EMPLOYMENT TRIBUNALS

Claimant: Ms Stanikzai

Respondent: IISAA Ltd

Heard at: **Reading (via CVP)** **On:** **13 and 14 June 2022**

Before: **EJ Milner-Moore**
Ms Bhatt
Mr Wharton

Representation
Claimant: Ms Hussain (Counsel)
Respondent: Mr Saeed (Solicitor)
Interpreter: Mr A Bahrami

RESERVED JUDGMENT

1. The claimant was wrongfully dismissed by the respondent.

2. The respondent has contravened section 39(2)(d) of the Equality Act 2020; the respondent discriminated against the claimant because of her pregnancy by:
    a. reducing the claimant's hours of work from 37 hours a week to 15 hours a week;
    b. blocking the claimant on WhatsApp; and
    c. dismissing the claimant.

3. The claims that the respondent discriminated against the claimant because of her pregnancy by:
    a. behaving in a hostile manner or ignoring her requests; and
    b. taking no immediate action when the claimant asked to reduce her hours of work in July 2020
    are not upheld.

4. Under section 123 of the Equality Act 2010, the Tribunal has jurisdiction to hear the complaints listed at 2(a) to (c) above because the claim was presented in time, or in the alternative, because it is just and equitable to extend time.

REASONS

Claims and Issues

1. This case was listed for a two day hearing to consider issues of liability and remedy relating to claims of wrongful dismissal and pregnancy and maternity discrimination under section 18 Equality Act 2010. At the beginning of the hearing, and following discussion with the parties, we identified that the following issues arose for determination.

2. **Wrongful Dismissal:**
    a. Was the claimant dismissed by the respondent or did she resign from her employment?
    b. If the claimant was dismissed when did that dismissal take effect?
    c. Did the claimant receive sufficient notice of dismissal?

3. **Pregnancy/maternity discrimination – Section 18 Equality Act 2010**
    a. Did the respondent do any of the following things?
        i. After being informed of the claimant's pregnancy, Mr Rasheed behaved in a hostile manner by ignoring the claimant or responding to her requests in an aggressive manner
        ii. In July 2020, the claimant asked to reduce her hours of work but Mr Rasheed took no immediate action in response to that request
        iii. After reducing the claimant's hours of work to 14 hours a week in August 2020, the claimant asked to work 25 hours a week and Mr Rasheed told the claimant that she could work 14 hours a week or leave
        iv. In late August 2020, Mr Rasheed blocked the claimant on WhatsApp
        v. On 23 September 2020, the respondent dismissed the claimant without warning or notice

    b. If so, did this amount to unfavourable treatment?
    c. If so, did the respondent treat the claimant unfavourably because of her pregnancy ?
    d. It was not disputed that, if established, the treatment complained of took place in the "protected period".

4. **Time limits and extension of time:**
    a. Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 16 September 2020 may not have been brought in time.

    b. Were discrimination complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

        i. Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?

ii. If not, was there conduct extending over a period?
iii. If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
iv. If not, were the claims made within a further period that the Tribunal thinks is just and equitable?

Matters that arose during the hearing and evidence received

5. The claimant does not have English as a first language. She was assisted in giving her evidence by a Farsi interpreter. There had been an error in relation to the booking of the interpreter and so we were not able to make a start with hearing evidence until 12pm on the first day of the hearing. Consequently, there was insufficient time for us to give a liability judgment and reasons orally. We therefore reserved our decision on liability and have fixed a further date for a remedy hearing to take place on 28 September 2022 and made orders in relation to the preparatory steps to be taken for that hearing.

6. When discussing the claims being brought and issues arising on those claims, Mr Saeed argued that the claim of pregnancy and maternity discrimination under section 18 of the Equality Act should be limited to considering whether the claimant's dismissal was an act of unfavourable treatment. He argued that although the other matters were referred to in the ET1, it appeared that they were being referred to by way of background rather as specific allegations of unfavourable treatment. He also argued that the allegation of hostile and aggressive behaviour by Mr Rasheed was a general assertion which was not supported by any specific detail, despite the respondent's having requested such detail.

7. We considered whether it would be consistent with the overriding objective to read the ET1 in this confined way and concluded that it would not be. The parties had not agreed a list of issues and so there had been no agreement that the allegation of unfavourable treatment should be confined in the way proposed by Mr Saeed. The matters identified as instances of unfavourable treatment all appeared in the ET1. These matters are all addressed by Mr Rasheed in his witness statement. The respondent had plainly anticipated that it would be required to address the issues in evidence. To the extent that the claimant had failed to provide any specific detail in relation to the allegation of hostile or aggressive treatment that was a matter that the Tribunal could consider in determining whether the claimant had discharged the burden of showing a prima face case.

8. We were provided with an agreed bundle of documents. We heard evidence from the claimant, who was assisted by a Farsi speaking interpreter. We also heard evidence from Mr Rasheed, the manager of the restaurant in which the claimant worked. Although the claimant alleged that her husband had witnessed one of her meetings with Mr Rasheed, the claimant's husband had not been put forward as a witness. During the hearing the claimant proposed that he could give evidence, but we declined to allow this on grounds that it would cause prejudice to the respondent, given that no witness statement had been produced setting out the evidence that he would give.

9. The parties had produced a report from a handwriting expert to address the question of whether the claimant had signed the "starter form". The expert concluded that it was unlikely to have been the claimant who signed the form, but the expert's report did not address who else might have signed it, or why. We agreed to accept the expert's report in to evidence but we indicated that we did not consider it necessary to hear from the expert given that the issue was of limited relevance and given that the contents of the report did not appear to be a matter of dispute. Neither party objected to that approach.

Facts

10. The claimant's employment with the respondent began on 27 November 2019. The claimant was employed as a kitchen assistant in a Pizza Hut in Aldershot. The respondent is a company which operates the restaurant as a franchise. The claimant earned £8.21 an hour but her rate of pay increased to £8.72 an hour from April 2020. The manager of the restaurant was Mr Rasheed and he had held that position for around a year at the time of the events at issue.

11. On joining the respondent's employment, the claimant was not provided with a contract of employment or a statement setting out the key terms of her employment as required under section 1 of the Employment Rights Act 1996. There was a handbook setting out some of the terms on which the claimant was employed but the claimant was not shown this nor was a copy provided to her. The handbook confirmed that the claimant was entitled to 28 days' leave a year and that holiday was to be booked 4 weeks in advance by giving written notice. In fact, Mr Rasheed never required written notice of holidays, employees simply asked for holiday and if the rota could accommodate it and they had accrued leave to take it would be approved.

12. When new employees begin work with the respondent they are required to fill out a "starter form" which records their basic information (name, address, bank details, emergency contact details and so forth). A starter form was completed for the claimant and it has been signed with her name. There is no controversy about the substantive contents of the form, the claimant accepts that these are correct. However, the claimant, maintained that she did not sign the form and that it must have been signed by someone else. This much appears to be borne out by the expert's report. Mr Rasheed could not recall how the starter form came to be completed and he did not know who had signed the form. His evidence, which we accepted, was that employees were sometime assisted to complete the form by colleagues. We did not consider it necessary to make any detailed finding on this matter, which was of no real relevance to the issues that we needed to determine in this case. However, we found that the claimant did not sign the starter form, that it was likely that someone completed the form for her with details that she provided and that the form was signed on the claimant's behalf. Whilst not good practice to sign on someone else's behalf without their express agreement, we considered it unlikely that whoever did this had any improper motive in doing so, given that the contents of the form were correct and uncontroversial.

13. When the claimant first began working for the respondent she was working around 18 hours a week. Her hours and times of work were variable. Mr Rasheed would WhatsApp the claimant each week to tell her what shifts were available. We had, in the bundle of documentary evidence, the records of the WhatsApp messages between Mr Rasheed and the claimant. These were brief and largely focused on Mr Rasheed communicating rota arrangements but occasionally the claimant engaged with him to explain that she could not work a proposed shift. The messages between the two were cordial. On one occasion the claimant says that she won't be able to work a shift because she has had an argument with her husband and she asked Mr Rasheed not to tell anyone. Mr Rasheed replied to tell the claimant not to worry.

14. In June 2020, the claimant asked Mr Rasheed to increase her hours. She explained that she needed to increase her hours of work because otherwise she would not meet the requirements for her visa. Mr Rasheed agreed to this and from June 2020 he gave the claimant shifts that amounted to about 37 hours a week.

15. In late June/early July 2020, the claimant discovered that she was pregnant. She informed Mr Rasheed of her pregnancy and he congratulated her. The claimant's evidence was that, after she made him aware of her pregnancy, Mr Rasheed was hostile towards her and ignored requests that she made. Mr Rasheed denies this. We noted that the claimant's evidence did not describe any specific occasions on which Mr Rasheed behaved in a hostile manner. The WhatsApp messages which they exchanged in the period from July onwards were not consistent with Mr Rasheed behaving in a hostile manner towards the claimant or ignoring her requests. In one, message in early July he asks whether she is having a nice holiday. In another exchange on 13 July, the claimant says that she can't work a proposed shift on the following day because she has too much work to do at home, Mr Rasheed messages the claimant shortly afterwards to provide a revised shift pattern and confirm that the revised shifts would amount to 37 hours. It is also clear from the messages that Mr Rasheed was arranging for the claimant to be picked up at home and taken to work by the delivery drivers.

16. The claimant stated that she had asked Mr Rasheed to reduce her hours of work at some point during July, because she was finding work difficult due to the effects of her pregnancy and that Mr Rasheed had ignored that request. Mr Rasheed denied this. There was no evidence in the WhatsApp messages of the claimant requesting to work shorter hours during July, although the claimant frequently made requests via WhatsApp, nor did the claimant's evidence detail any specific occasions when she had made such requests and been refused. We considered it unlikely that the claimant had asked to reduce her hours of work during July.

17. On one occasion on 12 August 2020, the claimant said that she would not be able to come in because she was "not ok". There was no evidence that the claimant told Mr Rasheed that she was feeling ill as a result of her pregnancy. Mr Rasheed said that he could not get anyone to cover her shift and so the claimant came in. The claimant had made a similar requests on a previous occasion, once when she said she was not fit to to attend work

because she had food poisoning and once asking to take leave. On both those occasions, whether the claimant was granted or refused leave was dictated by whether cover was available.

18. On 17 August 2020, Mr Rasheed sent the claimant her shifts for the upcoming week via WhatsApp. The claimant messaged him a few moments later to say, "*Hello Zahid 1:00 to closing is too long shift for me I am pregnant Doctor told me I can't do more than 8 hours a day sorry*". Mr Rasheed replied a few moments telling the claimant not to worry. About an hour later the claimant's husband also messaged Mr Rasheed to say, "*you know she is pregnant and we want she reduce her work hours I know you are in difficult time some time staff in holiday, but is will be hard for my wife to work 9 or 10 hours, the doctor advice she can work 6 to 7 hours, I will be appreciated if you do something about it, otherwise if something happen it will be Pizza hut company responsibility*". Mr Rasheed replied to the claimant's husband to say not to worry and that he would reduce the claimant's hours this week and that from next week he would reduce them more. The claimant's husband thanked him. Shortly after sending that message, he sent the claimant a revised rota in which she worked 5 shifts ranging between 5 and 8 hours and amounting to about 32 hours in total. His message stated "*that's new causal for this week as your husband has requested me to reduce your hours. I hope this will be ok*". The claimant thanked him.

19. On 24 August 2020, Mr Rasheed sent a WhatsApp message to the claimant with her new shifts for that week; he had allocated her 3 shifts totalling 15 hours. We found that Mr Rasheed had been alarmed by the message sent by the claimant's husband and the suggestion that the respondent could be liable for any injury caused to the claimant or her baby as a result of working excess hours. He therefore reduced the claimant's hours very considerably on the basis of his assumption that the claimant wanted to work significantly fewer hours each week. However, in doing so, he failed to understand that the claimant was not seeking to work significantly less than 37 hours a week – what she wanted was to work those hours in shifts not lasting for more than 8 hours on each occasion.

20. On 24 August 2020, the claimant met Mr Rasheed. There is a conflict of evidence as to what occurred during that meeting. The claimant stated that she told Mr Rasheed that she needed to work more hours than were being offered, in particular she needed to work at least 25 hours a week in order to meet the requirements of her visa. She stated that she agreed with Mr Rasheed that she would be away from work for two weeks whilst she moved to a new house, taking one week's annual leave and one week's unpaid leave. The claimant stated that, during this meeting, she was told by Mr Rasheed that she could work the hours being offered or leave. Mr Rasheed's account was that, at a meeting at which he and his manager Mr Ahmed were both present, the claimant asked for more hours. Mr Rasheed, explained that he had reduced her hours at her husband's request and that she and her husband needed to resolve matters between themselves and decide what they wanted. The claimant responded by saying that she wanted the respondent to issue her with a letter dismissing her. When Mr Rasheed refused to provide such a letter the claimant said that she would leave. Mr Rasheed says that there was no agreement that the claimant

would be off work for two weeks on annual leave/unpaid leave and that when she subsequently failed to attend for work he assumed that she had resigned.

21. We did not accept Mr Rasheed's account of that discussion. It was not disputed that the claimant was asking to work more hours during that meeting and that generally the claimant was keen to ensure that she had sufficient work to protect her visa position. We did not consider it plausible that the claimant would have resigned from her employment altogether when she was concerned to ensure that she worked enough hours to protect her position in relation to her visa. We also considered it implausible that neither Mr Rasheed nor Mr Ahmed had made a contemporaneous note of what, on the respondent's account, had been a fairly extraordinary meeting in which the claimant demanded to be issued with a letter of dismissal and, when her request was refused, stated that she would resign. Nor did the respondent write to the claimant after the event recording that she was understood to have resigned or take any other administrative action to process her resignation. When, a month later, the respondent did eventually issue a P45, that document specified 20 September 2020 as the date on which the claimant's employment had terminated rather than 24 August 2020.

22. Mr Rasheed had not completed any risk assessment when the claimant first notified him of the pregnancy, nor did he do so on 17 August 2020 when she informed him that she was finding work difficult due to her pregnancy. On 24 August 2020, Mr Rasheed did complete a pregnancy risk assessment document in relation to the claimant. However, he did not discuss the risk assessment with the claimant before completing it. The risk assessment records that the claimant was not being asked to undertake any heavy lifting or cleaning, that she was being given breaks and often given lifts to and from work. It also records that Mr Rasheed had reduced the claimant's hours of work but that the claimant was asking for more hours. That suggests that the risk assessment must have been completed after the discussion on 24 August had taken place. It is hard to understand why, if the claimant had indeed resigned, the risk assessment made no mention of this.

23. We found that, during the discussion that took place on 24 August 2022, the claimant asked to increase her hours of work, and that Mr Rasheed was unwilling to do so because he was concerned that this would run counter what he understood the claimant's husband to be requesting. We found that Mr Rasheed was worried that if he allowed the claimant to work more hours there would be further complaints from her husband or the claimant or that the respondent would be held responsible if the claimant were allowed to increase her hours and then subsequently became unwell. We considered that he did tell the claimant that these were the hours on offer and she could take it or leave it.

24. At some point later in August, Mr Rasheed blocked the claimant on WhatsApp so that she could no longer contact him. He offered conflicting explanations about how and why this had occurred. In his witness statement his explanation was ambiguous and he appeared to suggest that he had done so because his son had on occasions deleted/blocked contacts

inadvertently whilst using the phone to play games. It was not clear why this would have warranted blocking the claimant. Later he suggested that he blocked the claimant and that it was not wrong to have done so because she had resigned by the time that it happened.

25. Subsequently, at some point in the week of 7-12 September 2020, the claimant attended the restaurant with her husband. Again, there is a conflict of evidence as to what occurred. Mr Rasheed's evidence is that the claimant came to the restaurant asking to be paid her outstanding pay for her weeks' annual leave and that she made clear that she would not be returning to work. The claimant gave slightly different accounts of the meeting in the claim form and in her witness statement. In the claim form she stated that she went to the restaurant and was told that she would be contacted about her shifts and that she was later sent her P45. In her witness statement she stated went to the restaurant to ask about shifts and that Mr Rasheed told her she didn't need to come to work. She understood this to be a dismissal and she asked for her holiday pay. She was subsequently sent her P45 by email on 23 September 2020.

26. We made the following findings in relation to the events during September 2020. We have found that the claimant did not resign during the meeting on 24 August 2020. We considered that, having heard nothing from Mr Rasheed about future shifts, the claimant went to the restaurant make enquiries. Mr Rasheed told her that she needn't come to work. The claimant believed the respondent to be intending to dismiss her and this was confirmed when, on 23 September 2020, the respondent issued the claimant's P45 to her by email with a leaving date of 20 September 2020. The claimant was entitled to statutory minimum notice of one week but did not receive this.

27. The claimant contacted ACAS to begin the process of ACAS conciliation on 15 December 2020. A conciliation certificate was issued on 4 January 2020. The claimant filed her claim with the Tribunal on 1 February 2021. Accordingly, events that occurred before 16 September 2020 were out of time subject to the exercise of the discretion to extend time.

Law

Pregnancy discrimination

28. Section 18 of the Equality Act 2010 provides:

> *(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.*
> *….*
>
> *(6)The protected period, in relation to a woman's pregnancy, begins when the pregnancy begins, and ends—*
> *(a)if she has the right to ordinary and additional maternity leave, at the end of the additional maternity leave period or (if earlier) when she returns to work after the pregnancy;*

(b)if she does not have that right, at the end of the period of 2 weeks beginning with the end of the pregnancy.

29. **In O'Neill v Governors of St Thomas More Roman Catholic Voluntary Aided Upper School** 1996 IRLR 372 EAT the EAT stated that, in relation to a complaint of pregnancy discrimination:

"The critical question is whether, on an objective consideration of all the surrounding circumstances, the dismissal or other treatment complained of is on the grounds of pregnancy or on some other ground. This must be determined by an objective test of causal connection. The event or factor alleged to be causative of the matter need not be the only or even the main cause of the result complained of. It is enough if it is an effective cause"

30. Section 136 of the Equality Act 2010 deals with the approach to be adopted by Tribunals in relation to the burden of proof

136 (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.

31. The approach to be adopted by a Tribunal to the application of the burden of proof is detailed in the judgment of the Court of Appeal in **Igen v Wong** [2005] IRLR 259 CA

"(1) Pursuant to section 63A of the SDA , 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. 41 or s. 42 of the SDA 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.
(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 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.
(5) It is important to note the word "could" in 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 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.
(7) These inferences can include, in appropriate cases, any inferences that it is just and equitable to draw in accordance with section 74(2)(b) of the SDA from an evasive or equivocal reply to a questionnaire or any other questions that fall within section 74(2) of the SDA .
(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 section 56A(10) of the SDA . This means that inferences may also be drawn from any failure to comply with any relevant code of practice.
(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.
(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 .
(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.
(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."

32. It is not sufficient to establish a primary case for a claimant simply to show less favourable or unfavourable treatment, there must be "something more" which could enable a Tribunal to find that the protected characteristic could be the cause of the treatment **Madarassy v Nomura** [2007] IRLR 246 CA. That something more may be found in matters such as the making of discriminatory comments, in a breach of a code of practice, in evasiveness or failure to provide information that the respondent could reasonably be expected to provide etc.

33. Section 123 of the Equality Act 2010 deals with the application of time limits as follows:

123(1) Subject to section140B proceedings on a complaint within section 120 may not be brought after the end of—
(a) the period of 3 months starting with the date of the act to which the complaint relates, or
(b)such other period as the employment tribunal thinks just and equitable.
(2)Proceedings may not be brought in reliance on section 121(1) after the end of—

(a)the period of 6 months starting with the date of the act to which the proceedings relate, or
(b)such other period as the employment tribunal thinks just and equitable.
(3)For the purposes of this section—
(a)conduct extending over a period is to be treated as done at the end of the period;
(b)failure to do something is to be treated as occurring when the person in question decided on it.
(4)In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—
(a)when P does an act inconsistent with doing it, or
(b)if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

34. An act, or acts, may be treated as "conduct extending over a period" where there is a discriminatory policy or rule or where there was a "continuing state of affairs" in which a claimant was subject to discrimination as opposed to a " *succession of unconnected or isolated specific acts, for which time would begin to run from the date when each specific act was committed*" **Hendricks v Commissioner of Police for the Metropolis** [2003] IRLR 96 CA. A "*relevant but not conclusive factor*" in determining whether acts are connected will be whether the same individuals were involved in the acts in question **Aziz v FDA** [2010] EWCA Civ 304. Only acts which are found to be discriminatory can form part of a course of conduct extending over a period **Lyfar v Brighton and Sussex University Hospitals Trust** [2006] EWCA Civ 1548.

35. In considering whether, in the exercise of the Tribunal's broad discretion, it is just and equitable to extend that statutory time limit it is relevant to consider the prejudice that each party would suffer as a result of the decision reached and to have regard to all the circumstances of the case — in particular, the length of, and reasons for, the delay; the effect of delay on the cogency of the evidence; whether the respondent has cooperated in relation to any information requests, whether the claimant acted promptly once aware of the facts which gave rise to the claim; and the steps taken by the claimant to obtain appropriate advice once aware of the potential claim.

Conclusions

Wrongful dismissal

36. There is a dispute between the parties as to whether the claimant resigned, either on 24 August 2020 or during the subsequent meeting which took place in the week of 7 – 12 September 2020, or whether the claimant was dismissed by the respondent, either during that September meeting, or subsequently when the P45 was issued. We have found that the claimant did not resign from her employment either on 24 August 2020 or during the subsequent meeting during September 2020. We have found that during the September meeting Mr Rasheed told the claimant that she did not need to come to work. The claimant believed herself to have been dismissed but these words were somewhat ambiguous. However, we considered that the

respondent made it clear, beyond doubt, that the claimant's employment had terminated when, on 23 September 2020, it issued a P45 to her by email, recording that her employment had come to an end on 20 September 2020. We therefore find that the respondent dismissed the claimant on 23 September 2020 when it issued her P45. The claimant was entitled to one weeks' notice of dismissal. The respondent failed to give such notice.

Pregnancy discrimination

Was the claimant subject to unfavourable treatment by the respondent during the protected period? Did the respondent treat her unfavourably because of her pregnancy?

37. The claimant makes a number of allegations of unfavourable treatment on the part of the respondent. It is not disputed that any unfavourable treatment occurred during the protected period. Addressing the specific complaints advanced as allegations of unfavourable treatment on grounds of pregnancy we came to the following conclusions.

After being notified of the claimant's pregnancy Mr Rasheed behaved in a hostile manner by ignoring the claimant or responding to requests that she made aggressively

38. We considered that (leaving aside the events that occurred on or after 24 August 2020) there was no evidence that after the claimant notified him of her pregnancy, Mr Rasheed treated her in a hostile manner or that he ignored her requests. The claimant's statement provides no detail of any specific occasions when he did so. We considered that the evidence was not consistent with Mr Rasheed behaving in a hostile manner. The claimant accepted that Mr Rasheed had congratulated her on her pregnancy and that he had arranged for drivers to take her to and from work. The only contemporaneous evidence (in the form of the WhatsApp messages) shows that Mr Rasheed generally responded to the claimant's requests positively. Although he asked the claimant to work on 12 August 2020 when she had said she was not feeling ok, there was no evidence sufficient to establish a primary case that he did so because of the claimant's pregnancy. There was no evidence to suggest that the claimant told him that any illness was pregnancy related. Although he asked her to work, he did so because there was no other staff member to cover for her. He had adopted a similar approach on previous occasions before the claimant became pregnant.

In July 2020, the claimant asked to reduce her hours of work but Mr Zahid took no action

39. We did not consider it likely that the claimant had, in fact, requested to reduce her hours of work during July 2020 or that Mr Rasheed had refused any such request. The claimant tended to send WhatsApp messages when she wanted to adjust her hours of work and there is no evidence of her sending such messages during July. The claimant's statement did not point to any specific occasion when she had made a request to reduce her hours and had been refused. We considered it likely that the claimant requested to reduce her hours of work for the first time when she sent a WhatsApp

message to Mr Rasheed on 17 August 2020. When that occurred Mr Rasheed responded positively and did adjust the claimant's hours.

On or around 24 August 2020, Mr Rasheed having reduced the claimant's hours to 15 hours a week behaved aggressively told the claimant that she could either work 15 hours a week or leave

40. We preferred the claimant's account of what transpired during the meeting with Mr Rasheed of 24 August 2022 and have found that she did not resign during that meeting. We have found that the claimant asked to work more hours and that Mr Rasheed refused to allow this. We considered that this was unfavourable treatment because he had cut the claimant's total hours of work very significantly when this was not what the claimant was asking for, in fact, what she wanted was to work shorter shifts.

41. We considered that, in the circumstances, the claimant had established a primary case sufficient to shift the burden of proof to the respondent to show that such treatment was in no sense whatsoever on grounds of pregnancy. We considered that the "something more" required in the **Madarassy** case was present. We noted that the respondent had failed to produce any record of the discussion on 24 August although it was one which one would expect to have been documented. We noted that Mr Rasheed had failed to conduct a pregnancy risk assessment when the claimant first notified him of her pregnancy. When the claimant and her husband made clear that they considered that there were health and safety risks for the claimant as a pregnant women if she were required to work long shifts. Mr Rasheed failed to engage with those concerns in the appropriate manner, which would have been to conduct a pregnancy risk assessment in discussion with the claimant so that he understood the nature of the concerns and put appropriate arrangements in place. Had he done so he would have understood that what the claimant was primarily seeking was to work shorter shifts but, instead, he simply cut the claimant's hours by over 50% based on his assumptions about what hours the claimant's husband wished the claimant to work in light of her pregnancy.

42. We consider that Mr Rasheed took this decision because of the claimant's pregnancy. He had been alarmed by the message from the claimant's husband suggesting that the respondent would be responsible if the claimant worked excess hours and this adversely affected her pregnancy. For that reason he initially cut her hours of work from around 37 hours to 25 hours. However, he appeared to believe that the claimant's husband wished her to work even fewer hours and so for the week of 24 August 2020 he allocated her only 15 hours work.

43. When the claimant asked him to increase her hours and to give her at least 25 hours a week he refused and he did so because of the claimant's pregnancy. We considered that he did so because he was concerned that the claimant's husband might make further complaints about safe working arrangements during pregnancy or that the respondent might be held liable if she worked more hours and her pregnancy was adversely affected. We also considered that he was frustrated at what he saw as the conflicting messages that he was receiving from the claimant and her husband about

how much work the claimant could safely do. However he had not understood that what the claimant and her husband were concerned about was the impact of working long shifts. Had he held a meeting with the claimant and conducted the pregnancy risk assessment in discussion with her, he would have formed a better understanding of what the claimant considered she needed in order to continue working safely during her pregnancy.

On or around 24 August 2020, Mr Rasheed blocked the claimant from the WhatsApp group used to set the staff rota and on 23 September 2020, the respondent dismissed the claimant without warning or notice by sending her P45 by email

44. We have found that the claimant had not resigned on 24 August 2020 but that Mr Rasheed did subsequently block the claimant on WhatsApp. We consider that this was unfavourable treatment because it made it more difficult for the claimant to communicate with him, it also indicated that Mr Rasheed was no longer intending to offer the claimant any work. We noted and drew an adverse inference from the fact that Mr Rasheed offered conflicting explanations about why he had blocked the claimant on WhatsApp.

45. We have found that the respondent did dismiss the claimant. The words spoken by the respondent during the September meeting where somewhat ambiguous but once the claimant received her P45 by email it was clear that the respondent was dismissing her. The respondent gave no notice of dismissal and provided no explanation for the dismissal. That was plainly unfavourable treatment.

46. We considered that the claimant has established a primary case that this adverse treatment was accorded to her because of her pregnancy and, the burden of proof having passed to the respondent, we consider that the respondent had failed to show that this treatment was in no sense whatsoever on grounds of pregnancy. As with the refusal to allow the claimant to increase her hours of work, we considered that Mr Rasheed had taken this step because of the claimant's pregnancy; he blocked on WhatsApp and he no longer wished to offer her work because he was concerned that he would continue to receive complaints from the claimant and her husband about safe working arrangements during pregnancy or that the respondent would be held responsible if anything went wrong with the claimant's pregnancy whilst she was working for the respondent.

Time limits

47. Events which occurred before 16 September 2020 are out of time unless the Tribunal concludes either that the earlier events form part "conduct extending over a period" and ending with an "in time" discriminatory act or that it would be just and equitable to extend time.

48. We have found that dismissal occurred on 23 September 2020 when the claimant received her P45 and so the claim is "in time" in so far as it relates to dismissal. We considered that the discriminatory acts which we have

found to have occurred on or around 24 August 2020 constituted "*conduct extending over a period*" on the part of the respondent. The conduct complained of was carried out by a single individual, Mr Rasheed, and the events are closely linked. Essentially the discriminatory conduct began on 24 August 2020 with Mr Rasheed's decision to radically cut the claimant's hours as a knee jerk and inappropriate response to the concerns expressed by the claimant and her husband about the length of her shifts and, after blocking the claimant on WhatsApp when she protested about this, that conduct culminated in the decision to dismiss the claimant.

49. If we are incorrect about the timing of the decision to dismiss and that dismissal occurred in the week of 7-12 September, we would consider it just and equitable to extend time in the circumstances. The claimant does not have English as a first language which would have made the process of obtaining information about her rights and instructing a representative more complex. Any delay as it relates to the decision to dismiss is minor; it is a matter of around a week. There is no evidence of any such delay causing prejudice to the respondent. We considered that it would not be just and equitable for the claimant to be deprived of a remedy in the circumstances.

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Employment Judge **Milner-Moore**

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Date 21 July 2022

RESERVED JUDGMENT & REASONS SENT TO THE

PARTIES ON

21 July 2022

FOR EMPLOYMENT TRIBUNALS