EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4102792/2016 Held in Glasgow on 6 and 7 December 2016

Employment Judge: Shona MacLean
Members: Mr IC MacFarlane
Ms N Bakshi

Ms Rosalynn Robertson	Claimant Represented by: Mr S Healey Solicitor
Blue Sky Autism Project	First Respondent Represented by: Mr C Robertson Solicitor
Ruth Glynne-Owen	Second Respondent Represented by: Mr C Robertson Solicitor
Daniel Clayton	Third Respondent Represented by: Mr C Robertson Solicitor
Gillian Thompson	Fourth Respondent Represented by: Mr C Robertson Solicitor
Dorothy Currie	Fifth Respondent Represented by: Mr C Robertson Solicitor

E.T. Z4 (WR)

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is that (1) the claims of automatic unfair dismissal and discrimination on the grounds of pregnancy and sex are dismissed; and (2) the first respondent is in breach of the contract by failing to pay the claimant pay in lieu of notice and therefore the first respondent is ordered to pay the claimant £184.

REASONS

Introduction

1. The claimant presented a claim form to the Employment Tribunal's office in which she complained of automatic unfair dismissal, sex discrimination, pregnancy discrimination, unlawful deduction from wages and wrongful dismissal.

2. The respondents presented a response in which it denied that the claimant had suffered any discrimination on grounds of her pregnancy or exercising her right to maternity leave or time off to attend ante-natal appointments nor was she directly discriminated against contrary to section 13 of the Equality Act 2010 (the EqA) on the grounds of her sex. It was also denied the claimant suffered an unauthorised deduction from wages or was wrongfully dismissed. The respondents denied that the claimant was automatically unfairly dismissed contrary to sections 99 or 103 of the Employment Rights Act 1996 (the ERA). The respondents maintained that the claimant's fixed term contract could not be extended due to there not being sufficient funding or client referrals to continue her role.

3. The parties produced a joint set of productions. The claimant gave evidence on her own account. The second and fourth respondents gave evidence. During submissions Mr Healey, the claimant's representative withdrew the claim of direct sex discrimination claim.

4. The Tribunal found the following essential facts to have been established or agreed.

Findings in Fact

5. The first respondent was formerly called Speur-Ghalen Early Intervention Service. It changed its name to Blue Sky Autism Project around February 2016. It is a private company limited by guarantee without share capital issue. It is a small organisation which provides individual programmes of therapy to children experiencing developmental delays, including autism.

6. The second respondent founded the first respondent. She acts as Chief Executive Officer and sits on the Board of Trustees (the Board) along with some parents. The second respondent works for the first respondent on a voluntary basis.

7. The first respondent relies on receiving enough clients to contribute to the organisation by paying fees warranting the use of the service. It also relies on the raising and provision of grant funding. The first respondent has no financial security as it is dependent upon the number of clients wanting to use the service over which it does not necessarily have continuity or control. The financial outlook can change very quickly. It also does not have projections or a business plan.

8. The first respondent employed the claimant from 1 March 2015 on a 12-month fixed term contract as a Trainee Developmental/Behavioral Therapist. The contracts issued to all staff contained a typographical error which was rectified and the claimant was provided with an amended version (production 118).

9. All the employees of the first respondent are employed on fixed term contracts. Around July 2015 the second respondent did not renew the fixed term contract of two therapists. The claimant was aware of this.

10. In late July 2015, the claimant informed the second respondent that she was pregnant. The claimant's news was well received. The claimant was absent from work between 25 September and 12 December 2015 with a pregnancy related illness.

11. In mid-October 2015, the claimant asked to reduce her hours from 37.5 to 30 per week. The second respondent agreed to this with effect from 26 October 2015 which resulted in the claimant's working week being a Monday, Tuesday, Wednesday and Friday (production 50).

12. The claimant was issued with an amended contract to reflect the change in hours which covered the period 1 November 2015 to 1 March 2016 (production 161).

13. Around 9 December 2015 the claimant met with the second respondent. The claimant advised that she was proposing to go on maternity leave on 14 March 2016. There was discussion about whether a further reduction in hours could be accommodated for the claimant to continue in her position beyond 1 March 2016. The second respondent was hopeful that some of the 18 funding applications that had been made would be granted and more clients would sign up to the service over Christmas/New Year. Against this background the second respondent said that the request could be accommodated. The claimant was aware the organisation was a small charity that depended on there being sufficient clients and funding. The claimant was also aware that colleagues' contracts had not been renewed in July 2015 and that they had not been replaced.

14. The second respondent wrote to the claimant on 9 December 2015 confirming she and the Board would be happy to offer a new contract to the claimant on 1 March 2016 for 22.5 hours per week dependent on the claimant completing a PRT Level 2 fidelity before 27 February 2016 (production 51A).

15. Arrangements had been made following the claimant's sick absence for others to be on shift at the same time as her.

16. In December 2015, the claimant was issued with a pay slip containing the wrong hourly rate. This was an administrative error. The oversight was rectified immediately and in advance of the payment being made.

17. The second respondent was not scheduled to be in the office in January 2016 as she was writing a thesis. The claimant was aware of this.

18. On 3 January 2016, it came to the second respondent's attention that contrary to her earlier understanding the claimant was not eligible for statutory maternity pay owing to her earlier period of sick absence. This information was communicated to the claimant who was understandably disappointed. The claimant was advised that she should claim statutory maternity allowance.

19. On 4 January 2016, the claimant and the second respondent met. There was discussion about time off for ante-natal care. The second respondent said that the claimant would be paid for two and a half hours.

20. There was an email exchange between the claimant and the second respondent expressing different views as to what was reasonable paid time off work for ante-natal care. The communication was not heated but there was miscommunication on both sides culminating in the second respondent suggesting to the claimant that if she was not happy she should raise a grievance with the Board. The claimant was taken aback at this suggestion.

21. On 6 January 2016, the second respondent wrote to the claimant indicating that improved communication was required, best practice would be to provide appropriate notice of maternity appointments which the first respondent had a legal obligation to provide time off to attend. It was recognised that mutually convenient times could not always be agreed but it courteous to have a discussion in the first instance. The first respondent was willing to pay a maximum of two and a half hours. However, as the claimant had intimated that she required four hours for each meeting. The second respondent was happy to discuss this further. If the claimant could provide a letter stating that she required to have four hour appointments, the second respondent would happy to look at this request again (production 59).

22. The claimant attended her General Practitioner on 7 January 2016 and discussed commencing her maternity leave sooner than 1 March 2016. The General Practitioner wrote a letter "to whom it may concern" dated 7 January 2016 advising that, "*On medical grounds it may be beneficial for [the claimant] to start her maternity leave at a sooner date at her choosing to benefit the pregnancy and patient's health*" (production 60).

23. The claimant attended an ante-natal appointment on 11 January 2016. Although she was scheduled to return to work afterwards she did not do so as she felt ill.

24. On 14 January 2016, the second respondent attended the office in the evening and discovered a letter had been left on her desk dated 12 January 2016 from the claimant advising that she was no longer fit for work and required to take her maternity leave early. The claimant also provided a copy of a letter from her General Practitioner dated 7 January 2016 (production 60).

25. The second respondent was in London on 15 January 2016. Having viewed the correspondence received from the claimant the second respondent asked the fourth respondent if she would meet with the claimant to discuss taking early maternity leave. The second respondent was not avoiding the claimant. The matter required to be dealt with promptly and the second respondent was unavailable.

26. The claimant and the fourth respondent met on 15 January 2016 (production 63). Mr Campbell, Senior Therapist was also present. It was mutually agreed that the claimant would start her maternity leave as of 18 January 2016 and as an act of goodwill she would be paid until 22 January 2016. The claimant was issued with a letter detailing the changes to her planned maternity leave start date.

27. The claimant went on maternity leave on 18 January 2016.

28. The fourth respondent was unaware of any previous discussions between the claimant and the second respondent. Her role was to provide strategic

financial advice to the B. She was not normally involved in any day to day running of the business. Although several grant applications had been made during December 2015 and January 2016 they had not been as successful as had been hoped.

29. The first respondent has no provisions or reserves and could not afford to continue operating in such a poor financial state. Having failed to increase income the only option was to cut costs. The fourth respondent advised the Board that it was necessary to reduce costs. The biggest overheads were labour costs. There was a decrease in demand for therapy hours and there was a substantial deficit in unrestricted funds. Given that the organisation had no unrestricted provisions or reserves to continue trading without taking any action would involve the organisation becoming insolvent. Legal advice was taken and the Board was advised that it required to reduce staff and that the next fixed term contract that was up for renewal, which transpired to be that of the claimant, should not be renewed. The fourth respondent was not involved in any discussion other than giving the general strategic advice about reducing labour costs. There was no discussion about how savings could be made in not renewing the claimant's fixed term contract. The reason why her contract was not being renewed was because hers was the next contract to be renewed.

30. On 20 January 2016, the second respondent wrote to the claimant inviting her to attend a meeting to discuss expiration of the fixed term contract (production 64).

31. At the meeting on 22 January 2016 the claimant was accompanied by a fellow therapist. The claimant was advised that her fixed term employment could not be renewed on its expiry due to funding for the charity being very limited and due to a reduction in the number of families accessing the service. There were no alternative roles and the only vacancies available were for funded senior roles which required Masters degrees or the equivalent (production 68).

32. Following the meeting the claimant raised a grievance (production 70).

33. In a letter dated 26 January 2016 the second respondent wrote to the claimant confirming that her fixed term contract was not being renewed on its expiry. The letter reiterated the reason for this was that the first respondent did not have any funding for additional positions and the current staff numbers were adequate capacity to manage the current workloads on the relatively low numbers of clients (production 73).

34. On 29 January 2016, the respondent wrote to the claimant enclosing the final payslip and clarifying the breakdown as follows (production 75):

"*From 4 until 18 January - 7 days pay @ 7.5 hours per day x £8 per hours = £420 (4th,5th,6th,8th,12th,13th,15th)*
1 day @2.5 hours (Monday 11) - 2.5 x £8 an hour = £20.
From 18 - 22 January – 4 days pay at 7.5 hours per day x £8 = £240 (goodwill gesture by the charity)
Holidays accrued from 1 Jan (beginning of our leave year) until 1 March (end of contract) = 28 hours
1 day holiday taken on 1 January @ 7.5 hours per day x £8 = £60. Remaining holiday allowance 20.5 hours paid at £8 per hour = £164".

35. The claimant's grievance was considered by Fraser Sked, Senior HR Advisor at Hunter Adams an HR Partner for the first respondent. The grievance hearing took place on 8 March 2016. The grievance was not upheld and the claimant was advised of this decision by letter dated 17 March 2016. The claimant exercised her right of appeal. An appeal hearing was considered by Jennifer Marnoch, Business Partner of Hunter Adams.

36. At the date of termination, the claimant was 22 years of age. Her gross weekly salary was £240. Her net weekly salary was £184. The claimant remained on maternity leave until 17 October 2016. Since then she has been involved in looking for new employment. She has been unsuccessful in this regard.

37. Since the claimant's employment was terminated her position has not been refilled by the first respondent. The therapist who left in 2016 has not been

replaced. An employee who was employed on 37.5 hours per week in August 2015 took a reduction in hours in January 2016 and a further reduction in June 2016. This was following a re-allocation of this employee to a newly established specialist epilepsy service which was a joint project with the Muir Maxwell Trust. This post was established in June/July 2016 after discussions with Muir Maxwell Trust. It is part funded by the Lottery "*Investing in Ideas*" and the Muir Maxwell Trust. The post requires a relevant degree in psychology alongside specialist experience and qualifications in epilepsy (production 49).

Observations on Witnesses and Conflict of Evidence

38. The Tribunal considered that the claimant gave her evidence honestly and based on her recollection and perception of events. In the Tribunal's view the claimant viewed everything through the prism of being pregnant. While this was understandable the Tribunal considered that the claimant failed to take account of the fact that she was not the first respondent's only employee and that business decisions did not necessarily revolve around her.

39. Overall, the Tribunal considered the second respondent gave her evidence honestly and was genuinely taken aback at the accusations that had been made against her. The Tribunal considered that the work undertaken by the first respondent was an important but relatively small part of the second respondent's work. During the period in question the Tribunal was conscious that the second respondent was involved writing a thesis which was a culmination of six years' work. She had deliberately planned to take time out of the business in January 2016. The Tribunal therefore considered that her focus was elsewhere and that she perhaps did not devote the same amount of time and attention that she would otherwise have done had she not had other pressing commitments at the time. The Tribunal had no doubt the second respondent had no animosity towards the claimant. Indeed, the Tribunal's impression was that the second respondent was supportive of the claimant when she announced her pregnancy and during the period when

the claimant was absent due to pregnancy related illness. The Tribunal formed this view as there appeared to be no issue arising around this time and the second respondent was willing to accommodate a reduction in hours. She was also willing to re-engage the claimant on another fixed term contract on hours that were suitable for the claimant.

40. The Tribunal found the fourth respondent an entirely credible and reliable witness. The Tribunal considered that the fourth respondent was unaware of any issue between the claimant and the second respondent and had been asked to attend the meeting on 15 January 2016 at short notice. Further, the Tribunal had no doubt that the fourth respondent's involvement was in recommending that costs, principally labour costs should be cut. She was not involved in any discussion as to how this would be achieved. There was no discussion about selecting the claimant because she was going on maternity leave. The Tribunal considered that there was no discussion about selection; the claimant's contract was the next fixed term contract that was to be renewed.

41. There was conflicting evidence in relation to the email exchange at the beginning of January 2016. The claimant's evidence was that she considered that by challenging the second respondent's position on the amount of pay she should receive while attending an ante-natal appointment that seemed to be causing a problem and she felt threatened by the suggestion was she should raise a grievance. The evidence of the second respondent was that she was endeavouring to explain that the claimant would be paid a reasonable amount of time off for attending the ante-natal appointment. In the past employees had been paid for two and a half hours which was considered reasonable. The claimant was unwilling to accept this and the tone of the correspondence was such that the second respondent felt that it was appropriate to bring the exchange to an end. The Tribunal did not consider that the email exchange was heated although towards the end there was obviously a degree of irritation which was perhaps not surprising given that both parties appeared to have sought advice and there were conflicting views as to what the claimant should be

paid. The Tribunal could understand that the claimant had been taken aback at the suggestion that she should raise a grievance. However, when the whole email exchange was looked it was apparent the second respondent had suggested earlier in the correspondence that the claimant should not hesitate to speak to the Board.

42. It seemed to the Tribunal that the claimant continued to be upset by the email exchange, but the second respondent considered the matter was dealt with and was willing to pay for more than two and a half hours if the claimant was able to provide supporting documentation from a doctor or midwife that a longer ante-natal appointment was necessary. This approach seemed to be consistent on how the first respondent had dealt with pregnant employees in the past. The Tribunal did not detect that provided sufficient notice was given that there was any difficulty in the claimant attending the ante-natal appointment on 11 January 2016 and indeed she did not return to work afterwards and there was no issue with that.

43. In relation to the second respondent not attending the meeting on 15 January 2016 the claimant's evidence was that her understanding was that the second respondent did not wish to attend the meeting because she thought that she would cause the claimant further stress. This was based on comments made by the fourth respondent at the meeting. The second respondent's position was that the meeting had to be arranged at short notice and that she was in London. She did not consider it was necessary for her to conduct the meeting but it was probably better that someone more "*neutral"* dealt with the matter. The fourth respondent was not aware there had been any issue with payment for time off for ante-natal appointments. She had been asked to attend the meeting because the second respondent was in London and had agreed to do so as it was better for the claimant that matters were dealt with promptly. The Tribunal was satisfied that so far as the second respondent was concerned she had no issue with the claimant. The Tribunal's impression was that the second respondent was aware of the previous interaction had been strained but given that the second respondent was involved in other matters it was better that someone else

dealt with the claimant as it was not necessary for the second respondent to do so. The Tribunal considered that the second respondent was in a difficult position because if she delayed the meeting she could equally be criticised for that.

44. As regards the discussion at the meeting on 22 January 2016 the claimant's evidence was that she was upset at the meeting as the reason given for not renewing her contract was that the first respondent was unable to get funding because of a reduction in the number of children using the service. The evidence of the second respondent was that the minutes of the meeting adequately recorded what was discussed. The Tribunal considered that the fourth respondent had no reason to misrepresent the position in the minutes and the Tribunal accepted that they were an accurate record of what was discussed.

45. There was a dispute in evidence in relation to a payment made to the claimant for the period 18 to 22 January 2016. The claimant's position is that this was a goodwill gesture that was being paid as the claimant was going on maternity leave and was not going to be in receipt of statutory maternity pay. The evidence of the second respondent was that this was a payment which was made on an *ex gratia* payment as advice from the Inland Revenue had suggested that any benefit paid to the claimant should be deducted and the first respondent was making payment without any deductions.

46. Having reviewed the record of the meeting on 15 January 2016 it appeared to the Tribunal that the first respondent's position at that date was that it was making a payment on an *ex gratia* basis for wages for 18 to 22 January 2016 because the claimant was going on maternity leave earlier than originally been envisaged. Given that this meeting took place when the fourth respondent was unaware that it was the claimant's contract that was not to be renewed and that there appeared to have been no discussion about that, the Tribunal considered this payment was not related to any notice pay. There was also no reference to this payment at the meeting on

22 January 2016 which is again consistent with the position that the payment related to the claimant going on maternity leave earlier rather than being a payment of notice.

Submissions

47. The representatives helpfully provided the Tribunal with a written copy of their oral submissions. The following is a summary.

The Claimant

Automatic Unfair Dismissal

48. The claimant submitted that she was dismissed contrary to section 104A of the ERA for asserting the right for time off to attend antenatal classes and for pay.

49. The claimant asserted this right during the email exchange on 5 January 2016. She believed that she was entitled to more paid time off.

50. It does not matter that the right in question was not infringed or even if the claimant did not have the right. (See *Mennell v Newell & Wright Limited ICR 1039*)

51. Alternatively, the claimant complains that she was dismissed contrary to section 99 of the ERA. She was seeking more paid time off work and might have exercised her right to return to work following maternity leave. This was why the claimant's contract was not renewed.

Pregnancy Dismissal

52. The clamant submitted that she was treated unfavourably contrary to section 18 of the EqA. The claimant was pregnant during the protected period. She maintained that the unfavourable treatment was the non-renewal of her employment contract.

53. There were two reasons for this which should be considered together and in the alternative.

54. Firstly, the claimant might have exercised her return to work following maternity leave. This was a concern to the respondents. Her absence on maternity leave is linked to her pregnancy.

55. Secondly, the claimant was seeking more paid more time off to attend ante-natal care than the first respondent was prepared to pay. Her time off to attend to ante-natal care is linked to pregnancy. The Tribunal was invited to find that the second respondent reacted to the email exchange by taking the decision to dismiss the claimant. As this exchange only arose because of the claimant's pregnancy it follows that the unfavourable treatment was because of the pregnancy. Before this exchange the claimant was offered a new contract, maternity leave notwithstanding the first respondent's finances.

56. The Tribunal was referred to Chapter 8 of Code of Practice. *Jumenez Melgar v Ayuntamiento De Los Barrios [2001] IRLR 848 and Flectcher v Blackpool Fylde & Wyre Hospitals [2005] IRLR 689.*

Breach of Contract

57. The claimant was not paid for the week 23 to 29 January 2016. This is clear from the letter dated 29 January 2016. It is inconsistent to suggest that a goodwill gesture is the same as notice pay.

Remedy

58. The Tribunal was referred to the claimant's schedule of loss. It was suggested that injury to feelings should be awarded in the middle band of *Vento*.

The Respondent

Automatic Unfair Dismissal

59. The Tribunal was referred to section 99 and 104 of the ERA. The claimant's position was that her automatic unfair dismissal was based on her request for paid time off to attend antenatal appointments including attending the appointment on 11 January 2016 and not returning to work later that day after the appointment. In support, she referred to the second respondent

offering her a contract extension on 9 December 2015; the heated email exchange regarding the entitlement to paid time off for the claimant and the respondent's withdrawal of that offer at a meeting on 22 January 2016.

60. The Tribunal was invited to prefer the respondent's evidence. The offer on 9 December 2015 was made under the belief that the service would experience an increase in clients over the Christmas period, as this tended to be the case. That did not happen. The first respondent was unsuccessful in attaining a grant application on which it heavily relied. This combined with numerous other unsuccessful grant applications and the downturn in clients led the first respondent to have to take cost cutting measures. In the latter half of the financial year ending 31 March 2016 the first respondent was operating at a deficit. The first respondent has no provisions or reserves and could not afford to continue operating in such a poor financial state. The combination of the unsuccessful grant applications and the decrease in client numbers was the sole reason for the non-renewal of the claimant's contract. This was not the first time a fixed term contract which could not be renewed. The non-renewal was not the only cost cutting measure taken by the first respondent it cut staff hours.

61. The respondent accepted that to dismiss the claimant for exercising her statutory right to ante-natal appointments would be automatically unfair. However, that was not the reason for the dismissal. The overwhelming evidence is that the decision was taken for financial reason. There was a downturn in clients and unsuccessful grant funding. The link between the email exchange and being directed to the grievance procedure is reasonable. The Tribunal was invited to dismiss the claim for automatic unfair dismissal.

Pregnancy Discrimination

62. It was accepted that dismissal on the ground that an employee was exercising their statutory right to ante-natal appointment s would be pregnancy discrimination. However, the respondents reiterated that the

decision was purely on financial decision based on the advice given to the respondents.

63. In any event the claimant when the claimant was pregnant she was offered a renewal of the contract. The respondents would have been aware that she would be attending ante-natal appointments.

64. The respondents submitted that the clamant had failed to link the decision not to renew to her pregnancy.

65. The Tribunal was invited to dismiss the claim of pregnancy discrimination.

Breach of Contract

66. This claim was based on the claimant's assertion that she did not receive notice pay. She alleges that the payment made was a goodwill gesture.

67. The respondents accepted that the claimant was entitled to a week's notice pay and any failure to pay would be a breach of contract. However, the respondents maintain that it was paid. It went beyond the advice by not deducting any maternity benefit.

Remedy

68. If the Tribunal was not with the respondents and finds in favour of the claimant it was submitted that the schedule of loss was inflated. Any award to injury to feelings should be in the lower region of the lower band. Further the calculation of the period between the return from maternity leave and the hearing is incorrect.

Deliberations

Automatic Unfair Dismissal

69. The Tribunal referred to section 99 of the ERA which states that an employee who is dismissed shall be regarded as unfairly dismissed if the reason for the dismissal is based on pregnancy, child birth or maternity.

70. The Tribunal also referred to section 104 of the ERA which states that an employee who is dismissed shall be regarded as unfairly dismissed if the

reason for the dismissal is that the employee alleged that the employer had infringed a right of hers which is a relevant statutory right.

71. The Tribunal found that around January 2016 the first respondent was advised that it needed to save on labour costs and it should not renew the next fixed term contract that was up for renewal. This was the action that the first respondent had taken in July 2015 when it required to reduce costs. The claimant's fixed term contract was the next fixed contract that was coming to an end. Based on the financial advice received the first respondent did not renew the claimant's fixed term contract. The Tribunal had no doubt that had the claimant not been on maternity leave her contract would still not have been renewed and that had another employee's fixed term contract been scheduled for renewal before that of the claimant, then the claimant`s fixed term contract would not have been affected. There appeared to have been no consideration at the time of the non-renewal as to the financial implications of the fact that the claimant was currently on maternity leave. Had there been so then the Tribunal would have had to go on to consider whether this was based on the claimant's maternity. However, the Tribunal had no doubt from the evidence that the claimant being on maternity leave had no bearing whatsoever on the decision.

72. For the same reasons the Tribunal was not satisfied that the claimant's exercise of her statutory right to attend and be paid for ante-natal appointments had any bearing on non-renewal of her contract. Arrangements had been made following the claimant's sick absence for others to be on shift at the same time as her. The claimant attended her antenatal appointment on 11 January 2016 and no issue was taken when she did not return to work afterwards. The only issue appeared to arise from the amount to be paid. Even this was not a matter which the second respondent was refusing to consider but rather that it had been left on the basis that the payment beyond that which the first respondent would normally pay would be considered if supporting documentation was provided. The cost of the claimant attending ante-natal care was not discussed by the Board. The Board and in particular the fourth respondent

was unaware of the email exchange on 5 January 2016 and any perceived strain in the relationship between the claimant and the second respondent.

73. The Tribunal therefore concluded that the non-renewal of the claimant's fixed term contract was not based on her pregnancy, child birth or maternity or the claimant asserting a statutory right. According the claim of automatic unfair dismissal was dismissed.

Pregnancy Discrimination

74. The Tribunal referred to section 18 of the EqA which provides that it is unlawful discrimination to treat a woman unfavourably because of her pregnancy or a related illness or because she is exercising or is seeking or has sought to exercise her right to maternity leave.

75. The Tribunal noted that that the claim form referred only being dismissed because the claimant asserting her right to be paid time off to attend ante-natal and being challenged the amount of time being paid as being treated unfairly because of her pregnancy. The claimant's submissions referred also to the fact that she might exercise her right to return from maternity leave. There was no notice of this in the claim form.

76. In any event on the evidence the Tribunal was satisfied the claimant's request for time off for ante-natal care and the amount that she was to be paid had no bearing on the decision not to renew her fixed term contract. The claimant's contract was the next fixed term contract due for renewal. That was why it was not renewed. At the time there was no consideration about what the financial implications, if any were of the claimant being on maternity leave and exercising any right to return afterwards.

77. The Tribunal was not satisfied on the evidence that the non-renewal of the claimant's contract and anything to do with her pregnancy. Accordingly, the claim of pregnancy discrimination was dismissed.

Breach of Contract

78. As regards the entitlement to one week's pay in lieu of notice the Tribunal was satisfied that the note of the meeting on 15 January 2016 recorded that the claimant was starting maternity leave with immediate effect (18 January 2016) but would be paid until 22 January 2016 as an act of goodwill. As the fourth respondent did not know that the claimant's contract was due to expire the Tribunal considered that this was not a payment in respect of notice but rather an *ex gratia* payment because the claimant was taking maternity leave early. Accordingly, the first respondent has not made a payment of one week's notice of £184 to which the claimant is entitled. The Tribunal therefore makes an order for payment of this amount.

Employment Judge: Shona MacLean
Date of Judgment: 19 April 2017
Entered in register: 20 April 2017
and copied to parties