EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mrs R Garratt	**v**	**Travis Perkins Trading Company Limited**

Heard at: Watford **On**: 11-13 March 2019

Before: Employment Judge R Lewis
Mr D Bean
Ms J Gregory

Appearances

For the Claimant: Ms E Misra – Counsel
For the Respondent: Ms R Dawson - Solicitor

RESERVED JUDGMENT

1. The claimant's claims of pregnancy related discrimination and dismissal, howsoever formulated, fail and are dismissed.

REASONS

Introduction

1. This was the hearing of the claimant's claim of 6 October 2017, which had been the subject of a preliminary hearing and case management before Employment Judge Alliott on 3 April 2018, orders sent to the parties on 4 May 2018. Judge Alliott had listed the hearing for October 2018. Regrettably those hearing dates were in the event not available.

2. This hearing was listed to deal with all matters. It was agreed with the parties that the Tribunal would, as Judge Alliott had directed, aim to give judgment on liability on the third day or start of the fourth, and then deal with remedy.

3. In the event, the representatives agreed with the Judge's suggestion, which was that they were released after closing submissions on the morning of the third day of the hearing, and notified by email at the end of that day whether a remedy hearing the following day was or was not required (in the event it was not).

4. There was a modest agreed bundle of about 180 pages, including two supplemental elements, made up of about 30 pages of texts and WhatsApp messages, between the claimant and her husband, and the claimant and Ms Wood and Mrs Spencer. We approach that material with caution. They are media which do not encourage reflective drafting, and are rarely improved by the artificial technique of cross-examination.

5. Witness statements had been exchanged. By consent the claimant was heard first. Her evidence lasted, with the lunch break, from 12:00 until about 3:30pm on the first day.

6. The claimant was the only witness on her own behalf. The respondent called the following witnesses in the following order:

   Mr Paul Darlow, Regional Director;
   Mr Dean Langston, Business Development Director;
   Mr Daniel Collins, Regional Director;
   Mrs Deborah Spencer, Directors PA;
   Ms Shannon Wood, Directors PA; and
   Mr Wynne Philips, Regional Managing Director.

7. All witnesses adopted their statements on oath and were cross-examined. There were written submissions from both representatives, and Ms Misra provided the Tribunal with copies of two authorities, *Metropolitan Police Commissioner v Keohane 2014 ICR 1073* and *Ayodele v City Link Limited 2018 ICR 748*.

8. The issues were set out at paragraphs 4 to 6 of Judge Alliot's order. There were two alleged acts of discrimination for decision, which were the claimant's alleged demotion on 31 May 2017, and her dismissal on 2 August 2017. It was agreed that the claimant's reporting line had been changed on 31 May, but denied by the respondent that this was a demotion or a detriment. It was agreed that the claimant was summarily dismissed on 2 August.

9. The legal framework was relatively straightforward. The question for us, to be decided separately in relation to each alleged act of discrimination, was whether the protected characteristic of pregnancy was an effective or material cause of the treatment complained of. We did not need to decide if pregnancy were the only or the main cause. On the first point, we also had to decide (a) whether the event was a free standing event which was out of time, and if so, whether to extend time; and (b) if the event (alleged demotion) was a detriment, in the sense of an event which a reasonable worker would consider to have been a detriment in the workplace.

Executive summary

10. We preface our findings with a brief executive summary. The claimant, an experienced secretary/PA, was recruited to the post of Directors' Secretary when the respondent opened a new regional office in Watford in January

2017. Ms Wood and Mrs Spencer were recruited shortly afterwards. The most senior Director based at the location was Mr Philips, then Regional Managing Director for the London region. The claimant originally supported him and two functional Directors. On 31 May she was informed that she was instead to work for three Regional Directors. She alleged that that was a demotion in status (the respondent said that it was not, just a change of reporting line), and was done on grounds of pregnancy. Our finding is that the new arrangement, while not contractually a demotion, was a detriment, but was wholly unrelated to the claimant's pregnancy. The claimant was still in her probation period when on 2 August 2017 she was summarily informed that her employment was terminated and she was dismissed. Our finding is that that decision was wholly unrelated to the claimant's pregnancy.

11. Although the claimant's claims fail, we accept that a number of Ms Misra's observations and criticisms about the manner of her management, and in particular the absence of record keeping, were well made. We do not find that the first complaint was brought out of time.

General approach

12. We preface our findings with a number of general observations.

    12.1 In this case, as in many others, we heard evidence about a wide range of matters about which the parties felt strongly. Where we make no finding, or a limited finding, about such a matter, that is not oversight or omission, but reflects the extent to which the point was truly of assistance to this Tribunal.

    12.2 We remind ourselves that a binary approach to work place disputes rarely assists the Tribunal, because it rarely reflects the reality of work places. That general observation was true of this case.

    12.3 It was regrettable that both sides placed in evidence and the bundle material which went far beyond the legitimate enquiry of the Tribunal, and could be more suitably designated on a spectrum between office gossip and personal attack. We have disregarded that material in its entirety.

    12.4 We understand in this case that we must take care to avoid the trap of hindsight, and in particular we avoid the hindsight which might mislead us, on the basis that the respondent's evidence in particular included matters which were not in the knowledge of the relevant decision makers at the time.

    12.5 We remind ourselves that the legal technique through which we heard this case has at its core a number of artificial elements. In particular, we note the artificiality of attaching, with hindsight, disproportionate significance to events which at the time were seen as insignificant, and were certainly not seen as likely to be the subject of cross-examination nearly two years later.

Findings of fact

13. The respondent is the well-known national chain of builders merchants. It employs some 26,000 people. We were concerned with events at a regional hub office in Watford, which became operational in the last quarter of 2016 and opened fully in January 2017. It replaced an office in Tilbury, which was closing.

14. The office was a regional hub in the sense that only a handful of staff were actually based there. However, it provided management and services across a wide area. The functional and Regional Managers who were based there, including the respondent's witnesses, said that on average they visited the venue about once a week, if that.

15. They needed support based at the office, and that was provided in the position of Directors Secretaries, or PAs. The respondent appointed a team of three PAs, each of whom was assigned to support three Directors. None of the Tilbury PAs wanted to relocate to Watford.

16. The claimant applied and was initially interviewed by Ms Louise Robinson, of the respondent's recruitment function. Ms Robinson's note of their first conversation described the claimant as "really personable" with the right skill set, and recorded that "Rebecca is married and they have a son at nursery, so ideally would like to start at 8:30 am and needs to pick her son up at 6:00 pm but also has a good support network around her.." (43a).

17. Later the same morning, Ms Robinson sent the claimant a significant email explaining the job. She explained that there were three vacancies, one of which was PA Secretary to Messrs Philips, Langston and Davis. They were respectively then Regional Managing Director, Regional Development Director and Sales Director. The other two PA posts were each supporting three Regional Directors, all of whom reported to Mr Phillips.

18. The email said that there was no job description, but gave a summary of generic duties and included the following:

> "All the PAs currently support one another…our business is based on relationships, going that extra mile, and the culture is open, collaborative and supportive, it's non-hierarchical." (44)

19. With hindsight, it would have been helpful if Ms Robinson had spelled out that non-hierarchical in context meant that all three PAs were employed, graded and paid at equal level, and were so regarded.

20. The claimant started on 16 January 2017. As the first starter of the new PAs, who was supporting the most senior employee based at Watford, she may well have thought of herself as the senior PA. That would be understandable, but mistaken. Ms Wood started a week later, and Mrs Spencer early in April. The claimant was assigned to Mr Philips and the two functional Directors. For about the first two or three months of the claimant's employment, she was inducted by Mr Dave Johnson, who had led the project to open the Watford office, and who also provided induction

to the other two new joiners. The claimant's terms and conditions were set out in the bundle at page 46. The claimant signed receipt of a company handbook. The contract included a provision for probation, but no specific probationary procedure.

21. The nine Directors who were supported by the three PAs at Watford had responsibilities across the region, spread out among a number of locations. They spent a lot of time travelling within the region, or to the respondent's head office in Northampton, or dealing with functional aspects of their roles, such as meeting suppliers. They were reliant on the Watford based PAs for diary and meeting arrangements, IT, and support with reports. The Directors' limited time at Watford left the PAs working largely autonomously. Although each PA was primarily assigned to three Directors, it was the office culture and expectation that each PA supported the other PAs, and her managers, as and when necessary.

22. The Watford office also hosted meetings and training events, attended by managers and Directors from across the region and from outside the region, as well as outsiders to the business, such as suppliers. The PAs acted as receptionists when the office was in use for those purposes.

23. The working environment at Watford was collegiate and informal. It was common ground that the Watford based staff, (some) Directors and PAs included, shared banter, and that the conversation was sometimes sexual, and used four letter words. We heard of no one who took offence or objected to that. We accept that it was the shared understanding of those involved that their banter would not be appropriate if there were visitors to the office.

24. Each PA reported equally to the three Directors for whom she worked. The three Directors were regarded jointly as the PA's line manager. As said, the Directors were rarely at Watford, and not necessarily there together. This model created problems in practice. The Directors were highly dependent on the PAs, and their dependence was increased by the autonomy with which the PAs worked. That may in some part account for the reluctance of all the Directors from whom we heard to address performance and conduct issues. Secondly, the amount of interaction between each PA and Director was limited, and therefore each Director's opportunity to assess performance was limited. Thirdly, the dispersal of line management responsibility meant that no one individual took ownership of the management of a PA, and each felt constrained to consult his two colleagues about any performance issue.

25. There was no HR presence at Watford. The HR presence was based at Northampton, and was available by phone or email if required.

26. We find, with caution, that record keeping of employee interactions was not part of the working culture of the respondent. We make that finding with caution, because we do not have an expectation, as Ms Misra's questions sometimes suggested, that every conversation between colleagues in a work place should be the subject of detailed documentation. That said, it

was common ground that the respondent's concern about aspects of the claimant's performance was matched by an acute poverty of records of such concerns either arising at all, or being addressed in discussion with the claimant, so that boundaries between acceptable and unacceptable were made clear to her. Both representatives were at pains to stress that we were not required to consider fairness in the section 98(4) sense. We accept that, with the observation that if we had, the respondent would have encountered difficulties.

27. The above applies likewise to the poverty of evidence before us of interaction with HR. Although we were told that on a number of occasions a manager or Director spoke to HR for guidance, there was no record of that having taken place. The sole HR record which we had was a single page computer log, showing that the claimant spoke to Employee Relations on 5 July 2017.

28. As stated, the claimant started work on 16 January. We heard no evidence from or about Mr Davis, who left the business shortly after the claimant joined. The most senior Director for whom the claimant worked was Mr Philips. He expressed no real comment or criticism of the claimant's early weeks in her role.

29. Mr Philips at that time lived in Reading. His usual way of working was to leave home very early, sometimes shortly after 6:00 am, in order to drive to locations where he might start a meeting at 8:00 am. His preferred way of working was to telephone the office during his drive, speak to his (or another) PA, and give her instructions, to be followed up and discussed later in the day.

30. The claimant was appointed to work a day starting at 8:00 am. We accept Mr Philips' evidence which was that shortly after starting, she asked to change to an 8:30 am start, which he agreed.

The detriment claim

Working practice

31. Mr Philips noted that after Ms Wood joined, a week after the claimant, she was often in the office before the claimant, and therefore often the person who answered his early morning calls. When Mrs Spencer joined, in April, he noted that she was also an early starter, and he quickly noted that she took his calls, and dealt with them efficiently. By the time Mrs Spencer had been in post a few weeks, it occurred to Mr Philips that he would rather that she were his PA in place of the claimant. His reason was not that the claimant was performing inadequately; the point was that Mrs Spencer was better in his view, more efficient in follow-up and reporting, and available to speak to during his early morning drive to work. He therefore reflected, and came to the decision that Mrs Spencer and the claimant should swap roles, so that Mrs Spencer would be the PA for him and the remaining functional Director or Directors; and the claimant should swap to the role which Mrs Spencer had taken up, namely PA for three Regional Directors.

32. Mr Philips was able to give one striking example of an incident which led him to the view that he would prefer a different PA. He explained that on about 11 May, he travelled in his car to Northfleet (Kent) for a meeting. The claimant was to take notes of the meeting and accompanied him. As she knew, it was his practice to work hands off on the phone whilst driving. He wanted to do so during the journey to Northfleet, but the claimant was using her mobile to make and take personal calls, and so Mr Philips was unable to do so. Mr Philips gave this as an example of the claimant failing to recognise the importance of his work, and failing to recognise that in the context in which they found themselves, his need of the company phone in the car took priority over her personal needs. Mr Philips agreed that he did not tell the claimant at the time simply to switch off her phone so that he could work, and did not formally draw to her attention that this was a falling below of appropriate standards. Those were both surprising omissions.

Knowledge

33. The claimant learned early in May, and early in her pregnancy, (her due date was late January 2018) that she was pregnant. She told Ms Wood and Mrs Spencer, who advised her to keep the pregnancy confidential until 12 weeks (which would have been around late July). It was common ground that on 31 May she told Mr Langston about her pregnancy.

34. Mr Philips denied having any knowledge of the claimant's pregnancy when he made the decision. The other Directors who consented on 25 May, and who gave evidence (Messrs Collins, Darlow and Langston) advanced the same denial. Ms Misra struggled with what was a clear gap in the claimant's evidence.

35. The claimant's case was that she told Mr Collins about the pregnancy earlier in May. There was no evidence of a date, time or context. There was also no evidence to show how this information made its way to Mr Philips and if so that it did before 25 May. Our finding is that we accept Mr Collins' denial of knowledge, and we accept his evidence that he did not know of the claimant's pregnancy before 31 May. We accept that neither Mr Philips, nor any of those told about the swap decision on 25 May, knew on that day that the claimant was pregnant. Ms Misra agreed that knowledge of pregnancy is an essential element in a claim under Section 18, and the claim therefore fails on that basis alone.

Timing

36. Mr Philips asserted, supported by the other witnesses, that on 25 May he told the other Directors of his decision to swap around the claimant and Mrs Spencer. The claimant denied that that discussion took place at all (although she cannot have been in a position to know about it). We accept Mr Philips' evidence. We find that the decision to swap Mrs Spencer and the claimant was made on 25 May at the latest. The claimant asserted that Mr Philips and colleagues must have known of her pregnancy at the time they made the swap decision; we reject that evidence. We will deal

separately with the evidence of the precise sequence of events on 31 May below.

Whose decision

37. We accept Mr Philips' evidence that the decision was his, although he sought the consent of his Director colleagues at a routine meeting on 25 May, which consent was given. (We add that that finding is entirely in keeping with the consensual management style which we find Mr Phillips found valuable). We accept that the reason why he made the decision was a combination of Mrs Spencer's reliable early starting, and his honest perception that she was in the event more efficient than the claimant in general. We add, for complete avoidance of doubt, that we accept the evidence that the material reason was an objective job-related reason.

Detriment

38. There was dispute before us as to whether the swap constituted a demotion, or unfavourable treatment or detriment for the purposes of the Equality Act. We do not find that it was contractual demotion, because it was a change from one contractual role as Directors Secretary to another. It maintained all aspects of the contractual package, including grade and salary. We accept that the two roles had great functional similarities, in the sense of diary keeping, record keeping, reporting and such like. We do accept in principle that the change from being Regional Managing Director's PA to Regional Directors' PA was unfavourable treatment and/or detriment within the meanings of Sections 18 and 39, because we accept that there was a visible loss of status in being replaced as the PA supporting the most senior member of the Watford management.

39. We also agree that Ms Misra's criticisms of the process were well-founded. It might have been better practice first to ask the claimant whether she wanted to start at 7:00 am, and if so, to offer her the opportunity to show that she could be relied upon to do so: Mr Philips' evidence was that as she was appointed to start at 8:00 am and then asked to put back her start time to 8:30 am, it did not occur to him to ask her to start 90 minutes earlier than that. We do not fault his reasoning, only the assumption that he made, which was not to ask the claimant. It might also have been prudent to seek the guidance of HR, who might have suggested some form of written confirmation or reassurance to the claimant.

Notification

40. That decision was made on 25 May. Mr Philips wanted to tell Mrs Spencer and the claimant about the decision on the morning of Tuesday 30 May. Mrs Spencer was due to work at Welwyn Garden City first thing that day, and therefore an email was sent to her, in slightly guarded terms, asking her to come to the Watford office first thing on 30 May (53) (she was on holiday the week before). We accept that that email is evidence of an intention to arrange meetings with both Mrs Spencer and the claimant on the morning of 30 May. Those meetings did not take place, because on 29 May Mr Philips

was taken ill and admitted to hospital as an emergency. After that he remained off sick until 26 June, although he was in frequent contact with the office by phone and email.

41. On the morning of 31 May the claimant decided to tell Mr Langston that she was pregnant. She did so. We accept Mr Langston's evidence that there was a warm conversation, focused on his own happy experience of seeing his family change with the birth of his second child. We do not accept the claimant's assertion that Mr Langston expressed himself in any way negatively about the claimant's pregnancy. Ms Misra suggested that his questions about whether the pregnancy was planned, or whether a third child was planned, were intrusive, inappropriate and evidence of hostility towards the pregnancy. We find that such questions were, at the time, part of an unchallenged conversation about some aspects of the shared experience of parenthood.

42. Having met the claimant, Mr Langston telephoned Mr Philips, who was off sick. It was the third work call of the morning from Mr Langston to Mr Philips. He told Mr Philips that the claimant was pregnant. They had a conversation about what to do. They knew that the claimant would be at least concerned to find herself working for the three Regional Directors instead of Mr Philips. They were concerned that she should not think that that decision was "linked" to her notifying them of pregnancy. Their view was that the claimant should be told immediately about the change in role, and that Mr Langston should do so.

43. Mr Langston spoke to HR, although there was no documented record of him having done so. He then called the claimant in for another meeting at which he told her about the reallocation of duties, and that she would shortly afterwards be working for the three RDs.

44. Counsel criticised their haste, and relied heavily on the speedy chronology with which the claimant was 'demoted' after informing Mr Langston that she was pregnant. We accept that Mr Langston and Mr Phillips thought that if they informed the claimant with great haste, the claimant would see that that decision could not possibly have been taken in consequence of the pregnancy of which she had just told them; but that if they waited a few weeks for Mr Philips to return, it might look that way. Their thinking was precisely to reassure the claimant that the decision, communicated to her so hastily, was <u>not</u> related to her pregnancy because it could not have been made so quickly. Unfortunately, the sequence had exactly the opposite effect, and the claimant was quickly convinced (and remains so) that the speedy sequence was evidence of causation: in other words, that she had been removed from the role of Mr Philips' PA because she was pregnant.

45. Counsel asked why did Mr Langston need to telephone the unwell Mr Philips to tell him that the claimant was pregnant. We find that the answer was first that he was not so unwell that he declined to take office calls; and secondly, precisely because Mr Langston knew that there had been an intention to tell the claimant of a change in her job role, and he knew that Mr

Philips (and colleagues) had not known that the claimant was pregnant when he made the decision to do that.

46. Ms Misra criticised the absence of risk assessment or of the communication to the claimant from HR of pregnancy related information. We attach no weight to those: we note that the claimant's employment ended at around her twelfth week of pregnancy, and we accept that information of the respondent's arrangements was available to the claimant in the employee handbook and/or the intranet.

47. We do not attach weight to the submission that Mr Philips was instantly (i.e. instantly in response to being told of the claimant's pregnancy on 31 May) motivated to avoid the burden on him of a pregnant PA. In evidence to the Tribunal Mr Philips commented that Watford is a large employment centre; that he could see no difficulty whatsoever in recruiting cover; that he had experience of having done so, because his previous PA in Wales had had two pregnancies while employed by the respondent; and that the absence of one individual (out of, he said, some 11,000 for whom he was ultimately responsible) was a routine event which the respondent was accustomed to managing. We accept the gist of that evidence.

48. We are confident in concluding that pregnancy played no part whatsoever in the respondent's decision to reconfigure the claimant's duties, communicated to her on 31 May 2017.

49. As at 31 May, Mr Philips and Mr Langston were sensitive to the risk that their decision might, to the claimant, appear to be an immediate reaction to her pregnancy. Their awareness and sensitivity of that risk is entirely to their credit. Clearly HR advice agreed with them, and was to the effect that their instinctive response, which was to move quickly with their decision, and that speed would quell the flames of the claimant's possible concern of discrimination, was appropriate.

50. We pause there to make the following observations. We well understand that as a Tribunal, we have the luxury of working with hindsight. We have none of the burdens of organisational management. We have heard evidence given in the calm of the Tribunal, some 18 months or so after the event. Making all those allowances, it is difficult to avoid the observation that this was an avoidable conflict.

51. It might have been prudent not just to assume that speed of response would convey a message to the claimant, but to convey that message to her clearly and expressly in writing. The express message would (after congratulating the claimant) have been that the decision just conveyed had been made on 25 May, in ignorance of pregnancy, and but for Mr Philips' illness, would have been conveyed on 30 May. That information might have been coupled with reassurance that she remained on equal footing with the other PAs, and explanation of the issue of a 7:00 am start. It might have led to a possible trialling of the claimant in a 7:00 am starting role. None of that took place; and there was no evidence of HR following up Mr Langston's enquiry of 31 May about the well-being of the individual employee.

52. Almost no time was taken at this hearing on the time point. The event took place on 31 May. Day A was 17 September and Day B was 21 September. The ET1 was presented on 6 October. A free standing event before 17 June was on its face out of time.

53. We find that as a freestanding point, the claim about the 31 May incident was brought out of time. We do not consider that it was part of a continuing act up to dismissal on 2 August: that finding follows logically from our rejection of the claims. We do find that it is just and equitable to extend time, given the events of the next nine weeks, which are set out below. It seemed to us entirely proper that the claimant should await developments in her new role, culminating in dismissal, before entering into early conciliation.

The dismissal claim

54. The claimant began her new role on 5 June and worked in it for nine weeks until her dismissal on 2 August. Mr Philips was away for five of those weeks (June 5 to 26 inclusive and July 7 to 24 inclusive, the former on sick leave and the latter on holiday).

55. We received evidence of conduct issues in that period. We first disregard in its entirety evidence of matters which were not known to managers before the claimant's dismissal. Ms Misra characterised that evidence as "mudslinging". That word was well used.

56. It was common ground that no manager maintained a contemporaneous record of any issue or event for performance management purposes. Given the concerns about the claimant, her state of mind (see below) and the performance concerns, this was regrettable. We do not mean that business operational Managers should have made time to create the kind of detailed attendance notes which are found on a solicitor's files. It is the work of seconds to record a headline aide memoire of an event or conversation.

57. It was common ground that throughout the nine week period, no manager formally spoke to the claimant (except on 4 July) to alert her to things that she had done badly or things that she was doing well; there was likewise no evidence of HR advice being sought by any manager about the claimant, even though she was seen to be disaffected and perceived to be underperforming. There was no evidence that HR followed up Mr Langston's inquiry of 31 May by asking how matters had progressed.

58. We find that very quickly after 31 May, and certainly by 15 June, the claimant was firmly of the view that the change in reporting line was a form of discrimination in response to her pregnancy. (We take the date from the claimant's text of that date at C14). We find that she fell into that mistaken view by mistaking chronology for causation.

59. We find that the claimant entered into her new duties in a negative frame of mind, resentful towards the managers who had made the decision, and

hostile towards Mrs Spencer, who in her eyes benefited from it. We accept that the working environment among the three PAs deteriorated as a result.

60. Apart from her probation review meeting, there was no occasion when any of the responsible managers drew to the claimant's attention any issue of performance. On 4 July the claimant had a meeting with her Regional Directors at which they informed her of a decision to extend probation. Their reason was that they had only worked with her for less than a month, and did not consider themselves in a position to assess her performance. The extension was for three months. Ms Misra's submissions on this were based on the premise that it was a discriminatory decision (change of responsibilities) which led to a new reporting line, which led to the three RDs extending probation. She submitted that it was part of a sequence designed to facilitate the claimant's dismissal. We disagree, and we accept in principle that where there were performance concerns, a decision after only four weeks of joint working to extend probation was a reasonable and legitimate one, wholly unrelated to pregnancy.

61. Within that matrix, we find as follows in relation to the nine week period.

    61.1 We accept that there had been occasions when Mr Philips considered that he had a genuine concern about the claimant's time keeping. It was not always clear whether that was a concern about her adhering to her contractual hours, or simply a comparison with Mrs Spencer's earlier starting times.

    61.2 The claimant's role included attending meetings of Directors, and making notes. We accept that the claimant slipped out of meetings at times when she was thought to be absenting herself for longer than would be usual for a comfort break, and that the quality of notes which she made was not seen as meeting the standard of her colleague PAs.

    61.3 In the context of our finding about the claimant's resentment, we accept that she was heard to express herself in non-collegiate terms (e.g. "not my job"), including being overheard by managers and Directors not based at Watford;

    61.4 We accept that while the office banter continued after 5 June, when the claimant began her new role, the claimant took less part in it, and that on occasion she used bantering language which was acceptable within the Watford based group with whom she worked, but was adversely commented upon when inappropriately used in front of visitors or strangers to the Watford office.

62. Evidence at this hearing focused on two or three specific events in the nine week period, because they were supported by specific evidence. It was no coincidence that specific evidence, where it existed, did not come from managers or Directors, but from Mrs Spencer.

63. We accept that on two dates in July 2017 the claimant proposed to take annual leave which was not official or authorised, because the claimant, contrary to procedure, had not logged it into the IT system. Mrs Spencer noticed this when she realised that all three PAs had booked an afternoon to take simultaneous holiday. There was an altercation about this between the claimant and Mrs Spencer during which the claimant told Mrs Spencer to "fuck off". While that word and variants were in frequent office use, and depending on context and tone are not necessarily offensive, we accept that this one usage was aggressive in tone, and therefore legitimately offensive to Mrs Spencer. We note that the matter is evidenced by a text sent by Ms Wood (R5).

64. There was an incident in July when the claimant mistakenly over ordered coffee for the office coffee machine. It appears that she ordered four cases when she intended to order four boxes. When the order arrived, it was immediately seen as too much. Mrs Spencer reported that the claimant did not want to take immediate responsibility for dealing with the suppliers and returning the excess, and that she, Mrs Spencer, took the lead in doing so. This created tension between the claimant and Mrs Spencer. As Mr Philips was at pains to point out, the mistaken order, although expensive and potentially significant, was less of an issue than how the claimant later dealt with it.

65. It does not seem to us that the operational matters of which we heard would have led to the claimant's dismissal if all else had been well. Mr Philips seemed to us as a manager entirely open to the proposition that human beings make mistakes, and that not every mistake is important.

66. The three PAs worked in a small work place, on a collegiate basis, providing mutual support, more or less without a manager present. In his witness statement, Mr Phillips wrote (WS16) that after his return from sick leave,
"I became aware that the atmosphere was very strange in the office area and that [the claimant] seemed disengaged."

In the same statement, Mr Philips wrote that what prompted him to dismiss was that,
"When I returned from holiday in late July [Mrs Spencer] told me that [Ms Wood] was considering leaving due to the claimant's behaviour."

67. Mrs Spencer's evidence on the same conversation was (WS26):

> "It was after his return from holiday, I believe on 26 or 27 July, that I told him Rebecca had sworn at me. I also told him about her unauthorised holiday. Mr Philips confirmed to me after the claimant had left that the holiday had not been recorded on system. Mr Philips always asked how things were in the office every time we met or spoke…at the end of July, [Ms Wood] came into the office, and said I don't think I can do this anymore. I just don't want to come to work. [Ms Wood] gets on well with everyone and she's not one to exaggerate. Therefore, the next time I was in Mr Philips' office and he asked, "how are things?" I told him that Ms Wood was thinking of leaving. It was unbearable. He just said "right". It was shortly after that [the claimant] was dismissed."

68. Although we approached text message evidence with caution, we do note the claimant's text in July in which, in writing about Ms Wood, she said "and now I sit next to a snake" (C20) as a some sign of deterioration in working relationships.

69. Mr Philips' oral evidence was that he returned from holiday at the end of July, and noticed that the atmosphere in the office was "toxic" in a way which was out of his working experience. He formed the view that the claimant was responsible for the deterioration in the working atmosphere, and for jeopardising the retention of the two other PAs, whom he respected as an asset to the business; and for that reason he decided to dismiss her. He did not discuss his concern with her, or consult her about the issue. He did not put allegations to her and ask her to reply. He made the decision, and arranged for a meeting at which he informed the claimant of it. The decision was confirmed in writing. During the meeting, and on Mr Philips' instruction, the claimant's email and intranet access were disabled. We accept Mr Philips' evidence that that was the respondent's practice on dismissal.

70. Ms Misra's submission was that this was the final step in a pregnancy-related hostile sequence; we find that there was no such sequence. She submitted that what she called the extreme unfairness of this process was evidence of discrimination. We do not challenge her use of the phrase 'extreme unfairness.' We do not find the unfairness to be evidence of discrimination; if anything, we find that it illustrates the misconception that probationary employees have no rights to fair process.

71. We find that the claimant's pregnancy played no part whatsoever in Mr Philips' decision to dismiss. We find that Mr Philips' reason for dismissal was a combination of failure to address grumbling performance events, and most fundamentally, responsibility for a deterioration in working relationships which, he thought, ran the risk of causing the resignation of two other highly valued PAs. For avoidance of doubt, our finding is that pregnancy was not a factor in the decision to dismiss, whether seen as a biological fact, or in the managerial sense that the claimant's employment whilst pregnant would create organisational burdens and involve a prolonged absence.

72. It follows that the dismissal claim fails.

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Employment Judge R Lewis
01/04/2019
Date: ……..
3 April 2019
Sent to the parties on: .....

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For the Tribunal Office