



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss E L Delpinto

**Respondent:** Farmhouse Kitchen Huntleys Limited

**Heard at:** Liverpool (by video hearing)

**On:** 30 November 2023

**Before:** Employment Judge Aspinall

## REPRESENTATION:

**Claimant:** In person, supported by Ms Nuttall

**Respondent:** No Appearance

## Reasons

**Today I decided that Emma succeeded in her complaints. The company has to pay her £666.80 and there will be more to be paid. Here are the Reasons why. I have chosen to send them to Emma and Martin urgently today because there was a lot for her to take in and because he was not there.**

### Background

1. Ms Delpinto is happy for me to call her Emma. She was supported today by a specialist peri-natal mental health team nurse, Danielle. They agreed to call me Judge and to refer to the respondent as Huntleys and her boss, Mr Yates as Martin.

2. Emma has autism. She was very anxious about today's hearing. She has a baby son, Archie who was born on 2 November 2023 and was with her today.

3. Emma did not need any adjustments to join in the hearing today. We all agreed that Archie's needs must come first and that we would take a break if he needed his mum. He was feeding and then sleeping and Danielle held him while Emma talked to me and we only had to take a very short break to settle him.

4. We agreed to use ordinary words and where there were legal words we agreed I would explain them. We made a list of things we would cover and Danielle wrote that down. We went through the list and I checked back with Emma to make sure she was understanding what was happening. Danielle had to go just before the end of the hearing so I agreed to send Emma and Martin an email today summarizing what happened.

5. During our hearing today Emma took an oath and told me what had happened to her. I accepted what she said as her evidence in this case. We looked at her Claim Form and she referred to messages on her phone. I found her to be truthful and to be careful to get things right. She told me when she was not 100% sure and when she was.

## **Facts**

I accept Emma's evidence and find the following facts:

6. Emma used to work as a chef on national living wage, around £10.42 per hour, for Huntleys. She started there in December 2019. She was over 21. She worked different working patterns. Sometimes five days a week sometimes seven days a week. Overall, on average, she worked a forty hour week. She was paid through her bank national living wage rate and was paid cash in hand for two days sometimes. In this case I have only considered the amounts of money paid through the bank. She did not have a written contract of employment and did not receive payslips.

7. In 2022 Emma had a miscarriage and was very distressed. In 2023 she became pregnant again and was very worried about losing the baby. She told Martin Yates, her boss at Huntleys, that she was pregnant as soon as she found out, in early February 2023. She asked for a risk assessment to be done and one was done early on in her pregnancy but when she asked for a second assessment, specifically in relation to heavy lifting, Martin ignored her requests. She had to lift hot heavy pans, for example of soup, and she called for help but none was given.

8. Emma was bleeding in her pregnancy and was very worried that this might mean a miscarriage. She went to A and E several times in fear of losing her baby, to be checked. Sometimes she left work to go to A and E. Martin was not happy about this. Apart from bleeding Emma was feeling very unwell as her pregnancy progressed and asked for time off. Martin did not like her asking for time off. He told her she could not have time off unless she found cover herself.

9. Emma felt uncomfortable asking for time off to go to her ante-natal appointment. She had about 6 appointments between February and June. She was told she could not have paid time off for ante-natal appointments and had to take annual leave instead.

10. Emma did some online research about her rights to maternity pay and made a screenshot of her rights, including that maternity leave might begin on 24 September

2022, and she sent them to Martin. Emma wanted to know that she would be paid maternity leave. Martin said he would not pay for her maternity leave and said that she would have to take the matter up with the government. Emma explained that she understood that the Huntleys pays her but claims it back or offsets what has been paid from its payments to HMRC. Martin said he would not pay and that Emma could take it up with the government or HMRC herself.

11. On 29 June 2022 Emma was feeling very unwell. She was bleeding and she was not feeling well enough to work as a chef in the kitchen. She messaged Martin to ask for a few days off. She explained she was bleeding and not well because of her pregnancy. Martin replied that she could have time off if she could find cover. She approached two colleagues but could not get cover. She went back to Martin and said she couldn't get cover but really wasn't well enough to work. Martin said "fine" by message meaning she could have a few days off. His short reply was hurtful to Emma because she knew he was not happy about it and was not supportive of her.

12. On the morning of Friday 30 June 2023 Martin messaged Emma to ask if she could come in. She said she could not and that he had agreed she could have a few days off. He replied "I'm going to have to let you go". She was devastated. She asked for the reason for her dismissal. Martin replied "you have left us in the shit again".

13. Emma was paid final pay for days she had worked. She "hounded" this was her word, Martin about the ante-natal appointment days and eventually Martin paid for three days but required her to take annual leave for the other three maternity appointments and was not paid for them. She was due three days pay when she left for those appointments. She chased and chased for pay as she was in a desperate situation financially, not able to pay her bills, not able to buy food, pregnant and facing eviction. She was referred to foodbank. Emma was supported to apply for maternity allowance but her claim could not be processed as she did not have payslips from Huntleys.

### **The List of Issues**

14. I had to decide:

- (1) What was the reason for Emma's dismissal? Was it because she had asked for time off because she was pregnant and unwell due to pregnancy?
- (2) Was Emma treated unfavourably when Martin:
  - (i) refused to do a second Risk Assessment
  - (ii) required her to carry on lifting hot heavy pans
  - (iii) refused to pay her for attending ante-natal appointments
  - (iv) required her to take annual leave for ante-natal appointments

- (v) refused to pay maternity pay and told her to take it up with HMRC
- (3) Was this because of her pregnancy?
- (4) Was Emma required to take annual leave for maternity appointments leaving her three days short on pay on termination of employment?
- (5) What compensation and injury to feelings award should the company be ordered to pay?

### **The Hearing**

15. There were no documents other than the claim form and Tribunal file for me to look at and there were no witness statements today.

16. Emma took an oath and told me what happened to her. With Emma's permission Danielle told me, not on oath, about the impact of losing her job on Emma. Emma has had extreme financial hardship so that she was almost evicted and has been referred to foodbank and has only survived on loans from family and friends. She used charities to obtain items she needed for Archie and continues to struggle to pay bills and feed herself. She has autism, an eating disorder, anxiety and depression and has been referred for assessment for other psychological conditions. She has been so distressed that she has thought about suicide. She is supported by Danielle and by her partner.

17. Martin did not attend the hearing. He was sent notice of the claim on 17 August 2022 and on that same date was told that he had to send the Response on behalf of the company by 14 September 2022. No response was received. He was told about today's hearing and that a date had been reserved for a hearing next year. Because no response was received Martin was sent a letter telling him that a judge would make a decision today. He was entitled to attend and did not do so.

### **Relevant Law**

18. I used law from sections 23, 104 and 99 Employment Rights Act 1996 and from Section 18 Equality Act 2010. I explained the rights that those sections gave Emma and we called them 3a, b and c as below and I explained what would happen if Emma succeeded in those claims:

- 3a Unfair dismissal – section 99 leads to basic award and compensatory award (lost earnings and lost maternity pay)
- 3b Discrimination – Section 18 leads to an amount for “injury to feelings” to reflect the impact of the unfavourable treatment on Emma
- 3c Unauthorised deductions – section 23 leads to three days gross pay

19. I then went off camera and took time to think about what Emma had said, the Claim Form and the law. I came back on camera, Danielle had to go but Emma was

happy to carry on by herself to hear my decision. I told her my decision that she had won on each of 3a, 3b and 3c.

### Applying the Law to the Facts

20. I find that Emma was automatically unfairly dismissed by the company. The reason for her dismissal was because she had requested time off for pregnancy related reasons. This is apparent to me because of what Emma said on oath about the exchange of messages with Martin on 29 and 30 June 2023 and because of the timing of the dismissal, the morning after Emma asked for time off because she was bleeding and unwell. This is not a fair reason for dismissal. Emma was unfairly dismissed.

21. I find that Martin treated Emma unfavourably because of her pregnancy when he (i) refused to do a second Risk Assessment, (ii) required her to carry on lifting hot heavy pans, (iii) refused to pay her for attending ante-natal appointments, (iv) required her to take annual leave for ante-natal appointments and (v) refused to pay maternity pay and told her to take it up with HMRC.

22. I find that Huntleys wrongly withheld three days pay from Emma on termination of employment for time off to attend ante natal appointments.

23. Emma's claims succeed. Because Martin and Huntleys have not defended the claim and are not here today, and in view of Emma's ongoing severe financial hardship, I am ordering Huntleys to pay the basic award and the outstanding pay to Emma immediately. We will then have a hearing on 18 December 2023 to decide how much Huntleys has to pay Emma for her compensatory award and her injury to feelings award. I am also likely to award her money for not having had payslips, that could be as much as the total amount of unnotified deductions made from her pay, the difference between her net and gross pay from April 2020 to June 2023.

### Remedy – case management

24. Next we made plans for the Remedy (that means how much to order Huntleys to pay) Hearing on 18 December 2023. In Tribunal we call this planning "case management" and what I have set out below in bold is a **CASE MANAGEMENT ORDER**, that means it must be done.

25. So, we have to prepare for me to decide how much to award Emma for unfair dismissal compensatory award and for discrimination injury to feelings.

26. The compensatory award can include (a) lost wages from the date of dismissal, to the date when the maternity leave would have begun and the maternity pay to the end of the maternity period and possibly lost wages beyond that date. It can also include (b) any other losses Emma had because she had no wages, things like lost use of any benefits at work and (c) an amount for loss of statutory rights. This means that when Emma worked at Huntleys she had over two years' service so had the right to bring a claim to the employment tribunal for unfair dismissal. When Emma goes

back to work she will have to start again to build up two years' service before she has the right to claim unfair dismissal. She has lost the right to bring a claim until she earns it again after two years. She can be compensated for that loss and the usual amount would be between £ 250 and £ 500. **Emma must put all of the amounts she claims for compensatory award (a) (b) and (c) and any other amounts she claims onto a page showing her sums of how she worked it out and send it to the Tribunal by 16 December 2023. She must copy that page to Martin.**

27. Emma is also due an award for injury to feelings. This is for the unfavourable treatment. I have to look at the impact of the treatment on Emma to decide how much that should be. There is guidance for me as to how to value that. It is in a case called Vento and Emma and Danielle can look that up on the internet to see how Vento Guidelines help judges to get the awards for injury to feelings right. I can look at how long the unfavourable treatment lasted and at the distress, upset and hurt it caused Emma. Danielle was able to tell me some of that today and she is going to type up what she said, an email will do, and copy it to the Tribunal for my attention and to Martin. Emma might also ask her partner and family members to type up what they have seen the effect of the unfavourable treatment to be on Emma. This is different from the effect of losing the job – I must look at just the effect of:

- (i) refusing to do a second Risk Assessment
- (ii) requiring her to carry on lifting hot heavy pans
- (iii) refusing to pay her for attending ante-natal appointments
- (iv) requiring her to take annual leave for ante-natal appointments
- (v) refusing to pay maternity pay and telling her to take it up with HMRC

28. **Emma should also type up in an email what she says the effect of those things was on her and how long it lasted.** Danielle told me that it made Emma's mental health worse and that she has referred Emma for further assessment. I will need to know that detail of how the treatment during her pregnancy (before she was dismissed) affected her health.

29. **Emma is going to send her email and any other information from her partner or family and friends about the impact on her to the Tribunal and to Martin by 16 December 2023.**

30. Martin should be aware that the amounts for compensatory award and injury to feelings are likely to be thousands of pounds each. Emma tells me that he has changed the name of the business but I see that Huntleys is still active at Companies House and he is a director. I will allow Martin to speak at the next hearing and argue for me to award less than she claims to Emma.

31. I remind Emma and Martin that they must co-operate with one another to help me decide how much to award Emma. Martin must arrange for Huntleys to pay Emma the £666.80 I have already ordered immediately. Martin is reminded that Emma is

vulnerable and that any contact he makes must be copied to the Tribunal for me to see and must be kind.

---

Employment Judge Aspinall

Date: 30 November 2023

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

30 November 2023

FOR EMPLOYMENT TRIBUNALS

**Public access to employment tribunal decisions**

Judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.