Case Number: 6000245/2023

EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Miss L Powell	**v**	**One Transport UK LTD (formerly The Green Charging Co LTD)**

Heard at: Southampton **On:** 20 February 2024

Before: **Employment Judge Rayner**

Appearances
For the Claimant: In Person
For the Respondent: Did not attend

JUDGMENT

1. On 28 December 2023 the Respondent changed its name from The Green Charging Company LTD to One Transport UK LTD. The new name of the Respondent is therefore substituted for the old name and the correct name of the Respondent to this claim is therefore recorded as **One Transport UK LTD (formerly the Green Charging Co. ltd).**

Declaration

2. The Claimant was discriminated against on grounds of pregnancy, contrary to section 18 Equality Act 2010.

3. The Claimant was automatically unfairly dismissed contrary to section 99 of ERA 1996 and Regulation 20 of the Maternity and Parental Leave Regulations of 1999.

Remedy

4. The Respondent will now pay the Claimant the sum of **£19608.86,** as compensation for automatic unfair dismissal and compensation for unlawful pregnancy discrimination as follows

Loss of earning for 6 weeks	£2661.03
Interest on loss of earnings	£106.44
Loss of pension pay	£81.60

Interest of loss of pension pay	£9.79
Injury to feeling award	£15000.00
Interest on injury to feeling award	£1700.00
Total award now payable to the claimant	**£19608.86**

Reasons

1. The respondent having requested written reason on 4 March 2024, the following reasons are provided.

2. The claimant filed a claimed the employment tribunal on the 8th February 2023 the respondent filed their response on the 6th of April 2023.

3. The case was case managed by employment judge Roper and an order produced on the five July 2023 setting out 16 allegations relied on by the claimant.

4. The claimant alleges 16 matters which she says amount to individual and or cumulative breaches of contract, and in respect of which she says she resigned. She claims she was constructively and unfairly dismissed.

5. The claimant had not been continuously employed for two years at the point of her dismissal but she alleges that her treatment was discrimination on grounds of maternity and or pregnancy and further alleges that her dismissal was unfair within the meaning of regulation 20 Maternity and Parental Leave Regulations 1999.

6. In particular she relies on regulation 20 (3), that the reason or principal reason for her dismissal was for a reason connected with her pregnancy; the fact that the employee had given birth to a child; the fact that she took sought to take or availed herself of the benefits of ordinary maternity leave or additional maternity leave.

7. The claimant relies on the following matters as set out in the schedule of issues identified at the case management hearing, in respect of each of her claims:

8. Constructive Dismissal (ss 95(1)(c) ERA 1996) (s39(2)(c) EqA)

8.1. The claimant claims that the respondent acted in fundamental breach of contract in respect of the implied term of the contract relating to mutual trust and confidence. The alleged breaches were as follows:

8.2. In November 2022 – Sam Ferguson failed to attend meetings; and

8.3. On 15 December 2022 – the Respondent suggested that the Claimant might not be retained following probation due to redundancy, but agreed to discuss alternatives; and

8.4. Between 18 December 2022 and 28 December 2022' – It was agreed that the Claimant would return to work on reduced hours and wages; and

8.5. On 28 December 2022 – the Claimant was locked out of 'Signwell'. (This was a periodic automatic password change); and

8.6. On 28 December 2022 – the Respondent informed the Claimant that she could not work her reduced hours from home; and

8.7. In December 2022 – the Respondent reassigned Maria Gillingham from reporting to the Claimant to reporting to Sam Ferguson; and

8.8. Between 11 and 13 January 2023 – the Respondent required the Claimant to work from the office; she instead reported in as sick due to the requirement to travel; and

8.9. On 18 January 2023 – Omar Khan questioned the Claimant about the provision of a reference for Edward Bullough; and

8.10. On 18 January 2023 –the Respondent had stopped using 'Benchsmart' while the Claimant was on sick leave and did not inform her until her return; and

8.11. On 25 January 2023 – the Respondent invited the Claimant to a disciplinary hearing; and

8.12. 31 January 2023 the Claimant resigned (which she asserts was her constructive dismissal); and1.1.12 on 1 February 2023 the Respondent did not attend the disciplinary meeting (the Claimant had resigned); and

8.13. on 28 November 2022 Sam Ferguson missed or ignored meetings text calls and emails; and

8.14. over Christmas 2022 the respondent failed to invite the Claimant to the Christmas party; and

8.15. on 6 January 2023 Omar Khan bullied the Claimant about Signwell; and

8.16. on 18 January 2023 Melinda Nagy told Sara Hill not to speak to the claimant.

9. The respondent accepts that allegations 8.1 to 8.12 inclusive all took place, but it denies that any of these allegations amounted to fundamental breaches of contract and/or less favourable treatment because of the claimant's pregnancy or maternity.

10. The respondent denies that allegations 8.13 to 8.16 took place as alleged and asserts in any event that allegation 8.13 is too vague to be addressed.

11. The Tribunal will need to decide

11.1. Whether the respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent; and

11.2. Whether the respondent had reasonable and proper cause fordoing so.

11.3. Did the claimant resign because of the breach? The Tribunal will need to decide whether the breach was so serious that the claimant was entitled to treat the contract as being at an end. The Respondent asserts that the claimant chose to resign her employment rather than to face disciplinary

proceedings for her conduct, and that it had reasonable and proper cause for its actions.

11.4. Did the claimant delay before resigning and therefore affirm the contract? The Tribunal will need to decide whether the breach of contract was a reason for the claimant's resignation.

11.5. If the dismissal was unfair, did the claimant contribute to the dismissal by culpable conduct? This requires the respondent to prove, on the balance of probabilities, that the claimant actually committed the misconduct alleged.

12. Pregnancy Related Unfair Dismissal (s99 of the Act and Regulation 20 of the Maternity & Parental Leave etc Regulations 1999)

12.1. If the claimant was dismissed, was the reason or principal reason for the dismissal of a prescribed kind, or in prescribed circumstances (s99(1))?

12.2. The claimant relies on pregnancy childbirth or maternity (s99(3)(a))2.2 The Claimant did not have at least two years' continuous employment and the burden is therefore on the claimant to show jurisdiction and therefore to prove that the reason or, if more than one, the principal reason for the dismissal was her pregnancy or maternity.

13. Direct Pregnancy and Maternity Discrimination (s 18 Equality Act 2010)

13.1. Did the respondent do the following things (which is a repeat of the allegations of fundamental breach of contract):

13.2. In November 2022 – Sam Ferguson failed to attend meetings; and

13.3. On 15 December 2022 – the Respondent suggested that the Claimant might not be retained following probation due to redundancy, but agreed to discuss alternatives; and

13.4. 18 December 2022 and 28 December 2022' – It was agreed that the Claimant would return to work on reduced hours and wages; and

13.5. On 28 December 2022 – the Claimant was locked out of 'Signwell'. (This was a periodic automatic password change); and

13.6. On 28 December 2022 – the Respondent informed the Claimant that she could not work her reduced hours from home; and

13.7. In December 2022 – the Respondent reassigned Maria Gillingham from reporting to the Claimant to reporting to Sam Ferguson; and

13.8. Between 11 and 13 January 2023 – the Respondent required the Claimant to work from the office; she instead reported in as sick due to the requirement to travel; and

13.9. On 18 January 2023 – Omar Khan questioned the Claimant about the provision of a reference for Edward Bullough; and

13.10. On 18 January 2023 –the Respondent had stopped using 'Benchsmart' while the Claimant was on sick leave and did not inform her until her return; and

13.11. On 25 January 2023 – the Respondent invited the Claimant to a disciplinary hearing; and

13.12. on 31 January 2023 the Claimant resigned (which she asserts was a constructive dismissal); and

13.13. on 1 February 2023 the Respondent did not attend the disciplinary meeting (the Claimant had resigned); and

13.14. on 28 November 2022 Sam Ferguson missed or ignored meetings text calls and emails; and3.1.14 over Christmas 2022 the respondent failed to invite the Claimant to the Christmas party; and

13.15. on 6 January 2023 Omar Khan bullied the Claimant about Signwell; and

13.16. on 18 January 2023 Melinda Nagy told Sara Hill not to speak to the claimant.3.2

14. NB: The respondent accepts that allegations 13.1 to 13.12 inclusive all took place, but it denies that any of these allegations amounted to less favourable treatment because of the claimant's pregnancy or maternity.

15. The respondent denies that allegations 13.13 13.16 took place as alleged and asserts in any event that 13.13 is too vague to be addressed.

16. Was that unfavourable treatment? No comparator is required

17. If the claimant did suffer unfavourable treatment above, was this because of the pregnancy (s18(2)(a)); and/or because the claimant is exercising or seeking to exercise, or has exercised or sought to exercise, the right to ordinary or additional maternity leave (s18(4)).

The Hearing

18. The claimant attended and represented herself. She gave evidence by a written witness statement and also gave oral evidence under oath. She was asked questions by the employment tribunal judge.

19. The respondent did not attend. The respondent submitted witness statements which were read and taken into account by the employment tribunal. However because of the nonattendance of the respondent or any of the respondent witnesses none of the respondents evidence was heard under oath and it was not possible to challenge any of the assertions made either in the witness statements or have set out in the ET3 or grounds of response.

20. The claimant's witness evidence under oath was unchallenged by the respondent.

21. The tribunal reminded itself with that it must make findings of fact and draw conclusions on the basis of the evidence before it and that the best evidence will be that which is provided under oath and capable of challenge. The Tribunal carefully considered both the evidence provided by the claimant and also carefully consideredrespondents witness statements. Where there are differences, or a conflict between what the claimant says and what the respondent has asserted in

their unchallenged and unsworn witness statements, the tribunal prefers the evidence of the claimant as the basis of our findings of fact.

The Key legal principles

22. The claimant brings a claim under section 18 of the Equality Act 2010. Section 18(4) is in the following terms:-

"*A person (A) discriminates against a woman if A treats her unfavourably because of the pregnancy or because she is exercising or seeking to exercise or has exercised or sought to exercise the right to ordinary or additional maternity leave*". S.18(2)(a) and 18(3) and (4).

23. That duty has been interpreted purposively in the past. The claimant will bear burden of proving discrimination under the Equality Act 2010 subject to the burden of proof provisions contained in section 136 Equality Act 2010. This provides that where a claimant is able to prove facts from which a court could decide that discrimination had taken place in the absence of any other explanation, that unless the employer or person accused the discrimination is able then to prove that there treatment or their actions were not discriminatory in any sense, that the court must find that discrimination has taken place.

24. In practice this means that the claimant must prove a basic case which is more than simply showing, in pregnancy case for example, that she was pregnant and that she was treated unfavourably in the protected period, and that the employer knew that she was pregnant. Whilst in a pregnancy discrimination claim the claimant does not have to show that she was treated less favourably than another person, but only that she has been treated unfavourably, any evidence of how others were treated may support her claim and any evidence of comments made to her or changes in her treatment once she announced her pregnancy or her pregnancy became name may well be evidence that her pregnancy was a factor in any unfavourable treatment.

25. Where there are facts from which a tribunal or court could find that pregnancy discrimination had taken place the respondent must then prove on the balance of

probabilities that the reason for any unfavourable treatment was not a protected characteristic such as pregnancy. No discrimination whatsoever must be proved.

26. It is not necessary in a discrimination claim for the protected characteristic such as pregnancy to be the only reason for the unfavourable treatment. If any part at all of the course the unfavourable treatment was the fact that the claimant was pregnant, then unlawful discrimination will have taken place.

27. The statutory protection arising from this section applies to a woman during what is called the *protected period.* This is defined by 18(6) and is the period which begins when the women's pregnancy begins, and continues until

- if she has the right to ordinary and additional maternity leave either
- at the end of the period of additional maternity leave,
- or if she returns to work earlier, when she returns to work after the pregnancy.

28. The protection will only apply if an employer or the person who treats a woman unfavourably knew or ought to have known or is to be treated as having known that the claimant was pregnant at the time of the unfavourable treatment

29. Women who are pregnant or have recently given birth are also protected under the rules on Automatic unfair dismissal within section 99 ERA 1996. This provides that a person who is dismissed shall be regarded as automatically unfairly dismissed if the reason or principle reason for the dismissal is of a prescribed kind such as pregnancy or maternity leave OR the dismissal takes place in prescribes circumstances.

30. Section 99 ERA 1998 is concerned with leave for family reasons and protects employees who are dismissed for a reason relating to pregnancy, childbirth or maternity or for a reason relating to ordinary; compulsory or additional maternity leave or for exercising a right for time off of antenatal care.

31. We approached this case by applying the test in *Igen v Wong* [2005] EWCA Civ 142 to the Equality Act's provisions concerning the burden of proof, s. 136 (2) and (3):
"*(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.*
(3) But subsection (2) does not apply if A shows that A did not contravene the provision."

32. In order to trigger the reversal of the burden, it needed to be shown by the Claimant, either directly or by reasonable inference, that a prohibited factor may or could have been the reason for the treatment alleged. More than a difference in treatment or status and a difference in protected characteristic needed to be shown before the burden would shift. The evidence needed to have been of a different quality, but a claimant did not need to have to find positive evidence that the treatment had been on the alleged prohibited ground; evidence from which reasonable inferences could be drawn might suffice.

33. The test within s. 136 encouraged us to ignore the Respondent's explanation for any poor treatment until the second stage of the exercise. We were permitted to take into account its factual evidence at the first stage, but ignore explanations or evidence as to motive within it (see *Madarassy-v-Nomura International plc* [2007] EWCA Civ 33 and *Osoba-v-Chief Constable of Hertfordshire* [2013] EqLR 1072). At that second stage, the Respondent's task would always have been somewhat dependent upon the strength of the inference that fell to be rebutted (*Network Rail-v-Griffiths-Henry* [2006] IRLR 856, EAT).

34. If we had made clear findings of fact in relation to what had been allegedly discriminatory conduct, the reverse burden within the Act may have had little practical effect (per Lord Hope in *Hewage-v-Grampian Health Board* [2012] UKSC 37, at paragraph 32).

35. When dealing with a multitude of discrimination allegations, a tribunal was permitted to go beyond the first stage of the burden of proof test and step back to look at the issue holistically and look at 'the reasons why' something happened (see *Fraser-v-Leicester University* UKEAT/0155/13/DM). In *Shamoon-v-Royal Ulster Constabulary* [2003] UKHL 11, the House of Lords considered that, in an appropriate case, it might have been appropriate to consider ‘the reason why’ something happened first, in other words, before addressing the treatment itself.

36. We had in mind the judgment of the EAT in In *Interserve FM Ltd v Tuleikyte 2017 IRLR 615, EAT*. the claim concerned alleged unfavourable treatment because of pregnancy or maternity under S.18 EqA rather than direct discrimination under S.13. It was accepted by all parties and by the EAT that the correct approach to determining the employer’s motivation for any unfavourable treatment was identical in both types of claims.

37. the protection from unfair dismissal contained in Reg 20(1) MPL Regulations is not confined to circumstances where the employee is dismissed *because* of pregnancy, so that a woman will be treated as unfairly dismissed if the reason or principal reason for her dismissal is a reason ‘connected with’ her pregnancy

38. The EAT in *Ramdoolar v Bycity Ltd 2005 ICR 368, EAT*, confirmed that an employer must know or believe in the existence of an employee’s pregnancy in order to be liable for automatically unfair dismissal.

Findings of Fact and discussion

39. We find that the claimant realised that she was pregnant sometime in October 2022. Her expected date of confinement was 26 May 2023. Had the claimant continued to work for the respondent she would have been eligible for the statutory minimum maternity pay during the course of her maternity leave. The claimant told us and we accept that her plan was to return to work and that she had arranged at an early stage for her mother-in-law to look after her child once she did so. She hoped to take nine months maternity leave and then return to work.

40. We find that all the events which took place between the claimant being asked to attend a meeting on the 28th of November 2022 and the claimants termination of her employment and the matters following that took place within the protected. For the purposes of the Equality Act under that at all times the claimant was a pregnant woman to whom the protection set out in section 99 of the employment rights act 1996 and of the Maternity and Paternity Leave etc Regulations 1999 applied to her at all relevant times.

41. The Claimant told us that her plan was to ensure that she assisted her colleagues Maria and Sarah so that they would be ready to cover her in her absence.

42. The claimant says that she informed her employer that she was pregnant in November 2022.

43. The tribunal finds that the claimant had told the respondent that she was pregnant prior to the meeting on the 28 November 2022. The respondent accepts that the claimant had sent an e-mail on the 28 November 2022, which we have been referred to. We also find that the claimant had informed the respondent of her pregnancy before that date both by whatsapp and by e-mail.

44. We find that therefore the respondent was aware that the claimant was pregnant when they called her to a meeting on the 15 December 2022.

45. At that meeting the claimant was told that there was a chance that she would not be retained due to a downturn in business. The claimant asserts that there was no such downturn in business and the real reason why she was told she may not be kept on, was because she was pregnant.

46. We have had to determine whether the respondent called the claimant to that meeting as has been asserted in their claim form and statements because of a downturn in the business and a lack of funding to keep the claimant on, or whether

there was another reason for calling that meeting and if there was whether the reason or principal reason was something to do with the claimant's pregnancy.

47. We find that when the claimant attended the meeting, she was told it was for a probationary review. The claimant was nearing the end of her probationary period.

48. We find that during that meeting the claimant was told that she was going to be dismissed and then subsequently she was offered a job with fewer hours and lower pay.

49. We find that prior to that meeting no suggestion had been made to the claimant or to anyone else as far as she was aware, that there was a redundancy situation or indeed any particular financial difficulties within the company.

50. We accept that the claimant may not have been informed of financial matters and have therefore considered the evidence available to us about the actions of the company before, during and after the meeting.

51. We find that there was no suggestion before the meeting to the claimant or any one else, that there was a redundancy situation.

52. We find that redundancy was not raised as an issue with the claimant in the meeting, and it nothing said to her in that meeting suggested to her that there was a redundancy situation.

53. We find that following the claimant's dismissal, at least one other employee was given a pay rise. We also find that after the meeting, the company continued to recruit in other areas.

54. Further, we find that there is no evidence of a financial downturn, or a need for a reduction in the type of work that the claimant was doing before us at all.

55. There has been no evidence produced from the respondents at all, other than witness statements which are not sworn before us, of any exchange or e-mail or discussion or note of a meeting at which the alleged downtown in business was discussed and at which the question of keeping the claimant on or not keeping the claimant on was discussed as a solution to the particular problem the respondents say they faced.

56. We find that there were in also two other members of staff who were working with the claimant and therefore doing similar work to her, who had been more recently recruited. There is no evidence that there were ever spoken to about redundancy, or that there was any suggestion that their jobs might be at risk. They were not, for example, placed in a pool with the claimant as at risk of redundancy, as might have been expected.

57. Whilst the respondent has referred in their ET3 to redundancy, we find that when the claimant was called into the meeting, she was told it was for a probationary review. She was towards the end of her probationary period.

58. We have no evidence that the other more recently recruited members of staff what also called into meetings to discuss their progress and we find they were not.

59. The claimant and her colleagues were in the same material circumstances in that they were doing similar types of work and we conclude that, since they had been recruited after the claimant, they were all within their probationary periods.

60. The claimant and her colleagues were treated differently, and the claimant was pregnant. The respondents knew that the claimant was pregnant.

61. We have no sworn evidence before us about the reason for calling the claimant into that meeting or the reason for telling her that she would be dismissed, but then offering her a different job, unless pay and fewer hours. We have no evidence from the respondent about why it was only the claimant who was treated in this way and

why no other employee was considered either for demotion or for a reduction in hours. We find that this was unfavourable treatment of the claimant.

62. We find that it is more than a coincidence that the unfavourable treatment occurred shortly after the claimant had told her managers that she was pregnant , and we find that the burden of proof shifts to the respondent to prove a non discriminatory reason for that treatment.

63. In the absence of any explanation from the respondent we conclude that the real reason why the claimant was called into the meeting and told that she was to be demoted and that her hours were to be reduced , was because the respondent knew she was pregnant. It was therefore on grounds of her pregnancy.

64. We accept the claimant's evidence that when she returned to work on the lower hours and lower pay, that she did suffer with some pregnancy related illness and she also suffered with stress and accept her evidence that things changed.

65. We find that when she had been working full time the claimant worked Monday to Friday and had to come into the office initially for two days with three days working from home. As the hours changed and she was only working three or four days, she expected to be in the office 3 days and work one day from home.

66. Instead she was told that she had to be in the office every day.

67. The claimant told us, and we accept that she would have been happy to work 3 days in office and one from home. We find that her colleague Maria was doing the same hours as the claimant but was allowed to work from home. We accept her evidence that she was treated differently to other employees, in that she alone was required to do all of her hours in the office, rather than having the option of doing at least one day working from home. We find that the claimant was told on the 28 December 2022 that she had to work in the office and that her treatment was different to other employees.

68. We accept that at least on one occasion Maria was allowed to work a full week from home and there was apparently no problem with that. In contrast to the claimant, it was not allowed to work from home. The difference between them was that the claimant was pregnant and Maria was not. We have no evidence from the respondent of any other material difference between the employees and we find that there were known the relevant circumstances were that both were working part time in the office doing similar types of work.

69. We have no explanation from the respondent as to why it was necessary for the claimant to work solely in the office following the reduction in her hours and the change of her role.

70. We also accept her evidence that Omar Khan unnecessarily questioned her about the provision of a reference for Edward Bullough and also accept her evidence that that she, the claimant was invited to a disciplinary hearing in respect of a number of matters which she says were essentially trumped up charges.

71. In their response to the claim the respondents assert that she was called to a disciplinary hearing because of unacceptable performance of her role.

72. They allege that the claimant failed to refer HR complaints to either Sam or Melinda for resolution; they say she refused to account for how she was spending her time; that she failed to respond to job applicants that she asked the respondent to implement an IT system called breathe HR but then failed to properly utilise it that she failed to assist with recruitment across the company and that she sought to allocate HR tasks to others on the pretence that she had no time.

73. We find that the claimant did explain in January 2023 that she was off work because of sickness due to the stress of bullying and being unable to get into the office or reach the bathroom in the office as a result of being pregnant. We accept her evidence that no pregnancy risk assessment was conducted.

74. We find that in January 2023 work the claimant had done was altered to be sickness absence and that the claimant was removed as an administrator from smart plan.

75. We find that the claimant was not informed on her return to work that the company was no longer using the system Indeed but was instead using Benchsmart.

76. We find that the claimant was not invited to the Christmas party although this was rectified after she had mentioned it to management.

77. We find that the claimant received a disciplinary invite on the 25 January 2023 which accused her of telling business partners that the company was going bankrupt and that she had told employees that their contracts would be cancelled. The claimant asserts that this was not true and we accept her evidence. We find that the respondent knew or ought to have known that this was not true

78. We have no sworn evidence from the respondent in respect of any of the allegations for which she was invited to a disciplinary hearing were valid.

79. We have heard her evidence about what she says in respect of each of those allegations and we have also been referred to a document that she wrote at the time in response to the disciplinary allegations. We find that this was truthful and sets out her explanation about conversations which were alleged to have taken place and the reasons for them.

80. We prefer her evidence to the assertions made by the respondents in their unsworn statements and find that the claimant had reasonable and true explanations for all of the matters that were raised with her.

81. We find that the respondent was looking for excuses to criticise the claimant. On the evidence we have seen the respondent was treating the claimant differently to

other staff, and the treatment of managers was capable of amounting to bullying behaviour. The claimant had provided the respondent with explanations and had raised issues of bullying with them. Their response was to invite her to a disciplinary hearing on what we find were exaggerated and trumped up charges.

82. We find that the respondent did tell staff not to talk to the claimant.

83. We find that the claimant was treated unfavourably and that her treatment was different to that of other employees who were not picked on or criticised.

84. We have considered the respondents explanation and do not accept that they had any genuine reason for calling the claimant to a disciplinary hearing.

85. We conclude in the absence of a valid and non discriminatory explanation from the respondent that their unfavourable treatment of her in respect of the criticisms changes in systems without telling her refusal's a part time working from home and the invite to the disciplinary hearing were all on grounds of her pregnancy.

Summary of Conclusions

86. We have reviewed the list of issues set out at the case management hearing and have considered those issues identified as matters of potential direct pregnancy and maternity discrimination.

87. We do not accept that all the matters on that list were acts of direct discrimination.

88. We do not accept the evidence from the respondent that the reason for the meeting being called on the 15 December, was anything to do with a downturn in business or because of a lack of funding to keep the claimant on and the reason we reject that evidence is as follows.

89. We find that 3.1.1, which is a failure by Sam Ferguson to attend meetings, was not an act of discrimination because the claimant has candidly told us that Sam

Ferguson had a tendency not to attend meetings and not to respond to emails. We find that he was behaving as was usual for him and that he was not treating the claimant differently in this respect. In any event this seems to be earlier in the chronology

90. We find that each allegation prior to the claimant being called into a disciplinary hearing, (issue 3.1. 10 in the list of issues and took place on 25th January) was an act of discrimination on grounds of pregnancy.

91. We also accept the claimant's evidence in respect of the reason for her resignation, and conclude that that the claimant resigned in response to those acts of discrimination. This is the allegation at 3.1.11.

92. We also find that issue 3.1.12, which is the failure of the respondent to attend the disciplinary meeting and the subsequent matters including some folks and ignoring meetings text messages and emails and the failure to invite the claimant to the Christmas party and the claimant being bullied by Omar Khan about sign well and the issue that Melinda not a told Sarah hill not to speak to the claimant on the 18th of January are all proven and were all for reasons on grounds of the claimant being pregnant therefore we find that these rule pregnancy discrimination.

93. We have borne in mind the legal tests applicable and in particular we have considered the burden of proof and we have considered whether or not the claimant has proved facts from which we could find, in the absence of a valid explanation from the respondent, that discrimination had taken place.

94. We find that in each of these respects she has done so both on the basis of the evidence she has given in writing; the documentation in the bundle but also her own oral evidence. We also remind ourselves that the respondent has not attended, and therefore none of the evidence set out in their witness statements has been heard under oath. Therefore, where there is a conflict, between any

factual matter in issue, except as set out above, we prefer the claimant's sworn evidence which we have had the opportunity to question.

95. We conclude that the claimant was discriminated against on grounds of pregnancy.

96. We have also considered whether with the claimant was dismissed for a reason related to her pregnancy or subject to detriment related to her pregnancy or other matters contrary to s99 of ERA 1996 and Regulation 20 of the Maternity & Parental Leave etc Regulations 1999.

97. We accept the claimant's evidence that the reason for her resignation was the unfavourable treatment which we have found. We find therefore that she was constructively dismissed.

98. We reject the respondent's unsworn explanations for their treatment of the claimant and have found that the treatment was discrimination on grounds of pregnancy.

99. We conclude that the unfavourable treatment was also, in each case a detriment to the claimant, and we conclude that the reason for her detrimental treatment was related to her pregnancy, and that the dismissal was automatically unfair.

100. We also conclude that the reason for her dismissal was a reason related to her pregnancy.

101. Insofar as there may be any issue in respect of time we conclude that the treatment of the claimant which we have found to be unfavourable and unlawful discrimination and which we have found to be detrimental treatment and an unlawful dismissal were all part of a continuing course of conduct.

102. We have therefore considered what remedy to award in this case.

103. We remind ourselves of the legal principles when making an award in a discrimination case.

Key Legal Principles in Respect of Remedy

104. In this case, we needed to assess the claimant's losses which flowed from the acts of discrimination which we have found. The claimant claims an award for injury to feeling.

105. We have also found that the claimant was automatically unfairly dismissed and have also therefore considered whether or not we should make an award for loss of earnings in this case.

106. In respect of injury to feelings, we considered the original bands of awards set by the case of *Vento-v-Chief Constable of West Yorkshire Police* [2003] IRLR 102 CA, as uplifted by the case of *Da'Bell-v-NSPCC* [2010] IRLR 19 EAT and then the further case of *Simmons-v-Castle* [2013] 1 WLR 1239 (an uplift on all awards of general damages of 10% which has been held to have applied to Tribunal litigation; *Beckford-v-Southwark LBC* [2016] IRLR and *King-v-Sash Window Workshop Ltd* [2015] IRLR 348 and, more recently, *De Souza-v-Vinci Construction (UK) Ltd* EWCA Civ 879).

107. We have borne in mind the updated rates following presidential guidance. we remind ourselves that the Vento guidance suggests a lower band in respect of claims of less serious nature, a middle band for the cases which did not merit in awarding the upper band and an upper band for the most serious cases, with the most exceptional cases capable of exceeding capable of exceeding the upper band.

108. When reaching a figure for injury to feelings, we remained aware that the award that we made had to be compensatory and just to both parties. It should have been neither too low nor too high, so as to avoid demeaning the respect for the policy underlying the anti-discriminatory legislation. We also tried to bear in mind the value in everyday life of the particular sum that we chose to award, particularly in the

context of the Claimant's salary. We also took account of the severity of the treatment, it's length and the extent to which it affected other aspects of the Claimant's life including, in this case her ability to enjoy her pregnancy and the impact on her mental health.

Findings of fact and application of legal principles of compensation.

109. First, we have looked at the question of loss of earnings. Since termination of her employment with the respondent, the claimant has been able to find alternative work, which is better paid.

110. We find that she took all reasonable steps to mitigate her loss. We accept that she had to start her maternity leave earlier that she wished to, and find that therefore there was a period at the beginning, when she was receiving 90% of her pay rather than full pay.

111. We accept that had the claimant continued to be employed by the respondent, her maternity leave would have ended at a later stage. In calculating her loss, we have taken into account the end of her period of the maternity leave, which finished at the end of December 2023.

112. We find that the claimant started work on or about the 15 February 2024 and therefore we have calculated that she has suffered six weeks loss of earnings.

113. On the basis of the figures she has given us, which we accept, we calculate the amount owing is £2661.03. interest is due on that from the midpoint of the period at 8% per annum and we have calculated interest payable on that as £106. 44.

114. We also find that the claimant was entitled to pension loss for that 1 1/2 months and calculate the amount to be £81.60 and interest to be £9.79.

115. On the question of injury to feeling, we have taken into account that this was discrimination on the grounds of pregnancy that the claimant lost her job shortly before she was due to start taking her maternity leave.

116. We accept her evidence that this made her pregnancy a stressful and difficult time for her and that she had difficulties with her mental health. She was referred to the NHS talking therapies and continues to receive support for her mental health.

117. We understand that her treatment was particularly upsetting because of the timing of it and because of the concern that Mrs Powell, the claimant had about finding another job on return to work.

118. On the basis of everything that we have heard from the claimant, which we accept and find as true, we award a figure in the middle of the mid range of Vento guidelines £15,000 in respect of injuries feeling. The claimant is entitled to interest upon that at 8% from the date of the discrimination.

119. There are two dates of discrimination, one of them is the date on which she was told that her job was going to be changed and one of them is the point of the termination. We have therefore calculated the date from which interest will start to accrue, by taking a midpoint between those two periods and the date of hearing rather than carrying out two separate calculations.

120. On that basis we calculate interest at 8% for that periods being £1700.00.

121. The total sum of damages now payable by the respondent to the claimant is therefore £19,608.86.

Employment Judge Rayner
Dated: 20 February 2024

Sent to the parties on
13 July 2024
By Mr J McCormick
For the Tribunal

<u>Note:</u> Reasons for the decision having been given orally at the hearing, written reasons will not be provided unless a written request is received from either party within 14 days of the sending of this record of the decision.