



# EMPLOYMENT TRIBUNALS

**Claimant:** Heather Todd

**Respondents:** 1: Shaun Collins  
2: 52 Street Events  
3. 52 Street Events Supplies Ltd

**HELD BY CVP**

**ON: 12 September 2023**

**BEFORE:** Employment Judge Rogerson

## REPRESENTATION:

**Claimant:** in person

**Respondents:** No response entered.

**First Respondent (Mr Shaun Collins)** joined the hearing at 2pm and left at 3:01pm.

# RESERVED JUDGMENT

## (RULE 21 EMPLOYMENT TRIBUNALS RULES OF PROCEDURE)

1. The complaint of pregnancy and maternity discrimination made against the 1<sup>st</sup> and 3<sup>rd</sup> respondents succeeds.
2. The complaint of unfair dismissal made against the 1<sup>st</sup> respondent succeeds.
3. The complaint of arrears of wages (holiday pay and statutory maternity pay) made against the 3<sup>rd</sup> respondent succeeds.
4. Compensation is awarded in the total sum of **£37,310.05** calculated as follows:
  - 4.1 Arrears of Wages:
    - 4.1.1 Statutory maternity pay in the gross sum of **£635.41**.
    - 4.1.2 Holiday pay in the gross sum of **£2,175.00**
  - 4.2 Unfair Dismissal
    - 4.2.1 Basic Award  
C was aged 34 at EDT.

19 years' service.

Gross Weekly Wage £194.75

Basic Award= 15.5 weeks x £194.75= **£3,018.63**

4.2.2 Loss of statutory rights- **£585**

4.2.3 Compensatory award- £844 + £4,272 +£1,154+ £5,692 = **£11,962**

4.3 Injury to feelings in the sum of **£10,000**.

4.4 Interest on Injury to feelings in the sum of **£1,061**

4.5 25% uplift in accordance with section 207(2) Trade Union and Labour Relations (Consolidation) Act 1992 (the ACAS Uplift) to the amounts awarded (see 4.1,4.2,4.3.) increasing the award by the sum of **£7,094.01**.

4.6 Compensation of 4 weeks pay in accordance with section 38 Employment Rights Act 2002 (failure to provide written particulars of employment) in the sum of **£779**.

5. The 1<sup>st</sup> and 3<sup>rd</sup> respondent are held jointly and severally liable to pay the claimant the compensation sums awarded under 4.3 and 4.4 and 4.5.

6. The 3<sup>rd</sup> respondent is solely liable to pay the claimant the compensation sums awarded for unfair dismissal and arrears of wages under 4.1, 4.2, 4.5 and 4.6.

## REASONS

1. I heard evidence from the claimant. She provided some documents at the hearing which I considered as well as the available information on the file.

2. I found the claimant was a credible witness. She gave direct answers to questions in an honest and open manner. She was able to direct me to contemporaneous documentary evidence corroborating her oral evidence.

3. From the evidence I saw and heard I made the following findings of fact:

4. The claim form was presented on 5 May 2023. The claimant brought complaints of unfair dismissal, pregnancy and maternity discrimination, arrears of wages and holiday pay.

5. The claimant had engaged in early conciliation before presenting her claim. She provided EC certificates for all three respondents.

6. Early conciliation started on 2 May 2023 and ended on 5 May 2023. The address for service of the claim on the 1<sup>st</sup> respondent ("Mr Shaun Collins") was his home address. Mr Shaun Collins is the managing director/sole shareholder having significant control of the third respondent "52 Street Event Supplies Ltd" the employer at the material time.

7. The claim form was served on the employer at the claimant's place of work, the registered office of the third respondent (Unit 11, Fallbank Industrial Dodsworth, Barnsley S75 3LS).

8. The claimant started working on 25 August 2003. She was employed in the role of "Account Manager". She had an unblemished 19 plus year record of service prior to her summary dismissal on 2 May 2023.

9. It was clear from the way the claimant spoke about her job that it was for her an extremely important part of her life. It gave her financial independence and the ability to provide for her children. It gave her identity, purpose status and enjoyment.

10. She was employed to work 20.5 hours per week. The hours fit round her childcare responsibilities and enabled her to contribute to the family-household expenses. Her wages were used to pay for her daughter hobbies, social activities, and clothes to relieve the financial burden on her husband who worked full time. She had planned to continue working for the company for the future.

11. When she started working Mr Shaun Collins was an individual trading as "52nd Street". In May 2021 he incorporated and registered the business as "52nd St Event Supplies Limited". Mr Collins is the sole shareholder and registered person with significant control of the company.

12. The claimant now has 3 children. Her first child was born in 2011. She took her maternity leave and returned to work after taking maternity leave. In 2022 she was pregnant with her second child, and it is that pregnancy which is relevant to this claim. At the beginning of the claimant's pregnancy, she informed Mr Collins that she would be taking 39 weeks maternity leave but intended to return to work on the 30 January 2023. She informed him that she had arranged childcare around her hours of work so that she could return to work.

13. On 1 May 2022, her second child was born earlier than expected. Her maternity leave began from that date. She still intended to return to work on 30 January 2023 but was never permitted to return to work. She was dismissed by an email sent at 8am on 2 May 2023 for the stated reason of gross misconduct. The email states (highlighted text is my emphasis):

*"Dear Heather (Mason) Todd*

*I regret to inform you that **due to gross misconduct** on your part, your employment with 52 Street Supplies Ltd is hereby terminated effective immediately.*

*I have reviewed your claims regarding working hours and holidays due in relation to those hours and found them to be inaccurate, you have also made direct threats in relation to moneys you inaccurately claim to be owed.*

*After conducting an investigation into the misappropriation of funds, we have found that you have engaged in behaviour that is a clear violation of company policy and is unacceptable. Your actions have breached the trust of the company.*

*As a result of your misconduct, we have no choice but to terminate your employment with immediate effect. We expect you will return all company property and any outstanding funds will be deducted from any amount due to you if any balance remains in your favour this will be paid in due course.*

***Please be aware that as a result of your misconduct we may pursue legal action against you.***

***A breakdown of finding will be sent to you over the next 14 days to give you a full opportunity to challenge this decision.***

*If you have any questions or concerns regarding your termination, please do not hesitate to contact me.*

*We wish the best of luck in your future endeavours.*

*Sincerely*

*Shaun Collins*

*52 Street Event Supplies Ltd"*

(The registered office address is provided at the bottom of the letterhead)

14. The claimant immediately sought advice from ACAS. As a result of that advice, she sent a reply at 15.29 the same day to request an appeal and the paperwork supporting the dismissal decision. Her email states:

***"Following your email this morning I wish to appeal the notice. I feel there are unreasonable grounds unreasonable belief and you have not given me any paperwork or reason to support the decision. I have informed our ACAS mediator of this and hope to hear from you further regarding this matter".***

15. ACAS conciliation began on 2 May 2023 and ended on 5 May 2023. Presumably in this period ACAS contacted Mr Collins to make him aware that the claimant had entered a period of early conciliation and the possibility of an ET1 claim might follow if the early conciliation failed.

16. Mr Collins did not respond to the claimant's request for an appeal. He did not provide any paperwork or reasons supporting the dismissal. Mr Collins never provided the "breakdown of findings" he refers to in the dismissal email.

17. On the undisputed facts the claimant was dismissed without any opportunity to see the allegations or evidence or to make representations to defend/ challenge a serious allegation of gross misconduct. No disciplinary process followed by the employer before dismissal. No appeal was allowed after her dismissal. The dismissal email refers to Mr Collins having "*reviewed claims regarding working hours and holidays due*" consistent with the claimant's evidence that she had been raising issues about her maternity pay and holiday before she was dismissed.

18. The claimant presented her claim to the Tribunal on 5 May 2023. On 17 May 2023 the notice of claim was sent to Mr Collins at his home address and to the company at its registered office. The notice of claim includes the claim, a response form and warns respondents that to defend the claim a response must be entered 14 June 2023. The notice of claim specifically states that:

***"The response form from each respondent must be received by the Tribunal Office by 14 June 2023. A judgment may be issued against a respondent who does not submit a response in time. If there is a hearing that respondent will only be entitled to participate in it to the extent permitted by the Employment Judge.***

***You can apply for more time to submit your response. Any application must comply with Rule 20 of the Employment Tribunals Rules of Procedure. An Employment Judge will decide whether or not to allow you more time."***

19. The Notice of Claim provides a link to enable respondents to access information online about how to respond to a claim. If information cannot be accessed online the respondent is notified to contact the Tribunal Office so that a paper copy of the available information can be provided.

20. By letter dated 27 June 2023, the Tribunal notified the respondents the claim was treated as: "No Response Received" under the Employment Tribunals Rules of Procedure 2013. The letter states:

*"You did not present a response to the claim. Under Rule 21 of the above Rules, because you have not entered a response, a judgment may now be issued. You are entitled to receive notice of any hearing, but you may only participate in any hearing to the extent permitted by the Employment Judge who hears the case."*

21. By letter dated 7 August 2023, a notice of hearing was sent to the parties to confirm the hearing would take place by video on 12 September 2023 at 14.00.

22. On the morning of the hearing, Mr Collins contacted the Tribunal to request a link to join. He was provided with a CVP link and was informed that because the respondents had not been entered any response, he would only be *entitled to participate in the hearing to the extent permitted by the Employment Judge*. Mr Collins joined shortly after the start of the hearing. I informed him that the claim was being dealt with under rule 21 and would determine liability and remedy on the information available to me, including the evidence provided by the claimant at the hearing. Mr Collins was informed he would only be entitled to participate to the extent permitted by me. I intended to hear evidence from the claimant first and gave sworn evidence by way of affirmation.

23. Mr Collins would have heard the claimant's evidence until he 3:01pm when he left the hearing messaging that: *"I need to go and collect my children from now"*. The hearing continued in his absence.

24. The claimant described how shocked she was to be dismissed for "misappropriation of funds". She had not been in work since April 2022 and had no idea what she was supposed to have done. ACAS had advised her to request information about the dismissal and to request an appeal. She never received any response to her requests.

25. From 1 May 2022 until 30 January 2023 the claimant was on maternity leave. From 30 January 2023 to her dismissal on 2 May 2023 the claimant had been trying to return to work. She was expecting to take some of her accrued annual leave before a return to work but was unable to take any annual leave because of the ongoing unresolved maternity pay issue. Mr Collins was not permitting the claimant to return to work.

26. The claimant has always had a good working relationship with Mr Collins. She describes how she stepped in, when he was ill and kept the business running during his absence. She had no previous issues with Mr Collins until she disputed her maternity pay and holiday pay. She had a long unblemished record of service. She thought she was valued and trusted.

27. In April 2022, the claimant had expected her wage to be increased to the applicable NMW rate which had increased from £8.91 to £9.50/hr. Her monthly pay should have been £902.97 but she was paid £808.72 resulting in a shortfall of £94.25 per month from April 2022 onwards.

28. The claimant raised this with Mr Collins in April before her maternity leave and put the correct figures onto the PAYE system. Despite this Mr Collins continued to pay her the incorrect amount.

29. Mr Collins never corrected the error which meant the claimant received less maternity pay than she was entitled to. Sometimes the maternity payments were made late which meant the claimant had to chase up maternity pay during her maternity leave. This was stressful when she should have been enjoying her maternity leave and her time off with her baby.

30. The claimant attempted to resolve matters by providing Mr Collins with evidence she had obtained from HMRC showing that her maternity pay calculation was correct. The claimant had input correct information about her hours and pay into the HMRC SMP calculator. She provided a screen shot which showed Mr Collins her total SMP entitlement to the end of January should have been £6,186.66. Mr Collins did not agree with the figures and suggested the claimant had “*made them up*”. His explanation for why maternity pay was paid late was that he was ‘*busy*’.

31. The claimant describes how she kept chasing payment because she was incurring bank charges and late payment fees. It was a stressful time for the claimant. She described how she felt at that time:

*“I feel like he has been **as difficult as possible to try force my hand to leave** even though I have always made it very clear I would be returning to work from day one. **Even before my maternity leave started, he would keep saying whenever it was discussed that I would have nine months paid then return. Shaun constantly said “see how you feel” and I said “no I would need to return from financial point of view”. If Shaun doesn’t want me to return to work which seems to be the case, he should have let me know so I could have found myself another job”.***

32. The claimant invites me to draw an inference that Mr Collins repeated questioning of her intention to return to work during her pregnancy, his refusal to pay her maternity pay correctly and on time, and his dismissive attitude to her complaints were designed to force her to leave. When she did not leave voluntarily during her maternity, he dismissed her to avoid having her back at work. The dismissal was contrived and not based on any genuine concerns about misconduct because the claimant had not been in work in the year before she was dismissed.

### **Maternity Pay**

33. The claimant was due to return to work on 30 January 2023. She had expected maternity pay of £6,186.66 during her ordinary maternity leave but only received £5,551.25 leaving a shortfall in maternity pay in the sum of **£635.41**.

### **Holiday Pay**

34. By the end of her maternity leave the claimant had accrued untaken holiday leave.

35. The claimant has never been provided with a written contract of employment setting out her basic terms and conditions of employment. Holiday entitlement had previously been calculated by Gemma who had been Mr Collins’ partner at the time. Gemma had created a “Holiday XLS 2018” document which refers to the claimant and another employee called Will. In it their annual leave entitlement is recorded in hours. The claimant is recorded as having an annual entitlement of 179 hours leave each year.

As each period of holiday was taken the balance of leave would reduce until the leave for that year was exhausted. The record was signed off by Mr Collins. I accepted this evidence shows the claimant's contractual annual leave entitlement was 179 hours leave each holiday year.

36. For the 2022 leave year the claimant had 169 hours of holiday leave outstanding on the termination of her employment.

37. For the 2023 leave year (January-December 2023) the claimant was summarily dismissed on 2 May 2023. By then she would have accrued 4 complete months of leave equating to 60 hours (4 /12ths of 179) accrued untaken leave.

38. The total holiday pay outstanding is therefore calculated as follows:

January-December 2022: 169 hours

January-May 2023: 60 hours

**Total 229 hours@ 9.50/hr = £2,175.00.**

### **Notice of Termination**

39. The claimant was entitled to claimant been given the statutory minimum notice of termination she was entitled to under section 86 Employment Rights Act 1996 ("ERA 1996") her employment would have continued for another 12 weeks extending the effective date of termination to 2 August 2023.

40. She did receive notice or pay in lieu of notice. Section 97(b) ERA 1996 applies to extend the effective date of termination for certain purposes which includes for the purposes of calculating the basic award for unfair dismissal.

### **Was the claimant unfairly dismissed?**

41. The claimant was dismissed on 2 May 2023 by email while she was attempting to return to work after taking maternity leave.

42. The respondent dismissed the claimant without carrying out any disciplinary procedure, without identifying with any particulars of the alleged acts of misconduct, when it had occurred and how the claimant was responsible for it. The claimant was not given any opportunity to answer or defend the allegations before she was dismissed. The claimant was not informed how the respondent had reached the conclusion she was guilty of gross misconduct. No findings/evidence were disclosed before or after dismissal to explain how the respondent formed a genuine and reasonable belief in her guilt. The claimant did not know if an investigation had been carried out because no details of it were provided to her. She did not know how Mr Collins had decided she had misappropriated funds to dismiss her for gross misconduct. She did not know if any alternative sanction had been considered before deciding dismissal was the appropriate sanction.

43. With the help of ACAS, the claimant sent an email in response to the dismissal email to appeal the dismissal. This gave Mr Collins an opportunity to try to rectify the procedural and substantive failures in the dismissal process. If an investigation report and findings had been relied upon by Mr Collins it was odd that they were never provided to the claimant any time after her dismissal.

44. The claimant was dismissed summarily for gross misconduct after 17 years of unblemished service.

45. The ACAS code of practice on disciplinary and grievance procedures (2015) applies to misconduct dismissals. Mr Collins had not informed the claimant of the

problem before dismissal (paragraphs 9-10). Mr Collins had not held a meeting with the employee before dismissal to discuss the problem (paragraphs 9-10). He had not allowed the claimant a companion (paragraphs 13-17). These are breaches of the ACAS code which are relevant later in these reasons (see ACAS uplift)

46. He had moved straight to “deciding on the appropriate action” but without having any meeting. The ACAS code recognises that because gross misconduct is such a serious reason for dismissal: *“A fair disciplinary process should always be followed before dismissing for gross misconduct”* (paragraph 23).

47. Having not followed any fair procedure before dismissal it was even more important for Mr Collins to ensure he acted on the claimant’s request for an appeal. Mr Collins did not act. He did not respond to any of the claimant’s leaving her with no alternative but to bring her claim because it was the only way for her to challenge the unfairness of the dismissal.

48. I have no hesitation in finding substantive failures by the respondents to follow the ACAS Code of Practice on Disciplinary Procedures. The dismissal was procedurally and substantively unfair. The claimant had been absent from the workplace since the end of April 2022 and had never returned to work before she was dismissed. I do not find there was any genuine belief by the employer that the claimant was guilty of gross misconduct. I do not find there were any reasonable grounds for dismissing the claimant for gross misconduct. There was no investigation and no opportunity provided to hear what the claimant might say in defence or mitigation. The decision to dismiss was outside the range of reasonable responses of a reasonable employer faced with these circumstances.

49. Mr Collins is the shareholder and registered person with significant control. He makes the key decisions and was the decision maker for the 3<sup>rd</sup> respondent. His wholesale failure to comply with any part of the ACAS Code was an unreasonable failure.

**Was the dismissal an unlawful act under section 18 Equality Act 2010 (pregnancy and maternity discrimination)?**

50. Section 18(2) provides that it is unlawful pregnancy discrimination if:

“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.
- b. ....

51. Section 18(4) provides that it is unlawful maternity discrimination if:

“A person (A) discriminates against a woman if A treats her unfavourably because she is exercising or seeking or **has exercised or sought to exercise additional to exercise the right to ordinary or additional maternity leave.**

52. The claimant was seeking to exercise and had exercised her right to ordinary maternity leave (39 weeks) and was exercising her right to return to work after her ordinary leave. She had notified her employer of her intended return to work on 30 January 2023. She had arranged childcare to accommodate her return to work. The claimant was trying to exercise her right to return to work before the end of her maternity leave, but her employer was not permitting her return to work.



53. The claimant was entitled to ordinary (39 weeks) and additional maternity leave (52 weeks). Section 18(6) provides that 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 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.

54. The claimant had the right to ordinary and additional maternity leave and falls within section 18(6)(a) in relation to her complaint of pregnancy and maternity discrimination.

55. Under regulation 11(3) of the Maternity and Parental Leave Regulations 1999 the employer is "not entitled to postpone the employees return to work to a date after the end of the relevant maternity leave period". By not permitting the claimant to return to work the respondent was postponing the claimant's return to work in breach of this regulation. That postponement continued until the claimant's dismissal on 2 May 2023.

56. The claimant has the burden of proving unlawful discrimination and must show there are facts from which I can decide in the absence of any other explanation that the respondents have contravened sections 18(2) or (4) in the ways alleged during the claimant's pregnancy and maternity. If those facts are proved I must hold that a contravention has occurred.

57. From my findings of fact, the unfavourable treatment started when the claimant asked her employer to calculate her maternity pay in accordance with the national minimum wage increase in April 2022. At that time the claimant was pregnant and had not started her maternity leave.

58. When she became pregnant and discussed her intention to take maternity leave Mr Collins unnecessarily and repeatedly questioned her intentions treating her unfavourably during her pregnancy. By the 1 May 2022 the claimant had given birth to her child and had started her maternity leave. From 1 May 2022 until her dismissal she was treated unfavourably for exercising the right to take ordinary maternity leave and for seeking to exercise her right to return to work. Mr Collins made dismissive unhelpful comments when the claimant brought to his attention how maternity pay issues were causing her stress and financial difficulty.

59. No response had been entered by the respondents to the complaints so there is no non-discriminatory explanation provided for the alleged unlawful treatment.

60. I am satisfied on the positive findings of fact made very credible evidence that Mr Collins has treated the claimant unfavourably during her pregnancy and maternity leave in the ways alleged. I find that it reasonable to make the inference that the claimant invites me to from the primary findings of fact that Mr Collins attitude towards the claimant changed when she tried to assert her maternity rights to the correct maternity pay. Mr Collins made unfavourable comments about the claimant because she was exercising her rights to maternity leave. He was making the claimant's maternity leave difficult for her so that she would be forced to leave. It was reasonable to infer from Mr Collins interactions with the claimant during her maternity leave relating to her intentions to return after maternity, the shortfall in maternity pay, suggesting the claimant's maternity pay calculations were 'made up', that he was too busy to pay her maternity pay on time are all acts directly linked to the claimant's pregnancy and maternity. Mr

Collins either consciously or unconsciously was treating the claimant unfavourably because of her pregnancy and because she was seeking to and had taken maternity leave. When that unfavourable treatment failed to have the desired effect of forcing the claimant to leave voluntarily Mr Collins decided to dismiss the claimant for made up gross misconduct without substantiating any of the or giving the claimant an opportunity to defend herself.

61. It was clear on the evidence before me that allegations of misappropriation were unsupported by any evidence. Evidence was requested by the claimant but was never disclosed. If the allegations were genuine there is no reason not to follow a fair disciplinary process before dismissal. After the dismissal an appeal was requested and that presented another opportunity for Mr Collins to provide evidence and follow a fair procedure. If the allegations were genuine a fair and transparent disciplinary procedure was the correct way of showing the claimant these were genuine concerns that had nothing to do with pregnancy or maternity. In the absence of that it was reasonable to infer the dismissal was contrived and was not genuine and was because of the claimant's pregnancy and maternity.

62. The lack of transparency, lack of any procedure and the timing of dismissal were all very suspicious. The claimant had not been at work since 24 April 2022 (her last day at work). She was on maternity leave not working so how and when did she commit any alleged misconduct at work.

63. If Mr Collins had genuine concerns the claimant had misappropriated money, as the person with significant control of the company finances, he would/ought to have known of this much earlier than May 2023. The claimant was dismissed over a year after she had started her maternity leave.

64. From the claimant's perspective, during her pregnancy and maternity leave she had some stressful and difficult conversations with Mr Collins. She was trying to assert her maternity rights in relation to her pay and in relation to her intention to return to work and he was being dismissive and unsupportive. As a result of these conversations, she felt that Mr Collins was deliberately making life difficult for her during her maternity so that she would be forced to leave. She did not leave and then she was dismissed. Maybe the claimant's maternity leave and pay were a 'problem' the business could do without.

65. The claimant's evidence was supported by the contemporaneous documents. She had a very high regard for her employer. Her employment allowed her to be a working mum to contribute to the household expenses and made her feel valued.

66. If Mr Collins genuinely believed that the claimant's maternity pay calculations were wrong, he could have investigated them. Instead, he suggested they were 'made up'. If maternity pay had been delayed, he could have apologised and offered to settle any late fees incurred by the claimant because of any delay, instead of telling he was too 'busy' to sort it out. His unfavourable responses reasonably left the claimant feeling that he was trying to force her out and was treating her as a nuisance because she was asserting her maternity rights. seriously.

67. I find the claimant has proved she was unlawfully discriminated because of pregnancy and maternity contrary to 18(2) and (4) of the Equality Act 2010. I was able to make inferences from the positive findings I have made that the reason why Mr Collins was treating the claimant unfavourably was because she was pregnant and because she was exercising her maternity leave rights. Those rights include receiving the correct maternity pay at the correct time and choosing to take maternity leave and then to return to work. The claimant was entitled to not be repeatedly questioned about her intentions

to return to work after taking ordinary maternity leave. She was entitled not to have her employer postpone her return to work at the end of her maternity leave when she had made all the necessary childcare arrangements to enable her to return to work.

68. Had the claimant been permitted to return to work on 30 January 2023, she would have worked her contracted 20.5 hours per week. However, after her dismissal the claimant discovered she was pregnant again. Very honestly, she admitted to me that Mr Collins could not have known about her third pregnancy when he dismissed her.

69. If the claimant had not been dismissed unfairly and unlawfully, she would have worked up until her due date of 16 August 2023 which is based on her experience in her previous pregnancies. The National Minimum Wage rate increased from £9.50 per hour to £10.42 per hour in April 2023.

70. From 30 January 2023 - 1<sup>st</sup> April 2023 the claimant would have worked 3 months @ 9.50 per hour for 20.5 hours = **£844**.

71. From 1 April to 16 August 2023, she would have worked 20.5 hours for 20 weeks @ 10.42 per hour = **£4,272**

72. She would have started her maternity leave on 16 August 2023 and would have then received 90% of her wages normal weekly wage of £213.61 for 6 weeks @ £192.25 in the sum of **£1,154**.

73. Her SMP in 2023 for ordinary maternity leave would have been 33 weeks @ £152 in the sum of **£5692**. This would have taken her to 8 May 2024 a year after her dismissal.

### **Injury to Feelings**

74. The claimant gave clear and persuasive evidence about the effect of losing her job and of being subjected to the pre dismissal pregnancy and maternity discrimination. Her evidence was detailed and credible.

75. She did not attempt to exaggerate the injury to try to persuade me to award a higher sum. She described how the issues impacted on her family life, her social life, her financial independence, her morale, and her mental health.

76. She values work and feels strongly that having a job is important. She thought of herself as loyal and hardworking employee. Her good reputation has been taken away from her because she got pregnant. She worked for this employer for 19 years from the age of 18 on the basic NMW. She never expecting any additional pay she only asked for the amount she was legally entitled to. She is married with 3 children and is still unemployed.

77. She told me that when she discovered she was pregnant with her second child, she was excited. There was an 11-year gap between her first and second child. From the start of her pregnancy, she knew she was going to return to work because she enjoyed her job. She had arranged nursery to cover her hours of work and made it clear to Mr Collins that she would be returning.

78. When Mr Collins questioned her intention to return, he made her feel like he did not want her back. By not accepting her answer he made her feel like she was not being listened to or that her view was respected.

79. When she challenged her maternity pay, she took steps to provide him with information to confirm her entitlement so that he could see why she was challenging his position. She provided the print off the HMRC calculations after she had input all the required information. He told her it was 'made up' and it felt like he was putting her down because she was asserting her maternity leave rights. He made her feel like a

nuisance/burden because she was pregnant. The correct maternity pay is all she was asking for at no great cost to the company.

80. When she chased up the late payments of her maternity pay during her maternity leave this caused her stress and anxiety because she was expecting a difficult conversation. She suffered additional stress because of the bank charges and late credit card fees caused by the late and incorrect maternity pay.

81. Each time she raised a maternity issue there was another difficult conversation which made her feel like she was the problem. When Mr Collins told her he was too busy she felt like she was not a priority because she was on maternity leave even though he knew the financial impact it was having on her.

82. She really valued the financial independence the job provided her with which she lost when she was dismissed. She could no longer use her wages to pay for her children's hobbies. Her eldest child had dance lessons and horse riding which had to be stopped. She had planned to buy some new clothes for her second child. She had planned to take him out and socialise with him for his development and for her mental health. Instead, she spent a lot of time at home with her son not enjoying the time she had with him on maternity leave because she had been dismissed.

83. The dismissal had a knock-on effect on her husband who had to work more hours to cover her lost wages. This meant he missed family time and some of the milestones in their son's development. She felt it was her fault and felt guilty that her maternity leave had caused the situation and loss of job. She could not buy new clothes for her baby. She says she was fortunate her sister-in-law had a baby at the same time and was able to pass on baby clothes. The claimant felt guilt and shame and embarrassment.

84. She describes the shame and shock of the dismissal by email. Mr Collins had not attempted any phone call or direct contact to warn her it was coming. She had been loyal and hardworking for 19 years without any kind of reprimand/disciplinary/performance issues. She helped Mr Collins when he was ill and in hospital. She felt her pregnancy and maternity leave had caused the change in her working relationship with Mr Collins and that if she had not become pregnant, she would still be working there.

85. The stigma of being sacked for gross misconduct was significant because this was her first job as an account manager. She had never looked for other better paid jobs because she liked her job. She has lost her confidence because of the treatment she had experienced. She still does not know why she was dismissed or what she did wrong other than get pregnant and assert her maternity rights.

86. The claimant has described how "*all this caused me so much stress and anxiety I have been told by my doctors I am not fit to work. It has affected my day to day life as its bought money worries I have struggled to survive. All this with a twelve year old, a baby and then I found out I am pregnant. It has been a massive strain on my mental health*". The claimant visited her GP at the time and sought treatment for stress and anxiety.

87. Having regard to the evidence I have heard which I accept. The injury to feelings caused by the unlawful acts, fall in my view in the lower end of the middle Vento band in the sum of £10,000. The unfavourable treatment has had a devastating and long-lasting effect on the claimant and this amount in my view compensates the claimant for the injury to feelings caused by the unlawful conduct.

### **Interest on Injury to Feelings**

88. The “Employment Tribunals Interests on Awards in Discrimination Cases Regulations 1996” provide for interest on awards of injury to feelings at 8% per annum.

89. The calculation date for the injury to feelings award is 1 May 2022 and the end date is the date of this judgment.

90. The number of days interest can be awarded is 484 days.

91. The daily rate of interest is  $10,000 \times 8\% = 800$  divided by 365 days = £2.19

92.  $£2.19 \times 484 = £1,061$ .

93. The interest on injury to feelings is **£1,061**.

#### **Apportionment of Liability**

94. For the discrimination complaints of unfavourable treatment because of pregnancy and maternity the 1<sup>st</sup> respondent and 3<sup>rd</sup> respondent’ are jointly liable for the unlawful treatment and jointly liable to pay compensation. This is with regards to the pre-dismissal unfavourable treatment and the discriminatory dismissal. The injury to feelings caused by and flowing from the unlawful treatment are indivisible and the respondents are jointly and severally liable. Section 109(1) Equality Act 2010 provides that “anything done by a person(A) in the course of A’s employment must be treated as also done by the employer”. In this case as the managing director and person with significant control of the third respondent Mr Collins was the person (A) who in the course of the claimant’s employment has treated her unfavourably because of her pregnancy and because she exercised her rights to maternity leave. The 3<sup>rd</sup> respondent and Mr Collins are jointly and severally liable for the unlawful treatment.

95. For the unfair dismissal only the 3<sup>rd</sup> respondent is liable as the employer.

96. For completeness the claimant has made a claim for notice pay in her claim form. I find the claimant was wrongfully dismissed without any notice or pay in lieu of notice. No separate compensation has been awarded for notice pay because the compensation that would have been awarded is already included in the compensatory award made because it has been calculated to compensate the claimant for her loss of earnings from the date of dismissal.

#### **Section 207A(2) Trade Union and Labour Relations (Consolidation) Act 1992(the ACAS Uplift)**

97. I have found breaches of the ACAS code (see paragraph 46) which are significant failures of the code and the principles of natural justice.

98. I find the respondents wholesale failure to follow the ACAS code was unreasonable.

99. Section 207A (2) of Trade Union and Labour Relations (Consolidation) provides that if “*it appears to the employment tribunal that:*

(a) *the claim to which proceedings relate concerns a matter to which a relevant Code of Practice applies,*

(b) *the employer has failed to comply with that Code in relation to that matter, and*

(c) *that failure was unreasonable,*

*the employment tribunal may, if it considers it just and equitable in all the circumstances to do so, increase any award it makes to the employee by no more than 25%”*

100. I consider that it is just and equitable to increase the awards made to the claimant by 25%. The respondents had a chance to try and rectify their failures by allowing an appeal but chose to make no attempt at all before/after the dismissal leaving the claimant with no other means of challenging the dismissal other than bringing this claim.

**Failure to provide written particulars (a written contract of employment)**

101. Section 38 Employment Rights Act 2002 provides that a tribunal must award compensation to a worker where on a successful claim being made (in the jurisdictions applicable to this claim) the employer was in breach of its duty to provide full and accurate written particulars under section 1 Employment Rights Act 1996.

102. I have found the claimant was not provided with any written particulars (see paragraph 35). It is sufficient that the finding was made at this hearing that the respondent was in breach of section 1 when these proceedings began (5 May 2023).

103. The amount of compensation is a minimum of 2 weeks pay and a maximum of 4 weeks pay if the Tribunal considers it is just and equitable to award the higher amount. The claimant has been employed for 19 years and has not been provided with any written particulars of employment. Given that the claim raised issue relating to her maternity pay and holiday pay if a written contract had been provided some of the difficult conversations the claimant has had to have might have been avoided.

104. It is in my view just and equitable to award the higher amount of 4 weeks' pay in compensation for this failure.

**Financial Penalty**

105. Under section 12A Employment Tribunals Act 1996,

“Where an employment tribunal determining a claim involving an employer and a worker:

a) concludes that the employer has breached any of the workers rights to which the claim relates, and

b) is of the opinion that the breach has one or more aggravating features:

the tribunal may order the employer to pay a penalty to the Secretary of State (whether or not it also makes a financial award against the employer on the claim”.

(2) The tribunal shall have regard an employer's ability to pay-

(a) in deciding whether to order the employer to pay a penalty under this section

(b) subject to subsections (3) to (7) in deciding the amount of penalty

(5) the amount of the penalty under this section shall be 50% of the amount of the award

106. The award falls within 12A (5) and a financial penalty if awarded would be 50% of £29,437.04 which would mean a penalty of £14,718.52 would be payable by the company to the Secretary of State.

107. In my opinion there are aggravating features of the respondents conduct that could be considered under section 12A based on the findings of fact:

- The dismissive response of the employer that it's “made up” despite being presented with information based on “HMRC statutory maternity pay calculator” and knowing the NMW rate had increased from April 2022.

- The repeated questioning of the claimant's intention to return to work after the claimant had made it clear to her employer her intention was to return to work after her maternity leave.
- The dismissive response of the employer to late payment of maternity pay that he was "busy".
- Preventing the claimant's return to work by dismissing her claimant for serious unsubstantiated allegations of gross misconduct.
- Dismissal by email after 19 years' unblemished service for serious allegations without ever giving the claimant the opportunity to know/answer the allegations before she was dismissed.
- Threatening legal action against the claimant at the time of dismissal.

108. The information available from Companies House shows the 3<sup>rd</sup> Respondent (employer) was incorporated on 19 May 2021. The accounts filed for the period 19 May 2021 to 31 May 2022 provide the following details:

109. The director is Mr S Collins. The total assets less liabilities are recorded as £52,235 and a provision for liabilities of £9,923 has been allocated. Shareholders' funds of £42,312 are recorded in respect of the only shareholder Mr S Collins the first respondent. The company is solvent and appears to have the ability to pay a financial penalty.

110. If the sum awarded as a penalty adds additional financial burden and there is a risk the claimant does not receive the compensation awarded, then she will be disadvantaged by the making of a financial penalty which is paid to the Secretary of State and not to her.

111. Having found aggravating features of the employers conduct I considered the information I had on the employer's ability to pay and whether I should exercise my discretion to make a financial penalty order.

112. I was also mindful that the respondents have not had any opportunity to make representations on whether a financial penalty order should be made.

113. I have therefore decided at this stage, not to make a financial order against the employer requiring a further sum to be paid to the Secretary of State of half the compensation sum awarded.

114. However, if there are any further hearings where the matter can be revisited after representations can be made then the possibility of making a financial penalty order maybe considered at that stage.

115. Hopefully for the claimant now that her claims have been determined and judgment in her favour has been made this will bring some closure so that she can try to find new employment and make a fresh start.

**Employment Judge Rogerson**

Date: 27 September 2023