



EMPLOYMENT TRIBUNALS

Claimant: Miss H Barnes

Respondent: Guardian Recovery Limited

HELD AT: Manchester

ON: 18 – 20 July and
(deliberations)
16 August 2018

BEFORE: Employment Judge B Hodgson
Mr M C Smith
Ms S Khan

REPRESENTATION:

Claimant: Mr B Culshaw, Solicitor
Respondent: Mr R Logan, Managing Director

JUDGMENT

The unanimous Judgment of the Tribunal is that:

1. The claim of discrimination, contrary to the provisions of section 18 Equality Act 2010, by reference to the alleged conduct of the respondent in week commencing 9 January 2017, is dismissed by reason of lack of jurisdiction, it having been presented outside of the statutory timescale.
2. The claim of discrimination, contrary to the provisions of section 18 Equality Act 2010, by reference to the dismissal of the claimant, is not well founded and is dismissed.
3. The claim of unfair dismissal, contrary to the provisions of section 99 Employment Rights Act 1996 and regulation 20(3)(a) of the Maternity and Parental Leave etc. Regulations 1999, is not well founded and is dismissed.
4. By consent, the claims of breach of contract, by reference to notice pay, and unlawful deductions from pay are dismissed upon withdrawal.

REASONS

Background

1. This was the hearing of the claimant's claims of pregnancy discrimination contrary to the provisions of section 18 of the Equality Act 2010 and unfair dismissal under both section 99 of the Employment Rights Act 1996 and regulation 20(3)(a) of the Maternity and Parental Leave etc. Regulations 1999.
2. The claims and issues were previously considered at a Preliminary Hearing ("the Preliminary Hearing") held on 14 August 2017. The issues were clarified at that hearing and also included claims of breach of contract, by reference to an alleged failure to give notice of termination, and unlawful deductions from pay. In the course of the present hearing, the claimant's representative confirmed that neither of those latter claims were being pursued and consented to them being dismissed upon withdrawal. The remaining claims proceeded.

Issues

3. The issues in the continuing claims had been clarified at the Preliminary Hearing and were confirmed as remaining unchanged as the issues to be considered. These were set out at Annex B to the Preliminary Hearing as follows (subject to a minor typographical error with reference to the claim under the Maternity and Parental Leave etc. Regulations 1999):

Pregnancy discrimination - section 18 Equality Act 2010

"Suspension" - 10 January 2017

1. Are the facts such that the Tribunal could reasonably conclude that on 10 January 2017:
 - a. the claimant was treated unfavourably by being suspended, and
 - b. that the suspension was because of her pregnancy or because of illness suffered by her as a result of it?
2. If so, can the respondent nevertheless show that it did not contravene section 18?
3. Can the claimant show that the unfavourable treatment formed part of conduct extending over a period ending with dismissal, or if not that it would be just and equitable for the Tribunal to allow a longer time limit under section 123 Equality Act 2010.

Dismissal - 24 February 2017

4. Are the facts such that the Tribunal could reasonably conclude that in dismissing the claimant the respondent treated her unfavourably because of pregnancy or because of illness suffered by her as a result of pregnancy?

5. If so, can the respondent nevertheless show that it did not contravene section 18?

Unfair Dismissal - section 99 Employment Rights Act 1996

6. Was the reason or principal reason for dismissal a reason connected with the pregnancy of the claimant in breach of section 99 Employment Rights Act 1996 and regulation 20(3)(a) of the Maternity and Parental Leave etc. Regulations 1999?

Facts

4. The Tribunal came to its conclusions on the facts on the balance of probabilities based upon its assessment of all of the evidence given, both oral and documentary.
5. The parties had agreed a bundle of documents and references within this Judgment to page numbers are to those pages as numbered within the bundle.
6. The claimant gave evidence on her behalf and also called Mr David Watson, a former employee of the respondent.
7. The respondent called a total of five witnesses, namely Mr Robert Logan (Managing Director), Ms Zoe Pelham (PA to the Managing Director), Ms Linzi Holden (HR Manager), Mr Tim Adams (Senior Collector) and Mr Jack Adams (Collections Agent).
8. Credibility was a significant issue in the course of the hearing and in the context of the Tribunal's deliberations and conclusions. The Tribunal therefore considers it appropriate to set out its conclusions with regard to the credibility of the various witnesses from whom it heard.
9. The respondent's witnesses, across the board, gave their evidence in a coherent, consistent and credible manner. This was particularly so in the case of Mr Robert Logan, the Managing Director of the respondent.
10. This was, however, not the case in respect of both the claimant and her witness, Mr David Watson.
11. In the Tribunal's assessment, the claimant showed herself on a number of occasions extremely willing to depart from her written statement and also to self-contradict if she felt this may assist in her claim being successful.
12. Mr David Watson, a former employee of the respondent who gave evidence on behalf of the claimant, was a witness utterly lacking in any credibility whatsoever.
13. Having sat through the claimant's evidence and having heard the manner in which she herself sought to amend and contradict her own evidence, Mr Watson came to give his evidence and immediately advised the Tribunal that there were certain aspects of his witness statement which, upon reflection, he needed to amend to reflect more accurately what his recollection of events

were. This was on the second day of the hearing. Mr Watson's statement was signed and submitted to the Tribunal the previous day and ended with the statement: "I believe the evidence stated above to be true".

14. The amendments he sought to make concerned paragraphs 14, 15 and 16, of his witness statement which surrounded the events forming the basis of the first complaint by the claimant, namely the alleged conduct of the respondent in the week commencing 9 January 2017. He provided a convoluted and utterly implausible explanation for why he was seeking to make such substantive changes to his statement at this late stage. In essence, he was suggesting that, having heard the oral evidence and particularly the cross examination of the claimant, he had begun to question in his own mind whether his statement was correct. It had suddenly occurred to him that he may have access to some messages which had been sent around the relevant time through social media. Having had the opportunity overnight to examine those messages, it had become apparent to him that his statement had not been accurate and he wished to correct it. The Tribunal asked Mr Watson whether he was intending to produce any of the written evidence to which he was referring and he advised that he was not seeking to do so. The Tribunal checked with the claimant's representative as to whether or not there was to be any application to produce additional documents and the answer was that there was no such application to be made. This was notwithstanding the indication given by Mr Watson that he had "discussed" the essence of his proposed amended evidence the previous day with the claimant's representative. Mr Watson confirmed that there were no other changes he wished to make to his evidence in chief as set out in his witness statement.
15. The substance of the purported amendments to the statement will be dealt with in the findings of fact but there were other myriad examples of further contradictions within Mr Watson's evidence. One example only, by way of illustration, concerns paragraph 22 of his witness statement where he states that "I was suspended on 2 February and then dismissed on 10 February on[sic] based on an allegation of an incident of verbal sexual harassment ...". Notwithstanding this being a straightforward account within his own written statement, his oral evidence was that it was not accurate. (The respondent's evidence was that this statement was indeed accurate).
16. As stated, the Tribunal's overall conclusion was that Mr Watson was a witness utterly lacking in any credibility whatsoever and his proposed amendments to his statement were no more than an ill-judged attempt to assist the claimant in succeeding in her case, the reason for which can only be speculation.
17. Notwithstanding its general conclusions as to credibility, the Tribunal looked at the evidence surrounding each aspect of the claims before reaching its conclusions and did not automatically assume that in every respect the respondent's evidence was to be believed in preference to that of the claimant.
18. The respondent is a Debt Collection Agency with staff numbering approximately 30. Mr Logan has been the Managing Director since its incorporation approximately 10 years ago.

19. The claimant was employed as a Junior Collection Agent commencing on 21 November 2016 as confirmed by the offer letter from the respondent to the claimant dated 10 November 2016 (pages 34 – 35). The appointment is stated to be subject to "a probationary period of 3 months which will have to be completed satisfactorily".
20. Despite knowing that her ongoing employment was subject to a probationary period, the claimant attended work late on 23, 24, 25, 28, 29 and 30 November then 2, 5, 7, 8 and 9 December 2016.
21. As a consequence the claimant was given a formal verbal warning on 9 December 2016 (page 299).
22. The claimant was subsequently late again both on 13 and 14 December and off sick on 20 December.
23. It was accepted by the claimant that none of these late arrivals at work and sickness absence were connected with pregnancy.
24. The business was closed for a Christmas/New Year shutdown and, over this period, the claimant discovered that she was approximately 5 weeks pregnant.
25. Her evidence was that she notified Mr Watson (who at the time was her line manager) that she was pregnant when she returned to work on 2 January 2017 (Mr Watson's evidence was that the claimant told him during the Christmas break).
26. The fact of her pregnancy was notified to Ms Pelham (who, although not formally within HR, had taken on that role as the HR Manager had personal issues around that time leading to somewhat intermittent attendance and ultimately her resignation from the respondent soon into the new year).
27. Mr Logan's evidence was that he took an extended Christmas/New Year break, not returning to work until 10 January 2017. This evidence was not challenged and is accepted by the Tribunal. This is of a degree of significance in relation to further evidence from Mr Watson. His evidence (see paragraph 12 of his witness statement) indicated that he had concerns the claimant was being caused stress and anxiety - "Several times Mr Logan and Ms Pelham commented to me on Hayley's [the claimant's] attendance and time keeping. I told them both that it wasn't her fault as she was suffering from morning sickness. I recall Mr Logan saying that she was using this as an 'excuse'." As will be seen, Mr Logan's evidence, accepted by the Tribunal, was that the first he was aware of the fact that the claimant was pregnant was on 11 January. Mr Watson's evidence in this regard is therefore rejected by the Tribunal.
28. The first claim of the claimant surrounds the allegation of her being "suspended" and the date when this occurred. The claimant's initial written evidence (see paragraph 15) was that she was called into a meeting on Monday 9 January attended by Mr Watson and Ms Pelham and was told by Mr Watson that he was suspending her without pay for one week as "punishment" for continued lateness and poor attendance. She was told that

Mr Logan had wanted to dismiss her but Mr Watson had persuaded him to suspend her instead. In giving her oral evidence, the claimant revised her version of events. She was referred to logs (pages 246 and 247) showing her as being in work on both 9 and 10 January and accepted that perhaps she had got her dates mixed up – the meeting had been held on 11 January and Ms Pelham had not been in attendance.

29. Mr Watson's initial written evidence (see paragraph 15) was that the claimant was told that she was suspended for one week as "punishment" on 9 January (although he states this to be a Friday) – Mr Watson having been instructed to do so by Mr Logan who had originally decided to dismiss (see paragraph 14). Mr Watson refers to a typed up set of minutes of a meeting (page 47) and states (paragraph 16) that Ms Pelham was not present and no note of the meeting was taken by him. As a consequence, he states, "this document is of very serious concern to me. It contains information which was not said. The only matters discussed were her lateness and attendance, reflected in the first two bullet points".
30. As indicated earlier in this Judgment, Mr Watson sought to amend that evidence upon being sworn in. Having heard the evidence of the claimant, he proposed to amend his own evidence to state that he had had his discussion with Mr Logan on 11 January rather than on 9 January. The meeting in which he informed Ms Barnes that she was being suspended he said took place on 11 January rather than 9 January. In respect of paragraph 16 which the Tribunal have quoted above, having referred to the typed up minutes at page 47, his evidence should now read "I do not recall that meeting. However the notes provided at document 47 do not correlate to any meeting that I had with Ms Pelham and Ms Barnes". In giving his oral evidence, Mr Watson confirmed that he was no longer asserting that the document at page 47 was fabricated.
31. The respondent's version of events was different and consistent.
32. The evidence of Ms Pelham was that she held a meeting with the claimant in the presence of Mr Watson, her line manager, on 9 January as a result of the claimant being late again on 9 January and that the content of that meeting was accurately set out in the contemporaneous note at page 47.
33. In that meeting, as per the note, the claimant explained that her reason for lateness that day was "due to delayed trains" and there was no suggestion that it was connected in any way to her pregnancy. This was at the very least the third example of lateness following the warning that had been given on 9 December. She was told that she would fail her probationary period if she was late again within the month of January. The issue of her performance was also discussed in that she was "not fulfilling targets" which was "raised as a big concern" . Her "figures on the board" were described as "not satisfactory" and it was proposed that she work with Mr Tim Adams "as a mentor". The fact of the pregnancy was clearly known to Ms Pelham as referred to in the note.
34. The claimant herself, in the course of her later appeal, was referred to these notes (page 91). She was asked specifically "if the meeting notes taken by [the respondent] on 9 January 2017 were accurate ...". Her reply was that they were.

35. The Tribunal concludes that a meeting took place on 9 January as described by Ms Pelham and the content of that meeting was as set out in the notes at page 47.
36. Upon Mr Logan's return to work on 10 January he learned that the claimant had been late again on that day. He told Mr Watson to dismiss the claimant for failing her probationary period.
37. Even with his attempt at reconfiguring his evidence, Mr Watson makes no mention of a meeting on 10 January and there is no suggestion that the pregnancy of the claimant was raised at this stage. The Tribunal accepts that Mr Logan did meet with Mr Watson on that day and did give him the instruction to dismiss as indicated.
38. The following day, 11 January, Mr Logan learned that the claimant had attended work that day but had again been late. He was surprised, having given Mr Watson the instruction he had the previous day, that the claimant was even in work at all. Mr Logan met with Mr Watson for an explanation. Mr Watson explained to Mr Logan that he had not gone ahead with the instruction to dismiss because the claimant was pregnant, that had caused her medical problems the previous week and she should be given more opportunity to prove herself in the circumstances. Mr Logan's evidence, which was not disputed and accepted by the Tribunal, was that this was the first he was aware of the claimant's pregnancy. Mr Logan agreed, in light of what he was then being told by Mr Watson, not to proceed with dismissal but proposed that if the claimant was having medical difficulties she should take some time off to ensure everything was fine.
39. The Tribunal considers it noteworthy that both Mr Watson and the claimant seek to emphasise that Mr Logan's decision was taken as a "punishment" and this word appears in inverted commas in both of their witness statements. Mr Logan did not see his action as such and categorically denied using that word. On the contrary, having taken a decision to dismiss without knowledge of the claimant's pregnancy, he was prepared to countermand that decision and instead to allow the claimant some days off work to seek to ensure that there were no medical problems.
40. It is surprising to the Tribunal that, if the claimant had indeed been the subject of a formal suspension, Mr Watson as her line manager would not have kept a note of that decision and the fact of there being no such notes is supportive if anything of the informality of the arrangement.
41. The claimant also seeks to rely on later use of the word "suspension" by Ms Holden who, as will be seen, was appointed as HR Manager later in the process. Ms Holden's evidence on this point was that she had not been involved at all at this early stage and was simply continuing the use of that terminology it having been used as a description by the claimant in their later exchange of correspondence. The Tribunal does not accept that the mere use of the word by Ms Holden at a future date is in any way determinative of the events in question.

42. The claimant's evidence and that of Mr Watson suggested that the claimant's "suspension" as alleged was for a full week and extended through until the following Tuesday. She did, in fact, have holiday on booked for Monday 16 January and had to attend hospital on 17 January. This assertion was ultimately withdrawn on the claimant's behalf by her representative in his submissions.
43. Given the totality of the evidence and in particular the question of credibility, the Tribunal accepts Mr Logan's version of events and rejects the allegation that the word "punishment" was either used or intended.
44. The claimant returned to work on 18 January and there was a return to work meeting held with Mr Watson. Although this was said to be a formal meeting, Mr Watson did not make or keep any notes. His evidence and that of the claimant is that, having discussed the situation with Mr Logan, it was agreed that the "slate would be wiped clean", in other words that absolutely no note would be taken of the extensive non-pregnancy related absences and lateness and, indeed, the formal warning given on 9 December when it came to assessing whether or not the claimant had passed her probationary period. Mr Logan rejects that he agreed such a proposition. In giving his oral evidence, Mr Watson himself backtracked indicating that what may have been said was that if the claimant's timekeeping and absence levels improved, that may not automatically lead to her failing her probationary period which he accepted was not the same as the slate being wiped clean. The Tribunal concludes again that it prefers the evidence of Mr Logan and that Mr Watson and the claimant are presenting what can at best be described as a gloss on the position.
45. In the subsequent weeks the claimant was given every support that may be expected from an employer towards a pregnant employee. She was given time off work whenever needed for medical appointments. She was encouraged to and did take time off to attend clinics to assist her in giving up smoking. In a very similar scenario to the events on 11 January, the claimant was encouraged by Mr Logan to take time off for medical reasons and did so for a period of a week commencing on 30 January to seek to ensure her and her baby's good health.
46. These actions are consistent with Mr Logan's evidence, not challenged on behalf of the claimant, that the respondent has had a significant number of employees who have been pregnant and gone on maternity leave. This has never been an issue or a problem for them and they have never been accused of treating any employee adversely as a consequence of their being pregnant. Whilst the Tribunal accepts that this evidence cannot and does not of itself show or prove that the claimant was not treated adversely, it is part of the overall context in determining whose evidence is to be preferred.
47. The claimant herself expressed gratitude on social media for the actions of Mr Logan (see page 50 – "it was nice for Rob to suggest I take a week to relax and get better").
48. Mr Watson was suspended on 2 February pending investigations into allegations of gross misconduct and subsequently dismissed without returning

to work. Mr Adam Spurgeon was appointed as his replacement and became the claimant's line manager.

49. The claimant's probationary period ended on 21 February and it fell to Mr Spurgeon to carry out the review.
50. The claimant was, in fact, absent through ill health (accepted by her not to be connected to her pregnancy) on 22 and 23 February and the probationary review meeting was held on 24 February.
51. Prior to the review meeting, Mr Spurgeon, particularly given how recent his appointment had been, held discussions with a number of individual members of staff. Being now no longer employed by the respondent, he was not called to give evidence but the Tribunal heard evidence from those other employees involved in the decision.
52. Mr Tim Adams, who had been appointed as a mentor to the claimant in light of her poor performance, reported to Mr Spurgeon that her performance was not at the level expected and she was not hitting any of her collection targets. His opinion was that the claimant was unable to do the job required of her. The claimant accepted in her evidence that Mr Adams was a good and effective mentor.
53. Mr Spurgeon discussed the claimant's attendance record with Ms Pelham. Ms Pelham was clear that when it came to assessing lateness and attendance, any example that was connected with the claimant's pregnancy should be disregarded and this was fully taken into account in their assessment.
54. Mr Spurgeon provisionally decided that the claimant should be dismissed but, prior to the meeting with the claimant, he discussed this with Mr Logan. Having been given the facts, Mr Logan agreed with Mr Spurgeon and they came to what may be described as a joint decision.
55. Mr Spurgeon then met with the claimant on 24 February, with Ms Pelham present, advising her of the decision and the reasons for it. Minutes of the meeting were taken by Ms Pelham (page 343). Mr Spurgeon confirmed his actions in an email to Mr Logan dated 24 February 2017 (page 52), setting out his decision and the reasons for it.
56. The outcome of the meeting was confirmed by letter dated 24 February 2017 (page 53) from Ms Holden (who had been appointed as the new HR Manager very recently and had had no involvement in the meetings or discussions). The claimant's evidence was that she did not receive that letter. The respondent's evidence was that the letter had been sent. The claimant was between properties at the time and the Tribunal accepts the evidence of the respondent that the letter was sent whilst fully accepting that the claimant may not have actually received it.
57. The claimant raises two issues with regard to the decision and the meeting. She claims that her job performance was not raised as playing any part in the decision and also that she raised concern that much of her lateness and absence was pregnancy related to which Mr Spurgeon purportedly replied

that this was "not good enough" which she took to mean he did not consider it a good reason.

58. The claim that performance was not raised at all in the meeting is disputed by Ms Pelham who was present. Ms Pelham took brief handwritten notes of the meeting (page 343). It is correct that these do not specifically refer to performance but they are clearly very sketchy notes and do refer to "Zoe [Ms Pelham] in to go over details". The Tribunal has accepted that Mr Spurgeon discussed the claimant's level of performance with Mr Adams. Mr Spurgeon's email of 24 February (page 52) refers to the claimant not achieving targets. The claimant sought to argue in support the fact that the confirmatory letter from Ms Holden (page 53) does not refer to performance in its bullet points but accepted that the final paragraph does refer to her contributions to working as part of a team and reaching team targets not being satisfactory.
59. The claimant states in her evidence (paragraph 33) that the quality of her work had never been raised with her prior to correspondence subsequently received in March 2017 and (paragraph 44f) that she was not told of any concerns about her performance other than her attendance and lateness. This is not correct. The content of the note of the meeting of 9 January (page 47), for example, includes the clear statement that the claimant "not fulfilling targets was discussed and raised as a big concern" and that she was advised "this issue needed to be rectified".
60. The Tribunal rejects the claimant's evidence and concludes both that the claimant's performance was a material factor in the decision to dismiss her and that she was advised of this at the meeting in 24 February.
61. As to the alleged comment that this "was not good enough" and the claimant's interpretation of this alleged comment, the Tribunal notes the claimant's evolving position in this regard.
62. In a subsequent letter to the respondent sent on 26 April, the claimant refers to the content of the meeting but no mention is made of the alleged comment (page 63). In her "Summary of Appeal" document (page 74), she states that Mr Spurgeon said that her timekeeping and attendance record "was a good enough reason ..." Her allegation is then set out at paragraph 25 of her written statement, linking the alleged comment to her explanation that her morning sickness explained much of her absences.
63. Ms Pelham in her evidence denied that Mr Spurgeon had made any comment that suggested that he was taking into account pregnancy-related absence or lateness, she having previously gone through with Mr Spurgeon precisely that point. The Tribunal, having weighed the evidence, rejects the claimant's assertion that any comment was made which was indicative of Mr Spurgeon relying upon pregnancy related lateness or absence or that any such reliance was in fact a factor in the decision.
64. The claimant appealed by letter dated 24 March 2017 (pages 55 – 56).
65. The respondent replied by letter dated 4 April 2017 (pages 57 – 59).

66. The claimant wrote a further letter sent by email on 26 April (pages 60 – 64) and confirmation that the appeal would proceed on 8 May was given by the respondent by letter dated 3 May (page 65).
67. Further correspondence ensued between the parties (pages 68 – 77).
68. The appeal hearing proceeded on 8 May, conducted by Ms Holden, and notes were taken of the content and typed up (pages 89 – 92). In the course of the hearing, the claimant submitted a written statement from Mr Watson (pages 78 – 81).
69. Having considered all matters raised, Ms Holden rejected the appeal and that decision was confirmed in writing by letter dated 20 May 2017 (page 93).

Law

70. Under Section 18 of the Equality Act 2010:

Section 18(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.

71. Under Section 123 of the Equality Act 2010:

Section 123(1)... 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.

(2)

(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

72. Under Section 99 the Employment Rights Act 1996:

Section 99(1) – An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if:

(a) the reason or principal reason for the dismissal is of a prescribed kind....

(3) A reason or set of circumstances prescribed under this section must relate to:

(a) pregnancy, childbirth or maternity ...

73. Under the Maternity and Parental Leave etc. Regulations 1999:

Regulation 20(1) – An employee who is dismissed is entitled under Section 99 of the 1996 Act to be regarded for the purposes of Part X of that Act as unfairly dismissed if:

(a) the reason or principal reason for the dismissal is of a kind specified in paragraph (3)....

(3) The kinds of reason referred to in paragraphs (1) and (2) are reasons connected with:

(a) the pregnancy of the employee

Submissions

74. The claimant's representative made short oral submissions.

75. He highlighted the fact that in respect of dismissal the basis of the claims under the Equality Act and the Employment Rights Act/Maternity Regulations set out different tests which the Tribunal accepted and took into account.

76. In respect of the claims under the Equality Act, he confirmed that the claims were not being advanced on the basis that the claimant had been treated unfavourably "because of the pregnancy" but rather "because of illness suffered by her as a result of pregnancy".

77. He submitted that the Tribunal needed to look at all of the evidence and particularly the reasons as given by Mr Spurgeon for his decision on 24 February - if lateness and absence alone were the true reasons, as he asserted was the case, then the claimant had improved in both of those respects as the probationary period proceeded.

78. He submitted that the claims arising from dismissal should be considered without reference to and not seen through the prism of the appeal and any aspect of it. There were no allegations raised arising from the appeal process, whether procedural or substantive.

79. He confirmed that the allegation of "suspension" was limited to the period 11 to 13 January.

80. In respect of the jurisdiction point, his submission was that there was a continuing act. The Tribunal was not referred to any case law in this regard. He accepted that were the Tribunal to find that there was no continuing act then the claim would fail, no just and equitable argument for extension being put forward. (It was not in dispute that the ET1 claim form had been presented on 9 June 2017 with the intervention of an ACAS Early Conciliation Certificate covering the period from 15 May 2017 to 5 June 2017. On that basis, the claim arising from the events of week commencing 9 January 2017 was out of time if viewed in isolation.)

81. There were no substantive submissions made on behalf of the respondent, Mr Logan simply submitting that he felt the evidence spoke for itself.

Conclusions

82. Although the time point on the face of it is a preliminary point, the Tribunal considered the claims on their merits first.
83. The Tribunal has set out its findings of fact with regard to the events occurring on week commencing 9 January, the allegation being that the unfavourable treatment was her "suspension".
84. The Tribunal regarded the claimant's ever changing position regarding the specific date of the allegation (the original agreed issues indicating 10 January, the claimant's evidence initially proposing 9 January and final submissions alighting on 11 January in consideration of the evidence produced to the Tribunal) not of itself to be significant save in respect of the credibility point that the Tribunal has fully aired earlier in this Judgment.
85. A decision had been taken to dismiss the claimant without any knowledge of her pregnancy. When it became known that she was pregnant the respondent was prepared to cancel that decision. As a result of concerns over the medical condition of the claimant, she was invited to take time off to seek to ensure that she was medically fit. This was precisely what occurred some 2 or 3 weeks later and that is not the subject of any complaint by the claimant. On the contrary, the claimant's view was that time off work being suggested to her was helpful and she expressed appreciation for that action by the Managing Director. The Tribunal has rejected that the respondent, through its Managing Director, categorised or intended its decision to be one of "punishment" contrary to the allegation made by Mr Watson and the claimant.
86. The conclusion drawn by the Tribunal from such findings (which would in any event be subject to the issue of jurisdiction) is that the claimant was not subjected to unfavourable treatment by the events of that week.
87. The Tribunal, as indicated, has noted the separate ways in which section 18 Equality Act 2010 and section 99 Employment Rights Act 1996/Regulation 20(3)(a) of the Maternity and Parental Leave etc. Regulation 1999 is put. The Tribunal however rejects both claims.
88. The Tribunal accepts that the respondent was alert to the fact that the claimant was pregnant and that pregnancy-related absences and lateness should not come into play in the review at the end of her probationary period. It is clear that the claimant had an extremely poor record particularly with regard to lateness which was accepted by her as having nothing to do with the fact of her pregnancy. She was also a poor performer.
89. The Tribunal is satisfied that the decision to dismiss was taken by considering the overall position but allowing for the fact of pregnancy and discounting those aspects of lateness and absence which could be said to be related or connected to or "because of" pregnancy.
90. There was no submission on behalf of the claimant that the reversal of the burden of proof provisions under the Equality Act would apply. The Tribunal was in any event satisfied on its own findings that there were no facts from

which the Tribunal could conclude that the respondent has committed an unlawful act of discrimination.

91. Having reached these conclusions, the Tribunal then looked back on the question of jurisdiction.
92. The assertion of continuous conduct would fall as a consequence of the Tribunal's decision rejecting the claims arising from dismissal. Regardless, the Tribunal concludes that it would not find there to have been a continuing act. The Tribunal notes the timing between the discrete event said to have occurred on or about 11 January 2017 and the subsequent decision to dismiss taken on 24 February 2017. This was a single act with no continuing consequences. The Tribunal notes that far from there being any further allegations of adverse or unfavourable treatment during that period, on the contrary the respondent was wholly supportive of the claimant and the claimant was appreciative of that. The claimant's representative made no reference to any case law and simply referred to the argument being based on the factual suggestion that one decision continued into the other. On the evidence, the Tribunal rejects this argument and therefore finds that it has no jurisdiction to consider the initial claim, it having been presented out of time. As indicated, no argument for a just and equitable extension was pursued.
93. Accordingly the unanimous decision of the Tribunal is that all claims fail.

Employment Judge B Hodgson
Date 31 October 2018

JUDGMENT SENT TO THE PARTIES ON

12 November 2018

FOR THE TRIBUNAL OFFICE

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