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EMPLOYMENT TRIBUNALS

Claimant: Ms. A. Zawiasinska-Daszczyk
Respondent: WGC Limited
Heard at: East London Hearing Centre
On: 27, 28 and 29 April 2022
Before: Employment Judge A Ross
Members: Mrs G. McLaughlin
Mr P. Lush

Representation

Claimant: In person
Respondent: Ms. F. Henry, HR Director

RESERVED JUDGMENT

The unanimous Judgment of the Employment Tribunal is that:-

1. It is declared that the Respondent discriminated against the Claimant because of her pregnancy on 10 October 2019.
2. The remaining complaints of pregnancy discrimination dismissed.

REASONS

1. The Claimant was employed by the Respondent, a company which provides cleaning and housekeeping services to the hospitality sector, from 18 July 2019. At the time of the Preliminary Hearing, July 2020, the Claimant was on Maternity Leave, but in the event, she did not return to work for the Respondent.

Complaints and Issues

2. By a Claim presented on 15 October 2018, after a period of Early Conciliation between 12 November and 12 December 2019, the Claimant brought complaints of pregnancy discrimination under section 18 Equality Act 2010 (“EQA”).

3. During the Preliminary Hearing on 9 July 2020, the Claimant’s complaints were identified by the Tribunal. The complaints were set out in a list of issues by Employment Judge McLaren.

4. However, the list of issues and the Claim form itself lacked details of the complaints. At the Preliminary Hearing, the Tribunal ordered the parties to prepare witness statements. Before this Tribunal, the Claimant produced a witness statement for her Husband, and a document entitled “Justification Compensation”, which was directed largely towards remedy and general damages rather than a statement of the facts relevant to liability.

5. At the outset of this hearing, the Tribunal explained that in the first instance, the Tribunal would decide the question of liability – that is, whether any of the complaints succeeded.

6. Bearing in mind that the Claimant was in person, had limited English and did not appear to have understood that she was required to provide a witness statement directed to liability, the Tribunal permitted her to use her Claim Form as a statement, as well as permitting her to rely on the Compensation Justification document so far as it was relevant to liability. In order to further the overriding objective and ensure fairness to both parties and to put them on an equal footing, the Employment Judge asked a series of open question at the outset of the Claimant’s evidence, to set out dates for incidents relied on and the names of those alleged to be responsible for the treatment, and why the Claimant considered that the treatment was because of her pregnancy or pregnancy-related illness.

7. For ease of reference, the Tribunal drew up an amended List of Issues as follows, adding the Claimant’s particulars on each point of factual allegation, and taking into account that the Respondent admitted that if there was any unfavourable treatment, it took place during a protected period:

- (1) Did the Respondent treat the Claimant unfavourably by doing the following things:
 - 1.1. Sending her home? The Claimant’s case was that this happened on two occasions, but she could not recall the precise dates. On the first occasion, she was sent home by the lady in the office at Citadines Hotel; on the second occasion, she was sent home by Ms. Andreescu from the Holiday Inn Express, Chingford.
 - 1.2. Being regularly shouted at in the workplace and her work being criticised? The Claimant’s case was that she was shouted at by Ms. Andreescu; and criticised by Ms. Andreescu and Ms. Stefanska.
 - 1.3. Failure to adjust her duties and forced her to do work that she was unable to do? The Claimant alleged Ms. Andreescu was responsible

for this treatment; and that she was forced to change bedding and use chemicals and detergents.

1.4. Being told in writing that the Claimant would be dismissed in the seventh month of pregnancy if she did not carry out a job which had been forbidden to do by her doctor? The Claimant identified when giving further particulars, in her responses to the questions from the Employment Judge, the Letter of Concern from Ms Stefanska at p.65 as the document in question.

(2) Was the unfavourable treatment because of the pregnancy?

(3) Was the unfavourable treatment because of illness suffered as a result of the pregnancy?

The Hearing and the Evidence

8. The Claimant was upset at the commencement of the hearing. The Tribunal ensured that a full explanation of the procedure was provided. The Employment Judge assisted her to put her case, such as by asking open questions to allow her to particularise it. The Tribunal offered breaks where the Claimant became upset and agreed to each request for a break. There was no objection to these breaks. As a result, the Claimant was assisted so that she could put her case.

9. An Interpreter was provided for the Claimant by the Employment Tribunal. A break was allowed when requested by the interpreter. There was no suggestion that the Claimant was under any disadvantage by the fact that her evidence was given through an interpreter, but the Tribunal took the fact that evidence was being given through an interpreter into account and checked to ensure questions were understood and repeated as necessary.

10. The Respondent was represented by its HR Director, who was supported by its HR Manager.

11. The Tribunal heard oral evidence from the following witnesses:

11.1. The Claimant;

11.2. Ms. M. Stefanska, Area Manager;

11.3. Ms. C. Andreescu, Head Housekeeper;

11.4. Ms. M. Drwiega, Regional Manager at the relevant times (now Acting Operations Director).

The Tribunal found that none of the witnesses were entirely reliable. The Tribunal therefore addressed each factual issue separately, as explained below.

12. In addition, the Tribunal read a witness statement from Waldemar Daszczyk, the Claimant's husband. The Tribunal attached such weight to this statement as it thought fit, which was relatively little in circumstances in which he had not witnessed the incidents complained of and that he was not available for cross-examination.

13. The bundle was prepared by the Respondent. Page references in this set of Reasons refer to pages in that bundle.

The Facts

14. The Respondent provides housekeeping services to hotels, acting under a series of contracts with various hotels. It employs about 4,500 people.

15. The Claimant commenced employment with the Respondent on 18 July 2019 as a Room Attendant, based at Citadines Hotel Holborn.

16. The Claimant was absent sick from 7 August until 8 September 2019 and again from 17 September 2019 to 7 October 2019 with pregnancy-related illness, demonstrated by the Fit Notes in the bundle and confirmed in oral evidence.

17. On returning to work, the Claimant provided her employer with a Fit Note from her GP (at p.55) which stated that she was fit for work from 7 October 2019 and that she would benefit from a phased return and amended duties, specifically:

- (a) To start work from 8 October;
- (b) To work with a colleague during pregnancy;
- (c) To work reduced hours, 5 hours per day;
- (d) To work Monday to Friday only.

18. When the Claimant returned to work, on her first day, 9 October 2019, a Return to Work Assessment and Risk Assessment were carried out with her by Ms Stefanska, who had not previously met the Claimant. This was conducted in Polish. MS knew where the Claimant lived and knew that there was Holiday Inn Express, Chingford, near to her house, to which the Respondent provided housekeeping services, so she offered to transfer the Claimant to work there. The Claimant did not ask to be transferred at that point.

19. Ms Stefanska outlined the Claimant's amended duties to the Head Housekeeper at Citadines Hotel, in an email sent on 9 October 2019 (p62).

20. After the Claimant returned to work at Citadines Hotel, there was an incident. The Claimant's oral evidence was that the "*lady in the office*" (whom we infer was the Head Housekeeper, who, in effect, was the site manager of the Respondent) became very unpleasant and rude and that her attitude to the Claimant had changed after learning that she was pregnant.

21. The Claimant alleged that she had come in and asked how many rooms she would have to deal with and what work she would do, in response to which she was told that there was no work on that day and that it was her choice and decision to become pregnant and she should only be angry with herself; and as a result, the Head Housekeeper sent the Claimant home.

22. The Respondent contended in submissions that it did not know of this allegation against the Head Housekeeper at Citadines Hotel until it was revealed when the Claimant gave her further particulars in evidence. However, at 10am on the morning of 28 April 2022, the Tribunal had offered the Respondent the opportunity to apply to call any further

evidence that it wished to do so in respect of this allegation. The Respondent did not make such an application, and on further enquiry during submissions, it was apparent that this Head Housekeeper no longer was employed by the Respondent.

23. Moreover, the Tribunal concluded that the Respondent had some evidence that the Claimant was sent home by the Head Housekeeper at Citadines Hotel, evidenced by the email dated 4 December 2019 from Ms. Drwiega to the HR Manager (at p.74). It was accepted by Ms. Drwiega in oral evidence that this email showed that the Claimant had raised a complaint that she had not been paid for two days; but that one of these, 10 October, related to a midwife appointment as did the appointment on 31 October 2019. Ms. Drwiega could not explain how the time spent by the Claimant going to the midwife appointment on 31 October 2019 was to be paid only on the basis of the time off for the appointment, whereas payment for 10 October 2019 was to be made for the full shift. Further, Ms Stefanska had received a text from the Claimant, on or about 14-15 October, complaining about her treatment from the Head Housekeeper on or about 10 October 2019. The Tribunal concluded that this evidence and the document at p.74 supported the Claimant's account that shortly after she returned to work and told her employer that she was pregnant, she was sent home on one day.

24. Having assessed all the relevant evidence, the Tribunal accepted the Claimant's evidence about what the Head Housekeeper at the Citadines Hotel had said to her. The Claimant was in effect sent home; the Head Housekeeper said that there was no work for her. Moreover, the reference to her pregnancy in the comments made demonstrates that this treatment was because the Claimant was pregnant. We found that this occurred on 10 October 2019. The Tribunal reached these conclusions for the following reasons in particular:

- 24.1. The Claimant was consistent in her evidence about this incident; and she was not challenged on this evidence in cross-examination.
- 24.2. The Respondent adduced no evidence to dispute the Claimant's complaint about what was said to her by the Head Housekeeper at Citadines Hotel.
- 24.3. Although the Claimant did not make a formal complaint about what was said to her, the Tribunal found that her evidence on this issue was credible. It is apparent that she did raise the incident almost immediately with Ms Stefanska, because she requested a transfer to Holiday Inn Express, Chingford. In addition, the Claimant had weak English language skills and probably could not have understood a formal grievance procedure. Furthermore, the Claimant clearly pursued payment for both dates when she believed that she had been sent home, evidenced by the email at p.74 from Ms. Drwiega.
- 24.4. In her evidence, the Claimant could not recall the precise date of the incident, but her evidence was corroborated as to the date by the Respondent's own evidence, namely:
 - (a) The email at p.74, which showed that the Claimant had not been paid for work on 10 October 2019. The strong inference was that this was the date in question, because this was the day after her Return to Work assessment.

- (b) The oral evidence of Ms Stefanska tended to support the Claimant's account of this incident. As a result of what the Head Housekeeper had said to her, the Claimant tried to ring Ms Stefanska, but did not manage to do so, and then sent a text to her asking to transfer to Holiday Inn Express Chingford. The text referred to the Head Housekeeper at Citadines Hotel being unpleasant to the Claimant. The oral evidence of Ms Stefanska was that the gist of the text (which was not in the bundle) stated that no one knew what she should do at Citadines Hotel and the other Room Attendants would not work with her; and the Head Housekeeper had sent her home. Although the text was not in evidence, the account of it paints an account which is not inconsistent with the Claimant's account in evidence. The exception was the reference to the Room Attendants refusing to work with the Claimant. On balance, the Tribunal was not satisfied that this was part of the text sent by the Claimant; in the absence of the text, Ms. Stefanska was attempting to remember its contents and there was a risk (2.5 years later) that her memory was reconstructing events.

25. On 14 or 15 October 2019, the Claimant texted Ms. Stefanska to request a transfer to Holiday inn Express Chingford because of what the Head Housekeeper at the Citadines Hotel had done to her. Ms Stefanska transferred the Claimant immediately to the Holiday Inn Express, Chingford, and informed the Head Housekeeper there, Carmen Andreescu, of the Claimant's amended duties as set out on the Fit Note.

The Claimant's work at Holiday inn Express, Chingford

26. When the Claimant began work at the Holiday Inn Express, Ms. Andreescu paired the Claimant with another Room Attendant who was contracted to work five hours per day. There was no suggestion that they worked weekends. They worked together to prepare and clean rooms. They divided up the work between themselves; Ms. Andreescu did not direct them individually to do specific tasks.

27. Shortly after commencing work at the Holiday Inn Express, the Claimant provided Ms Stefanska with a Fit Note (p.63) following assessment by her GP on 21 October 2019, for period 21 October to 20 December 2019. This stated that the Claimant was fit for work with amended hours and duties because of pregnancy. In the comments section, it stated:

"Avoid using chemicals.

Reduce workload/hours (please discuss with her appropriate number of rooms – we discussed 15 rooms a day maximum is all she can do)"

28. After this Fit Note, Ms Andreescu explained that the Claimant stopped cleaning bathrooms and cleaned the bedrooms.

Whether the Claimant was sent home from Holiday Inn Express

29. The Claimant alleged that the second time that she was sent home by a Head Housekeeper was when she was sent home by Ms. Andreescu from Holiday Inn Express, Chingford. The Claimant could not recall when precisely this had happened. However, she confirmed that it was after a day that she had taken off because she was unwell.

30. We accepted the evidence of Ms. Andreescu that the relevant date was 29 October 2019.

31. On 28 October 2019, the Claimant had not attended work and, contrary to the Respondent's Sickness Absence policy, and contrary to Ms. Andreescu's practical application of that policy, she had failed to telephone Ms. Andreescu to inform her that she was not attending work that day, the reason for the absence and when she was likely to return to work. The Claimant had told a work colleague to tell Ms. Andreescu that she would be absent on 28 October.

32. There was no dispute about whether the Claimant followed the Sickness Absence policy. The Claimant did not allege that she had contacted Ms. Andreescu directly at any point on 28 October to inform her what was wrong and when she would return to work. The Claimant stated that she did not have her mobile number, and there was no answer when she called the Head Housekeeper's Office telephone. The Tribunal considered it unlikely that the Claimant did not have the mobile number of Ms. Andreescu bearing in mind the need to contact her when inside the hotel (which consisted of 102 rooms, over 3 floors). In any event, the Claimant had the mobile number of Ms Stefanska, so a message could have been sent to Ms. Andreescu via her or her mobile number obtained from Ms Stefanska.

33. As a result, Ms. Andreescu did not know if the Claimant would be attending work the following day (29 October) so she did not put the Claimant on the rota but secured the attendance of another Room Attendant. This was her normal practice in those circumstances, because Ms. Andreescu had to ensure that she had sufficient staff to cover the needs of the business which meant changing rooms (ready for new guests) or making up rooms (for returning guests) within a limited time period.

34. In fact, the Claimant attended work on 29 October 2019. In her oral evidence, Ms. Andreescu denied sending the Claimant home; she alleged that she had told her to contact MS to see if there was work elsewhere. This evidence was new information, inconsistent with her earlier witness statement and the note of her interview with Ms Stefanska in January 2020 (p89), in both of which Ms. Andreescu stated that she sent her home.

35. The Tribunal concluded that Ms. Andreescu had sent the Claimant home on 29 October. However, the Tribunal found that Ms. Andreescu had done this because the Claimant had failed to comply with the Respondent's sickness absence policy or procedure, and therefore Ms. Andreescu had covered her shift with another room attendant.

36. Having heard the evidence of Ms. Andreescu, the Tribunal found it was likely that any non-pregnant Room Attendant who had done what the Claimant had done would have been treated in the same way. The treatment was not connected in any way to the pregnancy or pregnancy related illness of the Claimant.

37. The Respondent did pay the Claimant for both dates on which she was sent home, evidenced by the Respondent's witness evidence corroborated by the Payroll information and the email at p.74.

Whether Ms. Andreescu shouted at the Claimant

38. The Tribunal found that the relationship between the Claimant and Ms. Andreescu was not a good one, with the Claimant becoming upset when Ms. Andreescu gave evidence. Having seen her give evidence, Ms. Andreescu was also upset to have had the allegations raised in these proceedings made against her, given the evidence that she had worked for sixteen years as a Head Housekeeper (including ten months Maternity Leave) without any such complaints. The Tribunal found that there were no facts from her time working at Holiday Inn Express from which we could infer that this poor relationship was because of the Claimant's pregnancy or pregnancy-related illness.

39. After her treatment by the Head Housekeeper at Citadines Hotel, the Tribunal considered it likely that the Claimant was sensitive to any criticism and perceived criticism to be hostile and linked to her pregnancy. The Claimant was a poor historian in her account of events at the Holiday Inn Express, Chingford. She accepted at places in her evidence that she could not recall events; and the Tribunal found that it was likely that her memory had reconstructed certain events so that she now perceived them in a negative way.

40. One example of the Claimant's negative perception of events was her evidence that she had been victimised by Ms. Andreescu keeping the Head Housekeeper's Office locked so that on occasion she could not leave when she wanted to because her belongings were in the Office. There was a simple explanation as to why the Office had to remain locked. This was for security reasons, because master keys, laptops, and guests' lost property were kept there. Only Ms. Andreescu and assistant would have access to Head Housekeeper office. The Room Attendants had no reason to go there, save when they had finished their rooms in order to sign out; and Ms. Andreescu aimed to return to the Office at about the time that the Claimant and her partner Room Attendant were due to finish their list of rooms. Moreover, the Claimant had the opportunity to keep her belongings in a separate changing room.

41. The Claimant's allegations included that she was shouted at regularly by Ms. Andreescu. The Claimant's evidence that this happened over the first couple of days after she moved there, on or about 15 October 2019. Ms. Andreescu denied this allegation, stating that she used the same tone with all her staff and that there was no point shouting.

42. On the issue of whether Ms. Andreescu shouted at the Claimant, the Tribunal preferred the evidence of Ms. Andreescu to that of the Claimant because:

42.1. The Claimant provided no particulars about what was shouted nor when exactly, nor in what circumstances. The Tribunal found her evidence on this to be vague and general, even allowing for the fact that she was giving oral evidence about events some 2.5 years ago.

42.2. There was no contemporaneous complaint about the alleged shouting made by the Claimant nor anyone else. In contrast, the Claimant had made a prompt complaint to Ms Stefanska about the treatment from the Head Housekeeper at Citadines Hotel.

- 42.3. Ms. Andreescu's evidence was clear and unwavering that she had not shouted at the Claimant or any other worker. She had worked for sixteen years as Head Housekeeper, had worked with thousands of Room Attendants and had no need to shout.
- 42.4. There was corroboration of Ms. Andreescu's evidence from Ms. Drwiega and Ms Stefanska who both said that there had been no concerns raised about Ms. Andreescu shouting or being over-critical.

Whether the Claimant was over-criticised by Ms. Andreescu

43. The Claimant alleged in oral evidence that the criticism from Ms. Andreescu was about how she performed her work and that every day Ms. Andreescu was dissatisfied with something. She stated that this was because of her pregnancy because everyone treated her normally at Citadines Hotel until she was pregnant.

44. The Tribunal preferred the evidence of Ms. Andreescu and Ms Stefanska. The Tribunal found that the Claimant was not unfairly criticised nor over-criticised for the following reasons.

45. Ms. Andreescu was in charge of housekeeping at the hotel, which consisted of 102 rooms. This necessarily meant that each day there were many rooms which needed bed linen and towels changing and cleaning (departure rooms) or cleaning and bed-making (stay over rooms). The work had to be completed within a certain time and to an acceptable standard. There were about five Room Attendants engaged on room preparation each day, depending on the level of occupancy.

46. Ms. Andreescu's role included supervising the Room Attendants and monitoring the work done. This meant that she would check that rooms were being completed to a sufficient standard.

47. Ms. Andreescu readily admitted that she did direct the Claimant and her partner to go back to rooms in order to complete them. However, on a daily basis, Ms. Andreescu would tell two or three other Room Attendants to go back to complete or correct defects in rooms that they had prepared.

48. The Claimant provided no real particulars to explain her case that she was over-criticised. The Claimant was working with a partner Room Attendant at Holiday Inn Express. The Claimant failed to explain when or how she was criticised, but not her partner.

49. The Tribunal accepted the evidence of Ms. Andreescu that, when she found a room prepared by the Claimant and her partner that was not up to standard, she searched for them and on entering whichever room they were working in, she would tell which one she saw first that they should go back and complete the work in the other room.

50. There was no evidence to support the Claimant's allegation that she was treated differently than the other Room Attendants.

51. Furthermore, Ms Stefanska's evidence tended to corroborate the evidence of Ms. Andreescu that some rooms prepared by the Claimant and her partner were not done

to an adequate standard. Ms Stefanska explained that on about 5 November 2019, the Claimant complained to her that Ms. Andreescu was asking her to return to rooms that she had cleaned due to poor standards. Ms. Andreescu informed Ms. Stefanska that she had indeed asked the Claimant and her partner Room Attendant to return to rooms because they were not changing bed linen when guests departed. Ms Stefanska considered that the failure to change bed linen between guests was unacceptable. She personally checked some rooms prepared by the Claimant and her partner and found that bed linen had not been changed.

52. As a result of her investigation, it was common ground that the Claimant and her partner Room Attendant, and another Room Attendant, were called into the Head Housekeeper's Office and each handed a Letter of Concern (p.65-66), which was identical in content. The two Room Attendants other than the Claimant who received the Letter of Concern were not pregnant.

53. The Letter of Concern, dated 13 November 2019, included:

"Following our meeting earlier today I would like to confirm our discussion during which we talked about current shortfalls in your work performance.

As I stated, your work is below that which is required and must improve.

My concerns are:

1. *Didn't change bed linen in departure rooms.*

....."

54. This Letter was relied upon by the Claimant as the document which informed her that she would be dismissed in the seventh month of pregnancy if she did not carry out a job forbidden by her doctor. However, the Letter of Concern stated no such thing.

55. In her oral evidence, when being asked for further particulars of her Claim, the Claimant stated that Ms Stefanska said the same thing to each person in the room, but separately, and that she did not want to speak with the Claimant. When asked why she believed that this treatment was because of her pregnancy, the Claimant said that she was treated worse than other colleagues.

56. When it was pointed out to the Claimant in later questions from the Employment Judge that she relied only on the letter at p.65 as being the source of her complaint about the threat to dismiss her, the Claimant changed her evidence about what took place in the meeting in the Head Housekeeper's Office. The Claimant alleged for the first time that Ms Stefanska told her when handing over the letter that it was the warning before dismissal and also said that she could resign if she did not like the job. Moreover, the Claimant alleged that Ms Stefanska said these things after the other Room Attendants had left the office and that no one else was present at the time.

57. Ms Stefanska's evidence was that she told the three Room Attendants that if the course of action in the letter was not followed, they would receive a warning under the disciplinary procedure, but that she would not have mentioned dismissal.

58. The Tribunal preferred the evidence of Ms Stefanska about the Letter of Concern, and what was said when it was issued, because:

- 58.1. There was the shift in the Claimant's evidence to allege for the first time at the end of her oral evidence that the threat of dismissal was made orally by Ms Stefanska.
- 58.2. The Claimant also alleged that she had given Ms. Andreescu a note from her GP before the Letter of Concern was issued, advising that the Claimant was not to change beds. However, Ms. Andreescu denied that she was given any medical letter or Fit Note at any point by the Claimant and no copy of this alleged document has been produced. We found that there was no such medical advice before the issue of the Letter of Concern, as further explained below.
- 58.3. The Letter of Concern clearly did not include any threat of dismissal. It was basically a standard setting letter, not a disciplinary sanction.
- 58.4. Ms Stefanska was unwavering in her evidence that no such threat of dismissal was made to the Claimant at any time.

59. The Tribunal found that the Letter of Concern was issued to the Claimant because of her poor performance of the Claimant and her partner Room Attendant, specifically by failing to change bed line between guests. The issue of this Letter was not because of the Claimant's pregnancy.

Whether the Respondent failed to adjust the Claimant's duties and whether the Claimant was forced to perform duties

60. The Claimant alleged that she was forced to perform duties which she was not able to do, contrary to the amendments advised by the GP on the Fit Notes. In her oral particulars, the Claimant stated that most frequently it was the number of rooms that they were required to prepare, but also complained about the number of hours of work and that she was required to use chemicals or detergents despite the Fit Note.

61. Ms. Andreescu and Ms Stefanska denied that the advised adjustments were not made or that the Claimant was forced to do duties that she was unable to do. Ms. Andreescu's evidence was to the effect that she did not micro-manage the Claimant and her partner Room Attendant as to how they divided the work; she did not force the Claimant to do any work, and accepted that her partner may have been doing much of the work in each room.

62. The Tribunal preferred the Respondent's evidence on this issue for the following reasons.

63. Primarily, the Claimant failed to provide particulars of the alleged failure to adjust her duties or to provide examples or particulars of when her duties were not adjusted or when she was forced to do work that she was unable to do.

64. In addition, the weight of the evidence pointed to the Respondent having made adjustments for the Claimant. For example, it was not disputed that her hours were reduced to five hours per day, Monday to Friday, and that she was paired with another Room Attendant.

65. The Fit Note of 21 October 2019 advised that the Claimant's workload should be reduced and proposed a maximum number of 15 rooms. The interpretation of this by the Respondent's witnesses was that the number of rooms prepared by the Claimant and her

partner Room Attendant should be less than 15 when divided by two. Applying that interpretation, the Claimant always prepared less than 15 rooms, demonstrated by the print out at p.69. Furthermore, the Claimant and her partner Room Attendant had divided their tasks so that the other Room Attendant cleaned the bathrooms after the Fit Note of 21 October 2019; and, in any event, the Fit Note did not specifically advise against the use of common detergents. The interpretation of the medical advice of 21 October 2019 by Ms. Andreescu and Ms Stefanska was not caused in any way by the Claimant's pregnancy, but by their desire to meet the needs of the housekeeping service at the hotel.

66. The Claimant's evidence that, with her partner Room Attendant, she cleaned 25-27 rooms per day was not accepted. There was no corroboration for such figures, which were contrary to the printout of hours and number of rooms completed at p.69, which had been inputted by the Head Housekeeper or their assistant each day that the Claimant worked, and contrary to the Respondent's oral evidence. The print-out showed only one date (23 October 2019) on which the Claimant worked more than 5 hours – when she worked 5 hours 25 minutes – which the Tribunal found to be the result of the amount of work fluctuating daily, depending on the number and state of the rooms. The Tribunal found that the Claimant's evidence was likely to be the result of her negative perception of events, rather than an accurate account of what in fact took place.

67. Although the Claimant alleged that she was not able to change bedding, and that she had given a medical certificate or Fit Note which stated this to Ms. Andreescu in mid-November 2019 before the Letter of Concern was issued, the Tribunal concluded that she was mistaken about this and that she was confused about the chronology of events. In the first place, the Letter of Concern was delivered on 13 November 2019; and there was no complaint raised at that point by the Claimant that she was being treated unfairly or contrary to medical advice. Secondly, there is no evidence to corroborate the Claimant's evidence, raised in oral evidence at this hearing, that Ms. Andreescu was handed any Fit Note or GP letter before 13 November 2019, and no such document has been put in evidence.

68. The Tribunal concluded that the Claimant did not provide Ms. Andreescu with any such Fit Note in early or mid-November 2019. The Tribunal found that on about 15 November 2019, the Claimant provided Ms Stefanska with a further Fit Note (p.70) following assessment by her GP on 15 November 2019, for the period 15 November to 6 December 2019. This stated that the Claimant was fit for work but with amended duties because of pregnancy related symptoms. Under the comments section, it stated:

*“Avoiding lifting and bending (this includes changing beds).
Follow advice from previous Fit Notes”*

69. This was the first medical advice which advised against the Claimant changing beds. The Claimant eventually accepted in evidence that she did not change bedding after this Fit Note was provided.

70. The Claimant subsequently provided the Respondent with a further Fit Note (p.73) following assessment by GP on 21 November 2019. This stated that the Claimant was not fit for work from 18 November to 5 December 2019, because of back pain and sciatica.

71. It is important to point out that the Claimant did no further shifts at the Hotel after 14 November 2019, evidenced by the print out of her hours at p.69 and the evidence of the Respondent's witnesses. The Claimant did not return to work at the Holiday Inn Express after 14 November 2019. She took her remaining holiday allowance before her Maternity Leave began.

Commencement of Maternity Leave

72. The Claimant commenced her Maternity Leave on 20 December 2019, evidenced by the letter dated 6 September 2019 (p.44) which was based on the MATB1 form received (which included Expected Week of Confinement dates confirmed by her GP) and the contemporaneous internal Respondent email at p50.

The Law

Pregnancy and Maternity Discrimination

73. Section 18 EQA, where relevant, provides as follows:

“18 Pregnancy and maternity discrimination: work cases

- (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—
 - (a) because of the pregnancy, or
 - (b) because of illness suffered by her as a result of it.”

Pregnancy: Less Favourable Treatment

74. Although there was no place for a hypothetical male comparator in the case of the dismissal of a female employee for being pregnant, it is not wrong for an employment tribunal to make such a comparison in order to determine whether pregnancy or some other reason was the ground for the particular treatment of a pregnant female employee: *Madarassy v Nomura plc* [2007] ICR 867.

75. A Tribunal has two routes open to it:

- (1) To identify the attributes of a hypothetical comparator; or
- (2) Go straight to the question: why was the complainant treated as she was?

Proving Discrimination and the Burden of Proof

76. In *Igen & Others v Wong* [2005] EWCA Civ. 142, at paragraph 76, the Court gave comprehensive guidance as to the proper approach to the burden of proof in direct sex discrimination cases after the reversal of the burden of proof.

77. In *Igen v Wong*, at paragraph (11) of the Appendix, it is pointed out that, if the burden of proof shifts, it is necessary for an employer to prove that the treatment was in no sense whatsoever on the grounds of the protected characteristic, because “no discrimination whatsoever” is compatible with the Burden of Proof Directive.

78. However, it is important not to make too much of the role of the burden of proof provisions at section 136. They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they do not apply where, as in this case, the Tribunal is in a position to make positive findings on the evidence one way or the other: *Hewage v Grampian Health Board* [2013] UKSC 37.

Submissions

79. The Tribunal heard brief oral submissions from each party. The Tribunal assisted the Claimant by reminding her both at the beginning of the hearing and at the point of submissions that it would assist her case and the Tribunal if her arguments could be based on the list of issues set out at the Preliminary Hearing. In the event, the Claimant made only a very brief submission of a more general nature.

Conclusions

80. Applying the above law to the findings of fact made, the Tribunal reached the following conclusions on the issues for determination.

Issue 1: Unfavourable Treatment

81. The Claimant was treated unfavourably by the Head Housekeeper at the Citadines Hotel, on 10 October 2019, by being sent home in a rude way, which was critical of the fact that the Claimant was pregnant. The relevant findings of fact are set out at paragraphs 20-21 above.

82. It is true that the Claimant was subsequently paid for 10 October 2019, but this is more relevant to compensation and, possibly, to the level of award for injury to feeling. The inference from the email at p.74 and the date on which it was paid (after Early Conciliation had commenced) is that the Claimant was paid for this date because she had raised a complaint about it, which had become a “*HR case*”.

83. The remainder of the alleged unfavourable treatment is not proved on a balance of probabilities, for the reasons set out in our findings of fact above.

Issues 2-3: Was the proven unfavourable treatment because of pregnancy or pregnancy-related illness?

84. The Tribunal repeats its findings of fact at paragraph 24 above.

85. There is no need for the Tribunal to ask itself how a comparator would have been treated. The reference to her pregnancy in the comments made by the Head Housekeeper at the Citadines Hotel demonstrates that this treatment was because the Claimant was pregnant. In any event, the Tribunal concluded that this treatment would not have happened to a non-pregnant Room Attendant, because the language used could not have been used to a Room Attendant who was not pregnant.

Summary

86. The complaint of pregnancy discrimination by the Head Housekeeper of the Citadines Hotel is upheld. The remaining complaints are dismissed.

87. The Remedy Hearing pencilled in for 19 September 2022 shall now proceed. However, the parties should consider whether they can reach terms of settlement, to avoid the expense, inconvenience and upset that a further hearing may produce. Given that only one part of the complaints succeeded, the Claimant should consider again the extent and value of her claim.

88. Prior to the listed Remedy Hearing, a Preliminary Hearing is required. The parties shall receive Notices of Hearing to confirm both the date of the Preliminary Hearing and the Remedy Hearing.

Employment Judge A Ross

29 April 2022