THE INDUSTRIAL TRIBUNALS

CASE REF: 17421/18IT

CLAIMANT: **Laura Gruzdaite**

RESPONDENTS:
1. **McGranes Nurseries Ltd**
2. **Peter McGrane**
3. **Stephen McGrane**

DECISION

The unanimous decision of the tribunal is that the claimant was discriminated against and dismissed for a reason connected to her pregnancy. The claimant is hereby awarded compensation in the sum of £27,917.60 as set out in this decision.

CONSTITUTION OF TRIBUNAL

Employment Judge: **Employment Judge Ó Murray**

Members: **Mrs E Gilmartin**
Mr D Walls

APPEARANCES:

The claimant was represented by Ms E McIlveen, Barrister-at-Law, instructed by the Equality Commission.

The respondent was represented by Mr Morris of Peninsula.
Interpreter: Ms R Bubiniene

THE CLAIM

1. The claimant claimed that she suffered unlawful discrimination because she was dismissed for a reason connected to her pregnancy and because she was treated adversely following the announcement of her pregnancy.

2. The claimant also claimed that there was failure to pay her for time off for two antenatal appointments on 14 September 2018 and 10 October 2018. At the outset of the hearing the respondent agreed that the claimant was due payment for those two dates because she had attended ante-natal appointments on those dates. The parties agreed settlement of that aspect of the claim in that there was an agreement that the respondent would pay the claimant the sum of £62.64 in relation to her pay for those two dates; that that sum would be paid by 17 July 2019; and that settlement of that claim was to be recorded in this decision.

3. At the outset of the hearing the parties agreed to an amendment of title of the first respondent and that was granted. The first respondent was therefore amended to McGranes Nurseries Ltd at the hearing. The second and third respondents are Peter McGrane and Stephen McGrane.

4. It was agreed in submissions that, if we found for the claimant, in that her dismissal was because of ante-natal appointments, the legal position is that that would amount to a discriminatory dismissal connected to the claimant's pregnancy.

5. At the outset of the hearing Mr Morris indicated that one of the witnesses who had provided a statement for the respondent (Ms Banirova) would require a Bulgarian interpreter. As this had not been mentioned before the first day of hearing, steps were taken to arrange for an interpreter to be available. The earliest available time for the interpreter was the afternoon of the Wednesday of the hearing. Mr Morris then stated that the respondent had reflected and had decided not to use the statement of Ms Banirova. It was made clear that that statement would not be taken into account at all by the tribunal unless she attended to give evidence. It was also made clear that a Bulgarian interpreter could be organised. Nevertheless the respondents decided not to use that evidence and it has therefore been disregarded by this tribunal.

THE ISSUES

6. The issues for the tribunal were as follows:

   (1) What was the reason for the termination of the claimant's contract on 12 October 2019 and was that dismissal an act of discrimination in that it was connected to her pregnancy?

   (2) Whether the claimant was treated adversely because of her pregnancy because the McGrane brothers' attitude towards her changed after they became aware of her pregnancy.

   (3) Whether the claimant was treated adversely by Peter McGrane, in particular, in that no allowance was made in respect of her duties for her pregnancy.

   (4) In the event of the claimant being successful, the measure of damages to be awarded.

SOURCES OF EVIDENCE

7. We heard evidence by way of written statements and oral evidence from the following witnesses. For the claimant we heard from the claimant and her husband, Andrius Jasinevicius. For the respondent we heard from Peter McGrane, Stephen McGrane and Alison McCaughley. We also took account of all the documentation to which we were referred.

THE LAW

8. Provisions in relation to ante-natal care are set out at Articles 83-85 of the Employment Rights (Northern Ireland) Order 1996 as amended (the ERO). Article 83 provides for a right to time off for ante-natal care. Article 84 provides for a

right to remuneration for time off under Article 83 and Article 85 provides for the right to make a complaint to an Industrial Tribunal for failure to pay for such time off.

9. Article 131 of ERO makes provisions in relation to leave for family reasons. Under Article 131(3)(a) an employee who is dismissed shall be regarded as unfairly dismissed if the reason or principal reason for the dismissal is pregnancy, childbirth or maternity. Under Article 131(3)(b) an employee who is dismissed shall be regarded as unfairly dismissed if the reason or principal reason for the dismissal is ordinary compulsory or additional maternity leave.

10. Under Article 140 of ERO there is no qualifying period for such claims of unfair dismissal.

11. Under Article 5A the Sex Discrimination (Northern Ireland) Order 1976 (as amended), discrimination on grounds of pregnancy or maternity leave is rendered unlawful.

12. In the ***Vento*** case the Court of Appeal gave guidance on the assessment of damages for injury to feelings. In the decision the Court of Appeal cited with approval the summary of the general principles on compensation for non-pecuniary loss which were outlined in the case of ***Prison Service v Johnson*** **[1997] ICR 275** by the EAT.

13. The guidance by the Court of Appeal on valuation states as follows:

> *"Employment tribunals and those who practise in them might find it helpful if this Court were to identify three broad bands of compensation for injury to feelings as distinct from compensation for psychiatric or similar personal injury.*
>
> *(1) The top band should normally be between £15,000 and £25,000. Sums in this range should be awarded in the most serious cases such as where there has been a lengthy campaign of discriminatory harassment on the ground of sex or race…Only in the most exceptional case should an award of compensation for injury to feelings exceed £25,000.*
>
> *(2) The middle band between £5,000 and £15,000 should be used for serious cases which do not merit an award in the highest band.*
>
> *(3) Awards of between £500 and £5,000 are appropriate for less serious cases such as where the act of discrimination is an isolated or one off occurrence. In general, awards of less than £500 are to be avoided altogether as the risk being regarded as so low as not to be a proper recognition of injury to feelings.*
>
> *There is of course within each band considerable flexibility allowing tribunals to fix what is considered to be fair, reasonable and just compensation in the particular circumstances of the case. The decision whether or not to award aggravated damages and if so what amount must depend on the particular circumstances of the discrimination and on the way in which the complaint of discrimination has been handled.*

Common sense requires that regard should also be had to the overall magnitude of the sum total of the awards of compensation for non-pecuniary loss made under the various headings of injury to feelings, psychiatric damage and aggravated damage. In particular double recovery should be avoided by taking appropriate account of the overlap between the individual heads of damage. The extent of overlap will depend on the facts of each case."

14. The ***Vento*** bands were reconsidered by the EAT in 2009 in ***Da'Bell v National Society for the Prevention of Cruelty to Children*** **EAT 0227/09** and the middle and upper bands were increased to £6,000 to £18,000 and £18,000 to £30,000 respectively.

15. In England, Wales and Scotland by Presidential guidance the ***Vento*** bands were updated as follows:

    (i) A lower band of £900 to £8,800 (for less serious cases);

    (ii) A middle band of £8,800 to £26,300 (for cases that do not merit an award in the upper band);

    (iii) An upper band of £26,300 to £44,000 (for the most serious cases).

FINDINGS OF FACT AND CONCLUSIONS

16. We considered the written and oral evidence together with the documentation to which we were referred and we took account of the written and oral submissions of both representatives. We found the following principal facts proven on the balance of probabilities and reached the following conclusions having applied the legal principles to the facts found.

17. The respondents' business is that of a commercial nursery which provides plants, flowers and vegetables. It was uncontested that the business includes work on a conveyor belt which involves filling baskets with plants. Duties can also include bending and kneeling to plant and pick flowers and other plants. There are 13 or 14 large greenhouses in operation which are heated and in which flowers and lettuces are grown.

18. The claimant was employed by the first respondent from 8 January 2018 until her contract was terminated on 12 October 2018. Whilst the respondents stated that they became aware of her pregnancy from 18 September 2018, we accept the claimant's evidence that she informed them on 14 September 2018. The claimant was due to commence her maternity leave on 9 December 2018. The claimant had had a road traffic accident on 10 May 2018 and had sustained a foot injury; nevertheless she had returned to work on 20 August 2018 and was therefore working at the time of her dismissal.

19. The evidence of the respondent was that at peak season they had approximately 60 workers including core staff and seasonal staff and at low season the number of workers went down to 30. What was unclear from the evidence of the three witnesses for the respondent was when the season started and ended.

20. It was common case that the claimant was the first staff member who was not core staff, to be pregnant. The other members of staff who had had maternity leave periods were referred to by the respondents as core staff.

Credibility

21. We found the claimant and her husband to be credible, convincing witnesses whose evidence was consistent and accorded with the documentation in important respects.

22. In contrast we found the evidence of the McGrane brothers and of Ms McCaughley to be lacking in credibility, to be contradictory and their evidence did not accord with several key points in the documentation. Specific examples are set out below.

23. For this reason, where there was a conflict in evidence between the claimant and her husband, on the one hand, and the McGrane brothers and Ms McCaughley on the other hand, we preferred the evidence of the claimant and her husband.

The Meeting on 8 January 2018

24. The claimant's case was that she and her husband had been living and working in Germany for a lengthy period and they came to Northern Ireland because the claimant's brother had been working for the first respondent for some years. The claimant's brother had told the claimant and her husband that there would be work for them with the first respondent. We accept the claimant's evidence that she was not told by her brother that this was to be a short-term contract but she believed that she was coming to Northern Ireland for a permanent job together with her husband. The claimant candidly accepted that at no stage was she actually told by her brother or anyone in the company that she was to a permanent employee; she simply made that assumption.

25. There was a dispute about the nature of a meeting on 8 January 2018 when the claimant and her husband attended at the respondents' premises in order to start work.

26. We find that this meeting was conducted by Tim who was another worker. At that meeting were the claimant, her husband and several other new workers who were Bulgarian. Tim conducted the discussions in Russian and that was understood by the claimant and her husband. We accept the claimant and her husband's evidence that at no point was she told that this was to be a seasonal job and she understood that it was a permanent job albeit that she was not specifically told that.

27. The claimant was given a blank contract and told that she had to sign that. She was concerned about this and therefore decided to take a photograph of that contract. That photograph was in evidence before us and had been taken on the claimant's phone. The properties of the photograph on the claimant's phone were that it was taken on 8 January 2018 at the time the meeting took place. The parts of the contract that had not been filled in were the dates of the season, the job title, the start and end dates, the remuneration and it had not been signed on behalf of the company. That document stated: *"your employment is for a seasonal basis. Our season is expected to operate from …. to …. Your employment will commence on …. and shall terminate no later than …."*

28. The following points were key points in assessing the veracity of the respondents' witnesses.

29. Ms McCaughley. Ms McCaughley's description of the preparation for that meeting was clear in that she stated that she gathered together bundles of documents for the claimant and her husband and filled them in before giving them to the claimant and her husband. She denied that there were other people at that meeting.

30. There were two versions of the completed contract for the claimant which were provided by the respondents in these proceedings. In one copy the figure for remuneration was not included. Ms McCaughley could give no explanation for the figure for remuneration being omitted in one copy of the contract produced for this case except to say that she had to check the claimant's date of birth and age to set that at the correct figure. This contradicted her evidence that she had the identification documents produced at the meeting on 8 January and her statement:

> *"Details of the employee name, commencement of employment, rate of pay had been completed by me prior to these documents being given to them."*

31. We therefore do not believe the evidence of Ms McCaughley that she filled in all the relevant details before handing the contract to the claimant at a meeting on 8 January 2019.

32. We were shown the contractual documents of approximately 15 staff including the claimant and her husband. We find it noteworthy the only two members of staff who had an end date inserted in their contract were the claimant and her husband. The end date was noted to be 8 July 2018. The only explanation forthcoming from Ms McCaughley for this disparity in the documentation was that seasonal workers were usually taken on for a six month period. That does not explain the lack of any end date being put in the other contracts. In contrast all the other contractual documentation to which we were referred stated that the end of the season was "TBC" and the date of the employment should end was "TBC" meaning "to be confirmed".

33. The only explanation that Ms McCaughley could put forward for the claimant being in a position to photograph a copy of a blank contract on 8 January 2019 was that the claimant might have done this whilst she was out of the room copying the identification documents. This point was only made by Ms McCaughley in answer to a question by the tribunal panel at the end of her evidence and had not been referred to as an explanation for the existence of a photograph of a blank contract despite the fact that this was a key point being made by the claimant's side throughout the preparation of this case.

34. In view of the inconsistencies in her account we reject entirely Ms McCaughley's account of the meeting of 8 January 2018 and accept the account given by the claimant and her husband as set out in our findings above.

35. Stephen McGrane. We found the evidence of Stephen McGrane to be less than convincing. In particular, Mr McGrane belatedly confirmed that on 14 September 2018 (the day of the claimant's first ante-natal appointment) the claimant did indeed tell him that she had an appointment to go to that day. He denied however that the claimant told him that it was an ante-natal appointment.

36. This evidence from Mr McGrane was only given after several questions being posed to him at the end of his evidence despite the fact that it had always been a key point in the claimant's case that she had told him on 14 September 2018 about an antenatal appointment. It would therefore have been relevant for him to include in his witness statement that she had informed him of an appointment on that day but had omitted to say that it was an ante-natal appointment.

The Ante-Natal Appointments

37. We find that:

    (i) The claimant told Mr Stephen McGrane on 14 September 2018 that she was due to go to her ante-natal appointment that day and she showed him a letter to confirm this;

    (ii) When she and her husband were called into a meeting with the McGranes on 18 September 2018 to explain why she had not been at work and why she had not told them about her ante-natal appointment, she responded by saying that she had told Stephen McGrane a few days earlier;

    (iii) Peter McGrane then asked Stephen McGrane in front her and her husband as to whether that was correct and Stephen McGrane stated that he had forgotten; and

    (iv) She informed Stephen McGrane in advance about her ante-natal appointment on 10 October 2018.

38. We specifically reject the respondents' case which was that they knew the claimant was attending medical appointments in relation to her injuries following a road traffic accident which had occurred in May 2018. The claimant had been off work because of that accident from 11 May 2018 to 20 August 2018. It was the respondents' argument that when the claimant mentioned appointments they assumed it was to do with that injury. We reject that point made by them given that we accept the claimant's specific evidence which was she told Stephen McGrane (and showed him a letter) on 14 September 2018 about her pregnancy and her check-up that day and that she also told him about her appointment on 10 October 2018 having shown him on 8 October 2018 the confirmation letter for the scan.

39. Given that the claimant had given advance notification of her ante-natal appointments, the respondent should have put in place measures to ensure that she was paid for those appointments. In the event she had to clock out for those appointments and as a result was not paid. The admission that she should be paid was only made at the outset of this tribunal hearing.

40. As the issue of payment for the time off work for those appointments was settled between the parties, the issue for this tribunal is whether or not the facts surrounding the ante-natal appointments constitute facts from which we could conclude that acts of discrimination occurred in the form of a change of attitude towards her and in relation to the termination of her contract.

The Meetings on 10 and 12 October 2018

41. It was common case that there was a meeting in the canteen on 10 October 2018 when a number of seasonal workers were told that their contracts were terminating with one week's notice. As that was the day that the claimant and her husband were at her second ante-natal appointment, neither she nor her husband were in attendance at that meeting. As set out above, we find as a fact that the claimant had given Stephen McGrane specific notice of her ante-natal appointment two days before it.

42. We found the evidence of the McGrane Brothers to be contradictory and unclear in the following respects:

    (i) The reason for that meeting;

    (ii) The reason why specific individuals were called to it; and,

    (iii) Whether or not all seasonal workers were to be dismissed on that date.

43. Peter McGrane's evidence was that all seasonal workers were dismissed on that day with one week's notice and the only reason for the claimant and her husband not being dismissed was that they were not in. In contrast, Stephen McGrane stated that some seasonal workers were kept on including Sabina Petrova. Stephen McGrane's evidence was that the claimant and her husband were included in the group to be dismissed but that because they were not at work at that day they were told on a later date. This contradicted his evidence in relation to how individuals were chosen to be dismissed on 10 October 2018. Stephen McGrane stated that the way the seasonal workers were chosen to attend the meeting was, if they were at work that day they had to come to the meeting and they would be dismissed.

44. It was not therefore made clear to us as to why the claimant and her husband were included the next day (11 October 2018) in that group and why they were chosen out of the remaining group of seasonal workers who were kept on by the respondents. In the event, the meeting with the claimant and her husband took place on 12 October 2018. At that meeting they were informed of their dismissal.

45. We accept Mr Jasinevicius' evidence which was that he was told by his supervisor:

    "If you were not invited to the meeting you will work through the winter".

46. There was some debate about Mr Jasinevicius' evidence which was that approximately 15 of the seasonal workers had been told at a meeting on a date between 20 September 2018 and 10 October 2018 that they were to go home as there was no work for them anymore. We do not find any conflict between this evidence of Mr Jasinevicius and the fact that a meeting took place on 10 October 2018 as he was quite candid that he could not remember the exact day and he did not give any information about whether or not those individuals worked their notice. We find that this evidence refers to the meeting which took place in the canteen on 10 October 2018.

47. The P45 date for each individual (other than the claimant and her husband) was 2 November 2018 as the respondents' evidence was that that was the payroll date for the October monthly pay. In summary we find nothing significant in relation to the dates for that group and we accept that the group of workers were told that they were to leave at the meeting on 10 October 2018 and that they worked their notice.

48. We also accept that the claimant did not work her notice and left immediately on 12 October 2018 because she was so upset she had to leave work to go to her GP. The claimant stated in her evidence to this tribunal:

> *"On that day I got very upset because both of our contracts had been terminated. We were waiting for our child to come into this world but both of us were unemployed and had no additional income. When I returned to my place of work following this conversation, I felt nauseous, my hands were shaking, and I felt a dull pain and a stretching sensation in my stomach. I was worried that too much stress could cause complications or even a miscarriage. The co-workers tried to comfort me. As I didn't feel any better, I left work to go to my GP. My husband Andrius Jasinevicius went with me. We explained to all our co-workers why we were leaving."*

49. We find that the effective date of termination was 12 October 2018.

The Season

50. We heard contradictory and conflicting evidence from the respondents' witnesses in relation to the start and end date of the season. Whilst we accept that the season may not have been fixed, as it depended to some extent on the weather, we do not accept that the season was as clear cut as was indicated to us.

51. The McGrane brothers stated that the season started around February or March and ended in September or October. They stated that there was an increase in work for a short time over the Christmas period.

52. We accept the evidence of the claimant's husband that there were periods when there were busier times and less busy times. We accept his evidence that in the two busiest months staff worked until 8.00 pm and then reverted to a normal length of day finishing at 5.00 pm. We accept that there were "spikes" in work for special occasions such as Valentine's Day, Mother's Day and Christmas Day.

53. There is no doubt that there was an inflow and outflow of staff throughout the year given the nature of the workforce. We accept the evidence of the claimant's husband that in busy times people would have worked longer hours rather than a lot of extra staff being taken on and that a number of staff were kept on over the winter.

54. We are not therefore satisfied that the seasonal nature of the work was as stark as was represented by the respondents' witnesses especially as their evidence was (and we so find) that some seasonal staff were retained after the claimant was dismissed.

55. The question of whether or not the claimant was taken on as a seasonal or a permanent employee is only one element of the issues to be determined by us.

There may well have been a misapprehension by the claimant about the nature of the contract. The contractual document clearly says: *"your employment is for a seasonal basis"* albeit that the claimant's contract had no start and end time nor were dates of the season inserted in it. Even if the claimant was wrong and she was actually taken on as a seasonal worker, on our findings that it was a blank contract that she was given on 8 January 2018, there was no clear date when the season was to end for her.

<u>The reason for dismissal</u>

56. The key issue for us in this case is what was the reason for the claimant being chosen for dismissal on 12 October 2018. She was not in the group of workers who were told their contracts were terminating on 10 October 2018 and we are not satisfied with the respondent's explanation for her not being included in that group.

57. The McGranes' evidence was that they called the claimant to a meeting on 11 October 2018 to ask her why she had not been at work the day before and to terminate her contract. We had conflicting evidence from Peter McGrane and Stephen McGrane in that Peter McGrane stated that the reason for the claimant being terminated was that all seasonal workers were going at that point. Stephen McGrane in contrast stated that the claimant was one of a group of workers to be terminated at that time whilst others were being kept on. The dismissal did not take place on 11 October 2018 as the McGranes decided to put that off. A further meeting took place on 12 October 2018.

58. Given our concerns about the veracity of the evidence of the respondents and our acceptance of the veracity of the claimant and her husband generally, we accept the claimant and her husband's account of what took place at the meetings on 11 and 12 October 2018.

59. There was some discussion at hearing as to why the decision to dismiss the claimant and her husband was put off until 12 October 2018. Whilst it may well be the case that the respondents wanted to get advice about the termination of the contract, that is not relevant to our deliberations. What is relevant is for us to determine the reason for the dismissal which actually took place on 12 October 2018.

60. We accept that during that meeting (attended by Peter McGrane, Stephen McGrane and the claimant and her husband) the following occurred as outlined in the claimant's statement:-

> *"They explained that the season was coming to an end and that there was not much work anymore. After these words, Stephen turned round to me and said, "You will need more days off for your pregnancy doctor's appointments." "You already skipped work on Wednesday (10th October 2018) when you had your ultrasound scan."*

61. As we have accepted that these words were said by Stephen McGrane to the claimant at that time in relation to the termination of her contract, we find as a fact that a reason for the termination of the claimant's contract at that point was because she had been for ante-natal appointments and she was due to go for further ante-natal appointments. As a result the decision to terminate the claimant's

contract on that day was tainted by discrimination in that it was connected to her pregnancy and her dismissal, therefore, was both unfair and an act of unlawful discrimination.

Ms D and Sabina Petrova

62. We have assessed all the documentation to which we were referred in relation to a number of employees including the claimant, the respondents, those seasonal workers who were listed in the replies as the individuals who were dismissed on 10 October 2018, and the contractual details of Sabina Petrova and Ms D as the claimant compared her treatment to theirs.

63. We accept that Ms D was a longstanding employee who had been on maternity leave, her leave was extended and she returned in October 2018 from maternity leave. We therefore find her details to be irrelevant to our considerations as her circumstances are insufficiently similar to the claimant's so she is not a valid comparator.

64. The details in relation to Ms Petrova we find to be important to the claimant's case. The respondents' case was that Ms Petrova was a seasonal worker who was dismissed at the meeting in 10 October 2018 (albeit that her name was not put in the list of individuals provided in replies) and she had asked to come back to work over Christmas. The only documentary evidence of Ms Petrova's end date was a P45 which stated that she left in March 2019. There was no explanation for a lack of a P45 in relation to the dismissal in October 2018. The claimant's case was that Ms Petrova was kept on to carry out duties that she had carried out and that Ms Petrova was told to take unpaid leave after October pending a return for the Christmas period in November/December. The respondents' evidence was that Ms Petrova was kept on the books throughout the entire period. There was no explanation for the claimant not being kept on the books in the same way or instead of Ms Petrova. We find this to be one of the facts from which we could conclude that the claimant was discriminated against in the manner alleged by her.

65. The claimant made the point that she could have worked for a period on the Christmas orders, just as Ms Petrova had, because her maternity leave was not due to start until 9 December 2018. It transpired that Ms Petrova worked for a number of weeks from 19 November to 18 December 2018.

66. We find as a fact that the claimant was unjustifiably questioned about her absence on 14 September and 10 October 2018 when she had in fact told one of the McGranes that the purpose of her being off was for ante-natal appointments. There appears to have been a lack of communication at best between the two brothers but this is no excuse for taking the claimant to task about the fact that she had been off. One of the reasons underpinning the strong protection given to women for antenatal appointments is that there should not be any disincentives to women who are pregnant attending such appointments given their importance for the woman's health and for the health of her unborn child.

67. We find in these circumstances that it was detrimental for the claimant to be questioned about her absence in this way particularly as she had informed Stephen McGrane of the reason for the absence. We further find that that detrimental treatment was for a reason connected to her pregnancy as it related to her ante-natal appointments and the claimant is therefore entitled to compensation

in that regard for injury to feelings as it is an instance of the negative attitude to the claimant's absence for those appointments. We also find it to be supportive of the claimant's case that Peter McGrane's attitude towards her changed in a negative way following his becoming aware of the claimant's pregnancy on 14 September 2018.

The attitude of Peter McGrane

68. We make clear that the focus of our enquiry in this case is not in relation to the treatment of migrant workers or seasonal workers generally. We were given contractual details of three of the dismissed staff who were later reengaged in early 2019 on 4 January, 30 January and 4 February 2019 respectively. In particular we were shown the evidence of the contract of Ms DD. Ms McIlveen explored a point in relation to the contracts signed by those members of staff in 2019 which were in a different format to the contracts previously used and in particular specific season dates and dates of employment were inserted. The evidence was that this was following a review of the contractual documentation and arrangements by Peninsula with the respondents. We find there to be nothing of significance in relation to that point which has a bearing on the issues to be decided by this tribunal.

69. Our focus is on:

    (i) Whether the reason for termination of the claimant's contract on 12 October 2018 was tainted by discrimination. We find as a fact that a reason for that was because the claimant had attended ante-natal appointments and was due to attend further ante-natal appointments;

    (ii) Whether there was negative treatment of the claimant following the announcement of her pregnancy on 14 September 2018 until she was dismissed four weeks later; and,

    (iii) Whether Peter McGrane failed to take account of her pregnancy in her duties during that four-week period.

70. One aspect of the claimant's claim of discrimination was that Peter McGrane sent her to do any job just like any other worker without any consideration for her pregnancy. The claimant was candid in her evidence that she had no complaint against Stephen McGrane in that regard in that he would swap her duties to take account of the fact that she was pregnant. We accept the claimant's account in this regard and we also accept her account particularly as it is supported by her husband, that after she announced her pregnancy, Peter McGrane was less friendly towards her.

Summary

71. We find that the claimant has proved facts from which we could conclude that acts of discrimination had occurred. Those facts relate to:

    (i) The inconsistent, contradictory and unclear evidence from the respondents' witnesses in relation to when the season started and ended and in relation to the start and end dates of the relevant employees with which we were concerned;

(ii) The contractual documentation and the contracts signed by the claimant and her husband;

(iii) The lack of explanation about the insertion of an end date for their contracts in contrast to other employees.

(iv) The specific comments about the claimant having attended ante-natal appointments and being due to attend more.

(v) The negative attitude displayed by Peter McGrane following the announcement of the claimant's pregnancy.

72. The treatment of Ms Petrova who, on the claimant's uncontested account was a worker like her, was in contrast to that given to the claimant and we find that there was no valid reason for failing to give the claimant that work to bring her up to her maternity leave. We were also given no reason for the failure to include the claimant in the group of seasonal workers chosen to stay on after 12 October 2018.

73. From an assessment of all the evidence we find that a decision was made to terminate the claimant's contract by choosing her to leave earlier than others because she had been on ante-natal appointments and would be going on more appointments. The treatment of core staff who had been pregnant and had returned following maternity leave was not therefore persuasive for us in pointing away from any adverse treatment of the claimant related to her pregnancy.

74. We find that the claimant was treated negatively following her announcement of her pregnancy in that there was a change in attitude towards her for four weeks and she was unreasonably questioned about her absence to attend her ante-natal appointments.

75. The task for this tribunal is to establish the factual reason for the dismissal. As we have found as a fact that a reason for the dismissal was in relation to the claimant's pregnancy the burden of proof shifts to the employer to provide an explanation which is untainted by discrimination.

76. The explanation put forward by the respondent related to the argument that this was a group of seasonal workers and that the reason for the termination was because the season had come to an end. At this stage of the process it is for the respondent to prove the facts upon which it relies for the untainted explanation. We find that the respondent has not proved those facts to our satisfaction. We also find that the reason was tainted by discrimination given that the specific reason for it was because of the ante-natal appointments.

Compensation

77. The claimant was dismissed on 12 October 2018 and her maternity leave was due to start on 9 December 2018. If she had not been dismissed we find that she would likely have worked until that point given that some seasonal workers were kept on after 12 October 2018 and Ms Petrova worked in November and December 2018.

78. Mr Morris submitted that we should not award compensation for loss of earnings for that period on just and equitable grounds. No arguments, authorities or legal principles were referred to in relation to that submission. We reject that submission and we award the agreed figure for earnings for that period in the sum of £2,252.16.

79. The claimant's side claimed loss of statutory maternity pay on the basis that if she had remained in employment she would have been entitled to 90% of her earnings for the first six weeks. The sum claimed was £820.20 (an agreed figure) being the difference between 90% of her earnings and the maternity allowance which was received during that period. We award that sum.

80. The claimant's maternity leave is due to end in September 2019. We reject the respondents' submission that the claimant should be penalised for failing to source work whilst on her maternity leave. We accept that it may take the claimant three months to find suitable alternative employment following the end of her maternity leave. The loss claimed for that period was 12 weeks' pay making a total of £3,378.24. We award that sum.

81. We turn now to the injury to feelings award. The claimant's side sought injury to feelings in the mid-***Vento*** band. The respondents' submission was that compensation for injury to feelings in the low-***Vento*** band should be awarded.

82. We reject the argument that this is a low-***Vento*** band case. As this case involved dismissal of an employee at 20 weeks' pregnancy, it had a particularly serious effect on her. In this regard we take into account the entries in the claimant's GP notes and records to which we were referred. In summary the GP records record stress-related physical signs on examination on 15 October 2018. Whilst the sick line issued on that date cites the foot injury from her accident, the records also show that the claimant was certified unfit for work due to stress and anxiety on 19 October 2018, 29 October 2018, 15 November 2018, 16 November 2018 and 26 November 2018. It is clear from those records that the dismissal had a very distressing effect on the claimant. The records support the claimant's account of the distressing effect of her treatment and dismissal.

83. The claimant's side submitted that an aggravating factor was the fact that the claimant's husband was sacked at the same time because the effect of this was that the household income suddenly dropped for approximately eight weeks until her husband was able to secure alternative employment on 5 December 2018. In our assessment of injury to feelings compensation we must look at the effect on the claimant of the discriminatory dismissal following a period of adverse treatment. We find that the fact that the claimant was sacked on the same day as her husband is an aggravating feature for compensation in this case. Under tortious principles a tortfeasor must take his victim as he finds her. In this case the respondents knew or ought to have known that dismissing both the claimant and her husband at the same time would had have a particularly serious effect on the claimant. That effect was therefore a foreseeable consequence of the tortious act.

84. From an assessment of the GP records and from the claimant's evidence we accept that the dismissal had a traumatising effect on the claimant in her vulnerable state as a woman at 20 weeks' pregnancy following several weeks of negative treatment. We therefore find this falls within the mid-band of ***Vento*** and award the sum of £20,000.00 for injury to feelings.

85. The summary of compensation is therefore as follows:

Loss of earnings EDT 12 October 2018 to 9 December 2018:	£2,252.16
Loss of SMP agreed figure:	£820.20
Future loss:	£3,378.24
Injury to feelings:	£20,000.00
Interest on injury to feelings from EDT to 12 September 2019 -11 months @ 8% pa	£1,467.00
Total Compensation:	**£27,917.60**

86. This is a relevant decision for the purposes of the Industrial Tribunals (Interest) Order (Northern Ireland) 1990 and the Industrial Tribunals Interest in Awards in Sex and Disability Discrimination Cases (Regulations) (Northern Ireland) 1996.

Employment Judge:

Date and place of hearing: 1-3 July 2019, Belfast.

Date decision recorded in register and issued to parties: