EMPLOYMENT TRIBUNALS

Claimant: **Nikita Twitchen**

Respondents: **(1) Genu Prima Limited t/a First Grade Projects**
(2) Jeremy Morgan

Heard at: **Cardiff** **On: 29 and 30 May 2024**

Before: **Employment Judge R Havard**

Members: **Ms M Walters**
Ms R Hartwell

Representation:
Claimant: Ms A Arya (Counsel)
Respondent: No appearance

JUDGMENT having been sent to the parties on 3 June 2024 and reasons having been requested by the Respondents in accordance with Rule 62(3) of the Rules of Procedure 2013:

REASONS

Introduction

1. By a claim form dated 25 July 2023 the Claimant pursues claims arising from the following complaints, automatic unfair dismissal, discrimination due to pregnancy and no written statement of dismissal. The Claimant was present and represented by Ms Arya of Counsel. There was no appearance by, or on behalf of, the Respondent. Mr Nigel Henry, Litigation Consultant, of Croner is on the record as acting for the Respondent.

2. For the purposes of this decision there is no requirement to set out in detail the chronology of events but, suffice to say, due to the Respondent's non-compliance with various directions made at earlier Case Management Hearings on 15 November 2023 and 29 February 2024, Mr Henry having

appeared on behalf of the Respondent on both occasions, the Respondent's response was dismissed and an application to set aside that decision was also dismissed. More particularly, this case was originally listed to be hearing on 18 March 2024. However, at the Case Management Hearing on 29 February 2024, which was arranged at short notice due to non-compliance with directions at the Case Management Hearing on 15 November 2023, it was decided by Employment Judge Ward to vacate the hearing in March 2024. EJ Ward says the following at paragraph 8 of her Order, *"for these reasons I postpone the hearing on 18 March 2024 and re-list it with dates agreed with the parties on 29, 30 and 31 May 2024. A revised Notice of Hearing will follow."*

3. However, on 27 March 2024, some 4 weeks after the hearing dates in May 2024 had been agreed by Mr Henry on behalf of the Respondent, he sent an email to the Tribunal stating that the Second Respondent, *"has been booked on a holiday from 27 May 2024 returning 3 June, proof of booking is to follow"*.

4. On 26 April 2024, and so a further 4 weeks after Mr Henry's email of 27 March 2024 requesting an adjournment and 8 weeks after agreeing the dates in May at the Case Management Hearing on 29 February 2024, Regional Employment Judge Davies directed that the Respondents application for an adjournment was refused. This was because, despite having had at least 4 weeks to do so, the Respondent had not provided proof of the holiday booking, something Mr Henry offered to provide in his email of 27 March 2024.

5. The reason for going into some detail about this issue is because, on the morning of 29 May 2024, when it became apparent that, without any prior explanation, there was no-one present from the Respondents or anyone on their behalf, the Tribunal telephoned and spoke with Mr Henry. He informed the Tribunal that the Respondents intended to appeal against the decision of Regional Employment Judge Davies refusing their application for an adjournment, and had therefore decided not to attend. Neither the Tribunal nor the Claimant's representative had been provided with any prior notice of their intention to appeal which is even more surprising as there have been exchanges of emails since the decision of Regional Employment Judge Davies was communicated to the parties on 26 April 2024, to include an application by the Respondents dated 3 May 2024 for the Tribunal to set aside the decision to dismiss the Response. As stated, that application was subsequently refused by a decision dated 14 May 2024.

6. In the circumstances the Tribunal considered that it was appropriate to proceed with the hearing in the absence of the Respondents.

Documents

7. In the absence of anything from the Respondents, the Tribunal had been provided with a bundle prepared by the Claimant running to 163 pages together with an index running to 3 pages.

Witness statements

8. The Tribunal had read a 4 page statement provided by the Claimant who also gave oral evidence to the Tribunal.

Submissions

9. The Tribunal listened to submissions made by Ms Arya on behalf of the Claimant.

Issues

10. At the Case Management Hearing on 15 November 2023, a List of Issues for the Tribunal to determine was discussed. In the Order, it stipulates that the List of Issues are included in the Case Summary and that if either party considered the List was wrong or incomplete they must write to the Tribunal and the other side by 30 November 2023; neither party did write by that date to question the relevance and accuracy of the Issues.

11. The Issues relevant to liability are as follows:

    1. Employment status

    1.1 It is accepted that the Claimant was employed by the First Respondent from 13 October 2021 until 18 April 2023.

    2. Time limits

    2.1 Given the date the claim form was presented and the dates of Early Conciliation, any complaint about something that happened before 28 March 2023 may not have been brought in time

    2.2 Were the discrimination complaints made within the time limit in Section 123 of the Equality Act 2010? The Tribunal will decide:

2.2.1 Was the claim made to the Tribunal within 3 months plus Early Conciliation extension of the act to which the complaint relates?

2.2.2 If not, was there conduct extending over a period?

2.2.3 If so, was the claim made to the Tribunal within 3 months (plus Early Conciliation extension) of the end of that period?

2.2.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable. The Tribunal will decide

2.2.4.1 Why were the complaints not made to the Tribunal in time?

2.2.4.2 In any event, is it just and equitable in all the circumstances to extend time?

2.3 Was the unfair dismissal complaint made within the time limit in Section 111 of the Employment Rights Act 1996? The Tribunal will decide:

2.3.1 Was the claim made to the Tribunal within 3 months plus Early Conciliation extension of the effective date of termination and act complained of ?

2.3.2 If not, was there a series of similar acts or failures and was the claim made to the Tribunal within the 3 months plus Early Conciliation extension of the last one?

2.3.3 If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?

2.3.4 If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable time?

3. Unfair dismissal.

3.1 Was the Claimant dismissed?

3.2 Was the reason or principle reason for dismissal that the Claimant was pregnant? If so, the Claimant will be regarded as unfairly dismissed.

5. Pregnancy and Maternity Discrimination (Equality Act 2020 Section 18)

5.1 Did the Respondent treat the Claimant unfavourably by doing the following things:

5.2 Ignoring messages sent by the Claimant to the Respondent on 27 March 2023

5.3 Not allowing the Claimant to return to work on 3 April 2023

5.4 Ignoring the Claimant's message on 11 April 2023 enquiring about her holiday entitlement

5.5 Dismissing the Claimant

5.6 Did the unfavourable treatment take place in a protected period?

5.7 The Claimant has confirmed that her first maternity leave ended on 26 March 2023

5.8 The Claimant has confirmed her second pregnancy was announced on 17 February 2023 (at which time she was approximately 8 weeks pregnant) and that the baby was born on 25 October 2023

5.9 Was the unfavourable treatment because of her pregnancy?

5.10 Was the unfavourable treatment because of illness suffered as a result of the pregnancy?

6. No written statement of dismissal. Section 92 Employment Rights Act 1996

6.1 Did the Respondent fail to supply the Claimant with a written statement of dismissal?

Findings of Fact

12. In reaching its findings of fact, the Tribunal had considered all the evidence, both written and oral. Whilst recognising that her evidence had not been subjected to cross-examination, the Tribunal found the Claimant to be a credible witness who gave her evidence in a consistent and coherent manner without attempting to embellish or exaggerate what had taken place.

13. Despite the fact that the response had been dismissed, the Claimant was asked, in the course of her evidence, to comment on what had been said by the Respondents.

14. The First Respondent provides building services to a range of commercial clients. It is based in Unit 16 at Albion Industrial Estate, Pontypridd. In their response form, the Respondents say that, at that time, it had a workforce of 14, to include the Second Respondent who is Managing Director.

15. On 13 October 2021, the Claimant commenced employment at the First Respondent. Her job title was Office Administration Assistant. In her oral evidence, the Claimant said, and the Tribunal found, that her job had involved answering the phone, making and taking payments, raising and sending out invoices, filing documents, organising meetings and organising the office generally.

16. The Claimant stated that her working relationship with the Second Respondent was very good and they got on well. He was very responsive when the Claimant needed to speak to him.

17. Shortly after commencing her employment, the Claimant became pregnant; she commenced a period of maternity leave on 27 June 2022.

18. On 17 February 2023, the Claimant attended a return to work meeting with the Second Respondent. The meeting started positively with the Second Respondent saying the business was doing well, confirming that the First Respondent had recently secured a contract with the NHS. The Second Respondent said he looked forward to the Claimant's return, and the basis on which the Claimant was to return, in terms of hours, was also discussed and agreed.

19. However, towards the end of the meeting, the Claimant informed the Second Respondent that she was pregnant. This was said in front of the Operations Manager and Contract Manager. Indeed, whilst not stated at the time, the Claimant was approximately 8 weeks pregnant. The baby was born on 25 October 2023.

20. The Claimant stated, and the Tribunal found, that this news came as a shock to the Second Respondent. Whilst it was suggested by the Second Respondent in the Grounds of Response that he congratulated the Claimant, this was disputed by the Claimant in her oral evidence. She also denied that she offered to finish with the First Respondent if this presented a problem. Indeed, the Tribunal accepted the evidence of the Claimant who stated that she needed the job and the security that came with it. She was responsible for her children and needed the financial stability.

21. The Claimant also noticed that even though her maternity leave came to an end on 26 March 2023, no-one from the Respondents had contacted her to confirm her return to work. She had to chase for a response to her message to the Second Respondent of 27 March 2023, as she wished to return to work on 3 April 2023. However, on that date, the Second Respondent sent a message stating, *"it's best to leave it until you have your routine in place"*. Whilst the Claimant replied to say *"that's absolutely fine"*, that was on the basis that she did not at any stage consider or suspect that her job was at risk. The Tribunal accepted the Claimant's evidence and she stated that she was ready to commence work on 3 April 2023, having ensured the necessary childcare arrangements were in place.

22. On 4 April 2023, the Claimant then raised the issue of holiday entitlement in her first month back as her son was due to start in school. The Second Respondent failed to respond substantively to the Claimant's query regarding holiday entitlement which was out of character and the Claimant had to send a chasing message on 11 April 2023 and then again on 18 April 2023.

23. It was then later that day, on 18 April 2023, that the Second Respondent telephoned the Claimant to inform her that, due to financial difficulties faced by the First Respondent and certain delays in payments being made to the business, savings had to be made. The Second Respondent confirmed that the Claimant's employment was to be terminated due to her role becoming redundant. It was suggested that this was due to new software being installed "*which meant that the Claimant's role would no longer exist with her becoming redundant"*. The Second Respondent also referred to a workshop manager being made redundant earlier in 2023, of which the Claimant had no knowledge, but he said that these financial difficulties continued.

24. However, at the time of the meeting in February 2023 and subsequently, no mention had been made of any financial difficulties or redundancies. Furthermore, the Claimant stated, and the Tribunal found, that in the course of the conversation on 18 April 2023 no mention was made by the Second Respondent of the new software which would mean that her job no longer existed.

25. Indeed, the Tribunal noted that one of the failures on the part of the Respondents in the course of these proceedings was to produce any evidence of the alleged financial difficulties or of the new software.

26. At paragraph 7 of the Case Management Order of 29 February 2024, Judge Moore says as follows:

    "Mr Henry was frank in his accepting responsibility for the failure to comply with Orders. A draft bundle has been provided yesterday but there are further

documents requested regarding the software the Respondents says resulted in the Claimant's redundancy. These are clearly relevant to the reasons for the dismissal and as of today have not been disclosed".

27. Despite being ordered to do so, no information or documentation has been provided since.

28. The Claimant also confirmed that, since her dismissal, the First Respondent has rebranded itself, recruited personnel and invested in vehicles. Whilst the roles advertised were not roles to which the Claimant would be suited, it cast doubt on the Respondents' assertion that the company was in financial difficulty. It also conflicted with what was said by the Second Respondent at the meeting on 17 March 2023 when he said the business was doing well.

29. Following her dismissal, the Claimant stated, and the Tribunal found, that she went online to find out whether the Respondents were entitled to treat her in the way that they did, as she was convinced that the reason for her dismissal was due to her pregnancy and that her role was not redundant. Through that process, she contacted her solicitors and cooperated with them, leading to her claim form being submitted on 25 July 2023. At no stage did the Claimant receive a written statement from the Respondents setting out the reasons for her dismissal.

The Law

30. Automatic unfair dismissal and Section 99 of the Employment Rights Act 1996 ("ERA").

31. Section 99 of the ERA provides that an employee should be regarded as having been unfairly dismissed if the principal reason for the dismissal is of a prescribed kind or the dismissal takes place in prescribed circumstances. Those circumstances or reasons include reasons relating to pregnancy, childbirth or maternity.

32. Regulation 21 of the Maternity and Parental Leave Regulations provides that an employee who is dismissed is regarded as unfairly dismissed under Section 99 if the reason, or principal reason, is a reason connected with the pregnancy of the employee, that includes taking or seeking to take time off for antenatal care or miscarriage. An employee will also be regarded as unfairly dismissed if she is selected for redundancy for any of those reasons.

33. Section 18(2) of the Equality Act 2010 states, *"a person discriminates against a woman if in the protected period in relation to a pregnancy of hers that person treats her unfavourably (a) because of the pregnancy or (b) because of illness suffered by her as a result of it"*.

34. Section 18(5) states, *"for the purposes of sub-section (2) if the treatment of a woman is an implementation of a decision taken in the protected period the treatment is to be regarded as occurring in that period (even if the implementation is not until after the end of that period) 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 the pregnancy or (b) if she does not have that right, at the end of the period of 2 weeks beginning with the end of the pregnancy."*

35. For a discrimination claim to succeed under Section 18 of the Equality Act, the unfavourable treatment must be because of the employee's pregnancy or maternity leave. In considering whether there has been pregnancy or maternity discrimination, the employer's motive or intention is not relevant and neither are the consequences of pregnancy or maternity leave. Such discrimination cannot be justified. The claim of pregnancy and maternity discrimination under Section 18 of the Equality Act does not require a comparator. A woman who alleges she has been discriminated against on the grounds of pregnancy need not compare her treatment with that of a man. The consequences of pregnancy for the employer, financial or otherwise, are irrelevant in considering whether there has been pregnancy or maternity discrimination.

36. The provisions of the Equality Act 2010 are supplemented by the Maternity and Parental Leave Etc. Regulations 1999.

37. The Equality and Human Rights Commission has produced guidance on the Equality Act in the form of a statutory Code of Practice on employment.

38. At paragraph 8.22 of the Code, examples are given of reasons for unfavourable treatment that will amount to pregnancy or maternity discrimination. The following are those which the Tribunal considers to be of particular relevance: the fact that because of her pregnancy the woman will be temporarily unable to do the job for which she is specifically employed whether permanently or on a fixed term contract; the cost to the business of covering her work; the failure to consult a woman on maternity leave about changes to her work or about possible redundancy.

39. Turning to detriment under Regulation 19 of the Maternity and Parental Leave Etc. Regulations 1999, both the Employment Rights Act 1996 and the Parental Leave Regulations make it unlawful for an employer to penalise or dismiss an employee for exercising rights afforded to her in relation to pregnancy, childbirth, maternity or maternity leave.

40. Dealing with the burden of proof, by Section 136 sub-sections (2) and (3) of the Equality Act 2010, the test in respect of the burden of proof is set out at

sub-section (2). If there are facts from which the Court could decide in the absence of any other explanation that a person contravened the provision concerned, the Court must hold that the contravention occurred. However, sub-section (2) does not apply if a person shows that the person did not contravene the provision. The switching of the burden of proof is simply set out in the Code at paragraph 15.34 *"if a Claimant has proved facts from which a Tribunal could conclude that there has been an unlawful act then the burden of proof shifts to the Respondent. To successfully defend a claim the Respondent will have to prove on the balance of probabilities that they did not act unlawfully. If the Respondents explanation is inadequate or unsatisfactory the Tribunal must find that the act was unlawful."*

41. For the burden of proof to shift the Claimant must show facts sufficient, without the explanation referred to, to enable the Tribunal to find discrimination.

42. There are guidelines to be found in various precedents such as ***Igan -v- Wong*** **[2005] IRLR 258** which relates to a two-stage test.

"The first stage requires the complainant to prove facts from which the Employment Tribunal could, apart from the Section, conclude in the absence of an adequate explanation that the Respondent has committed, or is to be treated as having committed, the unlawful act of discrimination against the complainant.

The second stage which only comes into effect if the complainant has proved those facts, requires a Respondent to prove that he did not commit, or is not to be treated and having committed, the unlawful act if the complaint is not to be upheld."

43. In ***Laing -v- Manchester City Council and others [2006] IRLR 748*** the correct approach in relation to the two-stage test was discussed.

"No doubt in most cases it will be sensible for a Tribunal formally to analyse a case by reference to the two stages but it is not obligatory on them formally to go through each step in each case….(para 73). The focus of the Tribunals analysis must, at all times, be the question of whether or not they can properly and fairly infer race (or other) discrimination. If they are satisfied that the reason given by the employer is a genuine one and does not disclose either conscious or unconscious racial discrimination but that is the end of the matter, it is not improper for a Tribunal to say, in effect, 'there is a nice question as to whether the burden has shifted but we are satisfied here that even if it has, the employer has given a fully adequate explanation as to why he behaved as he did and it has nothing to do with race' ".

44. The nub of the question remains why the Claimant was treated as he or she was and further guidance is to be found in ***Talbot -v- Costain Oil, Gas and Process Limited and others*** **[2017] ICR D11**, to which the Tribunal has been referred by Ms Arya. In decision of the EAT, His Honour Judge Shanks summarised the principles for Tribunals to consider when deciding what inferences of discrimination may be drawn. The Tribunal has taken account of that guidance.

45. With regard to time limits, section 123 of Equality Act 2010 ("EqA") states:

*"Subject to section 140B**,** proceedings on a complaint within section 120 may not be brought after the end of—*

(a) the period of 3 months starting with the date of the act to which the complaint relates, or

(b) such other period as the employment tribunal thinks just and equitable.
[…]

(3) For the purposes of this section—

(a) conduct extending over a period is to be treated as done at the end of the period;
(b) failure to do something is to be treated as occurring when the person in question decided on it.

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—

(a) when P does an act inconsistent with doing it, or
(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

46. The Tribunal has a wide discretion to extend time, but the burden is on C to show that it is just and equitable to do so: "*the exercise of discretion is the exception rather than the rule*" [Robertson v Bexley Community Centre [2003] IRLR 4343].

Analysis and Conclusions

47. In addressing each issue in turn, the Tribunal had carried out an analysis of the facts and, applying the legal framework, had reached the following conclusions.

48. Dealing first with the issue of time limits, it was agreed at the Case Management Hearing on 15 November 2023 that a claim in respect of

something that happened before 28 March 2023 may not have been brought in time.

49. It was submitted by Ms Arya that the Second Respondent's conduct at the meeting on 17 February 2023 and the Second Respondent's failure to respond to messages on 27 March 2023 were intrinsically linked to what occurred in April 2023 and the Claimant's dismissal. The Tribunal agreed. They are linked in terms of conduct and they all involve the same people, namely the Claimant and the Second Respondent. Consequently, the Tribunal was satisfied that the conduct on the part of the Second Respondent in February and March 2023 represented conduct extending over a period and forms part of the overall claim. Even if the Tribunal had found this was not the case, it was satisfied that it would be just and equitable to extend time and that the Respondent would not be prejudiced.

50. As for the claim of automatic unfair dismissal, the effective date of termination by dismissal was 18 April 2023 and it was therefore in time.

51. Turning to the claim of automatic unfair dismissal there was no dispute that the Claimant was dismissed on 18 April 2023. Taking account of its findings of fact, the Tribunal was satisfied that, on the balance of probabilities, it was reasonable to infer that the principal reason why the Claimant was dismissed was because she was pregnant. Even though the response had been dismissed, the Tribunal nevertheless found that no evidence had been forthcoming from the Respondent to suggest that the reason was redundancy.

52. In reaching its decision, the Tribunal took account of the change of attitude of the Second Respondent on being told by the Claimant on 17 March 2023 of her pregnancy, having said at an earlier stage in the meeting that the business was doing well, and that he was looking forward to the Claimant's return. The Tribunal also noted the change in approach in responding to her subsequent communications which contrasted with the speed of response by the Second Respondent prior to 17 March 2023.

53. The fact that the Claimant did not return to work between her return-to-work meeting on 17 March 2023 and her dismissal on 18 April 2023 despite indicating that she wished to return, and the relative proximity between those two events, was also considered by the Tribunal to be relevant.

54. Finally, the Tribunal took account of the complete lack of any coherent evidence-based alternative explanation from the Respondents, despite them having ample opportunity to provide one.

55. Consequently, in respect of the claim for automatic unfair dismissal the Tribunal found that the claim against the First Respondent was well-founded and succeeds.

56. In relation to the claim under the Pregnancy and Maternity Discrimination and Section 18 EqA, the Tribunal was satisfied that the Second Respondent's conduct at the meeting on 17 March 2023, the failure to respond to messages on 27 March 2023 and 11 April 2023, and not allowing her to return on 3 April 2023 amounted to unfavourable treatment. In particular, the dismissal of the Claimant on 18 April 2023 amounted to unfavourable treatment. Throughout this period, the Claimant was pregnant. The Tribunal was therefore satisfied that this unfavourable treatment took place in the protected period.

57. For the reasons already outlined, the Tribunal was satisfied that, in the absence of any evidence to support any other substantive explanation, there were sufficient facts to infer that the Respondents' unfavourable treatment of the Claimant was because of the pregnancy and that the Respondents conduct was discriminatory.

58. To confirm, taking account of the dismissal of the Respondents' response and, furthermore, the complete absence of any supportive evidence to suggest that the Respondents had acted lawfully, the Tribunal found that they acted unlawfully and that their conduct was discriminatory. The Tribunal therefore determined that the claim was well-founded and succeeded.

59. Finally, the Tribunal found that in the absence of any documentary evidence to the contrary the Respondents had failed to supply the Claimant with a written statement of the reasons for her dismissal.

Remedy

60. The Tribunal had been provided with a Schedule of Loss. The Tribunal noted that no Counter-schedule had been served by the Respondents, despite being directed to do so.

61. On considering the relevant documentation to include bank statements and wage slips, the Tribunal was satisfied that the figures in the Schedule regarding how much the Claimant was being paid by the Respondent were accurate.

62. Turning to the losses to date, the Tribunal was satisfied that the figures were correct. Furthermore, on hearing further evidence, the Tribunal was also satisfied that the Claimant had endeavoured to mitigate her loss. Indeed, taking account of the fact that she was pregnant at the time, the Claimant was to be commended for working in the months from June 2023 to October

2023. During that time, the Claimant had worked at a launderette and a caravan park. She was undertaking ironing and washing for customers. The Claimant was also cleaning caravans during the summer, in very hot conditions, travelling 45 minutes each way, up until she was 39 weeks pregnant.

63. Consequently, the loss to date amounted to £4,483.32.

64. As for future loss, the Tribunal accepted the figure of £1,034.88 representing remaining paid maternity leave to 11 July 2024.

65. However, in relation to the claim of a further 39 weeks from 12 July 2024 to 12 April 2025, the Tribunal considered this to be excessive. When giving evidence, the Claimant very fairly stated that there were job opportunities within the area. Whilst the Tribunal accepted the submissions of Ms Arya that it would be difficult for the Claimant to find employment which broadly reflected her role at the Respondent, and which catered for her personal and family circumstances, the Claimant was clearly resourceful. The Tribunal concluded that a more realistic period by which time the Claimant will have secured employment was 24 weeks, totalling £6,108.00.

66. Consequently, the total compensatory award for past and future loss was in the sum of £11,626.20.

67. The Tribunal also awarded the sum of £521 for the Respondents' failure to provide written reasons for the Claimant's dismissal.

68. The Tribunal therefore gave Judgment as against the First Respondent in the sum of £12,147.20.

69. With regard to the claim for injury to feelings, the Tribunal had considered carefully the guidance to be found in paragraph 53 of ***Vento – v- Chief Constable of West Yorkshire Police (2)*** **[2003] IRLR 102**.

70. It stated, *"in HM Prison Service and Johnson, Smith J reviewed the Authorities on compensation for non-pecuniary loss and made a valuable summary of the general principles gathered from them. We would gratefully adopt that summary. Employment Tribunals should have it in mind when carrying out this challenging exercise. In her Judgment on behalf of the Appeal Tribunal, Smith J said at page 165 '(1) awards for injury to feelings are compensatory they should be just to both parties, they should compensate fully without punishing the tortfeasor. Feelings of indignation at the tortfeasors conduct should not be allowed to inflate the award. (2) awards should not be too low as that would diminish respect for the policy of the anti-discrimination legislation. Society has condemned discrimination and awards must ensure that it is seen to be wrong. On the other hand, awards*

should be restrained as excessive awards could, to use the phrase of Sir Thomas Bingham MR, be seen as the way to "untaxed riches". (3) awards should bear some broad general similarity to the range of awards in personal injury cases. We do not think that this should be done by reference to any particular type of personal injury award, rather than to the whole range of such awards. (4) in exercising their discretion in assessing the sum Tribunals should remind themselves of a value in everyday life the sum they had in mind. This may be done by reference to purchasing power or by reference to earnings. (5) Finally, Tribunals should bear in mind Sir Thomas Bingham's reference to the need for public respect for the level of award made.' "

71. Paragraph 65 sets out guidance to Tribunals and provides, *"Employment Tribunals and those who practice in them might find it helpful if this Court were to identify 3 broad bands of compensation for injury to feelings as distinct from compensation for psychiatric or similar personal injury (1) the top band should be awarded in the most serious cases such as where there has been a lengthy campaign of discriminatory harassment on the grounds of sex or race. Only in the most exceptional case should an award of compensation for injury to feelings exceed the maximum amount. The middle band should be used for serious cases which do not merit an award in the highest band and awards in the lower band are appropriate for less serious cases, such as where the act of discrimination is an isolated or one-off occurrence."*

72. At paragraph 66 the Court added, *"there is of course within each band considerable flexibility, allowing Tribunals to fix what is considered to be fair, reasonable and just compensation in the particular circumstances of the case. The bands are currently upper band £33,700 to £56,200; middle band £11,200 to £33,700 and lower band £1,100 to £11,200."*

73. The Tribunal had also been provided by Ms Arya with a helpful extract from Harvey's which provided examples of cases where the discriminatory conduct related to pregnancy.

74. Having listened carefully to the Claimant give evidence, the Tribunal was struck by the fact that she did not seek to exaggerate or embellish the effect on her of the Respondents' conduct. However, the Tribunal was satisfied that this must have caused real anxiety and distress over a period of time, having been dismissed when pregnant and losing her sense of financial security with all the family responsibilities that she had. The Tribunal reminded itself that the purpose of the award was not to punish the Respondents. The Tribunal concluded that this claim fell within the middle band.

75. Taking account of the examples provided, and in particular the cases of ***Touati -v- Root Success Limited*** *(London South)(Case No 2702885/2008)*

and ***Wass -v- Finest Care Limited*** *(Teesside)(Case No 2501584/2017)*, which had similarities but where the conduct of the Respondents had been more severe, the Tribunal concluded, in exercising its discretion, that an award of £15,000 would be fair, reasonable and proportionate. Consequently, the Tribunal gives Judgment in this amount as against both Respondents on a joint and several basis.

76. Therefore, the total award to the Claimant is made up as follows:

    76.1 Automatic unfair dismissal as against the First Respondent - £11,626.20

    76.2 Failure to provide written reasons for dismissal as against the First Respondent - £521.00

    76.3 Injury to feelings as against both Respondents - £15,000.00

    76.4 Total - £27,147.20

77. With regard to interest, the Tribunal accepted Ms Arya's calculations as follows:

    77.1 Unfair Dismissal and failure to provide written reasons for dismissal at 8% - £625.66

    77.2 Injury to Feelings from 17 February 2023 at 8% - £933.90.

78. The Tribunal orders the First Respondent to pay compensation to the Claimant in the total sum of £12,772.86.

79. The Tribunal orders the First and Second Respondents to pay compensation to the Claimant in the total sum of £15,933.90.

Employment Judge R Havard
Dated: 15 July 2024

REASONS SENT TO THE PARTIES
ON 16 July 2024

FOR THE SECRETARY OF
EMPLOYMENT TRIBUNALS
Mr N Roche