



# EMPLOYMENT TRIBUNALS

## Claimant

Ms T Watson

## Respondent

Abbey Security Services Limited

v

**Heard at:** Cambridge

**On:** 17-18 February 2022

**Before:** Employment Judge S Moore  
Mr D Hart  
Ms S Elizabeth

## Appearances

**For the Claimant:** Ms J May, solicitor

**For the Respondent:** Mr D Alstin, Operations Director

This has been a remote hearing to which the parties did not object via CVP. A full face-to-face hearing was not held because it was not practicable and all matters could be determined in a remote hearing.

## JUDGMENT

- (1) The claim for detriment due to protected disclosure is dismissed on withdrawal by the Claimant.
- (2) The claim for automatic constructive unfair dismissal is dismissed on withdrawal by the Claimant.
- (3) The claim for (ordinary) constructive unfair dismissal is dismissed.

## REASONS

### Introduction

1. This was a claim for detriment due to a protected disclosure pursuant to section 47B Employment Rights Act 1996 (ERA), automatic constructive unfair dismissal pursuant to section 103A ERA and ordinary constructive

unfair dismissal. We heard evidence from the Claimant and, for the Respondent, from Mr David Alstin (DA), Operations Director. We were also referred to a witness statement from Mr Tony Waldock (TW), who at the relevant time was the Respondent's Quality Control Manager but has since left the company. On the basis of that evidence we make the following findings of fact.

2. The Respondent is a Security Services company with approximately 80 employees. The Claimant commenced employment with the Respondent as a Security Officer on 17 July 2017. Her contract was expressed to be a "48 hour contract" and she had to be available to work either day or night shift at the request of the Respondent. The contract further provided that from time to time she may be required to work such additional hours as might be necessary for the proper performance of her duties. She was paid monthly in arrears.
3. Initially the Claimant was based at the Cambridge Science Park where she worked 5 nights per week. She was then moved to City House on Hills Road, Cambridge working Friday, Saturday, and Sunday nights 7pm-7am with 2 shifts per week at the Cambridge Science Park. Her duties involved providing general security services to include setting alarms, checking offices, patrols, watching CCTV to make sure there were not trespassers on the private site and filling out incident reports.
4. In or about May 2019 the Respondent lost the City House security contract and the Claimant moved back to the Science Park where she stayed until she left the Respondent's employment in January 2020. The Claimant could have transferred by way of TUPE to the incoming security company, but chose to stay with the Respondent.
5. The Claimant says that because the Science Park was not just private land but had a public ring road, she was required by the SIA to undertake a CCTV course and have a specific CCTV license. The Claimant says that between May 2019 and December 2019 she raised this matter on numerous occasions with Sean Gipp, the night shift manager, but the course never materialised. She further says that she was extremely worried the SIA would implement a spot check and that she would face a fine of £10,000 and lose her SIA licence.
6. The Respondent says that the Claimant was not required to have a CCTV licence because she was not a CCTV operator, because she did not burn footage and make it available for others and was not monitoring a particular person or member of the public.
7. Ms May did not show us, or even refer to, any legislative provision to make good the submission that the Claimant was by law required to have a CCTV licence (in addition to a SIA licence) and we are not satisfied that the Claimant was so required.

8. As regards whether the Claimant asked to undertake CCTV training and/or was extremely worried about the fact she did not have a licence, Mr Alstin said in evidence that security officers are often keen to undertake CCTV training because having the additional qualification furthers their career. Further, in his statement Mr Waldock states that the Claimant was keen to complete such training and that on one occasion a training date was offered to her, but she declined it (the Respondent being bound by the constraints of the training provider with the dates of training). In his evidence Mr Alstin also stated that he also understood the Claimant had been offered CCTV training on one occasion. Although the Claimant denied she had ever been offered CCTV training, we prefer the evidence of Mr Alstin and Mr Waldock – for reasons which will become apparent we did not find the Claimant to be a credible witness.
9. Further and in any event, although we have been provided with nearly 100 pages of text messages passing, on the one hand, between the Claimant and Mr Alstin and, on the other hand, between the Claimant and Mr Waldock, (in total approximately 1000 messages) there is no evidence of the Claimant ever raising concerns about the fact she did not have a CCTV licence, which is entirely at odds with her claim she was extremely worried about the fact and we do not accept that she was worried about this at the time.
10. As part of her duties the Claimant says that she was required to lock and unlock buildings and that because she was not tall enough to reach the lock on one of the gates she was told to stand on an upturned milk crate. She said this was dangerous and that she complained about this to Tony Waldock and Sean Gipp on a number of occasions between July 2019 and December 2019. In his statement Mr Waldock denied he was aware the Claimant ever used a milk crate to reach the lock on a gate and that it was clearly stated in the Respondent's health and safety policy that employees should not undertake a task which endangers their health and safety.
11. The Claimant also said that she was never provided with a fully waterproof jacket and trousers despite asking Sean Gipp for this on a number of occasions between May 2019 and December 2019.
12. Again, there is no evidence in any of the text messages of the Claimant ever complaining about having to stand on a milk crate to unlock a gate or that her jacket and trousers were not waterproof. Further there was evidence that from May 2018 onwards, monthly Officer Welfare Visits were conducted with the Claimant at the Science Park and City House, which checked the guard base building and employee welfare and where employees had the chance to raise any issues with which they were unhappy. In this respect it is notable that in September 2018 the Claimant recorded that she needed two polo shirts, and in November 2018 complained about the lack of heating at City House, but there is no mention of having to stand on a milk crate or needing a (more) waterproof jacket.
13. We are therefore not satisfied that the Respondent ever provided the Claimant with a milk crate to stand on to unlock a gate at the Science Park, or

required or expected her to stand on a milk crate. We are also not satisfied that the Claimant made repeated requests (or any requests) for waterproof clothing that were ignored.

14. The Claimant also says that in the morning at the Science Park, after unlocking the building at 6am she was on the reception desk between 7am and 8am and that sometimes young people attending the college would arrive early and be waiting in the reception area. She says she mentioned to Graham Savill that she thought she ought to have an enhanced DBS check.
15. Again, Ms May did not show us, or refer to, any legislative provision to make good the submission that the Claimant was by law required to have an enhanced DBS check and we are not satisfied that the Claimant was so required. The Claimant did not work with young people and was not required to interact with them other than minimally. We are also not satisfied that she ever raised the matter with the Respondent.
16. The Claimant also complains about the fact she worked excess hours in July 2018 when she was required to work 18 shifts in a row to cover the holiday of another security guard and when she complained was told to "get on with it". Although the text messages in the bundle make regular references to shifts and rotas, there are no messages during July 2018 in which the Claimant complains about her shifts or volume of work. Notably there are texts in August 2018 when the Claimant says she has 11 days straight of shifts followed by two days off and requests a third. However the message show that Mr Waldock then arranged that third day off and a later message from him dated 20 August 2018 states "...let me know if things become too much or you are needing a break and I will make sure I plan this in..." We therefore reject the contention the Claimant was required to work excess hours in July 2018, despite complaining about it.
17. On 29 December 2019 the Claimant received her rota for January and found that she had only been given shifts for the first four days of January (1, 3, & 4 January 2020). On 30 December 2019 at 07.25 she emailed Tony Waldock asking for an explanation for this. He replied at 10.40 saying that the Claimant had been sent a letter, and that there "are a few things we need to discuss".
18. It is unclear when the Claimant received the letter, but it stated  
  
"I would like to formally invite you into the office during January of a time and date that is convenient for yourself for a formal discussion with David Alstin and myself. This is to discuss the incident that took place on 13 December 2019 where you failed to turn up for your shift, numerous calls were made to yourself by control which were ignored. It wasn't until contacted by myself you returned a message stating you had your days mixed up...  
You have on numerous occasions been spoken to regarding communications, this is also following on from a similar incident that took place with David Alstin.

Also there is some concern about your abilities conducting certain duties on the Science Park, mistakes being made on control, incorrect information given to mobile drivers and struggling with information taking...

You can respond to this letter by email, message or a telephone conversation to confirm a date and time.

Your rota for the period of January will not be completed until such discussion has taken place.”

19. At 14.20 the Claimant emailed to say she was ill and would not be able to work her shift that night. She said she would need a minimum of 48 hrs at home and would see how she was after that. Mr Waldock replied at 14.48 saying “Right ok I will remove you from 4 nights.” The Respondent didn’t have any further communication from the Claimant until she emailed David Alstin on 12 January 2020 (a Sunday) at 18.56 resigning. Her email stated:

“As from 4 January 2020 I wish to inform you of my resignation.

Unfortunately due to the manner in which I have been treated in recent months regarding a number of matters, I feel that all trust between myself and Abbey Security (Tony) have broken.

It is with this in mind that I feel it is untenable for me to work any notice period.

I will therefore not be returning to work.

I will return all Abbey security uniform to the science part at the earliest opportunity.

I would like my final wages to be accounted and paid in full.

I have four days holiday outstanding.”

20. The Claimant started a new job the following (Monday) morning. She stated in evidence that, notwithstanding the timing of resignation mail, she did not receive a job offer in respect of her new employment until after she had resigned.

21. In her witness statement, the Claimant described the above events as follows:

“I received an undated letter from Tony Waldock inviting me into the office in January 2020 for a formal discussion with him and David Alstin. It stated that I had failed to turn up for a shift on 13 December 2019 and they had issues with my communication and abilities conducting certain duties on the Science Park. It concluded that my rota for January 2020 would not be completed until the discussion had taken place. I considered the allegations were spurious and Tony Waldock and David Alstin would use the meeting to bully, harass and be abusive to me as had often been the case. ... I considered this to be the last straw and emailed David Alstin on 12 January to resign.”

22. That evidence that the Claimant considered the allegations to be spurious is plainly untrue because she admitted in evidence that she had indeed failed to turn up for a shift on 13 December 2019 and this is confirmed by the text messages between herself and Tony Waldock of the same date. Further the Claimant also admitted in evidence that she had made mistakes on control and had given out incorrect information but said that this was because the information on the Respondent’s computers was incorrect. Furthermore, there

is not a shred of evidence for the allegation that Tony Waldock and David Alstin had often bullied, harassed or been abusive to the Claimant. To the contrary, the many text messages in the bundle indicate a positive, supportive relationship and the Claimant expressing her gratitude to them on several occasions. It is regrettable and surprising that a party who is represented by a qualified solicitor should make such serious allegations without any regard for the evidence.

23. We also do not believe that the Claimant resigned prior to receiving a job offer for her new job. It is simply incredible that an employer would have contacted her after 7pm on a Sunday evening with a job offer to start the next morning.

### **Conclusions**

24. At the conclusion of the evidence, given that there was no evidence whatsoever to support the Claimant's assertion that she suffered the detriments relied upon for the purpose of her protected disclosure claim - namely Mr Waldock's letter and/or his decision to give her shifts only up to 4 January 2020 - because she had raised concerns about the fact she didn't have CCTV licence or an enhanced DBS check, and had raised concerns about breaches of health and safety, I invited Ms May to take instructions on that aspect of the claim. Having done so, Ms May stated that the Claimant was withdrawing both the claim for detriment due to protected disclosure and for automatic constructive unfair dismissal.
25. Turning to the remaining claim for ordinary constructive dismissal, Ms May argued that the decision to give the Claimant shifts only up to 4 January 2020 was a breach of the express terms of the Claimant's contract because she would not have been paid for hours she didn't work and she was entitled to work, and be paid for, a 48hr week.
26. As regards anticipatory breach, Chitty on Contracts provides at 24-022:
- "If before the time arrives at which a party is bound to perform a contract he expresses an intention to break it, or acts in such a way as to lead a reasonable person to the conclusion he does not intend to fulfil his part, this constitutes an "anticipatory breach" of the contract and entitles the other party to take one of two courses. He may "accept" the renunciation, treat it as discharging him from further performance, and sue for damages forthwith, or he may wait until the time for performance arrives and then sue."
27. In this case, we are not satisfied that the Respondent (through Mr Waldock) acted in such a way as to lead a reasonable person to the conclusion that the Respondent intended not to fulfil the Claimant's employment contract. She had only been given shifts up until 4 January 2020 because Mr Waldock wanted her to come in and have a meeting, but his letter inferred that the Claimant would be given her rota for the rest of January after the meeting. Furthermore, even if the Claimant might not have received enough shifts in the first week of January to work 48hrs that week, she was paid monthly and had no contractual right to receive 48 hrs work each and every week but

rather to receive monthly pay that reflected an average of 48 hrs work per week. A reasonable person would not have concluded on the basis of Mr Waldock's letter and the shifts the Claimant was allocated on 29 December 2019 for 1, 3, & 4 January 2020 that the Respondent did not intend to fulfil that contractual obligation.

28. Ms May's alternative argument was that the Respondent had breached the implied term of mutual trust and confidence.

29. According to that implied term employers and employees will not, without reasonable and proper cause conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the parties.

30. Ms May relied on the following matters:

- (1) Requiring the Claimant to undertake CCTV surveillance work without training or the requisite licence;
- (2) Failing to provide the Claimant with appropriate equipment and uniform which compromised her health and safety;
- (3) Requiring the Claimant to work excessive shifts without days off;
- (4) Requiring the Claimant to work with young people without an enhanced DBS check in place;
- (5) Threatening the Claimant with unjustified disciplinary action;
- (6) The final straw of withholding the Claimant's contractual hours in January 2020.

31. As regards Mr Waldock's letter, and the shifts the Claimant was allocated on 29 December 2019 for 1, 3, & 4 January 2020 we are not satisfied that these matters constituted a breach of the implied term because, while they might have seriously damaged the relationship of trust and confidence between the parties, the Respondent had reasonable and proper cause for conducting themselves in that way. Mr Waldock was entitled to ask the Claimant to attend a formal meeting to discuss the fact she had missed her shift on 13 December 2019 and about mistakes made in the control room. Further, while the Claimant was only allocated shifts up and until 4 January 2020, there is no reason to think the Claimant would not have been allocated the rest of her January rota once the meeting had taken place.

32. Furthermore, given our findings of fact set out above, we are also not satisfied that there was any cumulative breach of the implied term, in respect of which Mr Waldock's letter and the shift allocation could be said to be the final straw.

33. The claim for constructive unfair dismissal is therefore dismissed.

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Employment Judge S Moore

Date: 18/2/2022

**Case Number: 3303947/2020 (CVP)**

Sent to the parties on: 10/3/2022

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For the Tribunal Office