



EMPLOYMENT TRIBUNALS

Claimant

Miss C Thompson

Respondent

v

E-Zec Medical Transport Services
Limited

Heard at: Bury St Edmunds (by CVP)

On: 28, 29 and 30 March 2022

Chambers Discussion: 11 May 2022

Before: Employment Judge K J Palmer

Members: Ms Susan Elizabeth and Mr Allen Chinn-Shaw

Appearances

For the Claimants: Mr Michael Raffell, Consultant

For the Respondent: Mr Colin Barr, Consultant

RESERVED JUDGMENT

It is the unanimous Judgment of this Tribunal as follows:

1. The Claimant's claim that the Respondent's Risk Assessment amounted to a breach of the Management of Health and Safety at Work Regulations 1999 and was discriminatory under Section 18 of the Equality Act 2010, succeeds.
2. The Claimant's claim that 10 acts or omissions taking place between 6 November 2019 and 30 December 2019, amounted to discrimination under Section 18 of the Equality Act 2010, and detriment contrary to Section 47C(1)(2A) of the Employment Rights Act 1996, succeed.
3. A separate Remedy Hearing with one day allowed will take place on a date to be fixed.

REASONS

1. This matter came before this Tribunal for a three day Hearing to be conducted by Cloud Video Platform. A further one day was required in Chambers. The Hearing took place on 28, 29 and 30 March 2022 and the 11 May 2022 for the Chambers discussion.
2. The Tribunal had before it a Bundle running to some 174 pages. It heard evidence from the Claimant and from Eric Rolfe, a former employee of the Respondent and for the Respondent, from a Ms Adelle Finney, the National Operations Manager of the Respondent.
3. Both parties were represented by Consultants; the Claimant by Mr Michael Raffell and the Respondent by Mr Colin Barr.
4. The Tribunal took the first morning of the Hearing to read the Bundle and the accompanying Witness Statements and the Hearing commenced after lunch on 28 March 2022.

The Claims

5. The Claimant presented an ET1 to the Watford Employment Tribunal on 9 April 2020. She pursues claims as a result of her employment with the Respondent as an Ambulance Care Assistant Driver. In her ET1 she ticked the discrimination box and indicated that she had been discriminated against on the grounds of pregnancy or maternity and sex. She, in the body of her claim, relied upon Section 18 of the Equality Act 2010 ("EqA") and Section 13 and 19 of that Act.
6. However, matters were clarified at a Preliminary Hearing which took place on 16 September 2021 before Employment Judge Kurrein.
7. At that Hearing, clarity was brought to the Claimant's claims and the issues set out in that Case Management Summary are the only issues before this Tribunal today. Originally, it was part of the Claimant's claim that the treatment she received from the Respondents had caused her to miscarry her pregnancy in January of 2020. It was made clear by Mr Raffell at the outset of this Hearing that that claim was no longer part of the Claimant's claims.
8. The claims she pursues, therefore, are set out in paragraph 5, 6 and 7 of the Case Management Summary of Judge Kurrein pursuant to the September 2021 Hearing.

The Issues

PROTECTED PERIOD

9. It is the Claimant's case that she, at all material times, fell within the protected period pursuant to the Equality Act 2010, s.18(6).

FAILING TO CARRY OUT ADEQUATE RISK ASSESSMENT

10. It is the Claimant's case that after having informed the Respondent of her pregnancy in writing on 17 October 2019, it failed to carry out a suitable and sufficient Risk Assessment contrary to the Management of Health and Safety at Work Regulations 1999, Regulation 19(3) and that that amounted to discrimination under s.18(2) EqA 2010.

FAILURE TO COMPLY WITH THE RISK ASSESSMENT UNDERTAKEN

11. It is further the Claimant's case that the following acts or omissions of the Respondent were acts of discrimination contrary to s.18 EqA 2010 and / or amounted to detriment contrary to s.47C(1)(2a) of the Employment Rights Act 1996 ("ERA").

12. The acts and/or omissions relied upon are as follows:

- 12.1 6 November 2019 – job number or ID: 3193788 – Breach, manoeuvring wheelchair and arm assistance;
- 12.2 22 November 2019 – job number or ID: 3249199 – Breach, manoeuvring wheelchair and two persons needed, risk of blackout;
- 12.3 28 November 2019 – job number or ID: 3265570 – Breach, non-weight bearing bariatric patient;
- 12.4 2 December 2019 – job number or ID: 3284149 – manoeuvring wheelchair, risk of falls;
- 12.5 5 December 2019 – job number or ID: 3285278 – manoeuvring wheelchair;
- 12.6 12 December 2019 – job number or ID: 3316868 – manoeuvring wheelchair, bariatric patient plus Covid-19 positive;
- 12.7 13 December 2019 – job number or ID: 3320968 – two persons as risk of blackouts;
- 12.8 17 December 2019 – job number or ID: 336198 – rude and aggressive;
- 12.9 27 December 2019 – job number or ID: 3308754 – poor mobility; and

12.10 30 December 2019 – job number or ID: 3336482 – non-weight bearing bariatric patient.

Findings of Fact

13. The Claimant started working for the Respondent on 29 July 2019 as an Ambulance Care Assistant.
14. The Respondents are a company that provide transport for patients to and from NHS Trust Hospitals under contract. They run a fleet of vehicles and employ some 1,400 staff in Great Britain, with some 120 approximately working at the place where the Claimant was employed at Martlesham, Ipswich, Suffolk.
15. In her role the Claimant was assigned jobs to collect patients and deliver them to NHS Trust Hospitals for treatment as Out Patients and to return them. Depending on the nature of the job, she would be assigned a particular company vehicle and would either accompany another employee or carry out the task on her own.
16. For the material period in question, the Claimant's Crew Partner was a Mr Eric Rolfe from whom the Tribunal heard evidence.
17. The Claimant, in her evidence confirmed that she had previously in August of 2019, experienced an early miscarriage at about five or six weeks. She explained in evidence that she was therefore particularly anxious when she became pregnant again in light of the nature of her duties which involved a lot of heavy lifting of large patients, the pushing of wheelchairs and so on.
18. The Claimant, in her evidence, said that she found out she was pregnant on Saturday 12 October 2019, having conducted a test which had produced a faint positive.
19. On her next shift on 15 October 2019, she went to the Control Room accompanied by her Crew Partner Eric Rolfe and informed Laila Eldinari that she was pregnant. She had been that day assigned to a stretcher vehicle with Mr Rolfe. She was surprised that she was not reassigned due to the information she had imparted, including the fact that she had suffered a previous miscarriage.
20. Under cross examination, Mr Barr attempted to shake the Claimant in her evidence and suggested that the differences between the evidence in her Witness Statement and her email in writing to the Respondents informing them of her pregnancy on 17 October 2019, was somehow sinister and indicative of the Claimant fabricating evidence.
21. The Tribunal has analysed carefully that cross examination and we do not propose to comment on every aspect of it, save to say we do not consider that the cross examination elicited any evidence of fabrication. The

Claimant did, on occasion, accept that she had mis-remembered certain issues, but we believe she did so openly and honestly. Moreover, we did not consider any of those to be material and we were generally impressed with the Claimant's evidence.

22. There was a conflict in her evidence with that of her Crew Partner Eric Rolfe who recalled that she had informed Ms Eldinari of her pregnancy at the end of the day on 15 October 2019, but in cross examination the Claimant was adamant it was at the beginning. We prefer the Claimant's evidence in this respect and consider that Mr Rolfe mis-remembered the circumstances. In any event, nothing turns on that particular small piece of evidence.
23. At the end of the shift on 15 October 2019, the Claimant is assigned a rota for the following days work. She noticed that despite informing Miss Eldinari and others present that she was pregnant, she had still been rotated to work on a bariatric ambulance for patients with high body mass index (BMI), including stretcher and wheelchair. Both of which are considerably larger and heavier than on a standard ambulance due to increased weight. After raising this, it was changed back to a stretcher ambulance which, whilst not involving the likely weight lifting involved in a bariatric ambulance, may still involve the manoeuvring of heavy stretchers and individuals. During the course of that shift, the Claimant's Crew Partner Eric did ask for some jobs to be removed as being unsafe for a pregnant woman.
24. It was on 17 October 2019 that the Claimant sent an email to her Supervisor Amy Cage, in relation to her pregnancy. This was a lengthy email and it was before the Tribunal. It raised concerns about the nature of the shifts allocated to the Claimant since she revealed her pregnancy. She is very clear about her concerns and raises the fact that she has recently lost a child in early pregnancy. The Claimant never received a formal response to this email. She requested a Risk Assessment and one was conducted by the Respondents on 22 October 2019. This was conducted by the then Manager David Pepper. We accept that the Claimant was in fact off until 22 October 2019, so this is probably the first time the Respondents could reasonably have carried out such an assessment. The Claimant was off between the end of 17 October 2019 and 22 October 2019.
25. We accept the Claimant's evidence that Mr Pepper, from whom we have heard no evidence, was inexperienced at conducting such assessments and indicated to the Claimant that this was the first one that he had undertaken.
26. The Risk Assessment was conducted and a form was completed by David Pepper. This consisted of a number of boxes being ticked and some recommendations for action being inserted. The Claimant was then asked to sign the form to signify her agreement. In the Recommendations column, three hazards were noted and some recommendations were suggested; such as moving the Claimant to a car to be more comfortable.

27. There was generally a lack of detail and, in the Tribunal's view, a lack of proper consideration of the real risks the Claimant was going to face if she continued to be rostered to work in transporting Out Patients to and from Hospital. Too much emphasis appears to have been placed by the Respondents on the Claimant. At every opportunity throughout this process Mr Barr has sought to highlight the Claimant's failure to carry out a self-assessment and placed the burden of seeking proper consideration of her risks and needs upon her, rather than on the Respondents. The Claimant accepts that she signed the assessment sheet indicating she was happy, but in reality the Risk Assessment was wholly lacking in detail and proper consideration and it is the Tribunal's view that it is unreasonable to expect the Claimant to take the lead on such matters. This is very much a theme that the Respondents have pursued, both in their evidence and in the approach of their advocates.
28. The Claimant then continued to be rostered after a brief stint working in the office. It then appears that little heed was paid to the suggestions put forward in the Risk Assessment in light of the concerns raised by the Claimant, both verbally but most particularly, in her email of 17 October 2019.
29. The Claimant gave evidence that during her time on the road thereafter, she was frequently doing long trips to Addenbrooke's, Bury St Edmunds, Norfolk and Norwich Hospitals, as well as long local trips. This made it hard for her to manage the frequent toilet breaks that she required, or to eat as often as required. She found long periods of sitting very uncomfortable, especially when needing to visit the lavatory and she was often given back to back jobs.

The Particular Incidents in respect of which the Claimant Relies

30. INCIDENT 1 on 6 November 2019, ID: 3193788

The details of the difficulty the Claimant had with this job are in paragraph 54 of her Witness Statement. This was a car job, but the person needed manoeuvring with their wheelchair and required arm assistance. The Claimant gave evidence that she collected the patient from hospital and pushed the patient along the path and down the ramp to get to the road access point. She had to support the patient's weight to help them get into the car. This caused her immense physical strain in dealing with this patient with poor mobility. She explained that moving wheelchairs whilst pregnant was constantly concerning and involved her engaging her core a lot. Hospital wheelchairs are heavy and do not turn well. She had to twist her body frequently. The patient's weight was important as it involved the Claimant having to take the weight of the patient to support them as they moved. She had to stop herself from losing balance.

31. INCIDENT 2 on 22 November 2019, ID: 3249199

On this particular job which the Claimant was in a car and was dealing with on her own, the Claimant evidenced that this really was a job that needed two people. The patient's family met at the destination, but she still had to pick up the patient alone. The patient was subject to blackouts and the patient could have blacked out and fallen onto her and the Claimant would have been left to support the patient alone in such a scenario. The rota chart explained about the patient's potential blackouts and the fact that the patient had kidney problems, a walking stick and was DNAR. It explained the last fall of the patient was about 13 days previous. Despite this, the Claimant was rostered to do this job on her own.

32. INCIDENT 3 on 28 November 2019, ID: mis-described in Judge Kurrein's summary as: 326570, but is in fact: 3265475

This was a renal patient whose weight was 122 kgs. This patient was non-weight bearing and had a positive Covid-19 test. The patient described in the roster as having their own bariatric wheelchair. The patient was not accompanied. The Claimant was left to complete this job on her own. She explained that it was particularly difficult manoeuvring the patient as the pathway was sloping. She describes at paragraph 58 the physical strain that she exerted and the level of pressure put on her back and legs.

33. INCIDENT 4 on 2 December 2019, ID: 3284149

This patient was described in the roster as having poor communication, a stroke patient with poor hearing, risk of falls and confusion. The patient also had dementia. This was a TW Vehicle, not a car. The patient had a Carer but the Claimant gave evidence that the Carer did not help with moving or securing the patient. The Claimant had to secure the wheelchair in the vehicle and manage the vehicle and the ramp. She had to do the wheelchair manoeuvring herself. The job involved her collecting the patient from the Hospital and pushing while securing them down the ramp to get to the road access point. This all involved physical strain. The Claimant felt her lower joints were loose and she would get pains through her pelvis and this made her feel as though she was unstable when she was moving the wheelchair. She said the TW Vehicle which was a larger vehicle than a car and was very uncomfortable. The TW vehicle would vibrate a lot which would cause stress on her core and upper legs. Her lower hips and back would be painful as she stood up and would be often the cause of a limp as she walked into the hospital to collect the patient.

34. INCIDENT 5 on 5 December 2019, ID: 3285278

This is once again a TW Vehicle and the Claimant was alone. The patient was described on the roster as having not much English, being French and there being a wheel chair requiring handling. This was particularly difficult for the Claimant and she completed a record of her conversation with Lorraine Barner as she complained that this job was not in accordance with

the Risk Assessment carried out by Mr Pepper and that she had been assigned to a TW Vehicle and she had no training on the ramp and clamps and the fitting of the seat belts. She explained that she struggled to push the wheelchair up the ramp. This is recorded on page 88 of the Bundle. The Claimant explained extensively the difficulties she experienced with this job in paragraph 63 of her Witness Statement. She had to use great force from her arms and her core to manipulate and manoeuvre the wheelchair.

35. INCIDENT 6 on 12 December 2019, ID: 3316868

On this occasion the Claimant was assigned to a car, but it was a bariatric wheelchair needing greater force in manoeuvring. The patient was the same 122 kg patient previously mentioned and the Claimant experienced great difficulty manoeuvring the wheelchair with such a heavy patient on her own. It put enormous pressure on her.

36. INCIDENT 7 on 13 December 2019, ID: 3320968

The Claimant was assigned to a car. The roster explains it was the same patient as previously who was subject to blackouts, had a walking stick and a DNAR. The Claimant explained in her Witness Statement at paragraph 66 that she was on her own and had to deal with this very difficult patient. The risk of blackout was present and the Claimant does not accept that she should have been on her own dealing with such a patient in the circumstances.

37. INCIDENT 8 on 17 December 2019, ID: 3366198

The Claimant was on her own. The patient is listed as rude and aggressive with back problems. The patient can walk slowly with crutches and arm assistance. The patient suffers from anxiety and depression. She helped the patient get into the car, but the patient then was shouting the entirety of the journey and being very aggressive towards the Claimant. She gives evidence at paragraph 68 of her statement that she was in no position or equipped to deal with this level of confrontation. She said the patient was waving her arms about, causing her great distress. The Claimant did believe that she had raised a complaint about this individual due to a previous incident and that the complaint had been recorded pursuant to a job on 3 December 2019. The patient was a Mr Wright. Under cross examination she admitted that the incident on 17 December 2019 may not have been Mr Wright, but nevertheless asserted that simply this was not a job that should have been assigned to a pregnant woman.

38. INCIDENT 9 on 27 December 2019, ID: mis-described in the Order of Judge Kurrein as: 3308754, when in fact it was: 3377648

The patient is described as having limited walking and poor mobility and a previous TIA (stroke). The Claimant was assigned to this job on her own in a car. She describes how difficult it was in dealing with such a patient with poor mobility in paragraph 70 of her statement.

39. INCIDENT 10 on 30 December 2019, ID: 3336482

The Claimant was assigned this job on her own. It was a bariatric wheelchair, therefore a heavier patient. In fact, it was the same 122 kg non-weight bearing patient, with positive Covid-19 previously described.

40. We are bound to say that with all of these complained incidents, it appears as a matter of fact that no due cognisance was taken of the Risk Assessment carried out by Mr Pepper and that these jobs were just assigned to the Claimant in any event. It is true that some of the jobs were in a car and not in the larger TW Vehicle, which Mr Pepper had recommended be avoided, but there appears to have been no cognisance of the Risk Assessment in any event when allocating them.
41. The Claimant had previously miscarried in August 2019 whilst performing heavy moving jobs, moving patients and sadly she miscarried again in January 2020.
42. There appears to have been some suggestion that the Claimant was pregnant when she joined the Respondents. She entirely refuted this and despite constant probing by Mr Barr, we see no evidence to support the suggestion that she was. We accept the Claimant's evidence in this respect.
43. Further, we feel we must say that the email written by the Claimant on 17 October 2019 clearly sets out the concerns which she has, which we accept she also raised verbally once she was often assigned to jobs which were inappropriate in light of her condition and the Risk Assessment that had been carried out. We do not accept that the Claimant needed to do more herself to alleviate the dangers upon her. Facts do not support that assertion, albeit it is an assertion that the Respondents have volunteered throughout.

The Law

Submissions

44. We received extensive submissions from both advocates which I do not propose to repeat here in detail.
45. In summary, however, Mr Barr said that the Claimant was an ex-Police Officer who was trained in conflict management, who had many years of experience. She should not have been shy in coming forward. She should know right from wrong and he expected her to have a good memory. He said her memory had proven to be very selective in cross examination. He argued that she knew she was pregnant on 12 October 2019, but did not tell anyone until 15 October 2019. He said that the mis-remembering of when she reported the pregnancy, either at the beginning or the end of the shift, between either Mr Rolfe or Miss Thompson was significant. He said that

this reflected on her credibility as she had maintained it was the beginning of the shift, whereas Mr Rolfe who was highly regarded said it was at the end. He said she failed to tell the company about her pregnancy in August 2019 and it would have been good practice to do so. He said she was not within the protected period set out by Regulation 19. He said that her evidence had been shaky and that she had mis-remembered some of the details about some of the jobs about which she was complaining. He argued that the Risk Assessment was suitable and sufficient as carried out by Mr Pepper. He said that the form was adequate and had been properly completed. She agreed that the assessment was okay and signed off on it. He said she had been trained on the winch on the TW Vehicle and knew how to operate it. He said that she should have raised any concerns about using the winch at that time. He said that some of her evidence was not believable and that in her Witness Statement she had given evidence about not having a proper uniform and a name badge and still being able to gain access to the Hospital, which he found incredible. It just could not happen, he said. He said she should have complained more about jobs that she was assigned that she felt she was unable to cope with. He said there were three occasions when she had dealt with the same patient and had not raised queries. He said that she had become confused during her evidence, had jumbled some of the patient jobs and this went to her credibility. He said she should have refused jobs but did not do so.

46. Mr Raffell argued that she did fall within the protected period which kicked in on 12 October 2019 when she discovered she was pregnant. We were referred to s.18 EqA 2010 in this respect. He said that no formal process had been entered into in the allocation of roles. He said she had complained, but that her complaints had been ignored. He said 17 October 2019 document was a key document and that it set out her fears and her concerns very frankly. He said she was frequently unable to contact anyone and her calls were often not returned. He said her evidence was credible. He said the Risk Assessment recommended moving her into cars, but often thereafter she was not. He said that David Pepper was not an appropriate person to carry out the Risk Assessment as he did not have the confidence and experience to do it properly. He directed us to unfavourable treatment amongst the allocation of roles to her which he said went directly to the section 18 claim. He said she felt intimidated and vulnerable and once on a job would rather go through with the role with the job because she did not want to leave the patient and felt that she must not let the patient down in this respect. He said no proper consideration was given to alternative work in the office. He said she only did two days in the office and no proper analysis was given as to what other work she might have been able to do in her particular circumstances. She was particularly anxious about her pregnancy in light of her previous miscarriage. He said the person circumstances relating to her were not properly considered. He asked us to consider that each and every one of those incidents was essentially less favourable treatment under s.18 EqA 2010.

47. The Claimant's case in the main is a claim in pregnancy and maternity discrimination under s.18 of the Equality Act 2010. Section 18 provides,

18. Pregnancy and maternity discrimination: work cases

- (1) This section has effect for the purposes of the application of Part 5 (work) to the protected characteristic of pregnancy and maternity.
- (2) 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, or
 - (b) because of illness suffered by her as a result of it.
- (3) ...
- (4) ...
- (5) ...
- (6) 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;
 - (b) if she does not have that right, at the end of the period of 2 weeks beginning with the end of the pregnancy.
- (7) ...

48. With respect to the Claimant's claim relating to the Risk Assessment, this is allied to the Management of Health and Safety at Work Regulations 1999, which requires employers to carry out a suitable and sufficient Risk Assessment in respect of pregnant and breast feeding employees. The Regulations do not define what constitutes a suitable and sufficient Risk Assessment for these purposes. It is well established that in order to meet the suitable and sufficient criteria, employers need only identify the common workplace work hazards and risks to new and expectant mothers. They do not have to consider more remote risks. However, the European Court of Justice confirmed that a worker's specific individual circumstances must be taken into account. This is in the case of Otero Ramos v Servicio Galego de Saude and Anr. and Gonzales Castro v Mutua Umivale and Ors. [2019] ICR339 ECJ. In other words it is not sufficient to declare the worker's role risk free following a general assessment without examining her individual circumstances.

49. In practice, Employment Tribunals most often deal with the question of Risk Assessments in cases such as these in the context of pregnancy discrimination claims. Tribunals have to apply common sense when deciding whether a Risk Assessment was suitable and sufficient. Contrasting cases of Bruce and Anr. v Saffron Land Homes ET case number: 3101493/1998 and Taylor v Thomas B Limited ET case number: 63877/1995, are of assistance, but each case must turn on its own facts.
50. A Risk Assessment must also be carried out within a reasonable period. An undue delay in carrying out such an assessment will mean that an employer is in breach of its obligations under the Regulations.
51. With respect to the second part of the Claimant's claim, that is that each of the 10 incidents constituted unfavourable treatment under s.18(2)(a) EqA 2010.
52. To have the protection of this section, the acts complained of must take place within the protected period set out under Sub-section 6 of s.18. The protection begins when the pregnancy begins and ends at the end of additional maternity leave, or if earlier when she returns to work after the pregnancy.
53. Pregnancy and maternity is a protected characteristic for the purposes of this section. The Treatment complained of need only be unfavourable and is not described as less favourable so no comparator is required. There is often here some overlap with s.13 EqA 2010 and direct discrimination which describes less favourable treatment. In this case we are only concerned with s.18 and the unfavourable treatment and therefore no question of comparison arises. It is commonly accepted that claims such as this must be brought under s.18 and cannot be framed as claims under s.13. We are only concerned with s.18.

47C ERA Leave for family and domestic reasons

- (1) An employee has the right not to be subjected to any detriment by any act, or deliberate failure to act, by his employer done for a prescribed reason.
- (2) A prescribed reason is one prescribed by regulations made by the Secretary of State and which relate to—
 - (a) Pregnancy, childbirth or maternity.....

Conclusions

54. Based on our findings of fact, this Tribunal unanimously reaches the following conclusions.

The Claimant's claim relating to the Respondent's Risk Assessment

55. The requirement for a Risk Assessment to be completed under the Management of Health and Safety at Work Regulations 1999, Regulation 16 was triggered by the Claimant's email of 17 October 2019 setting out information relating to her pregnancy from 12 October 2019. A Risk Assessment was carried out by David Pepper on 22 October 2019 and it made certain recommendations. The Tribunal concludes that that Risk Assessment did not reach the threshold of suitable and sufficient in the circumstances of this case. David Pepper by his own admission, was inexperienced and had not done one before. He completed a fairly perfunctory tick box exercise, made some very brief recommendations, all of which seemed to relate to the Claimant being moved to a car rather than working in a larger vehicle. No proper assessment was made of the Claimant's needs and no detailed assessment was made as to what would be required to assist the Claimant during her pregnancy in light of her particular personal circumstances and in respect of the jobs which she was asked to complete. It is not sufficient to expect the Claimant to undertake this exercise. It is accepted that the exercise was undertaken within a reasonable time. The Claimant informed the Respondents on 17 October 2019 of her pregnancy, in writing and then was absent until 22 October 2019 when attempt to carry out a suitable and sufficient assessment took place. In the circumstances, however, a more experienced individual needed to carry out the assessment, have greater liaison with the Claimant about precisely what should and should not be avoided and a far more detailed report should have been produced and passed to those who then were subsequently rostering the Claimant for jobs.
56. We therefore conclude that this failure constituted a discrimination under s.18 of the Equality Act 2010, more particularly s.18(2)(a).

The 10 incidents cited by the Claimant as acts of discrimination under s.18(2)(a)

57. We have examined each and every one of these incidents in detail. They are set out in the findings of fact. Two of them are mis-described in Judge Kurrein's Order, albeit only that the ID number has been mis-stated and on one occasion the date has been mis-stated. However, these incidents relate to specific jobs which were allocated to the Claimant. In light of the evidence and our findings of fact, we conclude that each and every one of these 10 incidents constitutes an act of discrimination under s.18(2)(a) EqA 2010. We do not consider that the Claimant should have been asked to carry out any of these jobs in light of her pregnancy and more particularly in respect of her history. The Respondents should have considered both at the Risk Assessment and particularly at each point of allocation of a job, whether it was suitable. Other alternatives should have been examined, perhaps other roles within the business such as working in the office. On several of the occasions cited, the rather perfunctory recommendations in the Risk Assessment were ignored in any event. Nevertheless, we consider that there is not one of the 10 incidents where a particular job was allocated to

the Claimant which she performed individually where it can be said was reasonable for the Respondents to ask her to perform such a job in the circumstances. We therefore consider each and every act to be an act of unfavourable treatment under s.18.

58. We also consider that each and every act constitutes a detriment under s.47C(2)(a) of the Employment Rights Act 1996.
59. The Remedy Hearing will be listed. One day will be allowed for Remedy. Details of the Remedy Hearing and the Notice of Hearing will be sent to the parties in due course.

Dictated by
Employment Judge K J Palmer

on 21 June 2022

Sent to the parties on: 5 July 2022

For the Tribunal Office.