



THE EMPLOYMENT TRIBUNALS

Claimant

Respondent

Ms H Moxon

v

**(1) London Borough of Islington
(2) Mr Y Zavery**

Heard at: London Central

On: 20 March 2023 (In chambers)

Before: Employment Judge Glennie
Ms H Craik
Mr T Harrington-Roberts

JUDGMENT ON RECONSIDERATION APPLICATION

The judgment of the Tribunal is that its judgment sent to the parties on 29 December 2022 is confirmed.

REASONS

1. By its judgment and reasons sent to the parties on 29 December 2022 the Tribunal found (by a majority) in the Claimant's favour on one complaint of direct discrimination because of pregnancy contrary to section 17(2) of the Equality Act 2010. By an application dated 10 January 2023 the Respondents applied for reconsideration of that finding. The Employment Judge gave the application preliminary consideration under rule 72(1) of the Rules of Procedure and did not refuse it. The Claimant submitted a written argument as to why the judgment should be confirmed. All parties agreed to the reconsideration being determined without a hearing, on the documents provided.
2. The Employment Judge had been in the minority on the original decision. He considered that, in relation to the application for reconsideration, he should not continue to maintain his minority view, but should take the majority's decision as binding on him and should participate fully in the reconsideration process (in the same way as a member of a Tribunal with a minority dissenting view on liability nonetheless takes part in the decision-making on remedies).

3. The Tribunal re-read its reasons for the original judgment, focusing on paragraphs 40-48 and 96-99, where it dealt with the complaint in question. This concerned the sending of an email by Mr Zavery to HR in which he wrote that he had been “asked to clarify [the Claimant’s] entitlements to maternity etc as she would have become pregnant whilst on previous maternity leave.”
4. Mr McCombie on behalf of the Respondents advanced two arguments. The first concerned the “unfavourable treatment” element of section 17(2). The Claimant’s allegation was framed in terms of Mr Zavery “ridiculing” her. Mr McCombie accepted that no special meaning should be attached to that word, but argued that it would have to mean some form of mocking by Mr Zavery, which in turn involved a degree of severity and an element of intention on his part.
5. The observation in paragraph 45 of the original reasons that “it would have been better” if Mr Zavery had raised the question with HR without mentioning it to the Claimant reflected the view of all 3 members of the Tribunal, who differed on whether this amounted to unfavourable treatment. On the latter point, the majority considered that this was sufficiently serious as to amount to mocking or belittling the Claimant, or something equivalent to that. The majority considered that it was an implied criticism of her for becoming pregnant while on maternity leave. The majority also considered that the implied criticism cannot have been accidental or unintended since, as stated in paragraph 47, it was foreseeable that the Claimant would have been worried by it (including foreseeable by Mr Zavery), and that this could have been avoided.
6. Mr McCombie’s second argument was that the majority had not identified an effective discriminatory cause of the treatment. The majority considered that at least a more than trivial part of Mr Zavery’s reason for sending the email and copying it to the Claimant was the fact that she was pregnant, seen against the background that she had become pregnant while on maternity leave. The majority took into account the unanimous finding that (contrary to Mr Zavery’s evidence and in accordance with the Claimant’s evidence) there was a telephone conversation on the subject which preceded the sending of the email. The majority considered that this showed, as they had originally found, that Mr Zavery took a negative view of the Claimant becoming pregnant while on maternity leave. This in turn involved two elements, namely becoming pregnant and being on maternity leave. The fact that the Claimant was pregnant was therefore a part of the reason why Mr Zavery sent and copied the email.
7. The Tribunal therefore concluded that the original judgment should be confirmed. The majority considered that their original conclusions should stand, for the reasons given above. The Employment Judge, while not resiling from his different original conclusions, concurred with the majority’s reasoning based on their original findings.

Employment Judge Glennie

Dated:26 April 2023.....

Judgment sent to the parties on:

26/04/2023

For the Tribunal Office