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EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000612/2023

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**Final hearing in Edinburgh
on 18 and 19 June 2024**

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**Employment Judge A Jones
Tribunal Member A Mathieson
Tribunal Member N Richardson**

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Ms S Ehsan

**Claimant
In person**

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Scottish Design Exchange

**First Respondent
Represented by
Mr S Robertson, solicitor**

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Ms Leroy

**Second Respondent
Represented by
Mr S Robertson, solicitor**

JUDGMENT

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The claimant was not discriminated against by the respondents and her claim is dismissed.

Introduction

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1. The claimant claimed that that she had been discriminated against because of the protected characteristics of pregnancy or sex. The respondent

resisted the claims. The claimant gave brief evidence on her own account and then her partner gave evidence briefly. The respondent led evidence from Ms Leroy and their external HR advisor. A joint bundle of documents was produced. A list of issues had been agreed in advance of the hearing as follows:

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a. Whether the Claimant was treated unfavourably because of a pregnancy others on or after the protected period in terms of section 18(2) (a) of the Equality Act 2010

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b. Whether the Claimant was treated unfavourably because she was on compulsory maternity leave in terms of section 18(3) of the Equality Act 2010.

c. Whether the Claimant was treated less favourably than it treated or would have treated others in terms of section 13 of the Equality Act 2010. Specifically –

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i. Was the Claimant suspended from her role following notification to the Respondents that she was expecting a baby and, if so, was the reason because of her pregnancy and, if so, was this unfavourable or less favourable treatment? And

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ii. Was the Claimant subjected to disciplinary proceedings following notification that she was expecting a baby and, if so, was the action taken because of her pregnancy and, if so, was it unfavourable or less favourable treatment?

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d. Did the First Respondent fail to make payment of the correct amount of Statutory Maternity Pay while the Claimant was on statutory maternity leave and, if so, was this because of the Claimant's pregnancy/maternity and, if so, was it unfavourable or less favourable treatment? Potential Award

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e. What is the amount of financial loss suffered by the Claimant. What, if any, pension loss was suffered by the Claimant? Should a compensatory award be made to the Claimant and, if so, at what level should the award be - based on the 3 tier Vento scale

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2. The claimant contacted the Tribunal office in the afternoon after the hearing had finished seeking to bring documentation to the attention of the Tribunal which had not been lodged at the hearing. The claimant was informed that these documents and her emails would not be taken into account when determining the matter.

3. Having considered the evidence, the documents to which reference was made and the submissions of the parties, the Tribunal found the following material facts to have been established.

Findings in fact

- 5 4. The claimant commenced work with the first respondent on 22 June 2022 as an Operations Manager.
5. The first respondent is a small community interest company which provides space for artists to sell their creations in a number of locations in Glasgow and Edinburgh.
- 10 6. The first respondent was set up by the second respondent who is the CEO of the organisation.
7. The claimant was recruited to take over from another employee whose role was evolving. The claimant became the most junior member of a management team of three.
- 15 8. The claimant informed the second respondent that she was pregnant around 23 March 2023. She did this informally and as the second respondent was parked outside the building at the time and needed to leave, the discussion took place on the street. The second respondent did not say anything negative to the claimant regarding her pregnancy and
20 indicated that they would need to deal with the HR processes in due course.
9. A routine catch up meeting took place between the claimant, the second respondent ('LL') and Graeme Murdoch on 27 March. This made up the management team of the first respondent. The claimant was working from home that day. The claimant was unhappy with what was said to her during
25 the meeting as she perceived her performance to have been criticised unfairly and left the meeting. Nothing unreasonable was said to the claimant during the meeting.
10. The claimant then sent a text to the respondent's HR advisor indicating that she was 'going on long term sick leave because of work related stress'. The
30 claimant complained that she was being given an unreasonable workload. In the event, the claimant did not attend her GP and returned to work after two days' absence.

11. On 5 April, LL called the claimant. The claimant was working at home that day. LL had taken advice from the HR advisors prior to the call as she had a number of concerns regarding the claimant's work over the previous months and her overall health. LL was conscious that the claimant had taken very little leave. The leave taken had been given to deal with the claimant's attendance at the Family Court in England relating to a custody dispute over her first child and for appointments related to treatment for her mental health. LL suggested to the claimant that she take a week off work for which she would be paid and then they would have a meeting with her on her return to work. LL indicated that she was concerned about the claimant's welfare. The claimant was not at any time suspended from work.
12. The claimant was very unhappy at the suggestion she take paid time off work. She went to her GP and was signed off work on work related stress. She did not return to work thereafter. The claimant was paid SSP until her maternity leave commenced on 1 September when she was paid SMP which had been correctly calculated on the basis of her pay during the relevant reference period. The claimant was not at any time subjected to disciplinary action or proceedings.
13. The claimant's maternity leave ended on 5 June 2023 and the claimant is currently taking annual leave. The claimant is now pregnant again. She has not informed the first respondent of this and does not intend to return to work for the first respondent, although she has not formally resigned from her employment.

25 **Observations on evidence**

14. The claimant's evidence was brief. Although it was explained to her that the Tribunal would only take account of documents to which they were referred, the claimant made little reference to any documents. The Tribunal found the claimant's evidence unconvincing. It seemed to the Tribunal that the claimant took offence at any criticism made of her work and jumped to assumptions as to why her work might be criticised. In pleadings and correspondence regarding the hearing, the claimant made a number of

serious allegations against the second respondent. She did not provide any evidence to support these allegations, which the Tribunal concluded had been made out of spite and vindictiveness against the second respondent with no regard for the impact on the second respondent.

5 15. The claimant gave no evidence to support her claims. She did not cross
examine the respondent's witnesses in any meaningful way or suggest to
them that she had been suspended or that she had been treated to any
unfavourable treatment because she was pregnant. The claimant did not
give any evidence that she had been subjected to disciplinary action. She
10 also made allegations that she had been stalked online by the respondent,
which on enquiry related to a suggestion that her LinkedIn profile had been
viewed a number of times by the respondents' HR advisor (albeit the
claimant did not put this to the HR advisor). The Tribunal found it very
disappointing that the claimant found it appropriate to make hyperbolic and
15 serious allegations which she did not attempt to support in evidence. The
claimant's partner's evidence was of limited value and simply related to him
overhearing some of a call between the claimant and respondents. The
respondents' witnesses evidence was both credible and reliable and their
evidence was preferred in its entirety to the of the claimant.

20 **Relevant law**

16. Section 18 Equality Act 2010 provides that it is unlawful for a person to be
treated unfavourably within the protected period of pregnancy and maternity
by being subjected to a detriment in relation to a pregnancy of hers. In
25 addition, it will be unlawful to discriminate against a women because she is
on compulsory maternity leave.

17. Section 13 provides for direct discrimination, where a person is treated less
favourably than someone who does not have their protected characteristic,
one of which is sex.

Discussion and decision

18. The claimant simply led no evidence to support the allegations she had made. At best, the claimant's evidence suggested that she had not been told that she was being asked to take time off for welfare reasons and assumed she was being suspended. However, rather than exploring this with the respondent or attending any meetings to which she was invited, she simply went to her GP and was signed off work until she commenced maternity leave. The only communications between her and the respondents thereafter were in writing, where either she was being asked to meetings, to provide documentation (such as a MATB1) or in relation to the return of the company laptop in respect of which the police had to get involved. The claimant did not put to LL in cross examination any of the allegations she had made in relation to LL making comments regarding women and maternity leave. In any event the Tribunal found it entirely unlikely that LL had said anything along the lines suggested and regrettably came to the conclusion that the claimant was making up allegations in her pleadings which she then did not put to the relevant witness because there was no substance to them.
19. There was simply no evidence that LL had said anything which could amount to a detriment or unfavourable treatment in relation to the claimant's pregnancy.
20. There was no evidence that the claimant had been suspended and even if it could be said that the claimant's claim was in fact that she had been asked to take a week's paid leave and that amounted to a detriment (which was not what had been pleaded by the claimant) there was no evidence to suggest that this was in any way related to the claimant's pregnancy. Rather the Tribunal concluded that this was because of genuine concerns regarding the claimant both in relation to her mental health and how she was coping with workload issues. The claimant's reaction to this was entirely disproportionate and unhelpful and was the cause of the downward spiral in relations between the claimant and the respondents.

21. In any event these events took place in April 2023 and the claimant did not contact ACAS until 16 November 2023. It appeared to the Tribunal that, although this matter was not raised by the parties, these matters were likely to be time barred.

5 22. Neither was there any evidence to suggest that the claimant had been subjected to any disciplinary proceedings. While she was asked to attend meetings with the respondent, none of these were disciplinary in nature and in any event the claimant did not attend any such meetings, either suggesting she did not receive the notification or that she was unavailable.
10 The Tribunal's view was that the claimant had decided she would have no further involvement with the respondent after she had gone on sick leave on 6 April 2023.

23. Although the claimant had made a claim in relation to her pay during maternity leave, she accepted that she had been paid in line with the
15 statutory formula. Rather, her position was that she would not have been off sick had it not been for the respondents' actions on 5 April 2023 and therefore her additional maternity pay would have been calculated on the basis of her actual salary rather than SSP. This allegation would only be relevant if the Tribunal concluded that the actions of the respondents in
20 asking the claimant to take paid leave amounted to unlawful conduct. It made no such finding.

24. The respondents' agent in submissions indicated that were it not for the claimant's current situation, an application would likely have been made for expenses but confirmed that no such application would be made in the
25 circumstances. The Tribunal wished it noted that it concluded that the claimant's claims were entirely without merit and in so far as they were directed as LL were done so maliciously.

25. The claimant's claims therefore fail and are dismissed.

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Employment Judge:	A Jones
Date of Judgment:	24 June 2024
Entered in register:	25 June 2024
and copied to parties	25/06/2024

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