EMPLOYMENT TRIBUNALS

Claimant: Mr A Kerr

Respondent: Smyth Poultry (N.I.) Ltd

Heard at: Leeds (by CVP)
On: 15 November 2021

Before: Employment Judge Anderson

Representation
Claimant: In person
Respondent: Miss C Mooney

RESERVED JUDGMENT

The claim of unfair dismissal fails and is dismissed.

REASONS

Technology

1. This hearing was conducted by CVP (V - video). The parties did not object. A face-to-face hearing was not held because it was not practicable and all the issues could be dealt with by CVP.

Introduction

2. This was a claim of constructive unfair dismissal brought by the Claimant, Mr Kerr, against his former employer, Smyth Poultry (N.I.) Ltd. The Claimant appeared in person. The Respondent was represented by Miss Mooney.

3. The Claimant was employed by the Respondent, a transport company, as a

lorry driver. The claim is about the end of the Claimant's employment on 28 November 2020 when he resigned with immediate effect, in circumstances in which he says he was forced to resign.

Evidence

4. There was an agreed bundle of documents running to 259 pages, and a separate bundle of witness statements, running to 17 pages.

5. I heard evidence from the Claimant. For the Respondent, I heard from Mrs G Connolly (nee Smyth – this name appeared on some documents), who is the company director of the Respondent, working as a general administrator. I also heard from Mr D Loughlin and Mr P Moore, who work for the Business Solutions company providing external Human Resources support to the Respondent, and who dealt with the Claimant's grievance and appeal.

Preliminary Issues

6. The Claimant had previously indicated that he believed he was due a redundancy payment. At a case management hearing on 6 July 2021, the Claimant confirmed that he did not seek to pursue this, and it was dismissed by the Judge on withdrawal by the Claimant. I reminded the parties that this matter had been dismissed and would not form part of the case I would decide today.

7. The Respondent indicated that it had been incorrectly identified on the papers before the Tribunal, including the ET1, ET3 and ACAS certificate. The Respondent confirmed that its correct name is Smyth Poultry (N.I.) Ltd. The Claimant had no objection to this amendment. The issue arose again during the hearing, but on review of the documents, the Claimant again confirmed that the Respondent was Smyth Poultry (N.I.) Ltd. I have issued a separate order dealing with the issue and making the amendment.

8. The Claimant had provided a statement from an intended witness. The content of that statement referred to a communication issue, specifically around a listing date before the Tribunal. The prospective witness also set out that they were not able to be involved any further. The parties agreed these issues were not relevant to the matters before the Tribunal today. On that basis, the Claimant confirmed that he did not seek to rely on that evidence, nor was there any need to call the witness.

9. The Claimant complained that WhatsApp messages he had requested from the Respondent had not been provided. The Respondent confirmed that all messages in their possession had been provided, noting that when accounts are changed on WhatsApp, previous messages disappear. This was not further challenged by the Claimant, and I had no reason to doubt this was accurate.

10. The Claimant told the Tribunal that his original contract had not been included in the Tribunal bundle. The Respondent said this was an oversight, and it was provided at the beginning of the hearing.

11. The Respondent asserted that parts of the Claimant's evidence within his witness statement ought to be struck out. At the beginning of his evidence, the Claimant agreed that references to redundancy, references to the now discarded witness, and a reference to a without prejudice conversation could be removed.

12. There was no dispute that the Claimant was an employee, that he had the necessary qualifying service to bring the claim, or that the claim had been brought in time.

The Claims and Issues

13. The Claimant alleges that the Respondent's proposals to make changes to the terms of his contract, which would amount to a 20% reduction in guaranteed pay, forced him to resign.

14. This matter had previously been considered at a case management hearing, at which time the issues had been identified. I reminded the parties of these at the outset of the hearing. They are as follows:

1.1 Was the claimant dismissed?

1.1.1 What does the Claimant say the Respondent did which forced him to resign.

1.1.2 Did that breach the implied term of trust and confidence? The Tribunal will need to decide:

1.1.2.1 whether the respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent; and

1.1.2.2 whether it had reasonable and proper cause for doing so.

1.1.3 Did that breach any other express term of contract?

1.1.4 Was the breach a fundamental one? The Tribunal will need to decide whether the breach was so serious that the claimant was entitled to treat the contract as being at an end.

1.1.5 Did the claimant resign in response to the breach? The Tribunal will need to decide whether the breach of contract was a reason for the claimant's resignation.

1.1.6 Did the claimant affirm the contract before resigning? The Tribunal will need to decide whether the claimant's words or actions showed that they chose to keep the contract alive even after the breach.

1.2 If the claimant was dismissed, what was the reason or principal reason for dismissal i.e. what was the reason for the breach of contract?

1.3 Was it a potentially fair reason?

1.4 Did the respondent act reasonably in all the circumstances in treating it as a sufficient reason to dismiss the claimant?

The Facts

15. The Tribunal made the following findings of fact:

16. The Claimant had been employed as a lorry driver since 10 November 2002. The statement of terms and conditions, which the parties agreed were in force during the course of the Claimant's employment with the Respondent, was issued by a previous employer (Sullivans). The Claimant 'TUPE'd' to the Respondent from 13 July 2018 (i.e. he transferred under the Transfer of Undertakings (Protection of Employment) Regulations 2006, known as TUPE.)

17. The statement of terms and conditions sets out that in addition to the terms of that agreement, the Claimant's employment shall be subject to:
    a) Workplace Agreement
    b) Drivers Handbook
    c) A further Policy and Procedures Handbook

18. The hours of work, as defined in the statement of terms and conditions are:

    - 7.1 The Employee's normal hours of work are an average of 48 hours per week (excluding breaks and periods of availability), or 816 hours ever the 17-week working time directive reference period (excluding breaks and periods of availability).
    - 7.2 The Employee shall be required to work on the working pattern defined within the Workplace Agreement.

19. The parties agreed that the 'Workforce Agreement' dated April 2016 applied to the Claimant. That Agreement includes the following provisions:

    a) Paragraph 3: Any significant changes to this Workplace Agreement will be achieved through consultation with our employees and the appropriate notice given.

b) Paragraph 5: This Workplace agreement will be reviewed when appropriate, to ensure that it continues to meet the needs of legislation, the company, its' employees and customer requirements…
c) Paragraph 7: In the event of the hours worked. including periods of availability and breaks, being less than 12 hours, you will be paid for a 12-hour shift unless it falls at the end of your working week in which case you will be spelled off. **A minimum of 60 hours will be paid each week**. (sic) *emphasis added*
d) Paragraph 9: Hours will be recorded weekly to ensure an average of 48 hours work (excluding periods of availability and breaks) over the agreed 17-week reference period excluding rest breaks. But you maybe requested to work up to 60 hours in any single week, however this should still average 48 hours over the 17-week reference period.

20. The term at 7.1 of the statement of terms and conditions and paragraph 9 of the Workplace Agreement, reflect the requirements of the Road Transport (Working Time) Regulations 2005/639.

21. On 30 March 2020, the Respondent sent a letter to its employees notifying them that the company was considering placing some of them on furlough due to the Covid-19 pandemic. The Claimant was sent a furlough agreement on 31 March 2020.

22. Following an issue raised by the Claimant, an amended furlough agreement was sent to him on 1 April 2020. The Claimant signed that agreement and returned it to the Respondent.

23. The amended furlough agreement set out that the Claimant would be paid 80% and that "*when returning to work after Furlough, terms of current Employment contract (Tuped from Sullivan's) will resume. On return to work, this agreement will not affect your current employment contract*."

24. On or around 8 May 2020, the Claimant was contacted by the Respondent and informed that work had, and remained, reduced.

25. There was no contact or communication from the Respondent between that call and 16 October 2020.

26. On 16 October 2020, there was a telephone conversation between the Claimant and Mr G Smyth (Managing Director of the Respondent) during which the prospect of reducing the Claimant's hours was raised. The Respondent says the discussion was about the possibility of reducing the Claimant's guaranteed paid hours from 60 to 48 a week. The Claimant says comments were made that the company could not afford high wages, due to the pandemic and that 'the days of big wages are gone'. Mrs Conolly, who was present, said she did not recall these words being used. However, there is no dispute that a conversation

took place on this day, or that the issue of reducing hours and pay were discussed.

27. By letter titled 'Consultation - Change to Terms and Conditions' dated 23 October 2020, the Respondent set out that the company had reviewed the working hours in accordance with the Drivers Workforce Agreement 2016, to ensure that it continued to meet the needs of the company. The Respondent stated that "*as a result of a reduction in our work*", the guarantee of 60+ hours a week was no longer tenable financially. The letter set out that the "*the purpose of the consultation is to protect jobs and ensure future viability of our business. it is an economic reason*."

28. The proposals included (in summary):

    a) An increase in holiday entitlement from 25 to 28 days per annum
    b) A reduction in minimum paid hours from 60 hours to 48 hours per week (39 of these hours to be paid at the flat rate of £9.87 and 11 of these hours paid at £14.81. Any approved overtime thereafter would also be paid at time and a half).
    c) Any hours worked on Sundays or bank holidays would be paid in accordance with the above, rather than at double time.

29. The Claimant was asked to consider these proposals and provide his position on each point by 12pm on 28 October 2020.

30. The Claimant responded by letter dated 25 October 2020, in which he stated that "*the proposed changes to my various terms of employment are not acceptable to me and I would like to confirm that my position is to remain on my existing contract terms. I understand that you wish to protect your business interests, but having devoted almost 25 years of service to the company. I am disappointed that despite clarifying all of the various points with you when you took over the business. you are now proposing changes that have such a negative impact on my working life and financial stability*." The Claimant also recorded his disappointment at the lack of communication during the furlough period.

31. The Respondent wrote to the Claimant again on 27 October 2020, with a further letter titled 'Consultation - Change to Terms and Conditions'. It noted that an agreement had not yet been reached. The letter repeated the proposals as had been set out in the letter of 23 October 2020 and appended sample payslips, illustrating different scenarios under the proposed terms. The letter stated that the Respondent would endeavour to keep the Claimant's working week filled beyond 48 hours "*as it is in everyone's interest*".

32. The letter of 27 October 2020 recorded that the Claimant had rejected the proposals sent on 23 October 2020 and had provided no counter proposal. The

Claimant was requested to "*provide a mutually suitable working arrangement*" by 12pm on 30 October 2020.

33. The Claimant replied to that letter, on 28 October 2020. He noted that the terms were the same as had been set out in the letter of 23 October 2020 and, as previously, he confirmed he was "*declining your offers of change to my contract and as I am aware I will be returning to work on 1st November 2020 on my original Tuped Contract*".

34. On 29 October 2020, the Respondent wrote again to the Claimant stating that "*As we have not reached any conclusion to the consultation on the proposed contract amendment we would like you to come to work next week on the Job Support Scheme as an alternative, until such times as we can come to a suitable agreement. As we cannot at present offer you your normal working hours, this government scheme will enable us to employ you on your normal salary for days worked and subsidise days when we cannot offer your work*." A three-page agreement document with details of the scheme was attached.

35. The Claimant sent a 'letter of grievance' on 30 October 2020, in which he objected to the actions of the Respondent; he confirmed that he did not wish to join the Job Retention Scheme and he objected to the proposed changes to his contract. On the same day, he submitted a sick note and was 'signed off' for 11 days. A subsequent sick note cleared him to return to work one day earlier than the previous (so a total of 10 days).

36. Mr Loughlin wrote to the Claimant on 5 November 2020 acknowledging the grievance and summarising the issues as follows:

- Incorrect consideration by the company to use the Job Support Scheme
- Incorrect wording of the Job Support Scheme Agreement
- You believe that your position should be considered for redundancy
- Lack of communication on the part of the company
- Failure on the part of the company to 'sort' matters and not put you on the "back burner!!"
- Failure to engage you during the furlough period, yet others were
- Reasons behind the need for a change in contract
- Meaningful consultation has not taken place

37. The Claimant was invited to a grievance meeting on 9 November 2020 (incorrectly referred to as 9 October 2020 in the letter).

38. Mr Loughlin emailed the Claimant answers to some questions raised, on 9 November 2020. The Claimant had asked: *The proposal is a reduction of 12 hours per employee. What is the reason for this? (Where possible, please provide financial details, contracts that have been lost or orders that have been decreased).* Mr Loughlin replied, attaching an excel spreadsheet, illustrating the

downturn in work. He also stated that they were "*looking to pay 48 hours as we are hoping to keep (another employee and the Claimant) working at least 4 days per week. We are actively seeking more work but have no guarantees in place*." It was noted that the Claimant was a capable and competent driver who was valued and respected. The Claimant disputed some of the information provided by the Respondent.

39. The grievance was heard by Mr Loughlin, at two meetings, on 9 and 16 November 2020. The Claimant was accompanied by a friend, who was neither a colleague nor a Trade Union Representative, with the agreement of Mr Loughlin.

40. The outcome of the grievance was communicated by letter dated 18 November 2020. Mr Loughlin responded to each of the points raised by the Claimant.

41. Mr Loughlin also set out as follows:

    a) There has been a clear decrease in the amount of work that the company is required to carry out
    b) the current working arrangement neither satisfies the needs of the company nor does it comply with the legislation, in that the average of worked hours should equate to 48 hours over a 26-week reference period.
    c) The proposed changes put forward are based on economic reasoning. There has been a reduction in the orders received by the company, as per the graph provided. Covid has had an impact on the market. Businesses are keeping their driving in-house and the workforce has changed.
    d) As there is no alternative and the needs of the company must be met, the changes to be imposed must be imposed with a period of notice. As such, what is deemed reasonable is 4 weeks from the date of this correspondence. This is to allow for a transitional period for both yourself and the company and an amendment to administrative processes.

42. Mr Loughlin acknowledged that parts of the agreement were poorly drafted in relation to references to working 60 hours a week and averaging 48 hours per week. Mr Loughlin pointed out that if the Claimant were to be driving 60 hours or more per week, it would be in breach of both the Working Time Rules Directive 2002/15/EC and the Road Transport (Working Time) Regulations 2005.

43. The letter ultimately confirmed that the proposed changes previously communicated to the Claimant would be made and four weeks' notice was given of this change. The Claimant was informed as follows: *Should you not accept the amendments to the Workforce Agreement as set out above. The company will have no other choice than to invite you to a hearing for Some Other Substantial Reason (SOSR) which may result in your dismissal and offer of re-engagement under the new terms and conditions. Any offer of re-engagement would take place before the expiration of your current contract*.

44. The Claimant appealed the decision on 21 November 2020, in which he stated

> *Whilst it is appreciated that there is currently an economic downturn I believe that the company has failed to consult with me regarding proposed changes to my terms and conditions. I have now had two meetings in relation to concerns raised as part of my grievance, to address some of these concerns however, initially the company wrote to me with amendments to my terms and conditions, giving unreasonable timescales to reply, without any explanation and furthermore are now enforcing these new terms with effect 16th December 2020. There was not adequate notice of this and I do not believe that by changing my terms and condition in this manner I am being treated fairly.*

45. The Claimant resigned on 28 November 2020 with immediate effect. He stated that "*the actions of Smyth Transport since April 2020 leave me to feel I have no other choice but to move on*."

46. In his oral evidence, the Claimant confirmed that the breach he was relying on was the change to the terms and conditions. He also made reference to the fact the Respondent had not kept in touch with him during the pandemic and specifically between March and October 2020. He further complained about the short timeframes in which he was asked to respond to the letters entitled 'Consultation – Change in Terms'.

47. In cross examination, the Claimant accepted that he had received an apology for the lack of communication, albeit that this followed his conversation with Mr Loughlin. The Claimant also accepted that the time to reply to the letters was reasonable, given that he had responded earlier than he had been asked to do. He further accepted that the material (graphs) demonstrated that the Respondent's workload had both declined and was sporadic, though noted there could be extra work if it was sporadic.

48. The Claimant accepted he had rejected the changes to his contractual terms 'outright'. It was clear that he perceived the changes as 'destroying' them, and all he wanted was to remain on his original terms. On being asked specifically the reason for his resignation, the Claimant said it was the fact that they were "forcing the contract on me" and he decided to resign when he realised he would be dismissed and re-engaged on the new terms. I find that the Claimant resigned in response to the imminent changes to his contract, which he had been informed would take effect in four weeks time.

49. The Claimant stated within his resignation letter that he wished for his appeal to continue and would like to receive the outcome in writing.

50. An appeal meeting took place on 1 December 2020, which the Claimant did not attend. The appeal was considered by Mr Moore (external consultant). The outcome of the appeal was that the issues raised by the Claimant were not upheld. Mr Moore set out as follows: "*In essence the company are deciding to change your contract It would be classed as a unilateral variation to your contract because they consider your terms and conditions to be no longer commercially viable.*"

51. Mr Moore further stated "*However, and despite your resignation, I would urge you to re-consider signing the new contract*." The Claimant did not sign the contract and did not return to work for the Respondent.

Legal Principles

52. Unfair dismissal is dealt with in the Employment Rights Act 1996 (ERA) as follows:

53. Section 94(1) provides that an employee has the right not to be unfairly dismissed by his employer.

54. Section 95 sets out that:

> (1) For the purposes of this Part an employee is dismissed by his employer if…
> …
>
> (c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.

55. In a constructive dismissal case, the reason for dismissal is the reason for the breach of contract. For a claim of constructive dismissal to succeed, a claimant must show they have resigned because of a fundamental (sometimes called repudiatory) breach of the employment contract. This can include that the employer has breached an implied term of the contract, namely not to breach the term of mutual trust and confidence between employer and employee.

56. It was confirmed in the case of *Malik v Bank of Credit and Commerce International SA (in compulsory liquidation) 1997 ICR 606, HL* that the duty is that neither party will, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee.

57. If a Tribunal establishes that a relevant contractual term exists and that a breach has occurred, it must consider whether the breach is fundamental. A key factor for the Tribunal to take into account is the effect that the breach has on the employee concerned.

58. In the case of *Morrow v Safeway Stores plc 2002 IRLR 9, EAT*, the EAT held that where an employer breaches the implied term of trust and confidence, the breach is 'inevitably' fundamental.

59. A threat to unilaterally impose a substantial pay cut was considered in the case of *Mostyn v S and P Casuals Ltd EAT 0158/17*. In the EAT's view, no employer could have reasonable and proper cause for repudiating the contract or for breaching the implied term where the breach consisted of the unilateral imposition of a significant pay cut. The only possible conclusion in this case was that the contract had been repudiated, and it followed that M had been constructively dismissed.

60. The Respondent referred me to the case of *Lewis v Dow Silicones UK Ltd UKEAT/0155/20/LA*, in which the claimant resigned after a TUPE transfer and claimed unfair dismissal relying on alleged fundamental breaches of contract by his employer and/or on regulation 4(9) of TUPE, arising from the introduction of new standby/call out arrangements and the extension of his duties in relation to safety. The ET rejected his claim that he was to be treated as dismissed on either basis, finding (a) that under his existing contract the employer was entitled to introduce the changes and; (b) that the changes were not "substantial change(s) in working conditions to [his] material detriment".

61. On appeal the EAT held:

    (a) that the ET's finding that under the claimant's existing contractual terms the employer was entitled to introduce the changes was open to it; but

    (b) that that finding was irrelevant to the issue under regulation 4(9); and the finding that the changes were not substantial and to the claimant's material detriment were perverse on a proper application of regulation 4(9), as explained in *Tapere v South London and Maudsley NHS Trust [2009] IRLR 972.*

62. The Respondent submits, based upon *Lewis*, that its proposed changes to the Claimant's terms and conditions were not substantial changes in working conditions to the Claimant's material detriment. The EAT held that the finding that the changes proposed in *Lewis* were not substantial and to the claimant's detriment was perverse on proper application. The test referred to is the impact of the proposed changes on the claimant, if the claimant felt they were to his detriment, and whether that was objectively reasonable. The present case involved a reduction in guaranteed pay by 20%. It is perhaps difficult to imagine a situation in which this would not be reasonably felt by an employee to be to his material detriment and for the avoidance of doubt I am satisfied that the test is met in the present case.

63. I also note that the change in terms in the present case related to a reduction in guaranteed pay for the Claimant. The issue of reduction in pay in *Lewis* was not considered by the EAT, on the basis that it was satisfied that the employer intended to honour Mr Lewis's existing entitlements once they had been

established to their satisfaction and that any indication to the contrary resulted from misunderstandings and confusion about his contractual terms before the transfer.

64. As set out in the issues above, if a constructive dismissal is made out, a Tribunal must then go on to consider whether that dismissal was unfair.

65. Section 98 ERA sets out that

(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—

(a) the reason (or, if more than one, the principal reason) for the dismissal, and
(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(4) [Where] the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—

(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
(b) shall be determined in accordance with equity and the substantial merits of the case

66. The category of "some other substantial reason" or "SOSR" is a catch-all. The employer must show that the reason is potentially a fair one within s 98(1)(b), i.e. that it could, but not necessarily that it does, justify dismissal. Considerations of reasonableness then fall to be considered under s 98(4). In order to amount to SOSR, the reason must be substantial and genuine.

Application of the Law to the Facts

67. The Claimant says that the Respondent was requiring him to agree to less favourable contractual terms, which had the effect of reducing his guaranteed paid hours by 20% and that this was a fundamental breach of contract, which forced him to resign.

68. It is well established in case law, that the imposition of a substantial pay cut will amount to a fundamental breach of contract. A reduction in guaranteed hours of 20% is significant, and in my judgment can only be seen as repudiatory, following ***Mostyn***. As the EAT said in that case, no employer could have reasonable and proper cause for repudiating the contract or for breaching the implied term where the breach consisted of the unilateral imposition of a significant pay cut.

69. The Respondent submits that a reduction of hours by 20% was the maximum the Claimant would be receiving, that additional work would likely be available and that, applying ***Lewis*** (above), this was not a substantial change(s) in working conditions to the Claimant's material detriment. I disagree. On any view, a reduction in guaranteed pay of 20% is substantial and to the Claimant's detriment.

70. The Respondent asserts that the Claimant resigned on the basis of proposals only, and that no changes had been put in place at the time of his resignation. A fundamental breach of contract by an employer may be an actual or an anticipatory breach. An anticipatory breach arises when, before an act is carried out, an employer intimates to the employee, by words or conduct, that it does not intend to honour an essential term or terms of the contract when the time for performance arrives. I am satisfied that this was an anticipatory breach, and the reason was a change in terms amounting to a reduction in guaranteed pay. There can be no doubt that the Respondent had intimated, and clearly so, in writing, that it was unilaterally altering the terms of the contract, to reduce the Claimant's guaranteed pay by 20%. There was nothing vague or conditional about the proposed changes; the Claimant had been explicitly given notice of the changes and warned that a failure to accept them would result in a disciplinary hearing.

71. I accept the evidence of the Claimant that he resigned in response to that breach. He has been clear and consistent in his communication with the Respondent and throughout these proceedings that he resigned because of the proposed changes to his contractual terms. Having found that the actions of the respondent were repudiatory, it follows that the Claimant was entitled to treat the contract as being at an end.

72. There is no evidence that the Claimant affirmed the contract before resigning; he clearly rejected the terms, on more than one occasion, and resigned within 10 days of the letter informing him that the changes would be imposed.

73. Having found that there was a constructive dismissal. I then turn to consider the reason for the dismissal and breach of contract. The Respondent says that it could no longer accommodate paying the Claimant at the current rate and that due to economic need, the terms of the contract relating to pay had to be changed. The Respondent had explained to the Claimant that the working arrangement neither satisfied the needs of the company nor did it comply with the legislation.

74. I consider that this amounts to a potentially fair reason, within the meaning of the s98(2) ERA, as 'some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held'.

75. The cause of the imposition of the reduction was a direct result of the economic downturn and uncertainty as to the future of the business, and the need to ensure the contractual terms reflected the legal requirements of drivers.

76. I am satisfied that the cause of the Claimant's resignation and the reason for his constructive dismissal was some other substantial reason, as described above.

77. I then must go on to consider whether the Respondent acted reasonably in all the circumstances in treating it as a sufficient reason to dismiss the Claimant.

78. The Respondent set out from the outset of its consultation, that it was no longer financially viable to continue paying the Claimant 60 hours per week due to the downturn in work. Documents were provided, illustrating that downturn, and the Respondent explained this affected all Poultry work. In addition, where the Respondent had previously done driving work for another company, that company had now brought it in-house by investing in their own haulage and so the Respondent only worked for them when they were in difficulty. The proposed changes also reflect the legal requirements and position as outlined in the regulations as set out above. The Claimant accepted that the workload had declined and was sporadic.

79. I am satisfied in these circumstances that the Claimant's dismissal was fair in all the circumstances of the case and fell within the band of reasonable responses, taking into account the size and administrative resources of the employer.

80. There had been attempts to engage with the Claimant over the proposed changes to the contract terms. Although the timescales given for the Claimant to respond were short, he accepted that he was able to respond. The Respondent took steps to provide additional information to the Claimant as to the possible impact on his pay, and invited him to make suggestions or counter-proposals. A proper procedure was followed, whereby the Claimant was able to voice his concerns within two meetings, and was able to appeal the decision (albeit he chose not to attend that meeting).

Conclusion

81. I am satisfied that whilst the Claimant's decision to resign in response to the letter of 18 November 2020 amounted to a dismissal, and was a constructive dismissal based on the changes being imposed, it was nevertheless a fair dismissal for the reasons set put above. His claim for unfair dismissal consequently fails and is dismissed.

Employment Judge Anderson

15 December 2021