

**BETWEEN:**

**AHLAM ZAKI**

**Claimant**

**-AND-**

**OXFORD LEARNING LIMITED**

**Respondent**

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**JUDGMENT**  
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**The Claimant was unfairly dismissed by the Respondent and the Respondent discriminated against the Claimant on the grounds of pregnancy by dismissing her and the Respondent breached the Claimant's employment contract.**

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**Background**

1. The Respondent employed the Claimant as a Customer Adviser Trainee with commencement of employment date 1 October 2023 (as per the Claimant's ETB Notice of Terms and ETB Termination Notice, which were submitted by the Respondent pursuant to a request from the Tribunal).
2. On 30 September 2024, the Respondent terminated the Claimant's employment without notice, citing "end of contract" in the ETB Termination Notice.
3. The Claimant filed a Claim Form, with attached Details of Claim, on 23 December 2024, making claims for unfair dismissal, pregnancy or maternity discrimination, race discrimination and breach of contract, and seeking compensation and arrears of notice pay.
4. The Respondent filed a Response Form with attached Particulars of Response on 10 January 2025 defending the Claim, principally on the ground that the alleged reason for the termination was because the Claimant was purportedly unable to legally work in Gibraltar because she did not have a work permit.
5. On 19 February 2025, the Claimant's husband received via DHL Express Gibraltar (**DHL**) an anonymous undated letter, together with copies of the Claim Form and Response Form (**the Letter**).
6. On 1 April 2025, having considered the Letter, I issued an Order striking out the Response under Rule 36(1)(b) of the Employment Tribunal (Constitution and Procedure) Rules 2016 on the grounds that the manner in which the proceedings had been conducted by or on behalf of the Respondent had been scandalous, unreasonable and vexatious unless, before

22 April 2025, the Respondent made representations, either in writing and/or, if requested, at a Hearing explaining why the Response should not be struck out.

7. On 1 April 2025, the Respondent sent to the Tribunal the first of a number of communications challenging the strike out Order. The Claimant submitted skeletons and evidence in response. On 30 April 2025, the Claimant also filed an Application for disclosure by DHL seeking confirmation of the identity of the sender of the Letter. The Respondent submitted communications opposing the Application. On 6 May 2025, the Tribunal issued a summons and disclosure Order to DHL, which promptly complied with the same. The Preliminary Hearing of the Respondent's application challenging the strike out Order took place on 14 May 2025.

8. I handed down a Judgment dated 31 July 2025, holding, inter alia, that:

"The whole of the Respondent's Response is therefore struck out under Rule 36(1)(b) of the Employment Tribunal (Constitution and Procedure) Rules 2016 on the grounds that the manner in which the Respondent has conducted the proceedings has been scandalous, unreasonable and vexatious, and the effect shall be as if no Response had been presented.

The next step is for me to decide whether on the available material (which may include further information I may require) a determination can properly be made of the Claim, or part of it. To the extent that a determination can be made, I shall issue a Judgment accordingly. Otherwise, a Hearing shall be fixed. The Respondent will be entitled to notice of any such Hearing and decisions of the Tribunal but shall only be entitled to participate in any Hearing to the extent permitted by me."

### **The facts**

The facts set out below are those relevant and necessary to my determination of the issues derived from the available material following the strike out Order, namely, the Claim Form and attached Details of Claim, the Letter, email correspondence quoted in the Particulars of Response and the ETB documentation provided by the Respondent. They are not intended to be a full chronology of events.

1. The Respondent employed the Claimant as a Customer Adviser Trainee with commencement of employment date 1 October 2023. The Claimant's ETB Notice of Terms stated the Claimant's employment to be for an indefinite period with a one month either way notice period.
2. The Respondent applied for and was issued with a work permit for the Claimant (a Moroccan national) valid from 1 October 2023 until 30 September 2024. The Claimant assumed that the Respondent would apply for renewal of the work permit shortly before its expiry date.
3. On 6 March 2024, the Claimant notified the Respondent that she was pregnant and that her expected date of childbirth was 13 October 2024.
4. On 8 July 2024, the Claimant sent an email to Ms Deborah Coombe, director of the Respondent, informing her that she had been advised that her DSS maternity allowance forms could be submitted. Ms Coombe did not reply and on 12 July 2024, the Claimant chased her 8 July 2024 email. Again, Ms Coombe did not reply and one of the Claimant's

colleagues tried to help and asked Ms Coombe to resolve the situation. Ms Coombe replied to the colleague by email dated 12 July 2024: *"I have no documents for Ahlam's maternity"*; and then by email dated 14 July 2024 making various (untrue) allegations, inter alia, about the Claimant's right to work in Gibraltar and stating: *"There is nothing for a business to do when it comes to an employee going off with 'pregnancy' in Gibraltar, and she has already had a lot of time off for all her numerous appointments and where the remaining employees have had to cover her work. It is not a difficult system in Gibraltar for the mother. ... I will not be filling out another work visa for Ahlam for the coming year as she will not be working."*

5. The Respondent did not communicate further with the Claimant on the subject of her pregnancy or maternity entitlements.
6. On Thursday, 26 September 2024 (when the Claimant's expected date of childbirth was less than 3 weeks away), Ms Coombe sent an email to the Claimant's line manager to *"remind"* him that the Claimant's *"work visa runs out on the 30<sup>th</sup> September so Friday (tomorrow) is her last day. ... Please remind her, thank her for her work, and we shall send her the pay for the last few days this month..."*.
7. The Claimant appealed by email dated 15 October 2024, stating that the true reason for the termination appeared to be her pregnancy and therefore was unlawful discrimination. The Respondent replied by email on the same day stating: *"You were not terminated from your work, you stopped working as you did not have a visa to work in Gibraltar anymore"* and made more (untrue) allegations about the Claimant trying to obtain money from the Government.
8. The Claimant replied by email dated 15 November 2024 denying all of the Respondent's allegations and informed the Respondent that the Labour Inspector had advised her that work permits are simply renewed on an annual basis by employers. The Respondent replied by email, but did not reply on the work permit renewal point, to state that the Claimant's contract of employment was null and void.
9. No notice period was given to the Claimant by the Respondent, nor pay in lieu of her one month's notice period. The ETB Termination Form completed by the Respondent cited the reason for termination as *"End of Contract"*.

### **The law**

#### **Employment Act**

##### **Right not to be dismissed unfairly.**

59.(1) In every employment to which this section applies every employee shall have the right not to be unfairly dismissed by his employer.

(2) This section applies to every employment except in so far as its application is excluded by or under any of sections 60 to 63.

### **Qualifications as to length of service and age.**

60.(1) ... section 59 shall not apply to the dismissal of an employee from any employment if the employee— (a) was not continuously employed for a period of not less than 52 weeks ending with the effective date of termination; or ...

...(3) Subsection (1) shall not apply to the dismissal of an employee if it is shown that the reason (or, if more than one, the principal reason) for the dismissal, or in a redundancy case, for selecting the employee for dismissal, was one of those specified in section 65A(1)(a) to (e)...

### **Onus on employer.**

65.(1) In determining for the purposes of sections 59 and 70 whether the dismissal of an employee was fair or unfair, it shall be for the employer to show—

(a) what was the reason (or, if there was more than one, the principal reason) for the dismissal; and  
(b) that it was a reason falling within the next following subsection, or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which that employee held.

(2) In subsection (1)(b) the reference to a reason falling within this subsection is a reference to a reason which—

(a) related to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do;  
(b) related to the conduct of the employee;  
(c) was that the employee was redundant;  
(d) was that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under any enactment.

### **Dismissal in maternity cases.**

65A.(1) For the purposes of sections 59 and 70 the dismissal of an employee by an employer shall be regarded as having been unfair if—

(a) the reason (or, if there is more than one, the principal reason) for her dismissal is that she is pregnant or any other reason connected with her pregnancy;...

### **Complaints and recommendations.**

70.(1) A complaint may be presented to the Employment Tribunal by an employee against an employer that—

(a) action specified in the complaint has been taken by the employer or by a person acting on the employer's behalf;  
(b) that such action constituted a breach of section 59 on the part of the employer or of the person acting on the employer's behalf; and  
(c) the complainant is the person who was dismissed or was refused engagement, as the case may be.

(2) Where on a complaint relating to dismissal the tribunal—

(a) finds that the grounds of the complaint (as specified in subsection (1)(a) to (c) are well-founded; and  
(b) considers that it would be practicable, and in accordance with equity, for the complainant to be re-engaged by the employer or to be engaged by a successor of the employer or by an associated employer,  
the tribunal shall make a recommendation to that effect ...

(3) Where in such a complaint the tribunal finds that the grounds of the complaint are well-founded, but—  
(a) does not make such a recommendation as is mentioned in subsection (2);...

... the tribunal shall make an award of compensation, to be paid by the employer to the complainant, in respect of the dismissal.

### Equal Opportunities Act 2006 (the EO Act)

#### **Meaning of equal opportunities grounds and categories.**

3.(1) In this Act, except where otherwise provided, “equal opportunities ground” means the grounds of— ...

... (c) pregnancy or maternity leave;  
(d) racial or ethnic origin ...

#### **Meaning of discrimination on the grounds of pregnancy or maternity leave.**

7.(1) ... a person discriminates against a woman if— (a) at a time in a protected period, and on the ground of the woman’s pregnancy the person treats her less favourably. ...

... (3) For the purposes of subsection (1)— (a) a protected period, in respect of a woman, begins each time she becomes pregnant, and the protected period associated with any particular pregnancy of hers ends in accordance with the following rules ...”.

#### **Meaning of discrimination on the ground of racial or ethnic origin.**

9.(1) A person (“A”) discriminates against another person (“B”) if on the grounds of racial or ethnic origin, A treats B less favourably than A treats or would treat other persons.

#### **Applicants and employees.**

... 15.(2) It is unlawful for an employer, in the case of a person employed by him, to discriminate against that person on any equal opportunities ground— ... (c) by dismissing him, or subjecting him to any other detriment.

#### **Jurisdiction of the Employment Tribunal.**

69.(1) A complaint by any person (“the complainant”) that another person (“the respondent”)— (a) has committed against the complainant an act to which this section applies; ... may be presented to the Tribunal.

(2) This section shall apply to any act of discrimination or harassment which is unlawful by virtue of any provision of Part III or Part VI...

#### **Remedies on complaints to the Employment Tribunal under section 69.**

70.(1) Where the Employment Tribunal finds that a complaint presented to it under section 69 (jurisdiction of the Employment Tribunal) is well-founded, the Tribunal shall make such of the following as it considers just and equitable—

- (a) an order declaring the rights of the complainant and the respondent in relation to the act to which the complaint relates;
- (b) an order requiring the respondent to pay to the complainant compensation of an amount corresponding to any damages (including damages for injury to feelings) he could have been ordered by the Supreme Court to pay to the complainant if the complaint had fallen to be dealt with under section 76 (jurisdiction of Supreme Court);

... (4) Where an amount of compensation falls to be awarded under subsection (1)(b), the Tribunal—

- (a) may include in the award interest subject to, and in accordance with, the provisions of section 75 (interest on compensation); and
- (b) shall consider whether to do so, without the need for any application by the complainant.

#### **Burden of proof: Employment Tribunal.**

74.(1) This section shall apply to any complaint presented to the Tribunal—

(a) under section 69; ...

(2) Where, on the hearing of the complaint, the complainant proves facts from which the Tribunal could, apart from this section, conclude in the absence of an adequate explanation that the respondent— (a) has committed against the complainant an act to which section 69 or 71 applies; ... the Tribunal shall uphold the complaint unless the respondent proves that he did not commit, or as the case may be, is not to be treated as having committed, that act.

#### **Interest on compensation.**

75.(2) Interest shall be calculated as simple interest which accrues from day to day.

(3) Subject to subsection (4), the rate of interest to be applied shall be the rate of interest prescribed in respect of judgment debts in the Supreme Court by the order made under section 36 of the Supreme Court Act in force from time to time.

...(5) No interest shall be included in respect of any sum awarded for a loss or matter which will occur after the date of calculation...

(6) Subject to subsections (7) and (8),— (a) in the case of any sum for injury to feelings, interest shall be for the period beginning on the day of the contravention or act of discrimination complained of and ending on the day of calculation; (b) in the case of all other sums of damages or compensation in the award (other than any sum referred to in subsection (5)), and all arrears of remuneration, interest shall be for the period beginning on the mid point date and ending on the day of calculation.

...(9) The Tribunal's written statement of reasons for its decision shall– (a) contain a statement of the total amount of any interest awarded and, unless this amount has been agreed between the parties, either a table showing how it has been calculated or a description of the manner in which it has been calculated; or (b) include reasons for any decision not to award interest.

... (11) In this section– “day of calculation” means the day on which the amount of interest is calculated by the Tribunal; “mid point date” means the date half way through the period beginning on the date of the contravention or act of discrimination complained of and ending on the day of calculation, or where the number of days in that period is even, the first day of the second half of the period.

### **Jurisdiction of the Supreme Court.**

76.(1) A claim by any person (“the claimant”) that another person (“the respondent”)– (a) has committed against the claimant an act to which this section applies; ... may be made the subject of civil proceedings in the Supreme Court in like manner as any other claim in tort.

### **Employment (Maternity and Parental Leave, and Health And Safety) Regulations, 1996 (the Regulations)**

5.(5) Where an employee is pregnant, and has notified her employer in writing of that fact, she shall be entitled to have time off, without loss of pay, in order to attend ante-natal examinations, where such examinations have to take place during working hours.

### **Findings**

#### **Unfair dismissal**

1. The Claimant was continuously employed by the Respondent for a period of 52 weeks and one day (1 October 2023 to 30 September 2024). The Claimant therefore had the basic right not to be dismissed unfairly under Sections 59 and 60(1) of the Employment Act.
2. The Respondent dismissed the Claimant by terminating her contract of employment, as recorded in the Respondent's email dated 26 September 2024 in which the Claimant was to be “reminded” i.e. notified of her last day.
3. The Respondent's alleged reason for the Claimant's dismissal was that the Claimant's work permit was expiring and that she would not be working after she gave birth, in the next work permit year.
4. On the available material, it is clear to me that Ms Coombe was harbouring some resentments towards the Claimant in the Summer of 2024. She refused to communicate with the Claimant at all in relation to her pregnancy and maternity forms, let alone assisting her, as any decent employer would normally do. She also appears from her email dated 14 July 2024 to have believed that the Claimant should not have been taking so much time off for antenatal appointments, apparently indifferent to the obvious importance of these, and also ignorant of Regulation 5(5) expressly providing employees with this important statutory protective entitlement.

5. Further, as per my Strike Out Judgment dated 31 July 2025, I find that:

“... on the documents which I have reviewed to date in respect of this Claim, the only individual who appears to have tried to manipulate the work permit system for non-entitled workers is Ms Coombe herself: as I have no doubt she was aware, applications for work permits and renewals are the responsibility of and made by employers (not employees). The fact that the Claimant would have been on statutory maternity leave for the following work permit year has no bearing on the application for the permit. Ms Coombe’s argument (one of them) that the Respondent did not renew the Claimant’s work permit because the Claimant would be on maternity leave is therefore irrational, and the allegation that the Claimant was engaged in some kind of impropriety in respect of her work permit is nonsensical. The reason that the Claimant’s work permit was not renewed was because Ms Coombe did not make the application.”

6. Expanding on this, I find that Ms Coombe used the expiry of the Claimant’s work permit in conjunction with the fact that the Claimant would be giving birth after the expiry date and so not “working” for some of the following work permit year as a disingenuous reason not to renew the Claimant’s work permit, as was the Respondent’s responsibility as employer, and then to dismiss her for not having a work permit. On my finding, Ms Coombe knew (and if she did not, she should have called the Department of Employment to clarify) that work permits are not contingent on an individual “working”, but are issued to permit non-entitled employees to be employed by a local employer.
7. Further, and again as Ms Coombe must have known, the status of employment is not affected by pregnancy or maternity leave – employees do not stop being employed when they go on maternity leave. To think otherwise would show utter ignorance of the extensive well known legal protections for pregnant employees which have been in place for decades, in Gibraltar and internationally, aimed at prohibiting just the kind of detrimental and damaging treatment of a pregnant woman displayed by the Respondent in this case to the Claimant, 2 weeks before she was due to give birth.
8. Following from these findings, even on the Respondent’s own case - the reason that the Respondent did not renew the Claimant’s work permit in September 2024 and terminated her employment was because the Claimant would have been going on maternity leave in October 2024 - the Respondent’s stated reason for the dismissal was that the Claimant was then pregnant. This is not a fair reason for a dismissal under Section 65 of the Employment Act.
9. In addition, given that the reason or principal reason for the dismissal was that the Claimant was pregnant or was for any other reason connected with the Claimant’s pregnancy, the dismissal was in any event automatically unfair under Section 65A.(1) of the Employment Act (with no Section 60(1)(a) continuity of employment qualification applying).
10. On the available material, I therefore find that the Claim for unfair dismissal is well-founded and succeeds.
11. There is no doubt in my mind that the trust and confidence between the Respondent and the Claimant has irretrievably broken down as a result of the Respondent’s conduct and it is not in accordance with equity for a recommendation of re-engagement to be made under Section 70 of the Employment Act. I shall therefore make an Award of compensation in respect of the



unfair dismissal to be paid by the Respondent to the Claimant, further to an Awards case management directions order (which shall accompany this Judgment) and Hearing.

12. On the material before me, and given that the Respondent's Response is struck out, no deduction will be made for contributory fault (and Polkey does not apply in the circumstances).

#### Breach of employment contract

The Respondent did not give the Claimant her contractual notice of termination (one month), nor did it make a payment in lieu. This claim is therefore upheld.

#### Pregnancy discrimination

1. Following my findings above in relation to unfair dismissal, on the material available, the facts establish, and I uphold the submission made in the Claimant's Details of Claim, that: "the decision to not apply for a renewed work permit for employment to continue in line with the indefinite contract was directly influenced by the Claimant advising the Respondent of her pregnancy". On the Respondent's own case, the Respondent knew about the Claimant's pregnancy and decided not to renew her work permit and then dismissed her because of her pregnancy.
2. There are therefore primary facts from which I can conclude that the reason for the Claimant's dismissal was because of her pregnancy. This shifts the burden of proof to the Respondent under Section 74(2) of the EO Act to establish that the reason for the dismissal had nothing whatsoever to do with the Claimant's pregnancy. Even if the Response were not struck out, the Respondent's stated reason for the dismissal, being because the Claimant's work permit was to expire and the Respondent decided not to apply for the renewal – because the Claimant was pregnant – self-evidently does not discharge the burden of proof on the Respondent to show that the Claimant's dismissal had nothing whatsoever to do with her pregnancy.
3. On the material available, there is no adequate explanation for the Respondent's actions other than the Claimant's pregnancy - in not renewing the Claimant's work permit and dismissing her 2 weeks before she was to give birth.
4. I therefore find that the Claimant has established facts from which the Tribunal can conclude that the Respondent committed against her an act of unlawful direct pregnancy discrimination (under Sections 7 and 15(2) of the EO Act) by dismissing her and this Claim is well-founded and succeeds.
5. The Tribunal shall make an Order under Section 70(1)(b) of the EO Act requiring the Respondent to pay to the Claimant an Award of compensation of an amount corresponding to any damages (including damages for injury to feelings) which the Respondent could have been ordered by the Supreme Court to pay if the Claim had fallen to be dealt with by the Supreme Court, further to an Awards case management directions order (which shall accompany this Judgment) and Hearing.

#### Racial discrimination

There is nothing in the material before me which leads me to determine that the Respondent's negative treatment of the Claimant – the Respondent's decision not to renew the Claimant's

work permit and the Respondent's dismissal of the Claimant - was connected in any way to the Claimant's racial or ethnic origin. As I have held above, in my finding, the Respondent's negative treatment of the Claimant was primarily a response to the Claimant's pregnancy. This Claim is not upheld.

**Gabrielle O'Hagan**

Chairperson Gabrielle O'Hagan

**Dated: 8 September 2025**