Case Number: 3304684/2018

EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Ms Subashini Davuluri	v	(1) Pharmvit Limited (2) Mr Khalid Latif

Heard at: Watford **On**: 29, 30 and 31 July 2019

Before: Employment Judge Hyams **Members:** Ms A Brosnan
Mr D Sutton

Appearances:

For the claimant: Dr Austen Morgan, of counsel
For the respondent: Mr Andrew Watson, of counsel

RESERVED JUDGMENT

1 The claimant was dismissed unfairly, contrary to section 99 of the Employment Rights Act 1996 ("ERA 1996"), read with regulation 20(3)(a) and/or (d) of the Maternity and Parental Leave etc Regulations 1999, SI 1999/3312 ("MAPLE 1999").

2 The claimant was subjected to unlawful detriments contrary to section 47C of the ERA 1996, read with regulations 19(2)(a) and/or (d) of MAPLE 1999.

3 The claimant was subjected to pregnancy discrimination within the meaning of section 18(2)(a) of the Equality Act 2010 ("EqA 2010").

4 The first respondent failed to give the claimant written reasons for her dismissal, contrary to section 92(4) of the ERA 1996.

REASONS

Introduction

(1) The claim

1 The claimant was employed by the first respondent from 13 February 2017 until 29 December 2017, when she was dismissed. The parties agreed that the claimant informed the respondents that she was pregnant on 29 November 2017. The reason for the claimant's dismissal was hotly disputed: indeed, it was the key issue in the case, for reasons to which we come below. It was the claimant's case that she had been dismissed because the respondents wanted to avoid the need for the first respondent to pay her statutory maternity pay ("SMP"). The issues were determined at a preliminary hearing conducted by EJ McNeill QC on 1 November 2018, as stated in the document produced by her after that hearing. Those issues were in paragraph 7 on pages 63-64 of the hearing bundle. (Any reference to page below is, unless otherwise stated, to a page of that bundle.) We return to the issues below. The claim was stated by Mr Watson in his opening note as being of

1.1 automatic unfair dismissal contrary to section 99 of the Employment Rights Act 1996 ("ERA 1996"), read with regulation 20(3)(a) and (d) of the Maternity and Parental Leave etc Regulations 1999, SI 1999/3312 ("MAPLE 1999");

1.2 unlawful detriment contrary to section 47C of the ERA 1996, read with regulations 19(2)(a) and (d) of MAPLE 1999;

1.3 pregnancy discrimination contrary to section 18(2)(a) of the Equality Act 2010 ("EqA 2010"); and

1.4 a failure to give written reasons for the claimant's dismissal contrary to section 92(4) of the ERA 1996.

(2) Procedural issues

2 We were given closing submissions in writing on 31 July 2019 and after we had done so we heard oral submissions from both counsel, supplementing those written submissions. We reserved our decision on liability and set a provisional remedy day hearing, 13 September 2019, in case we found in favour of the claimant. We also discussed with both counsel what findings, if any, we should make on issues relating to the financial remedy that the claimant should receive if we found in her favour on liability. We determined that if we did so find, then we would give some further directions in order to ensure that both parties were fully prepared for the hearing of 13 September and that we would be able to make final determinations on that day.

The evidence

(1) A preliminary issue; the admissibility of some transcripts

3 The claimant had made a series of covert recordings of conversations that she had had with the second respondent at work, using her mobile telephone. The respondents objected to their admission on the basis that the view that it was "very distasteful" and "discreditable" to make such a recording was endorsed by ACAS. Mr Watson was not able to find a reference to ACAS endorsing such a view, and no evidence of such endorsement was put before us. We made our decision to admit the recordings purely by reference to the case law to which we referred, and we state our reasons for doing so in paragraph 4 below. Before doing so, we note (for the assistance of the respondents in this case) that after we had made our decision on liability as stated in the above judgment, we found that there was at https://www.acas.org.uk/index.aspx?articleid=4310, i.e. part of ACAS' website, the following passage, which showed that ACAS did not actually endorse that view, and that ACAS was, rather, drawing attention to a range of views, including that some experts say that the "Better advice ... is for managers to assume they are being recorded and to remember that what they are saying may be admitted as evidence in a tribunal." The passage is in these terms:

> "Some employees are secretly recording meetings with managers with the intention of using them as evidence at employment tribunals. And with the prevalence of sophisticated portable recording devices – including on many mobile phones – it's a trend that looks likely to continue.
>
> Employers may well wonder if such a practice is fair or reasonable. Certainly, tribunals have been describing covert recording as 'very distasteful' and 'discreditable'. But case law suggests that this in itself may not be enough to make them inadmissible as evidence.
>
> Following decisions in one case, experts say that recordings of disciplinary hearings and subsequent meetings may be admissible provided the employer has been given the evidence before the tribunal hearing, including both the recording and its transcription so that its veracity can be checked. If there's a lot of material to go through, employers should be told which parts are relevant to the proceedings.
>
> In the same case, secret recordings of private conversations were treated differently. They were not deemed to be admissible unless the recordings revealed evidence of discrimination.
>
> Employers may want to prohibit recording in their procedures and policies, but experts suggest that this won't deter some. Better advice, they maintain, is for managers to assume they are being recorded and to remember that what they are saying may be admitted as evidence in a tribunal.

> Better still would be to cultivate an open and supportive atmosphere in the workplace, where disagreements are dealt with swiftly and sensitively before getting out of hand. Where there's trust and mutual respect, employees would not feel any need to make secret recordings."

4 It was also contended on behalf of the respondents that the claimant, in taking her mobile telephone into the production and laboratory areas committed gross misconduct, so that for that reason also, we should refuse to admit the recordings in evidence.

5 In fact, Dr Morgan did not object to us reading the transcripts on a (as he put it) *de bene esse* basis before deciding whether to admit them as part of the evidence. We read parts of them, i.e. the parts to which our attention was drawn by the fact that there was highlighting on them (placed there by one of the parties), and took into account the case law described in paragraphs PI[882]-[883.02] of *Harvey on Industrial Relations and Employment Law*, before concluding that we should admit them. We did so because we could see no good public policy or legal reason for refusing to admit the recordings, even if, as it was contended, it would have been gross misconduct for the claimant to have her mobile telephone in the place where she made the recordings. Whether it would have been such gross misconduct was an issue that would be relevant to the question of what remedy the claimant should receive if any of her claims succeeded to any extent. The recordings were of conversations at work which were not part of any private panel deliberation, for example: they were simply conversations between the claimant and the person who ran the first respondent's business.

6 We considered the parties' submissions on the admissibility of the transcripts and read the witness statements and the documents referred to in them during the morning of 29 July 2019. We then announced our decision on the admissibility of the transcripts

(2) The oral evidence which we heard and the documentary evidence which we considered

7 We heard oral evidence from the claimant on her own behalf during the afternoon of that day. On 30 July 2019 we heard oral evidence from the respondent's three witnesses. On 31 July 2019, we heard (at our invitation and without objection from either party) a little more oral evidence from the second respondent.

8 We did not read the whole of the liability bundle put before us, as it was agreed that we did not need to. Rather, we read such parts as we were referred to.

9 Employment Judge McNeill QC had listed as the "Key Factual Issue" these two, related, questions:

9.1 Did the respondents give written notice of dismissal to the claimant by a letter dated 31 October 2017 which was allegedly hand-delivered to the claimant on that date?

9.2 Did the respondents give oral notice to the claimant on that same date?

10 These were key questions because it was the claimant's evidence that it was only after she had told the respondents on 29 November 2017 that she was pregnant that the first respondent, through the second respondent, had proposed the termination of her contract of employment. It was the claimant's evidence that that termination was first proposed on 8 December 2017 at a meeting between her and the second respondent. It was also her evidence that the first time that she knew that the respondents were asserting that she had been dismissed for redundancy following notice given to her for that reason on 31 October 2017 was when she received the ET3 in these proceedings.

11 The claimant's immigration status was (in the circumstances to which we refer below) relevant in that she is of Indian origin and was, at the time of being employed by the first respondent, given leave to enter the United Kingdom in part on condition that she did not have access to public funds.

12 The question whether the claimant received a written contract of employment, and when she did so, was also material. There was in the bundle at pages 219-228 a written contract in the name of the claimant, which was signed by her and the second respondent. It was dated 13 February 2017, and it was stated to be for a fixed term until 12 February 2019. The second respondent said that it was given to the claimant on 13 February 2017 but the claimant said that she had not received it on that day. Nevertheless, it was agreed by the parties that the claimant was given that contract before her dismissal. It required the claimant to give three months' notice and the respondent to give only "statutory notice", i.e. such notice as was required by statute.

13 There were some factual aspects which were common ground. The respondents accepted that the claimant had had a meeting with the second respondent (or at least a conversation with him in his office at the first respondent's premises; any reference below to a meeting of the claimant with the second respondent is to a meeting of the same sort) on 8 December 2017. The respondents also accepted that the claimant had had further meetings with the second respondent on 14, 19, 27 and 29 December 2019. The claimant's evidence on these meetings was in paragraphs 15-17, 19-20, 24, and 27 of her first witness statement. It was her evidence that on 8 December 2017 the second respondent had

13.1 said that he would not pay her SMP, that it was the first respondent's policy not to pay SMP, that the second respondent had never before

then paid SMP to any of his employees and that he instead helped them to get statutory maternity allowance;

13.2 asked her to resign and apply for maternity allowance;

13.3 asked her to resign in December so that her notice period ended in March (since she was obliged by her contract of employment to give three months' notice);

13.4 said that if necessary he would provide her with a letter to ensure that she did receive maternity allowance; and

13.5 said that he would give her an opportunity to rejoin the first respondent and continue her job after the end of her period of maternity leave.

14 It was also the claimant's evidence that the second respondent had said at that meeting of 8 December 2017 that since she (the claimant) was on a restricted visa, under which she was precluded from having access to public funds, he (the second respondent) could not pay her SMP. It was her evidence that she said to him that SMP was not public funds, and that she would think about their discussion.

15 The claimant was not cross-examined about that part of her evidence. The second respondent did not deal with the content of that meeting in his witness statement but was cross-examined on the claimant's evidence about it. The same was true of all of the other meetings between them to which the claimant referred in her witness statement: the second respondent did not refer in his witness statement to what happened in those meetings, and the evidence which we heard from him about what happened during those meetings was given only because Mr Watson put his client's evidence about the meetings to the second respondent in cross-examination.

16 The second respondent accepted that there had been a conversation between him and the claimant on 8 December 2017, and that he had suggested that she went to the Jobcentre to claim maternity allowance. He agreed also that he had expressed concern about the issue of the entitlement of the claimant to receive public funds and about the respondents' potential liability for a breach of immigration law if paying the claimant SMP amounted to giving her access to public funds. However, it was his evidence that he had done that purely because he had already, on 31 October 2017, given the claimant notice of the termination of her contract of employment on 29 December 2017. It was his evidence (in paragraphs 37-39 of his witness statement) that he had given notice orally and then in writing by means of the letter at page 245. That letter was dated 31 October 2017.

17 The second respondent agreed that he had told the claimant on 8 December 2017 that he would be happy to re-hire her after her pregnancy. He said that that was because her work was very good: that was, he said, because the respondents had never had any complaints about the claimant's work and they knew that her work was going to restart in June/July 2018.

18 The claimant sent the second respondent an email on 14 December 2017, before going to work. It was at page 248, and the respondents accepted that they had received it. It included this passage:

> "I am trying to meet you since Monday to inform you about this after our discussion on Friday regarding my maternity but didn't manage to get your time. Hence I am emailing you the details.
>
> I discussed with my husband about your suggestion you offered last Friday for me to resign this month and serve a notice period of three months. You also suggested that I can claim maternity allowance and you are happy to take me back when I return from maternity.
>
> He checked the rules and thought that I am not communicating effectively regarding this matter. He said it is the law that the employer should pay the statutory maternity pay. I brought to his notice that you said that my visa says that I do not have access to public funds. He said statutory maternity pay like NHS do not come under public funds. However, he said he can take the opinion of law graduates who he knows at University College London (he works as a scientist at UCL) if needed. He also said that you need to give me form SMP1 within a week of your decision of refusing to pay statutory maternity pay."

19 The claimant then went to work that day. Paragraph 19 of her witness statement described the meeting of 14 December 2017 to which we refer above, in the following terms:

> 'Just before I was due to leave, at around 2pm, Mr Latif asked me to come to his room. He was alone and the door shut behind me. He raised his voice and started shouting at me saying, "You can go legally if you want but I will not pay SMP". He threatened to terminate my employment immediately by paying my three months' notice period. He said my email was to make sure I had a written record and to indicate that I wanted to go legally. He said "your husband might know a law graduate but I am the headmaster of that school". He told me to proceed from a legal stance and he would fight with me in the court. He said he dealt with a number of lawyers and he could afford to pay £1,000 to the lawyer but I could not. He also mentioned that I could not afford lawyer's fees as they were expensive. He repeated that he was not willing to give a single penny as SMP. He said that I had less experience than him due to my age, and that as he was older, he had dealt with many things like this. He also made disparaging references to my race, and said,

> "People from India or from Asia think that rules in this country are going to protect them and they can proceed legally for any disputes, but remember, rules are meant to guide you and not to rule you." He said for every rule there will be an 'against rule', which I thought he meant loophole. He also threatened that he would give me a bad reference when I tried to get a job in the future and he would make sure that I could no longer work in this country.'

20 The second respondent denied saying the things which the claimant said he had said on 14 December 2017. He said that she might have had a conversation with him on that day, but he could not recall discussing the content of her email of that day, at page 248.

21 What occurred during the meetings of 19, 27 and 29 December 2017 was recorded by the claimant in the manner described in paragraph 3 above. The content of the transcripts of those recordings was not denied by the respondents, although on a number of occasions the second respondent and Dr Morgan emphasised that the recordings might not have been complete and therefore might be misleading. We took into account the whole of that content, but in particular the following passages (bearing in mind that English was not the first language of the claimant, that the second respondent's English was not always grammatically correct, and that the claimant's language was generally a little more precise than that of the second respondent):

21.1 On page 251, in the transcript of the meeting of 27 December 2017 (the transcript was at pages 251-260), the second respondent said (i.e. is shown to have said):

> " ... anyway we have discussed on 8th of December. You are in notice period actually I mentioned that. The notice period I have given you is up to the 29th of December."

21.2 On page 254, the second respondent said:

> "we have to give you one week notice we have given you 8th December till now. 3 weeks notice".

21.3 The claimant then said:

> "on that day you told me to resign from the position and three month notice period I will give you."

21.4 The second respondent then said:

> "I think next time when you came back I did tell you you are in notice period. Yes notice was, I was saying you I will you three months but

> once I check the book it says one week is statutory notice, one week is sufficient ... by law. So you teaching me law now I am teaching you law. If you had kept quite [i.e. quiet] I would have kept until March but you told me I have taken advice."

21.5 Also on page 254, the second respondent said:

> "say we had a verbal contract. you don't have to give them a contract there is a lot of things in there which can go against you. Like three months' notice for example. In the absence of that you will be ok to just tell them it's a periodic job."

21.6 Also on page 254, the second respondent said this:

> "If Prabal needs any help we may give a ring and say come for a week or two while Prabal out but that will be of [i.e. off] the books."

21.7 The claimant having said: "Ya I understood", the second respondent then said:

> "if you get your maternity allowance that is now official we can't change it for 39 weeks. we don't want to change it. It's not good for you but if we ask you to come and talk to Prabal then you can help and that will be private just say I am helping. We won't give you any paper. We won't give you ... We will just sort out something for you."

21.8 At pages 257-258 there is a discussion about whether or not the claimant will receive a "termination letter". At the top of page 258, there is this exchange (the references to "Khalid" being to the second respondent and to "Subhashini being to the claimant):

> "Khalid: ... Termination letter I have see my legal adviser[.] I cant leave myself open but I have given you notice I have told you that this is the situation... unfortunately you didn't go to the job center because of your personal reason but my position with you that I have it perfectly normal to give verbal notice it doesn't have to be in writing
>
> Subhashini: notice is fine but we are terminating the contract right
>
> Khalid: (24.13) no the contract has a clause in it we are exercising the clause. We are saying we have giving you the notice which I have given and the notice period we've given you s more then the statutory notice period and 29th is the end of the month and that is when the termination is
>
> Subhashini: (24.35) you told me on 21st right. Prabal told me on 21st.

you told me that you will give three months notice

Khalid: (24.42) no gave you notice on the 8th. I told you yes we did say: I did say that we will give you three months but then I have looked at your contract and I only obliged to give you one-week notice period. you read your contract when you go home. See what notice period employer has to give. Once you read that tomorrow we'll talk. I'm here tomorrow So, I have complied to the contract period.

Subhashini: (25.15) ok fine. I will also see this terminating letter as well. So, do I need to get termination letter or I will also this check point

Khalid: (25.26) I can check it. You can also check. I think what we saying to, you is this is it. We are giving you the notice according to the term condition of the contract. We have dealt with it. we will give you p45. P45 itself is a termination we don't give p45 when the job doesn't terminate. Your legal advisor will tell you."

21.9 On page 261, which was the start of the transcript of the recording of the meeting of 29 December 2017 (the transcript was at pages 261-264), there is this exchange:

"Davuluri: So what about my termination letter

K. Latif: I think .. your ... if you go to the job centre and if they want termination letter then we'll see what we can do. But P45 you should present them with P45 because P45 is as good as termination"

21.10 At the bottom of page 262 it is said by the second respondent and the person referred to on pages 261-264 as "Other", but whom the parties agreed was Ms Bhatti, that the claimant might be able to come back to work in the new year "on the private side".

21.11 At the top of page 263, there is an exchange which the respondents accepted accompanied an attempt by the claimant to give the second respondent a letter, in which she said she set out a request that he "reconsider my ... (inaudible)", to which he replied:

"Don't need to put anything in writing ... I will..you have to just pick up the phone".

21.12 Shortly afterwards, on the same page, Ms Bhatti said:

> "I think don't put anything else more in writing because you can just pick up the phone and talk isn't it? ... just pick up the phone".

21.13 At the bottom of page 264, Ms Bhatti is recorded to have said to the claimant:

> "... but don't put things in writing, please, just pick up the phone",

and, when the claimant said "ok":

> "Alright? Because sometimes what you put in writing sounds totally different to"

22 Both Ms Bhatti and the second respondent firmly denied that they had said that the claimant should speak rather than write to them because they did not want any kind of paper trail.

23 The second respondent asserted in cross-examination that if an employee needed to be paid only a small amount of money then that could be taken from the petty cash and there would not need to be any kind of record that it had been paid to the employee.

24 Ms Bhatti and Mr Bhargava both gave evidence that the second respondent had told them orally (and only orally) early in November 2017 that he had given the claimant notice of dismissal by reason of redundancy.

25 The second respondent did not respond in writing to the claimant's email of 14 December 2017 at page 248. The claimant's evidence was that she had had in her hand the letter dated 29 December 2017 at page 265, which included a statement that she believed that the second respondent was terminating her employment because she was pregnant and that that was discrimination against her because she was pregnant.

26 The claimant then sent the letter at pages 278-279, which was dated 11 January 2018 and was to the same effect as that of 29 December 2017, but was a little more detailed.

27 At page 289 there was a letter which was dated 2 February 2018 and signed by the second respondent. The claimant said that she saw it for the first time only after it was disclosed in these proceedings. It was in these terms:

> "Further to the above. The content of your letter is disputed.
>
> As you are clearly aware you were given notice on 31st October 2017 that there was a surplus of employment in the department and that you would be made redundant at year end. Your position was a junior position and your role was being absorbed by other members of the department. Due to

business reasons difficult decisions are required to be made.

Regarding payment of SMP it is clear that you have misunderstood this. For clarity what I advised you was to go to job centre and seek information regarding SMP. The confusion was that as your role was being made redundant it was unclear whether the company had to pay it or you would be claiming it through job centre. The issue was simply the source of payment.

Further you are also aware that other roles within the company have also been made redundant due to business reasons during the year 2017.

The issue of SMP payment is currently being verified and I will shortly revert regarding this."

28 It was the second respondent's evidence that he had caused a member of the second respondent's staff to send that letter by first class post and not by email (which the claimant in her letter at pages 278-279 invited him to do, referring to first class post only as an alternative), and that he had checked the next day with the relevant member of the first respondent's staff that the letter had in fact been sent as part of a number of letters that that member of staff had sent. He had not, however, asked that member of staff to obtain, and she had not obtained, proof of the letter's postage.

29 The SMP was, the parties agreed, subsequently paid by the first respondent in a lump sum after the claimant had received the help of a member of the staff of Her Majesty's Revenue and Customs in persuading the first respondent to pay the SMP.

30 Mr Bhargava's evidence was mainly about the workload of the claimant relating to the first respondent's standard operating procedures ("SOPs"). However, the claimant's job description was agreed to be the document at page 384, and her responsibilities in relation to the SOPs were only one of 11 areas of responsibility. In fact, given our conclusions on the facts of the matter (which we state below), we did not need to come to any conclusion on the reliability of Mr Bhargava's evidence in regard to the claimant's workload. However, we did see (as pointed out by Mr Watson on behalf of the claimant) that Mr Bhargava's evidence in paragraphs 7-14 of his witness statement about the manner in which the second respondent gave the claimant notice of redundancy conflicted in some material respects with what the second respondent said in that regard in paragraphs 30-35 of his witness statement.

31 The claimant saw her GP on several occasions before (on 2 April 2018) she gave birth. In the notes of a consultation that she had with a Dr Patel on 21 March 2018, it was evidently (given a referral document of which there was a copy at pages 342-346) recorded by the doctor that the claimant "has been made redundant". That reference to the claimant having been made redundant was not in the claimant's medical notes at page 326 where, instead, this was

recorded:

> "Has been dismissed from work - raising a claim for unfair dismissal".

32 Dr Patel had written a letter dated 24 July 2019 "To Whom It May Concern", in these terms:

> "This is to confirm that the above patient consulted me on the 21st March 2018 in respect of her pregnancy.
>
> On that day, she informed me that she was feeling low in mood, and under some stress, as a result of her recent dismissal from work. Originally, I inadvertently recorded this in the consultation entry as a redundancy. However, upon spotting the mistake, the patient informed again, that she had in fact been dismissed, and was planning to make a claim for unfair dismissal. I therefore corrected the mistake on 15th May 2018, to more accurately reflect the facts.
>
> Prior to correcting my entry, the patient was referred by Dr Najia Shaikh to the rheumatologist for an unrelated problem on 11th May 2018. Her referral form, captured my original, uncorrected consultation entry from March, and so has led to an apparent inconsistency in the notes.
>
> I would be grateful if this could be taken into due consideration."

33 The claimant had made a separate (supplemental) witness statement about the manner in which that letter had been procured. In that witness statement she said that she and her husband had attended the GP's surgery on 11 May 2018 for the 6-week check on their baby's health. They had before then received a copy of the claimant's medical notes to support her claim to this tribunal. Given the documents put before us, the claimant was given those notes either on 21 March 2018 or shortly after then. She said in her supplemental witness statement that she and her husband had, after attending the appointment on 11 May 2018, spoken to the surgery's reception staff and said that an error had been made by Dr Patel in saying that the claimant had been dismissed for redundancy, when she was claiming that she had been dismissed unfairly.

Our findings of fact

(1) Introduction; the standard of proof

34 We considered anxiously the evidence of both parties. The allegations of both parties (treating the first and second respondents as one party for this purpose) were of equally dishonest conduct by the other: both parties were in effect alleging that the other had acted dishonestly and was now seeking to deceive the tribunal in a major way. Thus, while the gravity of the allegations on one side was a factor to be taken into account in determining, on the balance of

probabilities, what had happened, the same was true for the other side. Nevertheless, we bore in mind the effect of the case law on the standard of proof in civil proceedings where there is an allegation of dishonest conduct, which was helpfully described by the Supreme Court in paragraphs 34 and 35 of its judgment in *Braganza v BP Shipping Ltd* [2015] ICR 449.

(2) Our conclusions on the facts and our reasons for them

35 There were some striking things about the evidence before us which in our view affected the credibility and the reliability of the second respondent's evidence, namely these things.

35.1 The second respondent told the claimant to tell a clear untruth to the staff of the Jobcentre about the terms under which the claimant was employed by the first respondent: see paragraphs 12 and 21.5 above.

35.2 At no time did the second respondent say to the claimant that her email of 14 December 2017 at page 248 (as to which see paragraph 18 above) was highly misleading in that she was saying in it that she was told by the second respondent on 8 December 2017 to resign on three months' notice (see paragraph 25 above) in the circumstance that if she had on 31 October 2017 been given notice of the termination of her contract of employment to terminate on 29 December 2017 then her resignation on 8 December 2017 to take effect in March 2018 would have been wholly unnecessary.

35.3 While the passage from the transcript set out in paragraph 21.1 above could be read (with a little straining) as saying that the second respondent had already given the claimant notice by 8 December 2017, the passages referred to in paragraphs 21.2-21.4 and 21.8 are consistent only with the proposition that the second respondent gave the claimant notice on 8 December 2017. If he had in reality given her notice both orally on 31 October 2017 and by means of the letter dated 31 October 2017 at page 245, then his failure to refer to that fact in those passages was very hard to understand, especially if, as he claimed, he sent the claimant the letter of 2 February 2018 at page 289 the text of which is set out in paragraph 27 above.

35.4 Equally, if the second respondent had in fact given the claimant the letter dated 31 October 2017 at page 245 then what he said as recorded in paragraphs 21.8 and 21.9 above about the claimant being able to rely on a P45 to show that her employment had terminated, and that she did not need a letter terminating her contract of employment, was also very difficult to understand.

35.5 The second respondent and his wife both refused to let the claimant give them a letter on her final day of employment, suggesting that she should

instead say what she wanted to say to them only orally: see paragraphs 21.11 to 21.13 above.

35.6 Even if, as the second respondent asserted in cross-examination (see paragraph 23 above), it is possible lawfully to pay an employee from the petty cash, it appeared to us that the clear implication of what is set out in paragraphs 21.6 and 21.10 above was that the respondents were willing to seek to hide payments from Her Majesty's Customs and Revenue.

36 As against those factors, the fact that the claimant had procured the alteration of her medical records so that they did not include a reference to her as having been made redundant (see paragraphs 31-33 above) was at least surprising. The fact that the changes made were not recorded as having been made was equally surprising.

37 However, we could see that Dr Patel could very easily have misunderstood what the claimant had said to him, and while it was surprising that he had changed his record of what she had said to him, he had done so less than two months after he had seen her, and the fact that he had been willing to do so was capable of being regarded as a genuine sign that he had recognised that he had made a mistake.

38 In addition, and in any event, we found both having heard and seen the witnesses giving evidence and on the balance of probabilities, especially bearing in mind the factors referred to in paragraph 35 above, that the claimant was telling the truth about when she received the letter of 31 October 2017 at page 245 and whether or not she was given oral notice of redundancy on that day, and that the second respondent was not doing so. That conclusion affected our conclusions on the other aspects of the claim. Indeed, when we considered what had happened, and whether it was as the claimant had given evidence, both in her first witness statement and in cross-examination, and then compared that evidence with the content of the transcripts at pages 251-264, we came to the clear conclusion that she was telling the truth in all respects about what had happened before 29 December 2017.

39 We also concluded that the claimant was telling the truth about not receiving the letter of 2 February 2018 at page 289. If indeed the first respondent sent that letter, it was not received by the claimant.

The relevant law and its application to the facts as we have found them to be

40 We accepted the submission of Mr Watson on behalf of the claimant in paragraph 3 of his closing submissions, that dismissal of a pregnant woman in order to avoid paying her SMP is dismissal for a reason connected with the employee's pregnancy, or the fact that she sought to take, or availed herself of the benefits of, ordinary maternity leave, so that it fell within regulation 20(1) and

(3)(a) or (d) of MAPLE 1999, construing those words if necessary against the background of the purpose of section 99 of the ERA 1996 and regulation 20.

41 Dr Morgan made no substantive submissions about the findings that we should make on the claimant's claims if we rejected the second respondent's evidence about what had happened on 31 October 2017. He accepted (it appeared) that if we accepted the claimant's evidence about what had happened throughout, then at least her claim of automatic unfair dismissal, contrary to section 99 of the ERA 1996, and her claim of a failure to give her written reasons for her dismissal, contrary to section 92(4) of the ERA 1996 would succeed. In any event, irrespective of such acceptance, in addition to finding in favour of the claimant in respect of her claim under section 99 of the ERA 1996, we found in her favour, on the facts, in respect of her claim under section 92(4) of that Act.

42 As for the other claims, we accepted the submissions made on behalf of the claimant by Mr Watson in paragraphs 14 and 17 of his written closing submissions about the detriments to which the claimant was subjected, contrary to section 47C of the ERA 1996, read with regulation 19(2)(a) and (d) of MAPLE 1999. We did not see the claim of a breach of section 18(2)(a) of the EqA 2010 as adding anything in that regard, but we will be willing to reconsider that conclusion at the remedy hearing which will now be necessary.

43 The remedy hearing of 13 September 2019 is therefore now required. We concluded that we should make no attempt to determine any matter relevant to the remedy which the claimant should receive before that hearing. We accordingly now, as discussed with the parties at the end of the hearing on 31 July 2019, give some directions for that hearing.

Directions

44 The parties may rely on further witness statement evidence relevant to the issues arising in connection with the question of what remedy the claimant should receive in respect of her successful claims. Any such evidence must be exchanged by 4pm on Friday 23 August 2019. The parties must bring to the tribunal 5 copies of such further witness statements for use at the resumed hearing on 13 September 2019.

45 Any further documentary evidence should be added to the existing bundle, with pagination following on from the current pagination. The respondents must prepare and give the claimant a copy of an amended index and the additional pages of the bundle by 4pm on Friday 6 September 2019. The respondent must bring five copies of those documents to the resumed hearing. (There is a need for a fifth set of such documents and a fifth copy of the witness statements in order to enable the tribunal to comply with rule 44 of the Employment Tribunals Rules of Procedure 2013.)

Employment Judge Hyams

Date: 7 August 2019

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE