



EMPLOYMENT TRIBUNALS

Claimant

Miss M Finch

v

Respondent

Certs Assured Limited

Heard at: Norwich

On: 26, 27 28 June 2024

Before: Employment Judge Postle

Members: Mr A Kapur and Mr A Chinn-Shaw

Appearances

For the Claimant: In person

For the Respondent: Ms L Quigley, Counsel

JUDGMENT

The unanimous decision of the Tribunal is:

1. The Respondents did not treat the Claimant unfavourably in being short and blunt with the Claimant on 16 March 2023 when she told them informally she was pregnant.
2. The Claimant as treated unfavourably by being dismissed on 31 March 2023 following the formal notice she was pregnant on 29 March 2023.
3. The Respondents are Ordered to pay a compensatory award to the Claimant of **£11,308.05** subject to recoupment.

DETAILS OF AWARD FOR UNFAIR DISMISSAL

(a) Monetary award	£11,308.05
(b) Amount of the prescribed element	£11,308.05
(c) Dates of the period to which the prescribed element is attributable	31 March 2023 to 25 October 2023
(d) Amount by which the monetary award exceeds the prescribed element	£0.00

4. The Respondents are also Ordered to pay the sum of **£10,000** to the Claimant in respect of an award of injury to feelings.

REASONS

Background

1. The Claimant brings two claims to the Tribunal under s.18 of the Equality Act 2010 ("EqA"), these are set out at page 37 of the Hearing Bundle. In particular:-
 - 1.1. Under s.18 EqA 2010, did the Respondent treat the Claimant unfavourably by doing the following things:
 - 1.1.1. Peter King and Kerry Towns being short and blunt when speaking to the Claimant on 16 March 2023 when she told them informally she was pregnant; and
 - 1.1.2. Dismissing the Claimant on 31 March 2023 following the Claimant giving formal notice that she was pregnant on 29 March 2023.

Evidence

2. The Tribunal heard evidence from the Claimant who gave evidence through a prepared Witness Statement. For the Respondents we heard evidence from: Mr Bolger the Managing Director; Mr King the Operations Manager; and Ms Towns Administrations Manager. Again, all giving their evidence through prepared Witness Statements.
3. The Tribunal had the benefit of a Bundle of documents consisting of 155 pages.

Findings of Fact

4. The Claimant was employed by the Respondent as an Administrative Assistant. The Respondents are engaged in distributing lifting and safety products for clients across all industry sectors.
5. The Claimant's Contract of Employment (pages 41 – 52 of the Bundle) confirms she commenced her employment on 4 January 2023 and under the terms of that contract the first six months was to be a probationary period, during which time her performance was to be monitored and appraised. The Respondents within that probationary clause reserved the right to terminate the Claimant's employment before the end of her probationary period. It would be on the grounds if she was found for any reason whatsoever incapable of carrying out, or being otherwise unsuitable for her job.
6. It is accepted in the early days of her employment, particularly in the first six weeks, the Claimant made several minor clerical errors which were clearly corrected by the Claimant the same day without any apparent negative consequences.

7. Indeed, Ms Towns said in her evidence the Claimant was a very capable member of staff. Mr Bolger told the Tribunal that they did not hold Management Meetings and as they were a relatively small company employing around 25 – 30 people they generally communicated by word of mouth and he was regularly kept informed of matters from his Management Team.
8. It is therefore strange that on 2 March 2023 a Management Meeting was held without Mr Bolger, the Minutes of that meeting are at pages 105 – 106. How that meeting came about is unclear, or the specific reason for that meeting as there appears to be no Agenda and no email arranging the meeting or setting out its purpose. It would appear that the meeting was run by a Mr Hookway (not giving evidence before this Tribunal) and the Meeting Minutes record amongst other things,

“John started the meeting by talking about Molly Finch, how she was doing in her role ... currently Kerry and Peter happy with what Molly was doing but would like to see more enthusiasm ... this is going to be mentioned to Molly again half way through her Probationary Report to learn what is expected. There is no sense of urgency when dealing with things, Molly has been learning the training side of the admin role.”
9. The Minutes mention the fact that the Claimant had been off sick for seven days, but then went on to say,

“We are going to monitor Molly closely and before her three month Report have another meeting to see if Molly is compatible with Certs Assured needs.”
10. However, despite saying they would monitor the Claimant closely and that the three of them would hold a further meeting to discuss the Claimant’s position, it appears there was no clear monitoring that the Claimant was aware of and no further meeting was held to discuss the Claimant’s progress, not that there are any Minutes; as confirmed in evidence.
11. The meeting of 2 March 2023 having taken place while the Claimant was on sick leave. On her return Ms Towns holds a Return to Work meeting on 6 March 2023 (at page 108) and makes no mention of the Manager’s Meeting on 2 March 2023, nor the fact that the Claimant was to be monitored. Ms Towns does not raise any concerns with the Claimant at that meeting. It is also of concern, after the Claimant signed the Return to Work Form and Ms Towns likewise, someone clearly added the words *“support required on return”*.
12. Ms Towns was unable during the course of this Hearing to clarify who added those words. Furthermore, Ms Towns outside that meeting did not speak to the Claimant about the Respondent’s concerns raised at the meeting on 2 March 2023 and the fact she was to be monitored.
13. It would appear nothing materially occurs with the Claimant and the Respondent in March apart from a couple of minor errors. On 16 March

2023 the Claimant informally notifies Mr King and Ms Towns she is pregnant. It is inconceivable that information was either not conveyed by Mr King and Ms Towns to Mr Bolger having said in evidence he regularly gets updates from his Management Team as to what is going on the business. There appears to be no other meetings or discussions, not that have been mentioned in evidence. The Claimant appears to have made an error regarding the stamping of packages which Ms Towns freely admitted she had also done so.

14. The Claimant had also been notified by Ms Towns on 7 March 2023 that she had booked 4 April 2023 for the Three Month Review. At that stage the Claimant had no formal Appraisal.
15. On 29 March 2023, the Claimant using the generic email within the Respondent's organisation formally notified everyone she was pregnant. Therefore even if Mr Bolger did not know before that date there is no suggestion he would not have been party to the generic email.
16. The Tribunal repeats, whilst a further meeting had been suggested at the Management Meeting on 2 March 2023 to discuss the Claimant's progress, for reasons which have not been set out before this Tribunal the meeting planned for 4 April 2023, the Probationary Review Meeting, was brought forward to 31 March 2023. No one was able to advise why it was brought forward, or by who.
17. Ms Towns said in evidence it was discussed about the Claimant's dismissal. Yet in her Witness Statement she says at paragraph 17,

"Prior to the Claimant's three month Probationary Review I understand the Claimant was spoken to on 31 March 2023 and notified of the Claimant's decision to terminate her employment on the grounds that she was not deemed suitable for an admin post."
18. Mr King says he was advised by Mr Hookway to terminate the Claimant's employment. Although he thinks that decision had come from Mr Bolger.
19. Again, whilst it is not a dismissal under the Employment Rights Act 1996, the Claimant was simply told by Mr King on 31 March 2023 and notified by him she was being dismissed as being unsuitable. At that meeting Mr King was unable to elaborate as to the reasons for her dismissal other than she was deemed unsuitable. He said she should speak to Mr Bolger.
20. Mr Bolger in evidence was unable to say why the meeting date of 4 April 2023 had been changed to 31 March 2023. He seemed to suggest that the decision had been made to dismiss the Claimant amongst the Management Team, despite there being no meeting to discuss the Claimant's progress.
21. Following the Claimant's dismissal she wrote to Mr Bolger and enquired of the specific reasons for her dismissal, he indicated that he would pass it to

his HR Department to deal with. Unfortunately the Claimant heard nothing further.

22. Literally within two days of the Claimant notifying formally that she was pregnant, a Review Meeting was brought forward without warning and any clear reason and the Claimant was dismissed.

Credibility

23. Miss Towns Witness Statement has clearly been worded in a way to imply negativity towards the Claimant in her approach to work; e.g. the reluctance to integrate – yet in evidence before the Tribunal she conceded there was nothing wrong with the Claimant's attitude, or in fact stating she was a capable worker. There was also a complete lack of evidence as to how the meeting of 2 March came about, or who, or why the Review Meeting was suddenly brought forward from 4 April to 31 March when the Claimant was simply dismissed by Mr King without explaining the reasoning for that decision.
24. Whereas the Tribunal found the Claimant's evidence clear, concise and consistent.

The Law

25. Section 18 of the Equality Act 2010, states,
 18. Pregnancy and maternity discrimination: work cases
 - (1) ...
 - (2) A person (A) discriminates against a woman if, in or after, 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 in that protected period as a result of the pregnancy.
26. Therefore the Tribunal has to consider whether the Claimant claims to have been unfavourably treated on the ground of her pregnancy. If the answer to that is 'yes', did the alleged treatment occur during the protected period?
27. If the answer to that is 'yes', has the Claimant proved facts on which the Tribunal could conclude that the Claimant has on the ground of her pregnancy, been less favourably treated than if she had not been pregnant.
28. If the answer to that is 'yes', has the Respondent disproved either the unfavourable treatment, or the pregnancy grounds.

Conclusions

Issue 1

29. Whether the treatment towards the Claimant by Ms Towns and Mr King was effectively negative after she informally announced her pregnancy on 16 March 2023, the Tribunal found there was no concrete evidence advanced by the Claimant during this period that there was a negative attitude towards her because of her pregnancy.

Issue 2

30. Was the Claimant treated unfavourably because of her pregnancy?
31. It is clear that there were some minor performance issues in the early days of the Claimant's employment. It is clear on 2 March 2023, at the Management Meeting the Respondents felt she was a capable employee and they were more concerned about her interaction and enthusiasm. However, the Respondents were not pro-active in drawing that to the Claimant's attention. That was despite, at the Meeting on 2 March 2023, the Respondents saying,
- "We are going to monitor Molly closely and before her three month Report have another meeting to see if Molly is compatible with the Respondents"
32. Despite the Contract talking about Appraisals during the probationary period, there were none.
33. It would appear on the evidence before the Tribunal, nothing of any significance happens in March apart from some minor errors, the type of which Ms Towns said she had also committed. The Claimant then announces formally her pregnancy on 29 March 2023 and two days later she is being dismissed as not suitable for the admin role.
34. The Tribunal are entitled to draw an inference that the reason for her dismissal was her pregnancy and was not capability. The Respondents have not advanced evidence disproving the fact that the unfavourable treatment was on the grounds of her pregnancy.

Remedy

35. Following the Judgment, the Tribunal went on to deal with Remedy.
36. Miss Finch was returned to the Witness Box and Miss Quigley, Counsel for the Respondent, questioned the Claimant on the period she was claiming between 31 March 2023 to 25 October 2023. In particular whether the Claimant made all efforts to obtain alternative employment, in other words to negate her loss. It did appear that the Claimant had made a number of applications for jobs in the months up until July.
37. Both Miss Quigley and Miss Finch were then allowed to address the Tribunal on the question of Remedy. Miss Quigley felt that the Claimant

had not mitigated her loss, given the history of short term placement she had had in the past and that she should have been able to find alternative employment within three months.

38. As to injury to feelings, Miss Quigley put forward the figure of £10,000 accepting there were certain aggravated features and that the other time fell on the borderline of the lower middle Vento Bands.
39. Miss Finch felt, given the fact that she was pregnant, prospective employers were wary of her and therefore felt she should be awarded compensation up to the time she went on maternity leave. During the period 31 March 2023 to 25 October 2023, the Claimant confirmed she was in receipt of Job Seeker's Allowance.
40. The unanimous view of the Tribunal was that the Claimant had clearly mitigated her loss. The fact of life is that prospective employers were likely to be wary, although not admitting it, of a prospective employee's pregnancy. Therefore in those circumstances it is always going to be difficult for a Claimant to mitigate their loss to the extent that a non-pregnant employee might be able to mitigate their loss.
41. The Tribunal were therefore satisfied the Claimant should be compensated for the period 29 weeks and 3 days, namely 31 March 2023 being the date of dismissal to 25 October 2023 when the Claimant accepts she went on maternity leave, or would have.
42. It was agreed that the Claimant's net salary per month was £1,665.18 and therefore the Claimant is entitled to 29 weeks and 3 days which amounts to: **£11,308.05**. Such sum being subject to recoupment.
43. Insofar as injury to feelings were concerned, the Tribunal unanimously endorsed Miss Quigley's assessment, namely £10,000 acknowledging that there were certain aggravating features, but that it was a single act and really is borderline from the top end of the Lower Band of Vento and the bottom end of the Middle Band of Vento and therefore awarded **£10,000** for injury to feelings.

Employment Judge Postle

Date: 2 October 2024

Sent to the parties on: 4 October 2024

For the Tribunal Office.

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<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>