

# THE INDUSTRIAL TRIBUNALS

CASE REF: 1188/13

**CLAIMANT:** Nicola McNamee

**RESPONDENT:** Millie McWilliams and Ken Neely  
t/a Melting Moments Bakery

## DECISION

The unanimous decision of the tribunal is that the claimant was unfairly dismissed and suffered sex discrimination. It awards her compensation of £23,288.25.

### Constitution of Tribunal:

**Employment Judge:** Mr B Greene

**Members:** Ms E McFarlane  
Mr A Kerr

### Appearances:

The claimant was represented by Mr R Fee, of counsel, instructed by the Equality Commission.

The respondent was represented by Mr Pat Moore, of MCL Employment Law.

The interpreter was Ms Silva Urbietiene.

### SOURCES OF EVIDENCE

1. The tribunal heard evidence from the claimant and on behalf of the respondent from Millie McWilliams, Ken Neely, Zidrrune Mickuviene, Vaida Kacergiute and Pat Moore. The tribunal also received seven bundles of documents amounting to 107 pages approximately.

## **THE CLAIM AND THE DEFENCE**

2. The claimant claims that she was unfairly dismissed because of her pregnancy and was discriminated against on the grounds of sex by reason of her pregnancy. The respondent denied the claimant's claims in their entirety and asserted that the claims made by the claimant were a fabrication, and asserted the unfair dismissal claim lacked the requisite continuity of employment.

## **THE ISSUES**

3. The agreed issues were as follows:-

### **Legal Issues**

- (1) Was the claimant subject to an automatically unfair dismissal by the respondent for a reason connected with her pregnancy? (Article 131 Employment Rights (Northern Ireland) Order 1996; Regulation 20 Maternity and Parental Leave etc Regulations (Northern Ireland) 1999).
- (2) Was the claimant subjected to a discriminatory dismissal by the respondent on the ground of her pregnancy? (Article 5A(1)(a) and 8(2)(b) Sex Discrimination (Northern Ireland) Order 1976).
- (3) Was the claimant entitled to receive from the respondent a written statement of reasons for her dismissal? If so, did the respondent fail unreasonably to provide the same? (Articles 124(4)(a) and 125 Employment Rights (Northern Ireland) Order 1996).
- (4) Subject to the above, what, if any, compensation is the claimant entitled to?

### **Factual Issues**

- (1) Why was the claimant dismissed as of 11 April 2013?
- (2) What was said to the claimant during her initial interview on 24 January 2013? Was pregnancy and/or marriage mentioned?
- (3) What role was the claimant employed to perform?
- (4) Did the claimant work in different areas of the bakery during her tenure with the respondent? If so, why?
- (5) Were there issues with the claimant's performance? Was the claimant spoken to in respect of the same?
- (6) If so, what if any influence did performance issues have on the decision to dismiss her?
- (7) Did the claimant become pregnant and if so when did she learn of the same?
- (8) Did the claimant make Ms McWilliams aware of her pregnancy on 5 April 2013?

- (9) If so, what if any influence did the claimant's pregnancy have on the decision to dismiss her?
- (10) What was said to the claimant on 5 April 2013 by Ms McWilliams and/or Mr Neely? Was the claimant given a week's notice of dismissal? Or was she given an option to be paid off?
- (11) Was the claimant asked to perform someone else's job on 8 April 2013? If so, why?
- (12) Did Ms McWilliams speak to the claimant about her job on 9 April 2013? If so, what was said?
- (13) Did Ms McWilliams and Mr Neely speak to the claimant about her job on 10 April 2013? If so, what was said? Was the claimant told she was being let go?
- (14) What was said between the claimant, Ms McWilliams and Mr Neely on the claimant's final day on 11 April 2013 and on 12 April 2013?
- (15) What procedure was followed in respect of the claimant's dismissal?
- (16) What financial loss and/or injury to feelings has the claimant suffered as a result of her dismissal?
- (17) Did the respondent supply the claimant with written employment particulars? If not, why?
- (18) Did the respondent supply the claimant with written reasons for her dismissal? If not, why? Did the claimant request same?

The claimant at the outset of the hearing stated through her representative that she was not seeking any redress for any failure of the respondent to provide her with a written statement of her main terms and conditions of employment.

## **FINDINGS OF FACT**

4. (1) The claimant was employed by the respondent from 8 February 2013 until 11 April 2013 as a bakery assistant. Her date of birth is 11 May 1990.
- (2) She worked 35 hours per week and earned £6.19 per hour with net weekly pay of £196.19.
- (3) The claimant was dismissed on 11 April 2013.
- (4) On 24 January 2013, following an advertisement for a job with the respondent business as a bakery assistant, the claimant was interviewed. Present at the start of the interview were Millie McWilliams and Ken Neely. The claimant was one of 14 for interview. Notes were not made of the interviews.

- (5) The tribunal is satisfied that in the course of the interview Millie McWilliams told the claimant that she did not want her to get pregnant or married in the next year. In so concluding the tribunal had regard to the following matters:-
- (a) The claimant was a more straightforward witness than Millie McWilliams and Ken Neely and appeared to be honest and precise about what she stated had happened. Ms McWilliams and Ken Neely, in giving their evidence, were vague, imprecise, constantly related what they would have said or done rather than what they did say or do. Their evidence frequently was contradictory and Mr Neely's evidence, at times, bordered on the incoherent.
  - (b) The claimant told the tribunal that her reaction to being asked if she intended to become pregnant or get married during the next 12 months was that the question did not bother her and she replied that she did not have any intention to have children or get married in the near future. This response, minimising the import of the question, does not seem to the tribunal to be what one would expect from someone who was fabricating the claim and this conversation as the respondent has alleged.
  - (c) The absence of any written record or note of the interviews.
- (6) Given that the tribunal found the claimant a more reliable witness than Millie McWilliams and Ken Neely the tribunal accepts that Mr Neely left shortly after the interview had commenced.
- (7) The claimant worked for the respondent on a few trial runs over three days and was appointed to work full-time as a bakery assistant from 8 February 2013. She was informed by the respondent that it would take six months to get her up to speed. The claimant was trained in the various tasks required of a bakery assistant. She carried out a number of different tasks within the bakery and she received directions and guidance about how to do the different tasks.
- (8) The tribunal is not persuaded that a meeting occurred on 22 March 2013 between the claimant and Millie McWilliams and Ken Neely. In so concluding the tribunal have regard to the following matters:-
- (a) The claimant denies such a meeting occurred whereas Millie McWilliams and Ken Neely assert that a meeting did occur. However, as stated above, the tribunal found the claimant a more reliable witness.
  - (b) The diary entry of 22 March 2013, which the respondent relies on in support of its claim, states:-  
  
"Nicola has been brought into the office today for a talk about herself and the bakery job she has been given by us at m.m.  
  
Her lack of interest in the job plus her lack of energy due to being very tired from lack of sleep.

Other staff are complaining they have to carry her and feel she doesn't want to be in the bakery.

She has been told to ship shape up as her verbal contract is nearly up which she agreed to do".

The respondent contends that diary entry was not made during the meeting but after the meeting following agreement between Millie McWilliams and Ken Neely as to its content.

- (c) In the course of his evidence Mr Neely accepted that the respondent's diary entry was not accurate. On his account it failed to record responses from the claimant properly and contained "assumptions" the respondent had made rather than what the claimant allegedly said.
  - (d) This does not seem to the tribunal to be the type of contemporaneous note that one would make of a meeting where an employee is essentially receiving a warning about the discharge of his or her duties. For example, the use of the phrase, "... the bakery job she has been given by us at M.M" seems a superfluous and unnecessary comment for Millie McWilliams or Ken Neely to record in their diary given that they had employed the claimant and were aware of that. It is more suggestive of a note that has been written with the anticipation that third parties would be reading it.
  - (e) The meeting, according to the respondent, was prompted by complaints from other staff. There is absolutely no written record of any complaint by any member of staff in relation to the claimant or about any aspect of her work. This is surprising given that the diary was used to record complaints made by other staff members unconnected with this claim and which sets out the name of the staff member and the nature of the complaint.
  - (f) The respondent presented Zidrrune Mickuviene as a witness who had complained about the claimant's inadequate discharge of her duties. The respondent relied on her as making one of the complaints upon which it acted and she is referred to in the respondent's replies to the Notice for Additional Information in that regard. However under oath the witness denied ever having complained about the claimant.
  - (g) The respondent did not produce any other complainant to give evidence about making complaints about the claimant, despite listing the names of five alleged complainants.
  - (h) The respondent was unable to give a satisfactory explanation as to the meaning of, "... her verbal contract is nearly up" or why that comment would be recorded in a meeting to improve the claimant's performance.
- (9) On 26 March 2013 the claimant found out she was pregnant. She was sick the next day, 27 March 2013, was unable to attend work, informed her employer of her sickness and attended at her doctor where her pregnancy was confirmed.

- (10) The respondent alleges a further meeting took place between Millie McWilliams, Ken Neely and the claimant on 28 March 2013 in relation to her failure to discharge her duties in the bakery with the expected degree of interest. The respondent relies, in support of its contention, on a diary entry of 28 March 2013, completed after the meeting, which states:-

“Nicola’s 2<sup>nd</sup> Time in office due to her lack of interest in her work.

Ask if any reason why she has lack of interest + always tired in her work – she said she just needed a kick up the backside as there was nothing wrong”.

- (11) The tribunal is not persuaded that a meeting took place on 28 March 2013. In so concluding, the tribunal had regard to the following matters:-

- (a) The claimant denies that such a meeting occurred and as stated previously the tribunal found the claimant a more credible witness.
- (b) The tribunal finds it somewhat surprising, if such a meeting did occur on 28 March 2013, as the respondent alleges, about her lack of interest and tiredness that the claimant would not offer, as an explanation for her tiredness and lack of interest, that she was pregnant given that that had been confirmed the day before and she had been unable to attend work the day before by reason of sickness.
- (c) In its response the respondent’s account of the alleged meeting contains significant matters not included in the diary entry viz; that her colleagues were complaining that they had to do her work; that they did not want to work with her; that she had accepted that was true; that she was told that she needed to improve; that she would have to change her attitude and that she agreed that she would.
- (d) It seems incredible to the tribunal, that at a meeting to investigate the claimant’s lack of interest and tiredness at which other significant complaints were raised, that these were not recorded, even in general terms, and that the claimant had apparently accepted the correctness of the complaints and her need to improve which is also not recorded.
- (e) The respondent alleges the claimant was given a week to improve which is also not in the diary. Not to have recorded that is unbelievable given the stated purpose of the meeting.

- (12) It is common case that Millie McWilliams invited the claimant into her office on 5 April 2013. There is a complete dispute as to the purpose of the meeting and what was said.

- (13) Again the respondent relies on a diary entry, made afterwards, which reads:-

“Nicola’s 3<sup>rd</sup> and last time in office about her lack of interest in her work on bakery floor.

Week’s notice with option to leave if she wanted to earlier.

Asked if any problem why always tired and lack of interest. No reply.

Stated nothing wrong”.

- (14) The tribunal is not satisfied that this note represents an accurate and complete account of what occurred at the meeting on 5 April 2013. In so concluding the tribunal had regard to the following matters:-
- (a) As previously stated the tribunal found the claimant a more credible witness.
  - (b) If the note were a contemporaneous note, as the respondent alleges, how did the respondent know it would be the last time in the office. That description could only have been applied at the end of the claimant’s employment.
  - (c) The diary entry reads like a note of an investigation meeting with the claimant about her lack of interest in her work and why she is always tired and where the claimant would have the opportunity to assuage the concerns of the respondent. Ms McWilliams described the meeting as a last chance to show a good attitude to her work, in her evidence to the tribunal. Whereas in other evidence and pleadings the respondent stated the purpose of the meeting was to dismiss the claimant. These declared purposes are mutually contradictory.
  - (d) Again the note contradicts itself in that it records that when the claimant was asked if there was any problem about her lack of sleep, or lack of interest, she made no reply. The diary entry follows that up by a statement that she stated that nothing was wrong.
  - (e) Similarly the diary entry also records the claimant was given the option of a week’s notice or to leave earlier. However the respondent, in its replies to the claimant’s Notice for Additional Information, states that on the morning of 5 April the respondent took the decision to dismiss the claimant. In the respondent’s evidence to the tribunal it was said that the meeting on 5 April 2013 “was a simple meeting to dismiss the claimant”. Likewise in the respondent’s response it states that the meeting was convened for the sole purpose of dismissing the claimant and no options were given to the claimant.
  - (f) The respondent’s evidence to the tribunal was that when given the option to work a week’s notice or go earlier the claimant chose to stay. This is not recorded and the respondent could not explain why.
  - (g) It would be strange, in the tribunal’s view, that the claimant did not raise her pregnancy as a reason for any lack of interest and being always tired when confronted with the respondent’s desire to dismiss her.
- (15) The claimant asserts that she informed Millie McWilliams that she was pregnant at the meeting on 5 April 2013. She also states that in the course of the conversation Millie McWilliams intimated to her that she also had

become pregnant at a young age and her mother had disowned her and similarly her daughter had become pregnant at a young age. Millie McWilliams went on to add that some women are better off on the dole and she would give the claimant until the following Friday ie 12 April 2013 to make up her mind whether she wanted to leave or not.

- (16) The respondent denies these assertions and states that Millie McWilliams and Ken Neely did not become aware of the claimant's pregnancy until they received the letter from the claimant dated 30 April 2013.
- (17) The tribunal prefers the claimant's account of the meeting for the following reasons:-
  - (a) Millie McWilliams did become pregnant at the age of 18. It was not challenged that her daughter also became pregnant at a young age.
  - (b) There was no suggestion that the information about the pregnancy of Millie McWilliams and her daughter could have come to the claimant in any other fashion nor that it was well known in the area of the business.
  - (c) There is no obvious advantage to the claimant in fabricating this account were it not true. It is easy to understand Millie McWilliams making such a comment on hearing of the claimant's pregnancy.
  - (d) As has been repeated above several times the tribunal found the claimant a more reliable witness than the witnesses on behalf of the respondent.
- (18) On the week commencing 8 April 2013 the claimant alleges that she had a series of meetings or discussions with Millie McWilliams and or Ken Neely. Her allegations are:-
  - (a) On Monday 8 April she was asked to do another girl's job which was heavier work than the work she had been doing. She felt that this was not fair as she was pregnant;
  - (b) On Tuesday 9 April Millie McWilliams asked her if she had thought anymore about what they had spoken about. She replied that she had and that she was happy to stay on at work.
  - (c) On Wednesday 10 April she was taken into the office of Millie McWilliams. Ken Neely was present. Millie McWilliams said to her that her work was too slow and that anyone else would have more speed built up in four weeks and that she was going to have to let her go. She asked for reasons in writing for her termination and both Millie McWilliams and Ken Neely said that that would not be a problem and that she would have the reasons on the following day with any money she was owed.
  - (d) On Thursday 11 April she brought her aprons to Millie McWilliams and enquired at what time she was to finish. She was told she would finish at 1.00 pm. She then asked for a copy of her contract of employment and Millie McWilliams stated that she could not give it to her as it had to



stay in the office for legal reasons. At approximately 12.05 pm Millie McWilliams called her and gave her the monies she was owed and informed her that they would not be giving her written reasons for her termination. She finished work that day.

- (e) She returned to the bakery on 12 April 2013 to have her pay corrected as the monies given did not properly take account of her holiday pay. She again asked for a copy of her contract and she was told she was not getting it.
- (19) The respondent in its response denies that any meetings took place between the claimant and Millie McWilliams or Ken Neely on 8, 9 or 10 April 2013. It asserts that the allegations about such meetings are a fabrication. In support of its contention it asserts that the respondent, through Millie McWilliams and Ken Neely, did not need to speak to the claimant because she had been informed on 5 April 2013 that her contract would terminate on 11 April 2013.
- (20) The tribunal accepts that the claimant was asked to do different work 8 April 2013 and that such work was physically more demanding than what she previously had been doing. However the tribunal is not persuaded that the work was of such a nature as to be a significant change to the type of work she was doing or presented to her problems by reason of her pregnancy.
- (21) In relation to the meetings alleged by the claimant to have taken place on 9 and 10 April the tribunal prefers the claimant's account. In so concluding the tribunal had regard to the following matters:-
- (a) The tribunal has seen all the witnesses give evidence and throughout it found the claimant to be a more persuasive witness in areas of controversy than either Millie McWilliams or Ken Neely on behalf of the respondent. The witnesses on behalf of the respondent were frequently imprecise, vague, contradictory and constantly couched their answers by what they would have done and would have said.
  - (b) Even on the respondent's account of the meeting of 5 April the note recorded in the diary contemplates the possibility of further discussion between the claimant and the respondent where she to wish to leave the respondent's employment at an earlier date. It is therefore not inconceivable that further discussion would take place or that Millie McWilliams might well enquire from the claimant, as the claimant alleges, whether she had thought anything more about their discussion.
  - (c) Despite the respondent's denial of a meeting on 11 April or that the subject matter alleged by the claimant was discussed Millie McWilliams, in her evidence to the tribunal, accepted that on 11 April she met with the claimant accepted her aprons, had to pay her monies due and recalled her request for her contract of employment.
  - (d) It seems to the tribunal that it would be unlikely that someone, who was leaving the employment of an employer within a week, would not necessarily be involved with some sort of meeting with the employer to surrender property or items belonging to the employer or to make arrangements for the proper payment of wages due and or of any holiday pay due.

- (e) According to the respondent's diary entry of 5 April 2013 the claimant was given one week's notice which would expire on 12 April 2013. It is common case that the claimant left on 11 April 2013 so there must have been some discussion between the claimant and the respondent after 5 April 2013.
- (22) The tribunal accepts the claimant's account of the meeting she had with Millie McWilliams on 11 April 2013 as set out above. In so concluding the tribunal had regard to the following matters:-
- (a) As stated frequently above the claimant was a more reliable witness than Millie McWilliams and Ken Neely in disputed matters.
- (b) Millie McWilliams in her evidence, regarding 11 April 2013, confirmed the claimant's account of the meeting on that day, which contradicts the respondent's response.
- (c) That there would be a meeting before the departure of the claimant on her last day of employment seems something that one would expect. It seems to the tribunal rather unusual that the claimant would leave her place of work, given the set up in the business without even having any meeting with the respondent to deal with matters such as wages, or holiday pay due and owing.
- (23) It is common case that on the evening of 11 April text messages were exchanged between the claimant and Millie McWilliams in relation to a non-payment of holiday pay due to the claimant. Arising from that contact an arrangement was made whereby the claimant called at the respondent's premises on 12 April 2013 in order to collect monies due and owing to her.
- (24) The claimant again said she asked on 12 April 2013 for a contract of employment and was told she was not getting any.
- (25) According to the respondent's response Mr Neely informed the claimant on 12 April 2013, after she had been paid her outstanding holiday pay, that she did not receive a contract of employment because she did not have two full months' service with the business. This comment assumes that there was some discussion between the claimant and the respondent in relation to the claimant's contract of employment.
- (26) The claimant was given five weeks' pay slips on 12 April 2013.
- (27) The respondent's diary records for 12 April 2013:-
- "Nicola McNamee  
called in to see us asking for  
a copy of contract? (Why)  
She did not state or wouldn't  
state why she wanted it as she had  
none in first instance – Health check? for EH Hasap  
\* She got paid 3 days Hol pay \*  
she was owed."

- (28) It seems somewhat strange that if the claimant had not been provided with a contract that the respondent would engage in questioning the claimant why she wanted a copy of her contract of employment and see fit to note that in those terms.
- (29) Mr Neely was unable to explain the entries in the diary for 12 April 2013, despite his evidence to the tribunal that entries were made following a discussion between him and Millie McWilliams.
- (30) By letter of 30 April 2013 the claimant sent a grievance to the respondent. She alleged, inter alia, that she was the victim of sexual discrimination and repeated her allegation about being told at her initial interview not to get pregnant or married for at least one year. She repeated her claim that on 5 April 2013 she was told she would be better off on benefits and should leave.
- (31) MCL Employment Law replied on behalf of the respondent to the claimant's letter of 30 April 2013 in which it denied all the claimant's allegations by letter of 14 May 2013. It relies on this letter as setting out the reasons for the claimant's dismissal. This gives the respondent's reason for dismissing the claimant.
- (32) Arising from the respondent's treatment of her the claimant stated that she did not feel nice, was upset, cried several times and this lasted for one month.
- (33) The claimant has not worked since her dismissal. After her dismissal and before the birth of her baby she attempted to obtain other employment.
- (34) The parties agreed that the claimant would have returned to work on 1 August 2014 after the pregnancy, had she not been dismissed.
- (35) The parties undertook to provide to the tribunal agreed figures as to the quantum of loss suffered by the claimant by 11 March 2014, but they did not do so.

## **THE LAW**

- 5. (1) An employee who is dismissed shall be regarded as unfairly dismissed if the reason for the dismissal or the set of circumstances in which the dismissal takes place relate to pregnancy, childbirth or maternity (Article 131 The Employment Rights (Northern Ireland) Order 1996; Regulation 20 Maternity and Parental Leave etc Regulations (Northern Ireland) 1999 No. 471).
- (2) A person discriminates against a woman if, on the ground of the woman's pregnancy he treats her less favourably (Article 5A(1) Sex Discrimination (Northern Ireland) Order 1976).
- (3) It is unlawful for a person, in the case of a woman employed by him at an establishment in Northern Ireland, to discriminate against her by dismissing her or subjecting her to any other detriment (Article 8(2)(b) Sex Discrimination (Northern Ireland) Order 1976).

- (4) An employee is entitled to a written statement of the reasons for dismissal without having to request it and irrespective of whether she has been continuously employed for any period if she is dismissed at any time whilst she is pregnant (Article 124(4)(a) The Employment Rights (Northern Ireland) Order 1996).
- (5) An employee may present a complaint to an industrial tribunal that the employer unreasonably failed to provide a written statement of reasons for dismissal or the particulars of reasons given in purported compliance with the legal obligation are inadequate or untrue and where an industrial tribunal finds such a complaint well founded, the tribunal shall make a declaration as to what it finds the employer's reasons were for dismissing the employee and shall make an award that the employer pay to the employee a sum equal to the amount of two weeks' pay (Article 125 The Employment Rights (Northern Ireland) Order 1996).
- (6) An employee with less than 12 months continuous employment, who is dismissed, shall be regarded as unfairly dismissed if the reason, or if more than one, the principle reason for the dismissal or the circumstances in which the dismissal takes place relate to the employee's pregnancy, childbirth or maternity (Articles 131 and 140(1) and (3)(b) The Employment Rights (Northern Ireland) Order 1996).
- (7) Where a tribunal finds a complaint of sex discrimination well-founded and it considers it just and equitable it shall require the respondent to pay to the complainant such compensation as a county court would order to be paid had the claim been brought in the county court (Article 65 Sex Discrimination (Northern Ireland) Order 1976).
- (8) Compensation for sex discrimination may include damages for injury to feelings (Article 66(4) Sex Discrimination (Northern Ireland) Order 1976).
- (9) Where a tribunal finds a complaint of unfair dismissal well-founded it shall require the respondent to pay to the complainant compensation (Article 146 The Employment Rights (Northern Ireland) Order 1996).
- (10) An order for compensation for unfair dismissal shall comprise a basic award and a compensatory award (Article 152 The Employment Rights (Northern Ireland) Order 1996).
- (11) Arising from an unfair dismissal the amount of the compensatory award shall be such as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the employee in consequence of the dismissal (Article 157(1) The Employment Rights (Northern Ireland) Order 1996).
- (12) If the failure to comply with the statutory procedures is wholly or mainly attributable to failure by the employer to comply with the requirements of the procedure the tribunal shall increase any award which it makes to an employee by 10% and if it considered it just and equitable in all the circumstances to do so increase it by a further amount but not so as to make the total increase of more than 50% (Article 117(3) The Employment (Northern Ireland) Order 2003).

- (13) Where a dismissal is both unfair and an act of sex discrimination and gives rise to substantial loss, then how is compensation to be calculated? Such a problem can easily arise (eg) where a women suffers dismissal for a pregnancy-related reason. Two possibilities are (a) to award the maximum permissible under the head of a compensatory award and then to make the award of further compensation under the heading of sex discrimination or (b) to award all compensation under the head of sex discrimination. The route chosen is of some importance. For example, the recoupment provisions do not apply where the award is made under the discrimination legislation, though they do when the award is of unfair dismissal. Another difference relates to the tribunal's discretion in fixing the level of an award; in discrimination cases there is no general power to decide on the basis of what is 'just and equitable', as there is in the fixing of an unfair dismissal compensatory award (ERO 1996 Article 57). In general, a claimant is likely to be better off if the award is made wholly on the basis of discrimination, and this consideration may weigh with tribunal's faced with a choice. Tribunal's faced with an unfair dismissal that is also an act of unlawful discrimination should award compensation for loss on the principles applied to discrimination cases (assuming discrimination has been expressly claimed of course), ignoring the upper limits fixed for a compensatory award: **D'Souza v London Borough of Lambeth [1997] IRLR 677, EAT (Harvey on Industrial Relations and Employment Law L [869]; Article 160 The Employment Rights (Northern Ireland) Order 1996).**
- (14) Compensation for injury to feelings falls into three broad bands; the top band ranges between £15,000 and £25,000 and is for the most serious cases such as where there has been a lengthy campaign of discriminatory harassment; the middle band between £5,000 and £15,000 for serious cases that do not merit an award in the highest band; and the lower band between £500 and £5000 for less serious cases such as where the act of discrimination is an isolated or a one-off occurrence (**Vento v The Chief Constable of West Yorkshire Police (Number 2) [2003] IRLR 102 CA).**
- (15) The Vento guidelines have been updated in line with inflation, as measured by the retail prices index: the top of the bottom band would be changed from £5,000 to £6,000; the top of the middle band would be changed from £15,000 to £18,000 and the top of the higher band would be changed from £25,000 to £30,000 (**Da'Bell v NIPCC [2010] IRLR 19).**

## **APPLICATION OF THE LAW AND FINDINGS OF FACT TO THE ISSUES**

### **6. Reason for Dismissal**

- (1) The tribunal is not persuaded that the dismissal of the claimant related to her conduct or competence or performance.
- (2) The tribunal is satisfied that the principle reason, or the set of circumstances that gave rise to the claimant's dismissal was the fact of her pregnancy. In so concluding the tribunal had regard to the following matters:-

- (a) The tribunal accepts the evidence from the claimant that she was told not to get pregnant or married in the first year at her appointment interview.
- (b) The respondent's contention of a conduct or competence or performance dismissal about which there had been meetings with the claimant on 22 March, 28 March and 5 April is rejected, on the balance of probabilities, by reason of the many weaknesses in that account as are set out above in this judgement.
- (c) The tribunal accepts the claimant's account of the meeting on 5 April 2013 that she was not dismissed but rather it was put to her that she would be better off on benefits and she had until 12 April 2013 to let the respondent know if she wished to follow that course and that this proposal followed the disclosure by the claimant to Millie McWilliams that she was pregnant.
- (d) The tribunal preferred the claimant's account of the meeting of 5 April 2013 because she was a more reliable witness than either Millie McWilliams or Ken Neely whose evidence had a number of weaknesses which have been set out above.

### **Unfair Dismissal**

- (3) The tribunal is satisfied that the dismissal falls within Article 131(1), (2) and (3)(a) of the 1996 Order and therefore is automatically unfair.
- (4) Where a finding is made under Article 131 of The Employment Rights (Northern Ireland) Order 1996 the claimant satisfies the exception to the 12 months continuous employment requirement, under Article 140(1) and (3)(b) The Employment Rights (Northern Ireland) Order 1996, to enable her claim for unfair dismissal to continue.
- (5) The tribunal considers that it would be just and equitable to award an uplift of 10% to any compensatory award. As the claimant did not have 12 months' continuous employment the respondent assumed the claimant would be deprived of the protection of the statutory procedures.
- (6) The tribunal is satisfied that the claimant mitigated her loss. There is not any evidence before the tribunal as to whether she would continue to be paid her full salary during maternity leave or not and so the tribunal assumes her loss of earnings continues throughout her maternity leave.

### **Sex Discrimination**

- (7) The tribunal is satisfied that the reason for the claimant's dismissal was that she had become pregnant. In so concluding the tribunal had regard to the following matters:-
  - (a) The tribunal accepts the claimant's account, for the reasons set out above, that she was told at her appointment interview not to get pregnant or married in the first year.

- (b) The tribunal has rejected the respondent's contention that meetings regarding performance were held with the claimant on 22 March and 28 March and 5 April 2013, for the reasons set out above.
  - (c) The tribunal accepts the claimant's account, for the reasons set out above, that she informed Millie McWilliams of her pregnancy on 5 April 2013 and when she did that Ms McWilliams raised with the claimant the possibility that she would be better off on benefits and invited her to consider that before 12 April 2013.
  - (d) The tribunal accepts, for the reasons set out above, that Millie McWilliams told her on 10 April 2013 that she would have to leave the respondent's employment on 11 April 2013. This amounts to a summary dismissal.
- (8) The respondent, by dismissing the claimant because of her pregnancy, has treated her less favourably and is therefore guilty of discriminating against her on the grounds of pregnancy (Article 5A(1)(a) Sex Discrimination (Northern Ireland) Order 1976).

**Written Statement of Reasons for Dismissal**

- (9) The tribunal is satisfied that the letter of 14 May 2013 from MCL Employment Law on behalf of the respondent states the respondent's reason for dismissing the claimant. The tribunal therefore dismisses the claimant's claim for any remedy for failing to provide written reasons for dismissal.

**Compensation**

- (10) It seems to the tribunal that the compensatory award element payable to the claimant would be higher under The Employment Rights (Northern Ireland) Order 1996.
- (11) Accordingly the tribunal awards the claimant her compensatory compensation under The Employment Rights (Northern Ireland) Order 1996 and for her injury to feelings under the Sex Discrimination (Northern Ireland) Order 1976.
- (12) Her compensation is as follows:-

**Compensatory award**

Loss of earnings for 12 April 2013 to 4 March 2014		
£196.19 x 46	=	£9,024.74
Future loss from 5 March 2014 to 3 September 2014		
£196.19 x 26	=	£5,100.94
Total loss of earnings	=	£14,125.68
10% uplift	=	£15,538.25
Loss of statutory rights	=	£ 250.00

Total compensatory award = £15,788.25

### **Injury to Feelings**

The injury to feelings falls into the middle band of **Vento** and the tribunal awards the claimant £7500.00 with interest @ 8% per annum.

£7,500.00

Total compensation is = £23,288.25

Prescribed period is for 12 April 2013 to 4 March 2014

Prescribed element is £23,288.25 - £9,024.74 = £14,263.51

- (13) This is a relevant decision for the purposes of the Industrial Tribunals (Interest) Order (Northern Ireland) 1990 and the Industrial Tribunals (Interest on Awards in Sex and Disability Discrimination cases) Regulations (Northern Ireland) 1996.
- (14) The compensatory award is subject to the Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations (Northern Ireland) 1996 and the Social Security (Miscellaneous Amendments No 6) (Northern Ireland) 2010.

### **Employment Judge:**

**Date and place of hearing: 17, 18 and 19 February 2014 and 4 March 2014, Belfast.**

**Date decision recorded in register and issued to parties: 9 July 2014**