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# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs N Agarwal  
**Respondent:** St John Freight System UK Limited  
**Heard at:** East London Hearing Centre  
**On:** 5 and 6 September 2019  
**Before:** Employment Judge C Lewis  
**Members:** Dr S Chacko  
Mrs A Berry

## Representation

**Claimant:** In Person  
**Respondent:** Mrs C Dzuiti (Legal Executive)

# JUDGMENT

The unanimous judgment of the Employment Tribunal is that:

1. The claim for unfavourable treatment because of pregnancy or illness suffered as a result of pregnancy contrary to section 18 of the Equality Act 2010 succeeds in respect of the following two aspects of the claim:
  - (1) The Claimant was told on the 24 October that she should resign.
  - (2) The Claimant's hours were changed and she was required to work in the office from 9am to 5:30pm when she sought to return from her period of pregnancy related absence.

# REASONS

**Judgment having been delivered orally to the parties on 6 September 2019 these written reasons are provided at the request of the Respondent**

1 The Claimant's claim was heard over two days in the Employment Tribunal. The Claimant gave evidence in person and the Respondent called two witnesses, Mr V Kanakasahai and Mr K Muthaiyan.

2 The hearing had been case managed by Regional Employment Judge Taylor in May 2019 and the issues arising in the claim had been identified in the following way:

3 The Claimant was employed by the Respondent, a freight company as a Customer Services Assistant and the Claimant brings complaints of being required to work full time at the Respondent's office having taken a period of absence on the 24 October 2018. The Claimant says that up until that date the arrangement was that she had to work in the office from 9am until 3pm and then from home 4:30 to 5:30 and this was changed when her employer was informed of her pregnancy. After that time, she was required to work full time in the office.

4 The Respondent's defence was that the Claimant had been required to work full time at the office before the Respondent was informed of her pregnancy because of the needs of the business.

5 The Respondent also alleged that the Claimant brought her complaint in bad faith and that she had wanted to stop working because of her prior miscarriage and wanted the Respondent to give her a letter of redundancy so she could claim on an insurance policy.

6 The Tribunal had to decide the conflict in the evidence and whether the Respondent treated the Claimant unfavourably contrary to section 18 (2) (a) or (b) of the Equality Act 2010, by requiring her to work full time at the Respondent's office: whether that amounted to unfavourable treatment because of the pregnancy or the pregnancy related absence.

*Case management*

7 The hearing was not able to get underway at the start of the first day as there were insufficient copies of the bundle and the bundle was incomplete. Following an adjournment, the Tribunal was eventually able to start the hearing and hear evidence from the parties. The Claimant gave her evidence first, she had produced a witness statement in July which had been sent to the Respondent and they had had sight of that in advance of preparing their own witness statements which were in the bundle provided to the Claimant on the morning of the first day of the hearing.

*Findings of fact.*

8 The Tribunal made the following findings of fact based on the evidence before it, as far as relevant to the issues it had to decide. The Claimant started her employment on the 7 September 2017, she received an offer letter [pages 45 to 48 of the bundle] setting out the terms of the employment, which was sent with an email dated the 6 September [page 49 of the bundle]; the email sets out explicitly that the Claimant is to start from the 7

September and “the office time given in the offer letter is a standard one but as agreed between us, it will be from 9am to 3pm at office and 4:30 to 5:30pm from home”. There is no reference in that email to that being a temporary arrangement or subject to discretion from the Respondent. We are satisfied that the email set out clearly the terms of the contractual agreement between the parties.

9 At the time the Claimant started her employment she did not know that she was in the early stages of the pregnancy. Unfortunately, she suffered a miscarriage on 24 October 2017 at nine weeks. She informed the Respondent of her miscarriage at that time and her evidence was that they were sympathetic towards her. The Claimant and the Respondent’s witnesses were in agreement in the evidence that they gave to the effect that the arrangement with the Claimant working from home for an hour at the end of each day, 4:30 to 5:30, did not work out very well. The Claimant described how it was difficult to respond to queries or deal with matters properly using only her mobile phone and that she needed access to the computer in the office to be able to do the work efficiently and effectively; she acknowledged that there were delays in responding to customer queries to the level that she thought appropriate or satisfactory. The Respondent’s evidence was to similar effect, the arrangement for working at home meant that things were not dealt with promptly or effectively and that it was not providing the required level of customer service to the customers.

10 We accept the Claimant’s evidence that the arrangement that she should work at home was allowed to in effect fizzle out. She had explained the difficulties she was having to the Respondent who acknowledged them and it was accepted that she was only effectively working during the time that she was in the office, that is from 9 am until 3 pm, although she might have to deal with the occasional queries on her mobile or messages only from time to time.

11 The Respondent’s evidence was to the effect that the Claimant was still required to carry out work at home between 4:30 to 5:30 but both witnesses acknowledged that this was something that happened only from time to time when something needed to be addressed. We find, from their evidence, that the Respondent was aware that the Claimant was not working on the Respondent’s business for the full hour each day or even the majority of that hour when she was at home between the hours of 4:30 to 5:30 and that she was only effectively expected to respond to matters that arose that could not wait and that were dealt with on an ad hoc basis.

12 The Respondent’s witnesses gave evidence that they informed the Claimant from January 2018 and in February 2018 that the arrangement was not working and that it would be better if she came into the office. We accept that there was discussion between the Respondent and the Claimant that the working at home arrangement was not satisfactory. However, we find that there were no discussions to the effect that the Claimant would be required therefore to come into the office between the hours of 4:30 to 5:30. We accept the Claimant’s evidence that if she had been told that that was required of her, she would have responded and would have told the Respondent that she was unable to do that because of her childcare commitments.

13 Mr Kanakasahai gave evidence that he had drafted an email to send to the Claimant in either March or April intending to raise the issue of the Claimant’s hours and working from home with her but after discussion with Mr Muthaiyan, he did not send it.

That was consistent with Mr Muthaiyan's evidence that the matter was discussed with him but he told Mr Kanakasahai there was no need to send an email at that point, he described the arrangement in the office as being everyone working as a team and there was no need for that formality.

14 Whilst we accept that the Respondent had formed a view that it would be better for the Claimant to work in the office for that hour, we also find that there was no evidence of any clear instruction or requirement, or even a decision to seek to formally change the Claimant's working hours, The Respondent witnesses accepted that there was no formal meeting with the Claimant nor is there any written notification to her to inform her that they would require her to be in the office until 5:30pm from any particular date, or at all. We find that throughout the period from September 2017, when the Claimant started with the Respondent, until the 24 October 2018 the Claimant worked in the office from the hours 9 am to 3 pm and left the office at 3 pm. This was whether she worked an additional hour at home between the hours of 4:30 to 5:30 or not. We also note that having told the Tribunal that having formed the view in their minds in or around January or February 2018 that the Claimant needed to be working in the office, the Respondent did nothing about it for some 10 months.

15 On the 24 October 2018 the Claimant left the office at around 2:30 pm and went straight to the hospital. She was pregnant again and suffered some bleeding. She rang the office and spoke to Mr Kanakasahai to inform him of the reason for her absence and told him of her pregnancy. The account of that conversation is disputed. The Claimant alleges that in that conversation, Mr Kanakasahai told her that she needed to be in the office and words to that effect that if she could not come in, she should resign as he needed staff who could work full-time. Mr Kanakasahai denies saying this, his account of the conversation is that he told the Claimant to take care and asked her to let him know her plans. The Claimant also spoke to the Respondent again on the 25 October, she told us that she rang and spoke to Mr Kanakasahai again, this time on her way into hospital for a scan. She remembered that she went to the Gurdwara first and that she rang him from there and the content of the conversation was to the same effect. She described in her evidence how she felt panicked and stressed by this and she told him that she would follow the normal procedure and send him the GP sick note, which she then did.

16 We had to decide the conflict in this account. We note that the Claimant has been consistent as to the content and effect of that conversation in her evidence and in her submissions. We also considered the Respondent's submission in respect of the letters dated 5 and 11<sup>th</sup> November [pp. 50 and 51] which referred to the Claimant having been selected for redundancy, which the Claimant left for the Respondent at their offices. The Claimant told us that she was panicked and stressed by what she had been told and sought advice from a former colleague. She told him what had been said to her about her needing to resign and he asked her if she wanted to resign, when she said that she did not want to resign, that the Respondent was telling her that she should, he suggested that what the Respondent was in fact saying to her was that she was redundant and he drafted a letter to reflect that she was redundant. The Claimant took the letter to the Respondent's office and left it. Mr Kanakasahai said he received the letter and refused to sign it because the Claimant was not being made redundant by them. The Respondent alleges that the Claimant needed the letter to claim on an insurance policy.

17 We are satisfied that the Claimant is being truthful when she denies that the letter

had anything to do with claiming on an insurance policy. We find that the timing of those letters dated 5 and 11<sup>th</sup> November is consistent with her account of being told that she should resign if she was not able to attend the office in the hours required by the Respondent and we accept her account. We find that the words spoken on the 24 October 2018 by Mr Kanakasahai were to the effect that the Claimant would need to be in the office between the hours of 9 to 5:30 and that if she was unable to do so she was told that she would need to resign. Having carefully considered the context of that conversation and Mr Kanakasahai's account of it we find that the remark would not have been said if the Claimant had not told him that her absence was pregnancy -related.

18 The Claimant submitted sick notes between October 2018 and January 2019. On the 27 December 2018 the Claimant emailed the Respondent to inform them that she intended to return to work at the end of her sick leave on the 2 January 2019

19 We have seen the Respondent's reply dated 27 December [page 59] which states:

"Please ensure you are in the office between 9am and 5:30pm with a 1 hr lunch break." to which the Claimant's reply was "I will only stay until 3pm as previous. I cannot work extra hours".

The Respondent maintained its position in subsequent email correspondence between the parties, repeating that the Claimant needed to attend the office between 9 am and 5:30 pm. [pages 57-59].

#### *The reason for the Claimant's absence*

20 The Respondent did not dispute that the Claimant's absence on the 25 October 2018 was for a pregnancy-related reason. The Claimant told the Tribunal that what was said to her on those dates increased her stress and that had an impact on her pregnancy. Her period of absence was certified on the 31 October 2018 as being for 'bleeding in early pregnancy'. The Claimant sought to return to work on 2 January 2019 notifying the respondent of her intention on the 27 December 2018. Although the later fit note referred to stress we are satisfied that there was a continuous period of absence up until she sought to return to work on 2 January 2019. We find that this was a continuous period of and that the two stated reasons on the fit notes were both related to her pregnancy. We are satisfied that the Claimant was seeking to return from a period of absence with a pregnancy related illness. We also find that the Respondent made clear to the Claimant that they would only allow her to return if she changed her working hours and that condition was maintained throughout the period of December to January preventing the Claimant from returning.

#### *Conclusions*

21 We have found that if the Claimant had not been off for the pregnancy-related illness, the requirement to work in the office between the hours of 9 am to 5:30 pm would not have been imposed on her. Whatever the Respondent would have liked to ask the Claimant to do there is no evidence that they would have acted upon that wish, or that they intended take any steps to change her working arrangements until she went off sick

for a pregnancy-related reason. We find that in the absence of that trigger, that is, her pregnancy-related illness, that requirement would not have been imposed upon her. The Respondent used the opportunity of her seeking to return from that absence to impose a requirement that she worked in the office until 5 or 5:30 pm where previously she had been able to work from 9 am only until 3pm. That change was a detriment to the Claimant as she was able to work those hours due to her childcare; the Claimant was additionally fatigued as a result of her pregnancy and was not physically able to increase her hours. We are satisfied that seeking to impose the change in hours amounts to unfavourable treatment.

22 The Claimant also alleged that the Respondent did not want her back because she was pregnant and deliberately engineered the changing hours to prevent her return because they feared she would need more time off either for other pregnancy related illnesses or for maternity. We do not find in the evidence before us that that was the reason. We accept the evidence given by Mr Kanakasahai that he would have taken the Claimant back if she could work the additional hours in the office. We do not find that he formed the conclusion that he did not want her back because she was pregnant but, we do find that he used the opportunity of her absence to impose a change in her working hours which he would not have imposed otherwise.

23 In conclusion we are satisfied that (i) the requirement to work increased hours in the office would not have been imposed but for the pregnancy-related absence and that amounts to unfavourable treatment under section 18 (2) (b) of the Equality Act 2010; and we find that (ii) being told on the 24 October 2018 that she should resign, or words to the effect also amounted to unfavourable treatment.

### *Remedy*

24 This Judgment was delivered orally to the parties and Case Management Orders in respect of the Remedy Hearing were made at the end of the liability hearing, those Orders are contained in a separate document.

25 The Remedy Hearing has been listed to take place on **7 February 2020 at 10 am.**

Employment Judge Lewis

7 October 2019