RA

EMPLOYMENT TRIBUNALS

Claimant: **Miss E Walker**

Respondent: **Arco Environmental Limited**

Heard at: **East London Hearing Centre**

On: **27, 28 and 29 March 2019**

Before: **Employment Judge B. A Elgot**

Members: **Mr P Quinn**
Mrs BK Saund

Representation

Claimant: Miss S Tharoo (Counsel)
Respondent: Mr J Gilbert (Litigation Consultant)

The Tribunal having reserved its decision now gives judgment as follows: -

JUDGMENT

1. **The claim of unfair dismissal SUCCEEDS. The Tribunal is satisfied that the principal reason for the constructive dismissal of the Claimant was her pregnancy. The compensation to which the Claimant is entitled shall be determined at a separate Remedy Hearing on a date to be arranged. A Notice of Hearing will be sent out in due course.**

2 **The complaint of pregnancy discrimination SUCCEEDS including the complaint of harassment related to the protected characteristic of sex. The remedy for this discrimination will also be determined at the Remedy Hearing.**

3. **The claim for damages for breach of contract (failure to pay notice pay) SUCCEEDS.**

4. **The Respondent has failed to supply the Claimant with written particulars of her employment and this claim also SUCEEDS. The Claimant is entitled to the maximum amount of four weeks' pay which will be calculated at the Remedy Hearing.**

REASONS

1. In this case the Claimant makes the following claims: -

   1.1. First, she says that she has been unfairly dismissed in the circumstances set out in s.95 (1) (c) Employment Rights Act 1996. She resigned from her job as an administrator on 13 December 2017 without notice (her exact job title is in contention and therefore we have adopted this generic neutral description). She contends that this resignation took place in circumstances where she terminated the contract of employment under which she was employed in circumstances in which she was entitled to terminate it without notice by reason of the Respondent's conduct as employer and in particularly she says that the Respondent was in breach of the duty of mutual trust and confidence because it behaved in a manner calculated or likely to destroy or seriously damage the employment relationship between the parties without reasonable or material excuse. Secondly, she says that the Respondent failed to provide and maintain a suitable working environment for her free from unlawful discrimination and harassment and in that respect it has also breached its employment obligations towards her in a fundamental way. This claim succeeds.

   1.2. Secondly, the Claimant states that her constructive dismissal as described above was automatically unfair. She was only employed by the Respondent for a short period of one month from 13 November 2017 to 13 December 2017 and therefore does not have the two-year qualifying period which is usually necessary to bring a claim of unfair dismissal. However, it is her contention that her dismissal is automatically unfair by reference to s.99 (1) Employment Rights Act 1996 which provides that an employee who is dismissed shall be regarded as unfairly dismissed if the reason or principal reason for the dismissal is pregnancy, child birth or maternity. This claim succeeds.

   1.3. Thirdly, the Claimant claims pregnancy discrimination by reference to s.18 (2) Equality Act 2010 which provides that a person (A) discriminates against a woman if, in the protected period in relation to a pregnancy of her, A treats her unfavourably because of the pregnancy. The protected period in relation to a woman's pregnancy begins when the pregnancy begins.

   1.4. Mrs Walker's claims of pregnancy discrimination and direct sex discrimination by reference to s.13 Equality Act 2010 are both claims of direct discrimination. These claims succeed.

   1.5. In addition, the Claimant states that she was harassed by reference to s.26 of the 2010 Act because the Respondent engaged in unwanted conduct related to the relevant protected characteristic of sex and that the conduct had the purpose or effect of violating her dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment

for her. This claim succeeds.

1.6. She makes a claim for breach of contract by reason of the Respondent's failure to pay her one week's notice pay to which she says she is entitled. This claim succeeds

1.7. Finally, she alleges and the Respondent, at the end of this Hearing, conceded that it had failed to provide the Claimant with a written statement of her particulars of employment by reference to s.1 - 4 Employment Rights Act 1996 and s.38 Employment Act 2002 and in relation to that claim we award an amount equivalent to four weeks' pay. We are satisfied in all the circumstances it is just and equitable to increase the minimum award of two weeks' pay and award the higher amount instead. The amount of four weeks' pay will be fixed at the Remedy Hearing referred to above and the precise figure will be calculated.

1.8. The reasons for the award of the higher amount are that the Claimant, when appointed to her new job with the Respondent, received no documentation whatsoever. There was no letter or correspondence confirming her appointment even after she worked at initial three-day trial period from 3-6 November 2017. There were some matters of ambivalence concerning her job title, job description and duties. She told us that she unequivocally understood that she was taking over from the departing Office Manager with whom she had a handover period of two weeks. The Respondent has described her as the administrative assistant to the Operations Director and some of its witnesses (see paragraph 2 of Mr Heyfron's witness statement) dispute her status. Those discrepancies could have been clarified by a written statement of employment particulars and were not. Similarly, during the course of her very short employment her hours of work were altered from 9am to 5pm and changed to 8am to 4pm. The Respondent states that this was not a permanent change We are satisfied that the Claimant worked 8am – 4pm with effect from the first full week of her employment which began on 13 November 2017 as appears from the timesheet signed by one of the owners of the Respondent Mr Steve Rees at page 155 of the agreed bundle. This arrangement is also confirmed by her husband Barry Walker in his statement in paragraph 7. She worked 9am – 5pm only for her three-day trial period 3-6 November 2017. The Respondent failed to give any written particulars which might clarify the original or amended working hours or state how long any alleged trial of the amended hours was intended to be. The Respondent has given no proper explanation for not producing employment particulars. Mr Ron Heyfron the Managing Director told us he had responsibility in this small company for personnel and human resources matters of which he had some experience. He said that the Respondent also had online access to legal and human resources advice from external consultants. There is no reason why the Respondent could not provide the statutory documentation either during the course of the Claimant's employment or within the period specified in s.2 Employment Rights Act 1996.

2. There is at pages 39 – 41 of the agreed bundle in this case a list of the agreed issues in this case which we will use as the structure for these Reasons but taken in a different order so as to more closely follow the chronological progress of the Claimant's short employment. The Claimant gave evidence on her own behalf and her husband Mr Barry Walker was a witness. The Respondent's witnesses were Mr Steve Rees, the owner and a Director of the Respondent, Mrs Adele Rees, his wife, who is employed in the business, together with the Managing Director Mr Ron Heyfron and the Operations Director Mr Jim Grant. There was a small agreed bundle of documents to which was added, by consent, pp 155-7. We had the benefit of oral submissions from both Ms Tharoo and Mr Gilbert.

3. As stated above, the Claimant worked for the Respondent from 13 November to 13 December 2017. The Respondent is a small company which at the time had twenty-three employees, carrying out asbestos services including asbestos removal and insulation, asbestos surveys, demolition, fire-proofing and building services. The Claimant worked in the office with eight or nine other employees including the Respondent's witnesses.

4. We find that she was certainly recruited to carry out some of the duties of the Office Manager (Jackie) and also to take on some of the duties then carried out by Mrs Adele Rees in relation to payroll and other finance tasks. Mrs Rees was unfortunately unwell from a serious illness, recovering from chemotherapy and needed assistance. The Claimant was recruited to the role through her personal connection with Mr Jim Grant who had worked with her previously. He made contact with her and introduced her to the Respondent. She had previously been working for her husband Barry and caring for her small daughter but was interested in a new opportunity.

5. The relevant exchange of emails is at pages 149 – 152 of the bundle. Mr Grant writes, "*our Office Manager is leaving soon and am actively looking to get someone to run the price* [this is a misprint for place] *maintain compliance etc. etc."* In that email chain the Claimant makes it clear that she is ambitious and wants to obtain additional qualifications and move forward with her career above and beyond the part-time work which she was then doing for her husband's digital marketing company.

6. Her enthusiasm for her new job is apparent from the messages at page 139 which are published by way of a WhatsApp family group chat called "dad updates". The group consists of the Claimant's five siblings, her two brothers in law, her husband, her mother and father. It is a characteristic of this case that the Claimant seeks the advice and support of this group on a regular basis in relation to her work and working relationships. This is not unnatural nor the subject of any criticism by us. The nature and content of these chats does not suggest to us any plan by the Claimant to exploit or deceive the Respondent in the way implicitly suggested by the Respondent's witnesses, for example, to knowingly obtain maternity benefits from her new employer rather than from her husband's business. We do not agree that the content of those chats or any other communications between the Claimant and her family and friends demonstrates any pre-meditated plan to bring tribunal claims or any other legal action against the Respondent for financial gain.

7. Messrs Rees and Heyfron were content to accept Mr Grant's recommendation of Mrs Walker and therefore did not carry out any further recruitment exercise.

Mr Rees told us that he was relieved and pleased that the problem of Jackie's departure, after ten years with the company, had been solved. Mr Grant and Mr Rees therefore appointed Mrs Walker after an interview and a three-day trial period and she was not required to compete with any other candidates.

8. It matters not, whether at the time of her job interview, during the initial three day trial period or in the early days of her permanent employment Mrs Walker knew she was pregnant or had informed her colleagues that she was 'trying' for another baby. Neither of those facts makes any difference to her entitlement to assert her rights to the legal protection offered by employment law and the Respondent given its size and administrative resources could be expected to know that position. However, certainly by 6 December 2017, when she had been working for the Respondent three full weeks, she told Mr Grant and Mr Rees that she was pregnant with her second child. She told Mrs Rees on the telephone on 7 December and received her congratulations. Following a scan on Friday 8 December, she told her family chat that she was eight weeks and four days pregnant (page 142 of the bundle). Her baby was due on 16 July 2018 and she has subsequently had a healthy baby boy.

9. The Claimant said that she wanted to give the Respondent as much notice as possible in order that it could make arrangements to cover her maternity leave which, in the ordinary course of the events, may not have commenced for another five or six months.

10. Mr and Mrs Rees and Mr Grant told us that they had never worked before with a pregnant employee. Mr Heyfron told us that he had never had direct Human Resources responsibility for a pregnant employee because in his other jobs in bigger organisations there had been an in-house human resources department which dealt with maternity issues. We repeat however that the Respondent had access to expert on-line advice via subscription. The Arco Environmental Ltd Team Handbook in the bundle at pp 48-117 was only in a draft version during the period of the Claimant's employment, Mr Heyfron confirmed that the Claimant would not have known what was in it and it is therefore an irrelevant document for our purposes.

11. Mr Heyfron also became aware of the Claimant's pregnancy in the circumstances which he describes in paragraph 4 of his witness statement which is not disputed by the Claimant save for the final sentence which is a part of the conversation she says did not occur. A simple calculation, which Mr Heyfron said he did not carry out at the time, would confirm that the Claimant must have become pregnant in early October before she arrived to work for the Respondent.

12. It is the Claimant's case that what had been she describes in the ET1 as a *"nice family business and close working environment, friendly and informal atmosphere in which she got on well with everyone in the office, including the management group began to change*". There is a central office in which the Claimant sat and four glass walled offices around that central space so that the Directors and the office staff are in close proximity and interact regularly during the working day. On Thursday 7 December 2019, none of the managers were in the office and although she spoke briefly to Mrs Rees on the telephone she did not see anyone else because Friday 8 December was not one of the Claimant's working days.

13. The difficult and indeed discriminatory circumstances which the Claimant therefore identifies leading to her resignation at approximately 12.30pm on Wednesday 13 December 2017 occurred over a period of two and half days; 11, 12 and half day on 13 December. The alleged incidents of pregnancy discrimination and harassment are set out at 2.1.1 – 2.1.7 in the List of Issues.

Conversation with Mrs Adele Rees on 11 December 2017

14. The Claimant describes in paragraph 17 of her witness statement that upon meeting Mr and Mrs Rees in the office that Monday morning both were "*very quiet with me*" and declined to engage in conversation. The Claimant states "*it was clear neither of them wanted to talk to me*". She attempted to engage Mrs Rees in conversation by showing her a picture of the pregnancy scan. We accept the evidence of Mrs Rees that at this particular time, around 10.30 am, she was busy doing the wages and carrying out her normal Monday morning tasks.

15. Mrs Rees was also preoccupied with the serious health difficulties experienced by her and her husband and she also told us she was particularly concerned about her husband because on the birthday of his late mother's, which actually occurred on 12 December not 11 December as both she and Mr Rees state incorrectly in their witness statement's, her husband is subdued and upset.

16. In those circumstances, we find that Mrs Rees inappropriately asked the Claimant if she had been trying to get pregnant. This comment was the beginning of the Claimant's perception that the Respondent was not pleased that she had arrived at her new job already pregnant and that she would require replacing, at least temporarily, by another employee during her maternity period.

17. The Claimant responded that she had been trying to get pregnant before she took the job but had then stopped trying to which we find Mrs Rees replied with words along the lines of "*oh well, shit happens, it's a new life*". Mrs Rees strongly refutes that she said any such thing but we prefer the Claimant's evidence that it was said and that she found it 'rather upsetting' but went back to carry on with her office duties. However, we are equally certain that the reference to "shit happens" was a reference to the inconvenience Mrs Rees perceived would be caused to the Respondent's business. It was not a derogatory reference to the Claimant's personal circumstances or her pregnancy being something which was "shit" for her and her husband. Mrs Rees had already congratulated her on the pregnancy. Mrs Rees gave her oral evidence in a highly emotive, often angry, and hyperbolic way; we are satisfied that she is more likely than not to have made such an 'over the top' remark.

18. However, we reiterate that this was the beginning of the Claimant's understanding that the Respondent was not pleased about the anticipated difficulties her pregnancy and maternity might cause for the business in a situation where none of the senior managers had dealt with maternity arrangements before. It was also the beginning of the Claimant's realisation that the Respondent was suspicious that she had taken the job whilst trying for a baby or even knowing that she was already pregnant. She telephoned her husband as was her normal daily practice in her lunch hour to tell him that she had been upset by this conversation with Mrs Rees. We accept the Claimant's evidence that she did not normally send frequent WhatsApp or

text messages to her family and her husband in the course of a working day and this explains why there are no such copy communications in the bundle. She did however message much more frequently during the ensuing two days as she became more distressed about the position she found herself in. Then she began to message more frequently for advice and support.

19. We find that Mrs Rees' remark was unfavourable treatment and the reason for the remark was the Claimant's pregnancy and the perceived inconvenience it would cause the Respondent.

Meeting at 3.30pm on 11 December between the Claimant and Mr Grant and Mr Heyfron

20. Following the conversation with Mrs Rees in the morning the Claimant was called into a meeting with the Operations Manager and Managing Director half an hour before she was due to leave to go home. She was surprised that Mr Rees was not there since he normally attended meetings. At this point there had been no discussion that the Claimant should transfer to Mr Heyfron as her line manager and she assumed Mr Grant was her manager. Mr Heyfron confirmed to us that he inappropriately asked the Claimant if she knew she was pregnant at the time she had taken the job. He now says that, upon reflection, it was a mistake to ask her that question. Mr Heyfron told us(and Mr Grant could not recall) that he is not sure whether he said Steve Rees wanted to know the answer but he did say that he asked the question out of "curiosity". We do not find it credible that such a personal and sensitive question was asked only from curiosity or by reference to a seemingly ambiguous reference by the Claimant about "over celebrating" her new job at the beginning of November (when she must have already been pregnant).

21. We instead find that it was reasonable for the Claimant to feel that the reason for this question was because either Mr Heyfron and/or other members of the management at the Respondent expected that the Claimant had taken the job under some kind of false pretence when she knew she was already expecting a baby. There was a reasonable perception by the Claimant that this was an implied criticism of her. Mr Grant does not recall that it was specifically put to the Claimant that anyone thought she was 'un-trustworthy' but, as stated below, in hindsight he was able to see how the Claimant at least received that impression.

22. In addition both Mr Grant and Mr Heyfron agree that at this meeting Mr Grant told the Claimant that it was best that Steve Rees was not there and that she should *'tread carefully'* around Steve. Mr Heyfron did not contradict or challenge this assessment of the situation. Mr Grant said in evidence *'I cannot remember what triggered me to say it- I think just to be calm in the situation'*. We do not accept that this remark was made by Mr Grant only on the basis that the Claimant should be aware that Mr Rees had had a minor stroke. The meeting was to discuss the Claimant's pregnancy, as Mr Heyfron confirms in paragraph 5 of his statement, and the implications for the Respondent's business. When the Employment Judge asked Mr Grant whether the reason that the Claimant should tread carefully around Mr Rees was because Mr Rees was 'fed up' that she was pregnant so soon into a new job he (Mr Grant) replied candidly "*everybody (me, Ron, Steve, Adele) was upset not particularly him because it was a new and stressful situation*.

23. Mr Grant also conceded that it could have been understood by the Claimant during that meeting that the Respondent believed that she had known about her pregnancy, taken the job anyway and intended to obtain maternity pay from the Respondent rather than from her husband's own business. Certainly, neither Mr Grant nor Mr Heyfron knew what the employer's statutory obligations were. He said, *"it could be perceived that's what we believed, yes*". In fact, that was precisely the effect upon the Claimant as appears from a message at page 154 that she sent to Mr Grant on the same evening at 6pm.

24. Mr Grant was the Claimant's primary contact at the Respondent's organisation, her line manager and a colleague from a previous job. He had introduced and recommended her to the Respondent. It was not surprising therefore that he was the first port of call for her to communicate her concerns and upset following the 11 December meeting with him and Ron Heyfron. It is not correct, as Mr Grant states in paragraph 7 of his witness statement, that he had no further interaction with the Claimant after the meeting because he received this eloquent message appealing directly to him.

25. The message at page 154 is a key document in this case. It begins '*sorry to* bot*her you at home. I went home quite upset after the chat today. I haven't intended on creating a problem for the business'* It is clear from Mrs Walker's communication with Mr Grant that not only is she distressed but also that she clearly understood the meeting to be about the potentially adverse financial and other implications of her pregnancy and maternity for the Respondent. That is why the message contains information about the responsibility for maternity pay and why she makes the statement "*I wouldn't take a job for maternity pay when I was already guaranteed it without travelling two hours a day. Can you pass this on to Steve and let me know where I stand please"?*

26. We find that she would not have used that phraseology unless during the 11 December meeting it had at the very least been strongly implied that she had taken the job when she knew she was pregnant in order to obtain maternity benefits from the Respondent and not from her husband's business. Mr Grant did not forward the message to either Mr Rees or Mr Heyfron and he did not reply to it. He says he discussed it with Mr Heyfron on the telephone but neither could recall the content of their conversation. Neither director took any action to reassure the Claimant or correct her impression. Mr Grant ignored her request for help on the apparent ground that Mr Heyfron was now the line manager of the Claimant and he would deal with all matters of her welfare moving forward. We find, in accordance with Mr Heyfron's own evidence that the proposal for him to become the Claimant's line manager in the future was not conveyed to the Claimant until 13 December.

27. We find that the conduct of the meeting on the afternoon of 11 December 2017 and the failure of the Respondent to respond in any way to Mrs Walker's concerns as expressed in the message to Mr Grant at page 154 amounts to unfavourable treatment because of her pregnancy and harassment. There is no other explanation for the Respondent's treatment of her.

28. **Burden of proof**

We are satisfied by reference to s136 Equality Act 2010, on the basis of the totality of the evidence in this case, that the Claimant has discharged her burden of proof. She has demonstrated facts in relation to direct pregnancy discrimination and harassment from which we could decide that a contravention of the 2010 Act has occurred and there is an absence of any other explanation for the Respondent's behaviour towards her as appears from our findings stated above and the conclusions set out below.

29. In his oral evidence Mr Rees spoke of a changed and unsettling 'atmosphere' or 'cloud' in the workplace after the Claimant announced her pregnancy. He said '*it was no secret that an incident would occur. I was nervous there was a problem'.* We were unable to understand what type of incident he might be referring to but it was clear that Mr Rees took the decision to withdraw from all but the bare minimum of contact with the Claimant. His evidence in tribunal was irritable, incoherent and inconsistent in many aspects and he referred to his witness statement as being *'not enough, not good quality. I am out of my depth'.* However, he sought to demonstrate, so far as we could ascertain, that any withdrawal by him and Mrs Rees from their previous informal and friendly daily engagement arose only from other pressures upon them and not from any disappointment and/or distrust they felt as a result of the Claimant's announcement. Mr Rees agreed that he was disappointed at the prospect of losing an employee on maternity leave who had only just been trained up and was doing good work. He cited his own and his wife's health problems, the anniversary of his late mother's birthday, pressure of daily tasks and business -critical meetings and decisions which needed his attention. He and Mrs Rees also gave unsupported evidence that they were made uncomfortable '*from day one'* by talk of sexually explicit conversations in the office initiated by the Claimant and- as it transpires unsubstantiated- rumours that she had brought several tribunal claims against her employer before; Mrs Rees refers to the Claimant's complaints against the Respondent as deliberately 'concocted'.

30. Mr Heyfron also agreed that there was a bit of an 'atmosphere' which he described as 'flat'. He said it was because the Claimant was almost apologetic about her pregnancy and the Respondent probably did panic about the HR issues and because *'we had employed her to solve a problem when Jackie left and I was thinking who would do the work next year'.* These are not the same reasons given by Mr Rees.

31. We cannot agree that any of the factors described by Mr Rees are an alternative non-discriminatory explanation for the Respondent's actions. Rather we are certain that after 6 December 2017 Mr and Mrs Rees did withdraw from interaction with the Claimant and this is because they perceived that her pregnancy and maternity would both add to and exacerbate the pressures on the business and on them personally. We find it likely that they therefore wanted Messrs Hefron and Grant to deal with the practicalities and they did not want, save for a bare minimum of contact, to speak to or meet with the Claimant for fear that their animosity, disappointment and impatience towards her might become too evident and cause an incident.

32. We are satisfied that the ostracisation of the Claimant by Mr and Mrs Rees after 6 December 2017 amounted to unfavourable treatment and harassment because of her pregnancy. We are not convinced that there is any other credible and consistent explanation for this treatment which was a change from their previous conduct towards her.

33. **Events of 12 December 2017**

Paragraph 2.1.5 of the List of Issues refers to the Claimant's observation that both Mr and Mrs Rees ignored her on the morning of 12 December and, by contrast, did greet and chat to Mr Heyfron. She describes the awkward situation of being 'blanked' in her contemporaneous messages to her husband summarised on page 136 of the bundle and to a friend (Clara Brown) in an email at page 141 timed at 2.45pm. The Claimant was in tears in Mr Heyfron's presence and we find that he acknowledged the difficulties of the situation for her but said that a meeting the next day to obtain advice from the Respondent's HR provider should help to resolve matters. Mr Rees gave oral evidence that he was told by Mr Heyfron that the Claimant was upset and had been crying that morning but he took no steps to speak to her or reassure her. He left the matter to Ron Heyfron to resolve because he is '*the professional'.*

We are satisfied that the behaviour of Mr and Mrs Rees on the morning of 12 December was unfavourable treatment and harassment relating to the Claimant's pregnancy and that there is no other explanation for the fact that they singled her out to be ignored as compared to their courteous treatment of Mr Heyfron.

34. **Meeting with Mr Ron Heyfron on 13 December 2017**

34.1 There are no notes or minutes of this meeting at which we are satisfied that Mr Heyfron told the Claimant that he would now be her line manager in substitution for Mr Jim Grant. Part of the Claimant's account of the events of the morning of 13 December is contained in her messages to her husband on their private WhatsApp chat which is summarised on page 138. Mr Walker says at paragraph 11 of his witness statement *'at this point Eilise was extremely upset each day'.* The messages record that Mrs Walker was tense because she had offered tea to Mr Rees, he had refused and then three minutes later had made tea for himself; whatever the reason for Mr Rees' actions she reasonably perceived this as another snub to her following the upset she had experienced the day before about which she had complained to Mr Heyfron.

34.2 The Claimant's meeting with Mr Heyfron must have taken place at around 11.30 am which is when her messages to her husband are paused. It was clearly a short meeting. At 12.18 pm Mr Heyfron sent her the email at page 122 headed' just to summarise our brief meeting this morning'. An outline risk assessment is attached to that email at pages 123-126. The Claimant is certain and we accept her evidence that she did not complete or indeed contribute to the text of the risk assessment and the medical form is blank. We are certain that the content of the email and the attachments did not influence the Claimant's decision to resign because she had already decided to leave as advised by her husband at 11.21 am on page 135. She had already drafted her resignation letter and did not amend it. She told us that the email confirmed what she already knew.

34.3 Nonetheless Mr Heyfron's email and the attached documents are

stated in his email to be a contemporaneous record of his 13 December meeting with the Claimant and it is apparent that on receipt of HR advice from Emma Charlick of The HR Department Advice Line he wished to complete a pregnancy risk assessment. Mr Heyfron's email refers to the opportunity for the Claimant to '*discuss any aspect of the risk assessment'* with Ms Charlick the following week on Wednesday 20th December combined with an invitation '*if you feel that this needs to be amended please let me know'.* It is not clear to us whether the time and date of the appointment with Ms Charlick was conveyed to the Claimant at her face to face meeting with Mr Heyfron.

34.4 What is clear is that she was very alarmed and fixated upon the fact that the Respondent wanted to change her working hours to 9am-5pm which would substantially increase her travel time to and from work. An employee who had not experienced the unfavourable treatment the Claimant had received in the preceding two days might have waited to consult with Ms Charlick and Mr Heyfron as to whether any such change in hours was necessary or desirable. However, the Claimant was convinced that the change of hours was inevitable. She wrote to Clara Brown *'they want to change my hours 9-5. They are considering changing my days'.* The contrast in terminology relating to the change of hours - '*we need to change your hours'* and the change of working days - ' *we would like you to consider your working days'* in Mr Heyfron's email suggest that the former course of action was a much more fixed decision than the latter. The draft risk assessment states at page 124 '*with immediate effect hours of work to be adjusted'*. The email is a summary of the discussion Mr Heyfron and Mrs Walker had just had. It is unsurprising that the Claimant formed the view that the change of hours was a fait accompli. In his evidence Mr Heyfron agreed that he had explained to the Claimant that the HR Adviser was insistent on the change of hours and that it was 'required'; he said that his email was perhaps not well expressed and he now realises, with regret, that the HR advice was probably in error and he ought to have sat down with the Claimant and worked it out rather than giving the impression that it was a 'done deal'.

34.5 The Claimant did not see the email at page 121 sent by Ms Charlick to Mr Heyfron and copied to Mr Rees. Its content cannot therefore be causative of her resignation. However, the content of that email does reveal that the Respondent and its advisor recognise the poor relationship between Steve Rees and the Claimant. We have found as a fact that Mr Rees ostracised the Claimant and not vice versa. It is not relevant to the stated purpose of the meeting which was to discuss a pregnancy risk assessment but nonetheless Ms Charlick advises:-

'*Steve, we mentioned that you would not for the time being have any involvement with Eilise but do please make sure you are still being civil to her, say good morning, good night etc. as you would with any other employee'*.

This comment corroborates the Claimant's evidence that she was indeed being treated differently and unfavourably by Mr Rees. Mr Heyfron confirmed that at the meeting with HR he had himself told Steve Rees to '*butt out and leave it with me'*

34.6 Again, the wording of the email from Ms Charlick demonstrates a contrast between the change of working hours '*the hours will be changing back to 9 til 5'* and the change of days-'*ask her to consider this'.* We find that this contrast of language and tone was on the balance of probability conveyed to the Claimant and she panicked, in the context of the discriminatory behaviour and harassment she had experienced before. She anticipated further unfavourable treatment and a breach of the terms and conditions of her verbal employment contract and resigned almost immediately after her meeting with Mr Heyfron without waiting for the outcome of any further risk assessment or consultation. She told us that she thought 'the Respondent's behaviour would continue for another week '*so I couldn't stay in that environment just waiting to speak to somebody'.*

We are satisfied that the conduct by the Respondent of the short meeting on 13 December 2017 had the effect on the Claimant of continuing to make her feel intimidated and degraded. It was therefore part of the harassment relating to her pregnancy to which she has been subjected.

35. **Harassmen**t

We find that the effect of the events which took place at work over the very short period of three days 11-13 December 2017 was to harass the Claimant by violating her dignity and creating a hostile, humiliating and offensive environment for her. That harassment related to her protected characteristic of sex because, as is axiomatic, only women can be pregnant.

There is no requirement in employment law for there to be an extended period of such conduct before the statutory definition of harassment is met.

The Claimant made it clear not only in her message to Mr Grant at page 154 but also when she broke down in tears in front of Mr Heyfron on the morning of 12 December 2017, having been ignored by Mr and Mrs Rees, that this conduct was unwanted. She summarised the unwanted conduct in her resignation letter at page 127 of the bundle.

36. **Resignation**

The Claimant's resignation letter dated 13 December 2017 addressed to Mr Steve Rees was written before she saw Mr Heyfron's email; we are certain that she did not amend it before she left the office, arriving home by 1.29 pm as appears from a 'Dads Updates' WhatsApp message on page 146. Her journey home from Romford to Southend must have taken an hour at least and so she probably left the Respondent's premises no later than 12.30pm.

The resignation reiterates the principal alleged acts of pregnancy discrimination which

have occurred ’after the announcement of my pregnancy’ and refers to the ‘hostile environment’:-

- Avoided and ignored by Mr and Mrs Rees
- Asked in a meeting if I was pregnant when I started ‘insinuated untrusted and advised to tread carefully’
- All meetings avoided by yourself
- The meeting ‘held this morning stated the intention to give me a written contract which will change the verbal agreement we have in place’.

The Respondent’s reply is at page 128 dated 18 December 2017. It makes no answer to the allegations of discrimination. She received no notice pay in her final salary payment.

We have determined that the unfavourable treatment described above which occurred because of the Claimant’s pregnancy amounted to discrimination and harassment as defined in section 26 of the 2010 Act. Acts of discrimination are, save in the most exceptional circumstances, sufficiently serious in themselves to amount to a repudiatory breach of contract which entitles the employee to resign and claim constructive dismissal. This is what the Claimant did and the reason for her constructive dismissal on 13 December 2017 was pregnancy which is an automatically unfair reason as set out in s99 (3) (a) Employment Rights Act 1996. It matters not, in the case of a dismissal for this automatically unfair reason, whether the Claimant was employed for the two year qualifying period in s 94. Her claim of unfair dismissal therefore succeeds.

37. For the reasons stated above the claims of pregnancy and harassment also succeed. A Notice of Remedy Hearing will be sent out in due course with a listing for one day.

Employment Judge Elgot

1 May 2019