



# EMPLOYMENT TRIBUNALS

**BETWEEN**

**Claimant**

**Respondent**

MS R ATTALAH

**AND**

KING FAHAD ACADEMY

**Heard at:** London Central, by CVP

**On:** 8 and 9 March, 2023;

**Before:** Employment Judge O Segal KC  
Members: Ms S Samek; Mr F Benson

**Representations**

**For the Claimant:** In person

**For the Respondent:** Ms L Habersaath, HR & Compliance at Respondent

## JUDGMENT

The unanimous judgment of the Tribunal is that:-

The claim pursuant to s. 18 Equality Act 2010 is dismissed.

## REASONS

1. The Claimant (C) was at the material times a teacher in the English as an Additional Language (EAL) Department of the Respondent (R) school, where the substantial majority of students have Arabic as their first language.
2. C became pregnant around the beginning of February 2021, at which time she was on a fixed-term contract with R due to end in July 2021.
3. C was told on 20 May 2021 that this contract would not be renewed for the following academic year (21/22). C claims that decision was made because she was pregnant.
4. R denies this, saying there was no need for it to re-engage her for the following year, since it had a permanent member of staff with the relevant experience and qualification who had been largely displaced from another role and who it redeployed to cover all EAL classes that needed to be covered. R also asserts that the relevant senior management, who made the decisions about staffing in the EAL department for the 21/22 year, in about April/May 2021, were not in fact aware that C was pregnant at the relevant time.
5. The issue on liability was defined at a PH on 23 May 2022 as whether, pursuant to s. 18 Equality Act 2010, R treated C unfavourably “*by not renewing her contract*” and if so “*was the unfavourable treatment because of pregnancy*”.

### Evidence

6. We had an agreed bundle.
7. We had witness statements and heard live oral evidence from:
  - 7.1. For the Claimant: the Claimant; Ms Jayne Maggs; and Ms Tayyuba Mukhtar;
  - 7.2. For the Respondent: Dr Tahani Aljafari, Director General (TA); Mr Stuart McWilliams, Head of Upper School (SM); Ms Roua Al-Halawani, EAL Coordinator; Mr Solomon Tarekegn, Accountant; Mr Walid Zaky, Upper Assistant Head; Dr Samia Morsy-Fahmy, Health Adviser.

8. We also read statements from two witnesses who were not able to attend: Ms Lara Fawzy (for C); and Ms Nariman Altahan, HR Assistant (for R).

**Facts**

9. R employs mainly female teaching staff and, unsurprisingly, frequently has one or more staff off on maternity leave; at present there are five such staff.
10. C first worked for R as a ‘cover teacher/supply teacher’ in the Primary school, within the EAL Dept, on a contract which ran from September 2019 to 31 May 2020. During that time, it is C’s case that she alienated management at R to some extent by insisting on her entitlement to be paid over the Christmas holiday and by applying for a role for the following year.
11. That contract was not renewed because the cover was no longer needed. C inquired in May 2020 if there was another role she could take on and was told she should look at R’s job advertisements.
12. C told us that her then manager encouraged her to apply for a fixed-term job in the Upper school EAL Dept, which was advertised from about 22 May 2020 with a closing date of 5 June 2020, stating that ‘Applications are invited from current employees of the Academy’. C did apply and was informed on 1 July that she was successful.
13. As noted, her new contract, which C signed, was a fixed-term contract running from 3 September 2020 to 9 July 2021.
14. By then, the pandemic had arrived, student numbers had fallen and a consultation period was announced in September 2020 with a view to staff reductions. It seems to be agreed, however, that staffing needs within EAL did not change materially.
15. In about December 2020 a member of staff in EAL left and was replaced (after an initial agency cover) by the recruitment of a permanent full-time member of staff. C was not encouraged to apply for that role, she says, and she did not apply. C told the tribunal that she was not offered that job because she was “not favoured” by R.

16. After C became pregnant in early February 2021, she naturally did not inform many people during the first trimester, indeed Ms Maggs, her closest friend, advised her not to do so. However, C did inform Dr Morsy-Fahmy in confidence around 7-8 weeks pregnant because she wanted to know about the risks of UTI. Dr Morsy-Fahmy, rightly, did not tell other staff or managers what C had told her in confidence.
17. C was worried that if R knew she was pregnant, it might prejudice her prospects of continued employment. It is notable that there is no written document sent to/retained by R, from C or otherwise, recording the fact of C's pregnancy before 27 May 2021. The tribunal considers it likely that C was hoping to secure a position for the following academic year (such staffing decisions were made in about April/May) before formally announcing her pregnancy to R.
18. There was considerable dispute about who exactly knew, or would have believed, C to be pregnant before 27 May 2021, when C announced it generally to staff.
  - 18.1. We accept that C did not keep it a secret from staff with whom she was friendly or students who asked.
  - 18.2. C also told Ms Dalila Rachi, Upper Senior Team Admin Assistant, in late March 2021 (around the same time as C informed Dr Morsy-Fahmy) because she wanted to know R's maternity leave policy – but C accepts that she asked Ms Rachi not to tell others at that time.
  - 18.3. C was 'showing' from about 3 months and certainly from 4 (by end May 2021) and other staff who saw her, including her immediate managers, may have wondered or guessed that she was pregnant.
  - 18.4. C did not inform R that she needed time off for ante-natal appointments. The only such appointments she was due to attend before May 2021 were (1) in the school holidays, (2) by phone, (3, 4) cancelled because C was in hospital with a UTI.
  - 18.5. C asked to be moved off playground duties to avoid the risk of being hit by a ball. Mr Zaky, who authorised that move, was told it was a 'lady's matter'.

19. Against the background of reducing student and staff numbers generally, as well as a move from International Baccalaureate to the English curriculum, the position of a permanent member of staff, Ms Samia Bashir, was at risk. Ms Bashir was teaching mainly Humanities, for which there was a reduced need, but also doing some EAL teaching and she had a Masters in EAL. SM proposed and TA decided that Ms Bashir should be moved to a full-time role in Adult EAL. As TA put it, “*We had a permanent member of staff who might lose her job; we focused not on people but on posts*”. That decision meant that there would be no need to renew C’s fixed-term contract.
20. On 20 May 2021 C sought to clarify her position with SM, who explained in a meeting the decision to move Ms Bashir into EAL and therefore that C would not be needed the following year. That was confirmed in a short letter to C the next day.
21. At that time we find that it is likely that TA and SM did not know C was pregnant, though SM may have guessed that she was.
22. On 27 May 2021, as noted, C announced her pregnancy “more formally” to staff and brought in a cake to celebrate.
23. There were two teaching vacancies outside of the EAL Dept advertised for a one year fixed term, to current employees of R only, for the year 21/22; one teaching year 2, one year 6. There was a dispute whether C had the necessary qualifications to apply – C believed she did. C did not apply for either position because, she said, she felt ‘unwelcome’ at R

### **The Law**

24. Section 18 EqA 2010 provides that

*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 ...*

(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.*

25. Section 136 of the Act provides, as to the burden of proof, that

(1) *This section applies to any proceedings relating to a contravention of this Act.*

(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.*

26. Although the two-stage analysis of whether there was less favourable treatment followed by the reason for the treatment can be helpful, as Lord Nicholls explained in Shamoon at [8], there is essentially a single question: “*did the claimant, on the proscribed ground, receive less favourable treatment than others?*”

27. A claimant does not have to show that the protected characteristic was the sole reason for the decision; “*if racial grounds or protected acts had a significant influence on the outcome, discrimination is made out*”: Nagarajan v London Regional Transport [2000] 1 AC 501 at pp512-513.

28. We refer to well-known remarks of Mummery LJ in Madarassy v Nomura International Plc [2007] ICR 867, [56-58] on the burden of proof issue, albeit in the context of a claim that the claimant had been treated less favourably than actual comparators: that for stage 1 of the burden of proof provisions to be met, what is

required is that “a reasonable tribunal could properly conclude” from all the evidence, that discrimination occurred.

29. An employer cannot be held to have dismissed because of pregnancy unless it had actual knowledge or actual belief that the employee was pregnant: **Ramdoolar v Bycity Ltd** [2005] ICR 368

**Discussion**

52. On the facts found, this claim must fail.
53. If, hypothetically, C had not been pregnant, all the members of the tribunal would nonetheless have been surprised if (as C suggested should have happened) R had dismissed as redundant either the permanent EAL teacher they had recruited in about December 2020 or their long-standing permanent member of staff Ms Bashir, in order instead to retain C in employment.
54. Thus, R’s explanation of why they did not offer C a further fixed-term or permanent contract for the 21/22 year was entirely plausible.
55. In the circumstances, and leaving aside whether the relevant senior managers know C was pregnant at the time (which we have found they probably did not), we do not find that C has established facts from which we could decide, in the absence of any other explanation, that R did not renew her contract for a reason related to her pregnancy. In any event, we find that R has shown that this was not the reason for its decision not to offer C a further contract.
56. It is perhaps a little surprising that C was not offered, or encouraged to apply for the permanent role which was filled in December 2020; but that was at a time when she was not yet pregnant.

Oliver Segal KC

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Employment Judge

9 March, 2023

JUDGMENT & REASONS SENT TO THE PARTIES ON

10/03/2023