

Successful internal appeal cancelled out earlier allegation of indirect discrimination

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Ms Little worked as a full time sales executive for Richmond Pharmacology. Richmond required all its sales executives to work full time to provide high customer service.

Ms Little took maternity leave. Prior to returning to work, she made a request to work on a part time basis, which was refused. Consequently, Ms Little appealed but the day before the appeal hearing she resigned. Richmond asked that she reconsider her resignation and attend the appeal hearing. She attended the appeal where Richmond agreed to a three month trial basis of part time working. Ms Little refused this offer, confirmed her resignation and brought claims for: (1) constructive unfair dismissal; and (2) indirect sex discrimination.

The Employment Appeal Tribunal dismissed Ms Little's claims. The constructive dismissal claim was time barred and in any event, the EAT said that a fair appeal can 'cure' the defects in an initially unfair decision to dismiss. In relation to the indirect discrimination claim, the EAT found that it was made out bar that Ms Little suffered no detriment as a result of Richmond's initial decision as she was on maternity leave at the time. As a result, she was not disadvantaged by the full time working hours initially imposed. Richmond were lucky.

Employers should bear in mind that had Ms Little not been on maternity leave in the period between the refusal to grant her application for part time working and the appeal, she probably would have suffered a detriment as a result of the discriminatory initial decision and been entitled to some compensation.

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