Senior executive exited in “sham” redundancy was victim of pregnancy and maternity discrimination

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In the recent case of Shipp v City Sprint UK Limited an Employment Tribunal unanimously held that a senior employee was unfairly dismissed, harassed and discriminated against on the grounds of maternity/pregnancy and sex. City Sprint’s argument that Mrs Shipp’s role was redundant following an internal business reorganisation was held to be nothing more than a sham.

What happened in this case?

Mrs Shipp had been employed by City Sprint Limited for 10 years at the date of her dismissal. She began a period of maternity leave on 10 June 2019 and was due to return to work in March 2020. At the time she went on maternity leave, she was City Sprint’s Group Marketing Director and sat on both the City Sprint Executive Board and the Group Executive Board.

She informed her colleagues about her pregnancy in February 2019 and was asked a number of highly inappropriate and intrusive questions from various senior executives. Such questions concerned when she had stopped using contraception, if her pregnancy was planned, and if she had thought about how the pregnancy would affect her long-term career prospects. In May 2019, shortly before she went on maternity leave, the Director of Operations said to her: “when you have to leave that little one in nursery, you won’t want to come back”. The CEO also purportedly remarked that they should put a wager on how much weight Mrs Shipp would put on during her pregnancy (however that comment was contested).

Mrs Shipp found these comments offensive and humiliating. She

considered making a formal complaint but decided against it because she did not want her maternity leave to be marred by the issue. Furthermore, she was wary about making complaints against senior executives in circumstances where there had already been some allusion to the effects of her pregnancy on her career prospects. Instead, she raised her concerns informally with the Director of Customer Management and the Head of HR before going on maternity leave.

By the end of July 2019, all of the Group Executives (save for Mrs Shipp who was on maternity leave) had either been dismissed, resigned or made redundant. From 1 August 2019, City Sprint began to discuss reorganising the business. Even though Mrs Shipp was the sole remaining member of the Group Executive Board at that time, City Sprint failed to inform or consult with her about the proposed changes. Mrs Shipp first became aware of the proposed reorganisation on 6 September 2019 when she met with City Sprint's former CEO.

On 20 September 2019, City Sprint sent Mrs Shipp a letter headed "Potential Redundancy – Consultation". Later that same day, the proposed reorganisation was announced. When Mrs Shipp was shown the new structure charts, she recognised that her Group Marketing Director role had been replaced with a more junior Director of Marketing position, which it was proposed would neither report into the CEO nor have a seat on the reorganised Group Executive Board (now renamed the Operating Board).

This role was later offered to Mrs Shipp, however, it appeared that City Sprint had no genuine desire for her to return to work. Firstly, it was a demotion in seniority within the business structure; secondly, the salary was reduced by £20,000 without any apparent justification; thirdly, there was a new requirement that the role be performed from the London office four days per week, which was likely to be highly unattractive to Mrs Shipp as a new mother living in Wiltshire.

Other employees who had lost their Group Executive positions but had been retained in different roles, had not seen their salaries reduced and, in some cases, the individuals were given pay increases. Also, other senior executives whose teams were based in London were not required to work from the London office four days per week.

Consequently, on 3 December 2019 Mrs Shipp raised a grievance alleging that she had suffered discrimination relating to maternity/pregnancy and sex. On 16 December 2019, she contacted ACAS and commenced early conciliation. On 28 February 2020, she presented her first claim to the Employment Tribunal. Finally, on 30 March 2020 City Sprint wrote to Mrs Shipp to inform her that her employment would be terminated as her role as Group Marketing Director was redundant and it gave her 6 months' notice set to expire on 30 September 2020.

Mrs Shipp brought a s a variety of claims, however, in this article we look only at her claim of maternity/pregnancy discrimination.

What was decided?

First, The Employment Tribunal considered whether Mrs Shipp's claims had been brought in time. It held that although the comments relating to Mrs Shipps' pregnancy made between February and May 2019 were outside of the three-month time limit, it was just and equitable to extend time so that she could claim for those elements. In so doing, the Employment Tribunal provided useful support for pregnant women who are faced with potentially discriminatory treatment at the start of their maternity leave and who are concerned about the short timeframes within which to bring an Employment Tribunal claim. The Employment Tribunal also held that the discriminatory acts that related to the "sham" redundancy were part of a continued course of conduct and were, therefore, in time.

Having considered whether the claims were in time, the

Employment Tribunal went on to find that the evidence demonstrated an intention to push Mrs Shipp out of the business and an awareness that her role was not truly redundant. In particular, an email from a director to the Head of HR stated that once Mrs Shipp had been removed from the company, her replacement could potentially be "promoted to the Board after say 6 months". The Tribunal held that the redundancy was a "sham" and the real reason for the unfavourable treatment of Mrs Shipp was because of pregnancy/maternity and/or sex.

What does this mean for employers?

Employers should be careful not to neglect employees on maternity leave during a business reorganisation where those employees would otherwise be entitled to be informed and consulted about any changes. However, the balance here is fine and an employer should be sensitive to each individual situation. Whilst it is important to keep communication channels open and to provide information in a clear and timely fashion, an employer should also be mindful of the stresses that a new mother may be under and the fact that one of the purposes of maternity leave is to allow a woman to recover after childbirth.

Employers should be careful to avoid discriminating against female employees on the grounds of maternity/pregnancy whether or not a business reorganisation is in prospect. It should take steps to ensure that all staff members receive frequent training in relation to equal opportunities, discrimination and harassment at work.

If you would like to discuss any issues arising out of this decision please contact, James Hockley (jameshockley@bdbf.co.uk), Amanda Steadman (amandasteadman@bdbf.co.uk) or your usual BDBF contact.

Shipp v City Sprint UK Limited

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