



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Miss Poppy Hedges-Staines

v

CF Social Work Limited

Heard at: Cambridge (by CVP)

On: 8, 9, 10 August 2022

Before: Employment Judge M Ord

Members: Mr R Allan and Mr A Chinn-Shaw

Appearances

For the Claimants: In person

For the Respondent: Mr S Hoyle, Employment Consultant

JUDGMENT

It is the unanimous decision of the Employment Tribunal that:

1. The Claimant was treated unfavourably on 6 November 2020 when she advised the Respondent of her pregnancy, to which Ms Finlayson of the Respondent replied by saying words to the effect,

“Poppy we’ve only just put you on a contract”.

2. The remainder of the Claimant’s claim are not well founded and they are dismissed.
3. The Claimant is awarded the sum of **£4,500** for injury to feelings, together with interest from the date of the unfavourable act (6 November 2020) until the date of the Judgment (10 August 2022), a total of 643 days at the rate of 8% being **£634.19**.

REASONS

1. The Claimant was engaged by the Respondent on a self-employed basis from November 2019 until she was appointed as a full time employee of the Respondent on 1 July 2020.

2. Her Contract of Employment of that date was for a fixed term of six months and was due to expire on 31 December 2020. Throughout the period the Claimant worked as a Social Work Assistant. The Respondent provides assessment and social work assistant services to local authorities working alongside families and children.
3. On 6 November 2020, the Claimant telephoned the Respondent and spoke with Ms Finlayson regarding her concerns over attending a particular client that day and advised Ms Finlayson that she was pregnant. The Claimant says that Ms Finlayson's reply was,

"Poppy we've only just put you on a contract"
4. The Respondent denied that any such remark was made.
5. The Claimant was dismissed by the Respondent on 15 January 2021. In a meeting that day the Respondent told the Claimant that following the end of her fixed term employment, the Respondent was unable to find any way that her current work could continue, nor could they find a suitable role for her within the company. The Claimant was given four weeks' notice of the termination, for which she was paid. The Claimant says that the reason was, or if more than one the principal reason for her dismissal, was related to her pregnancy.
6. The Claimant appealed against her dismissal but that appeal failed.
7. Following a period of Early Conciliation which began on 20 February 2021 and ended on 3 April 2021, the Claimant presented a claim to the Tribunal on 22 April 2021. She complained that she was automatically unfairly dismissed and subject to detriment on the grounds of pregnancy or maternity. All of the claims were denied.
8. At a Preliminary Hearing on 8 February 2022, a List of Issues was put forward and the issues before the Tribunal for determination were as follows:-
 - 8.1 Was the reason, or if more than one the principal reason, for the Claimant's dismissal one which related to pregnancy or maternity?
 - 8.2 Was the Claimant in receipt of unfavourable treatment during her protected period in relation to her pregnancy. In particular:-
 - 8.2.1 Did Ms Finlayson tell the Claimant in response to being informed of the Claimant's pregnancy, *"Poppy we've only just put you on a contract"* on 6 November 2020?
 - 8.2.2 Was there a reduction in the amount of work being offered to the Claimant following 6 November 2020 and if so, was the reason for that reduced volume of work a reason which related to the Claimant's pregnancy?

8.2.3 Was the reason why the Claimant's fixed term contract was not renewed and / or the reason for a termination of the Claimant's employment and which related to her pregnancy?

The Hearing

9. The Claimant gave evidence and submitted statements from Amanda Grainger (formerly Harrington) and Edward Grainger, neither of whom gave evidence before us. The Tribunal has read their statements and afforded them the appropriate weight bearing in mind they have not been sworn to, nor have the makers of the statements been available for cross examination.
10. On behalf of the Respondent evidence was heard from Cheryl Finlayson (former Director of the Respondent), Peter Masters (at the relevant time Logistics Officer), Christine Beckett (Finance Manager) and Ross Evans (Chief Executive Officer and Head of Education Services).
11. Reference was made to a Bundle of documents which was considerably expanded by the Respondent on the first day of the Hearing. The Claimant was, however, happy to proceed having had sight of those extra documents over the course of the weekend before the Hearing. Each witness gave evidence in chief by prepared witness statements.

The Facts

12. Based on the evidence we have heard we have made the following findings of fact.
13. The Claimant's period of employment began on 1 July 2020. Prior to that date she was engaged by the Respondent on a self-employed basis, but her work did not change as a result of this change in status.
14. Throughout the time the Claimant was a Social Work Assistant. The Claimant's Contract of Employment was on a fixed term basis from 1 July 2020 to 31 December 2020. The Claimant worked for the Respondent without incident until 6 November 2020.
15. On 6 November 2020, the Claimant was due to attend a client's home but rang the Respondent's office and spoke to Ms Finlayson who was the person on overnight safeguarding duty. The Claimant said to Ms Finlayson she did not wish to go to visit the relevant client because the father of the child being supported was reported to have (suspected) scabies. Ms Finlayson told her she did not believe this to be the case because the father of the child had regularly made excuses to avoid a Social Worker visit.

16. The Claimant then told Ms Finlayson that she was pregnant. According to the Claimant Ms Finlayson's reply was,

"Oh Poppy we've just put you on a contract".

Or words to that effect.

17. In her written statement of evidence, the Claimant expanded that by saying that Ms Finlayson's response followed with the words,

"...and now you are telling me you are pregnant".

18. Ms Finlayson denied making any such comment.

19. During the course of cross examination of the Claimant, it was put to her by Mr Hoyle that Ms Finlayson would not have said this because the Claimant had not been "just" put on a contract, the contract had in fact been running by that time for four months. The Claimant confirmed the words were used.

20. In her written statement of evidence, to the truth of which she swore an affirmation, Ms Finlayson said that she definitely did not use the words when speaking to the Claimant and said this,

"I was aware that she had previously worked as an independent SWA, but I would have had no information relating to the time frame of any contract she may be on".

21. Ms Finlayson went on to say that she relied on her Managers to manage the contracts of their workers and that whilst Amanda Harrington would have been aware of the terms and time frame of the contract,

"I would not have had that knowledge to hand".

22. However, when Ms Finlayson was cross examined about this, she said she remembered the night of the telephone call quite clearly and that she had no reason to say that the Claimant had only just received a contract because she knew the Claimant was several months into it.

23. Ms Finlayson could not explain the apparent divergence between her sworn statement (in which she said she had no information relating to the time frame of the Claimant's contract) with her evidence in cross examination before us that she would not have used the words "*we have just put you on a contract*" because she knew the contract had already been running for several months.

24. We have considered the evidence of the Claimant and Ms Finlayson carefully in this regard. We have considered the unsworn and untested evidence of Mr and Mrs Grainger to which, for reasons we give later, we afford very little weight indeed.

25. The Claimant has been consistent in her evidence about this matter throughout. The reason why Ms Finlayson says she would not have used the words given are substantially different in her witness statement to that which she gave in cross examination and we have concluded that the later reason given was one which came to her much later in the day, perhaps only when hearing Mr Hoyle's cross examination.

26. On balance therefore and for those reasons, we prefer the evidence of the Claimant in this regard and we find as a fact that when Ms Finlayson on behalf of the Respondent was advised of the Claimant's pregnancy, her response was,

"Poppy we've only just put you on a contract".

27. The Respondent accepts that thereafter less work was offered to the Claimant, but we are satisfied by their evidence that this was the case for all Social Work Assistants (of whom there were three) as the impact of the Covid-19 pandemic and that a number of visits being carried out were reduced with people working from home, travel restrictions and the closure of schools and some Courts. There was simply less work available. The Respondent's unchallenged evidence was that all three Social Work Assistants worked fewer hours around this time, but continued to receive their full contractual pay throughout.

28. During December the Claimant did much less work than would normally be the case. She was offered less work for the reasons set out above, but she also expressed concern over tiredness, therefore for that reason and for reasons connected to ante natal care, she was not always available to work when requested.

29. No action was taken by the Respondent in relation to the end of the Claimant's fixed term contract when it was due to expire.

30. The Claimant also did nothing but we do not accept Mr Hoyle's submission that it was necessarily incumbent upon the Claimant to take any steps in that regard.

31. The contract on its face would automatically expire on 31 December 2020, but the Respondent continued to offer the Claimant work into the new year and she worked a number of days in January 2021. Her last day of actual work was 6 January 2021.

32. On 11 January 2021, the Respondent was advised that a potential new project, which they understood they had been successful in obtaining, would not now be placed with them as the work was to be carried out in house by a local authority. This compounded the Respondent's problems regarding workload.

33. The Claimant was then called to a meeting on 15 January 2021 *“to discuss her contract”*. Ms Beckett who conducted the meeting was accompanied by Ms Harrington who explained that work had not been available and that due to the pandemic and the risks associated with it, local authorities were seeking people who were prepared to work on 48 hour shifts to include sleep-ins which was work the Claimant could not do.
34. The Respondent’s unchallenged evidence was that two other Social Work Assistants were also engaged on six month fixed term contracts and were also dismissed at the end of their fixed terms. There contracts were not renewed. One such Assistant had their employment terminated shortly before the Claimant and one in March 2021, by which time the Respondent said it had no work at the relevant time at all.
35. The Respondent had come to the conclusion therefore, that there was no suitable work available for the Claimant and that her employment was to be terminated. The Respondent said that the Claimant would receive four weeks’ notice during which time she might be called on to carry out work; although in the event she was not.
36. The decision was confirmed in writing by letter dated 18 January 2021 and on 21 January 2021 the Claimant exercised her stated right of appeal. That Appeal was heard by Mr Evans on 9 February 2021. During that meeting the Claimant confirmed that if she was given the opportunity to return to work for the Respondent, she would decline it. In her letter of appeal the Claimant referred to the comment which she said Ms Finlayson had made on 6 November 2020. Although it was not mentioned in his witness statement, when he was asked about this Mr Evans said that prior to the meeting with the Claimant he had spoken to both Ms Finlayson (who was this time no longer directly involved in the business but was working as a consultant) and Ms Harrington.
37. Mr Evans told us that Ms Finlayson denied making the comment when he spoke to her and Ms Harrington said she had not heard the relevant conversation. Mr Evans confirmed that he had no notes of these meetings, did not discuss what those ladies had said to him with the Claimant and further, according to the minutes of the meeting there was no direct reference to this subject or these conversations with the two ladies in question, at all.
38. In the outcome letter of 19 February 2021 dismissing the appeal, Mr Evans made no mention whatsoever of the subject.
39. Our conclusion is that the comment which the Claimant alleged Ms Finlayson made (in which we have found was made) was not investigated properly, perhaps not at all, by Mr Evans, hence its absence from both the decision on 9 February 2021 and the outcome letter.
40. It is against that factual background that the Claimant brings the complaints.

41. It is right, however, to point out that we have been directed by the Respondent to a number of documents which we relate to what we can only refer to as the character of Mr and Mrs Grainger. The number of emails of apparently anonymous origin and a letter from Suffolk Police were amongst the documents.
42. There has clearly been some difficulty between the Graingers and the Respondent; including in particular, we understand, Ms Finlayson. We mention this only to confirm that the evidence contained in the statements of Mr and Mrs Grainger is of negligible weight in our minds.

The Law

43. Under s.94 of the Employment Rights Act 1996 (“ERA”), every employee has the right not to be unfairly dismissed by their employer.
44. Under s.108 of the same Act, s.94 does not apply to the dismissal of an employee unless they have been continually employed for a period of not less than two years ending with the effective date of termination.
45. Under s.99 of the Act, employees who are dismissed for reasons connected with pregnancy, childbirth or any of the statutory rights related to family leave, have special protection and there is no minimum of service required for the right to claim such (automatically) unfair dismissal under s.99.
46. Under s.4 of the Equality Act 2010 (“EqA”) pregnancy and maternity is a protected characteristic.
47. Under s.18(2) a person discriminates against a woman if in the protected period in relation to a pregnancy they treat that woman unfavourably because of her pregnancy and because of the illness suffered by her as a result of it.

Conclusions

48. Applying the facts found to the relevant Law, we have reached the following conclusions.
49. The Claimant’s fixed term contract had expired and there was no available work that the Respondent could offer her. The Claimant was one of three employed Social Work Assistants, all of whom were female and all of whom were employed on six month fixed term contracts. None of those three individuals had their contracts renewed, or (save in the case of the Claimant) extended and all of them had their employment ended.
50. The fact that the Claimant continued to be offered and accepted work in early January 2021, we put down to an oversight by the Respondent, not noticing that the Claimant’s contract had expired. But perhaps also

because of their expectation of new work. That does not impact upon the Respondent's reasons for termination of the Claimant's employment. Not only has the Claimant failed to satisfy us that the reason, or the principal reason, for her dismissal related to her pregnancy (indeed this suggestion was not put to the Respondent's witnesses at all) but the Respondent has satisfied us that the reasons for the Claimant's dismissal are related to the end of her contract and the amount of work available within the Respondent's business. The other two Social Work Assistants were dismissed in the same way and for the same reasons. Neither of them was pregnant.

51. We have found on the balance of probabilities that Ms Finlayson did tell the Claimant in response to being informed of the Claimant's pregnancy,

"Poppy we've only just put you on a contract".

52. Although Ms Finlayson denied making the remark, her explanation as to why she could not and would not have done so, varied substantially from that contained in her written witness statement when she was asked about it in cross examination. This difference was not explained in any way by her.

53. In her witness statement the Claimant added the words,

"...now you are telling me you are pregnant"

to the words previously set out and initially complained of and in respect of which the Claimant has not satisfied us that those additional words were said.

54. However, the thought process behind the words that we have found were used was, we have concluded, frustration that a recently appointed and valued member of staff might not be available to carry out the full range of her duties and would thereafter be taking a period of maternity leave.

55. We are satisfied that the remark amounted to unfavourable treatment based on the Claimant's pregnancy.

56. The down turn in work which the Respondent was facing meant less work was offered to the Claimant in November / December 2020. That was not as a result of or for a reason connected to, the Claimant's pregnancy. The Country was dealing with the Covid-19 pandemic, schools were closed, some Courts were closed. Travel restrictions were in place with many people working from home and clients were reluctant to have people visiting their homes with problems of social distancing compounding the issue.

57. We have accepted the Respondent's evidence that this meant a general and substantial down turn in the amount of work of the type carried out by the Claimant and to other Social Work Assistants. The Claimant has not

satisfied us that she was treated any differently to the two other SWAs and her complaint that the Respondent treated her unfavourably by offering her less work or by dismissing her, is not well founded. The reason for the reduction in work available to the Claimant was completely unconnected to her pregnancy and her dismissal was equally unconnected to her pregnancy.

58. Accordingly, the Claimant suffered unfavourable treatment to the extent that Ms Finlayson's remark that, "*we have just put you on a contract*" on 6 November 2020 when the Claimant advised of her pregnancy. Her other complaints are not well founded and are dismissed.

3 October 2022

Employment Judge M Ord

Sent to the parties on: 6/10/2022

N Gotecha

For the Tribunal Office.