, a Solicitor.

2. In determining the Claim the Tribunal considered the content of a Joint Bundle of Documents consisting of 233 pages. The Tribunal heard evidence from the Claimant herself. In addition, the Claimant called Ms Victoria Wright formerly an employee of the Respondent. The Tribunal heard evidence from the First Respondent, Mr George Dodds, the Company Secretary and Director of the Second Respondent. In addition the Respondent called Mr Rory Dodds who was a self-employed mortgage consultant with the Second Respondent between July and December 2018; Ms Sharon Lockwood a Bookkeeper employed by the Second Respondent between December 2017 and May 2019; and Ms Loraine Gee the Second Respondent's Compliance Director who was employed by them between November 2013 and July 2019. Each of the witnesses produced a written Witness Statement which they adopted as their evidence in chief. Each witness was subject to cross examination and they were asked questions by the Tribunal.
3. The Claimant brings to the Employment Tribunal two Claims. The first is a Claim for Breach of Contract and / or Unlawful Deduction of Wages regarding the sum of £83.00 representing a shortfall due to the Claimant in respect of outstanding maternity pay. At the commencement of the Hearing the Respondent confirmed to the Tribunal that the Claim was accepted and by consent, on that basis, Judgment is given in favour of the Claimant. The Second Respondent is ordered to pay to the Claimant the sum of £83.00.
4. The second Claim is a Claim brought by the Claimant pursuant to the provisions of Section 18 Equality Act 2010. Section 18 states:-
 - “(1) This section has the 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-
 - (a) Because of the pregnancy or
 - (b) Because of illness suffered by her as a result of it.
 - (3) A person (A) discriminates against a woman if A treats her unfavourably because she is on compulsory maternity leave.
 - (4) A person (A) discriminates against a woman if A treats her unfavourably because she is exercising or seeking to exercise or has exercised or sought to exercise the right to ordinary or additional maternity leave”.
5. The protected period begins when the pregnancy begins and ends at the end of a period of ordinary or additional maternity leave. The issue therefore to be determined in this case is whether or not the First and

Second Respondent treated the Claimant unfavourably because of her pregnancy and her maternity leave.

6. Unlike other claims for Direct Discrimination, it is not necessary for the Claimant to compare the way she was treated with the way a comparator had been or would have been treated. Section 18 Equality Act 2010 requires that the Claimant shows she has been treated “unfavourably” and no question of comparison arises. There is no dispute in this case that the unfavourable treatment alleged by the Claimant occurred during the protected period, i.e. between the date the Claimant informed the First and Second Respondent that she was pregnant and when her period of maternity leave would have ended.
7. The Tribunal reminds itself of the burden of proof in such cases which is set out in Section 136 Equality Act 2010. The leading cases on the burden of proof are Igen Limited v Wong 2005 EWCA CIV 142, Madarassy v Nomura International Plc 2007 EWCA CIV 33 and Hewage v Grampian Health Board, a decision of the Supreme Court in 2012. It is for the Claimant to prove, on the balance of probabilities, facts from which the Tribunal could conclude, absent any explanation from the Respondent, that the Respondent has discriminated against the Claimant. If the Claimant does show that, the burden of proof shifts to the Respondent to show that it did not discriminate as alleged by the Claimant.

Findings of Fact

8. On the balance of probabilities and having heard the evidence of the witnesses and having considered the documents in the Bundle, we come to the following findings of fact.
9. On 26 September 2016 the Claimant commenced her employment with the Second Respondent’s predecessor Swift Employment Corporation Limited. She was employed as a Processing Clerk based at the Second Respondent’s offices in Northampton. At the time of the Claimant’s allegations of unfavourable treatment she was still in the Second Respondent’s employment. The Claimant’s Claim to the Employment Tribunal was presented on 29 June 2019. There is some confusion as to what eventually happened to the Claimant’s employment after that date but because those events postdate the presentation of the Claim to the Employment Tribunal, we are not concerned with them. Our judgment is to determine the allegations made by the Claimant up to the date of presentation of her Claim.
10. On 27 October 2018 the Claimant sent an e-mail to Mr Dodds informing him she was pregnant and that her baby was expected on 2 March 2019. Mr Dodds did not acknowledge the e-mail and he made no reference to the Claimant regarding this notification.
11. About a week later the Claimant requested some holiday leave. Mr Dodds did acknowledge the request and spoke with the Claimant on the

telephone. The holiday request was granted. During the conversation Mr Dodds made reference to the Claimant's pregnancy for the first time. He mentioned to the Claimant that she *"must have been having some fun lately"*.

12. On 30 November 2018 Mr Dodds sent an e-mail to the Claimant requesting a meeting with her at the office on 3 December 2018. Ms Wright saw the Claimant in the office that day and expressed some surprise that the Claimant was there. Mr Dodds arrived at the office later that day and had a meeting with the Claimant. In that meeting the Claimant was shown a letter from Mr Dodds. He was the author of the letter. The letter stated that the Claimant was to be "laid off with immediate effect". Mr Dodds told the Claimant that the Respondent Company was having some financial difficulties and could not continue "to keep her". No other employee was given such information. Mr Dodds denied that in fact he had shown any such letter to the Claimant and denied its existence. The letter was not before the Tribunal because on the Claimant's own account she handed it back to Mr Dodds and never saw it again.
13. The Tribunal is completely satisfied as to the existence of that letter and the fact that it was shown by Mr Dodds to the Claimant. Ms Wright told the Tribunal that she herself had seen the letter; she had printed it at the request of Mr Dodds; and had scanned it to him. The Tribunal accepts without hesitation the evidence of the Claimant and Ms Wright who we both regarded as honest and reliable witnesses. We do not accept the evidence of Mr Dodds. When the Claimant informed Mr Dodds that she would be absent from work due to maternity leave from March 2019 he took the letter off her and said to her, *"that changes everything. I did not know it was so soon"*. It is evident to the Employment Tribunal and we conclude that the threat of laying off the Claimant was only made to her as a result of her notification to the First and Second Respondent that she was pregnant. On 3 December 2018 (page 84) the Claimant sent an e-mail to Mr Dodds making reference to the letter and her belief that she was, *"being discriminated against"* due to her pregnancy status.
14. Additional evidence was placed before the Employment Tribunal on 8 March 2022. The Respondent produced a list from Google which it had obtained within the previous twenty-four hours. In addition, the Respondent produced a Supplementary Bundle which on page 5 showed two e-mails to Victoria Wright from Mr Dodds dated 29 November 2018. The Google schedule also showed two e-mails from Mr Dodds to Ms Wright on the same day but at different times. The Respondent also produced a signed statement from a Mrs Mathi Anbarasu. Mrs Anbarasu provides IT services for the Respondent. She lives and works in India. No application had been made by the Respondent prior to 8 March 2022 to hear the evidence of Mrs Anbarasu either live or by video link. Her statement was of little value. It did not show one way or the other whether or not the e-mail to which Ms Wright gave evidence existed or not. The schedule and the e-mails on page 5 of the Supplementary Bundle also

proved to be of no assistance. There was a possibility that the e-mail itself could have been deleted. Without expert IT evidence being called by the Respondent we remain satisfied that the evidence of the Claimant and Ms Wright regarding the existence of the "*lay off letter*" was correct. We are further persuaded of that fact by reference to the letter being made in the Claimant's e-mail to Mr Dodds on 3 December 2018 (page 84 of the main Bundle) and in another e-mail of 30 January 2019 (page 92 of the main Bundle). In those e-mails the Claimant makes reference to the letter and being "*laid off before Christmas*". Mr Dodds did not respond to either e-mail by denying the existence of the said letter.

15. On 4 December 2018 Mr Dodds sent an e-mail to the Claimant (page 86). In it he reminds the Claimant of her working hours (9:00 a.m. until 5:00 p.m. or 5:30 p.m. depending on the day worked) and specifically ensuring that the Claimant took her lunch break between 1:00 p.m. and 2:00 p.m. Mr Dodds added the words, "*please ensure you leave on time and return by 2:00 p.m.*". This was an e-mail sent to the Claimant without any apparent previous difficulty with regard to her timekeeping.
16. There followed a series of criticisms by Mr Dodds to the Claimant regarding her standard of work; accusations regarding e-mails not being sent etc.; and being shouted at on various occasions. This form of behaviour directed to the Claimant by Mr Dodds had not been in evidence prior to the Claimant's pregnancy. On one such occasion the Claimant was so upset she had to leave a group video call and went to the toilet in tears. This event took place on 8 November 2018. We accept without hesitation the Claimant's account with regard to that meeting.
17. There were delays by the Respondent in responding to the Claimant's MAT1B Form but we find in fact these were due to the fact that Ms Lockwood who dealt with such matters within the company was not always in the office. We find that the absence of prompt replies did not constitute any act of unfavourable treatment because of the Claimant's pregnancy or intention to take maternity leave. They were simply lapses in administration.
18. On 30 January 2019 the Claimant met with Mr Dodds to discuss the Claimant's request to take her 2019 holiday entitlement before she went on maternity leave. Mr Dodds agreed but referred to her request as "*cheeky*". That was, we consider, an inappropriate comment and was aggravated by the fact that it was the Claimant's last day at work before she took the period of holiday and subsequently went on maternity leave.
19. The last day the Claimant was at work was 30 January 2019. The Claimant reported for work as normal. Shortly after doing so her computer was shut down; she was denied access to all systems and told she was not required to work. She was required to sit around for a number of hours before being allowed to go home. Ms Wright informed the Tribunal that she herself felt uncomfortable with the Respondent's actions directed towards the Claimant that morning.

20. In February 2019 the Claimant questioned non-payment of her maternity pay and had to make a number of requests to rectify the shortfalls. We find that the Claimant's requests were largely ignored by the Respondents.
21. On 24 April 2019 Mr Dodds informed the Claimant that all employees would be converted to "*self-employed status*". We were not given any reason or explanation for this communication by the First Respondent Mr Dodds. When the Claimant asked Mr Dodds why he was doing this she was told she would receive a communication from the Respondent's solicitors. No such communication was ever received by her or indeed was sent. The Claimant e-mailed Mr Dodds on 29 April 2019 (page 102) asking for more information only to receive a reply which stated..... "*This doesn't surprise me. You have been looking for a way to accuse us of this for months*" (i.e. the termination of the Claimant's employment). We find Mr Dodds' reply was uncalled for and was without merit.
22. The actions of the Respondents at the end of April 2019 continued a series of acts of unfavourable treatment alleged by the Claimant beginning in November 2018. Thus we find that the Claimant's Claims presented to the Tribunal on 29 June 2019 were presented within the statutory time period stipulated by the provisions of Section 123 Equality Act 2010.

Conclusions

23. The Tribunal concludes that the actions of the two Respondents with regard to the comment made by Mr Dodds that the Claimant had been "*having fun*"; with regard to the letter informing her that she was to be laid off; unwarranted and unsubstantiated allegations of poor performance where no such criticisms existed prior to November 2018; Mr Dodds shouting at the Claimant in meetings thereby distressing her to the extent she ended up in tears; by making reference to the Claimant's contractual hours in the context of an unnecessary form of communication; delays in paying her maternity pay; by referring to the Claimant's request to take holiday before the commencement of her maternity leave as "*cheeky*"; by closing down the Claimant's computer and instructing her not to work on her last day; the instruction regarding her employment status and the unsubstantiated accusation that the Claimant was trying to "*set up*" her termination of employment all amount to acts of unfavourable treatment.
24. In our judgment the treatment that we have found constitutes "unfavourable treatment". We have reminded ourselves of the guidance with regard to such matters provided by the Equality and Human Rights Commission in its Code of Practice on employment. The Tribunal is completely satisfied that these acts of unfavourable treatment were carried out by the First and Second Respondents because the Claimant had advised them that she was pregnant and due to take and subsequently did take maternity leave. No lawful or indeed any plausible alternative exists for that treatment.

25. We find that the Claimant's Claims of unfavourable treatment against the First and Second Respondents because of her pregnancy and her maternity leave, pursuant to the provisions of Section 18 Equality Act 2010, are well founded and therefore succeed. The First and Second Respondents are jointly and severally liable for the unlawful treatment.

REMEDY

26. The Tribunal heard further evidence on oath from the Claimant. The Claimant confirmed that she suffered no loss throughout her period of maternity leave. Her maternity leave lasted from March 2019 until March 2020. She did not return to work for the Second Respondent. She was not sent a P45 by the Second Respondent and there is some dispute between the parties as to whether or not she resigned from her employment or whether or not her employment was terminated by the Second Respondent. We come to no finding of fact in that regard because those events occurred a substantial time after the presentation of the Claimant's Claim to the Employment Tribunal.
27. We are solely concerned with the matters relevant to the Claimant's Claim presented in June 2019. We conclude there is no link between any financial loss suffered by the Claimant on or after March 2020 in respect of the proceedings before us. We must and do consider only losses suffered by the Claimant relevant to these proceedings. There is no financial loss. We are solely concerned therefore with consideration of an award for Injury to Feelings.
28. We remind ourselves that in respect of any consideration for such an award that it is designed to compensate the Claimant and not to punish either Respondent. We have taken note of the fact that the Claimant was extremely distressed by the events set out in this Judgment. Her pregnancy was her first pregnancy and she had been very much looking forward to the birth of her child. The Claimant was undoubtedly not only upset by the events but became stressed. Eventually she had to see her General Practitioner and was prescribed medication for anxiety and stress. At a time when she ought to have been looking forward to the birth of her child she had to deal with the events described in our Judgment and a subsequent deterioration in her health. We consider that it is appropriate to award the Claimant a sum by way of Injury to Feelings.
29. This is not a case which falls within the Lower Band of the Vento Guidelines. The acts of Discrimination did not consist of a one-off act. They continued over a period of time. We think that the circumstances of this case fall within the Middle Band of those Guidelines.
30. After due consideration we award the Claimant the sum of £12,500.00. Interest at the rate of 8% is to be awarded on that sum in addition. Interest runs from the last act of Discrimination, i.e. 29 April 2019 until the date of

the last Hearing, i.e. 8 March 2022. Interest at 8% on £12,500.00 amounts to the sum of £2.74 per day. Nine hundred and sixteen days have elapsed between 29 April 2019 and 8 March 2022 which results in an interest award in the sum of £2,509.84. That sum is added to the award for Injury to Feelings and results in a total award in the Claimant's favour in the sum of **£15,009.84**.

31. The First and Second Respondent are jointly and severally liable for payment of that sum.

28 March 2022

Employment Judge M Bloom

Sent to the parties on
04 April 2022

For the Tribunal Office: