



EMPLOYMENT TRIBUNALS

Claimant: Mr N Singh & Others
(see attached schedule)

Respondent: Kingdom Services Group Limited

Heard at: Manchester (by CVP) **On:** 23 & 24 February 2022

Before: Judge Cowx (sitting alone)

REPRESENTATION:

Claimant: Mr B Culshaw Solicitor
Respondent: Ms Evans-Jarvis Solicitor

JUDGMENT having been sent to the parties and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. This was a final hearing conducted remotely by CVP on 23 and 24 February 2022. The parties did not object to the case being heard remotely.
2. Claims were brought against the respondent by eight former employees of the respondent. It was agreed at a preliminary stage of proceedings that the claims were identical and that only Mr Singh need attend the liability hearing to give evidence.
3. I was not provided with any written evidence pertaining specifically to the claims made by the seven other claimants; Messrs Hamer, Thompson, Mohammed, Hanif, Hastings, Hamill and Afum-Baidoo who did not attend the hearing. Mr Culshaw confirmed on their behalf that their claims would stand or fall with that of Mr Singh's.

4. The claimants each brought claims that they were unfairly dismissed by the respondent or alternatively they were constructively dismissed by the respondent.
5. The primary head of claim was that the respondent terminated the claimants' contracts of employment by unilaterally amending a fundamental term of their contract, which was the guarantee of a minimum number weekly hours. In Mr Singh's case 56 hours.
6. Mr Culshaw prayed in aid the case of Hogg v Dover College [1990] ICR 39 EAT as the authority for this form of termination of contract which, it was contended, would amount to unfair dismissal in accordance with S.95(1)(a) of the Employment Rights Act 1996 (the "ERA").
7. Ms Evans-Jarvis agreed that such a unilateral amendment to the employment contract, if it occurred, and it is not accepted it did occur, would amount to termination of that contract and replacement by an entirely new contract.
8. I agree that such an alteration, if it did in fact occur, would be so fundamental as to constitute termination of the contract and replacement by a new contract. The claimants argue that the termination of contract occurred on 24 December 2020 when the respondent's contract with the Co-Op to provide security services at the CIS building ended.
9. As to the second limb of claim, it is averred that the claimants were unfairly constructively dismissed contrary to S.95(1)(c) of the ERA in that they, and not their employer, terminated their contracts of employment by resignation on 25 Dec 20, and that they were entitled to do so by reason of the respondent's conduct, namely a repudiatory breach of their contracts in the form of the alleged refusal to guarantee the minimum weekly hours stated in their contracts. This, it is averred, caused an irreconcilable breakdown in trust between employee and employer.
10. It was agreed at the start of the hearing that the key issue for the Tribunal to decide was whether the respondent did refuse to guarantee the claimants' minimum hours or gave the claimants' reasonable cause to genuinely believe their hours would no longer be guaranteed.
11. Claims were also brought by Messrs Singh, Hamer and Thompson for alleged unpaid wages and by Messrs Thompson and Hanif for unpaid holiday pay. The respondent asserted in preliminary proceedings that those claims no longer had any basis and asked the claimants to confirm this. Mr Culshaw took instructions from his clients and it was agreed that those claims were withdrawn.
12. I was provided with an electronic bundle of documents for the liability hearing, which runs to 84 pages. I was also provided with a witness statement by Mr Singh of 4 pages and a witness statement by Mr Burton of 5 pages.
13. I heard evidence from the claimant Mr Singh. For the respondent I heard from Mr Burton, an employee of the respondent, who was a senior line manager of the claimants.

FACTS

14. I find the following facts.

15. The claimants were employed by the respondent as security operatives although their contractual title was “support officer”. Mr Singh’s contract of employment is dated 1 September 1997 which is when he began his employment with Aegis Security Services Limited. The claimants transferred to the respondent on 13 February 2015 under TUPE.

16. The claimants’ contracts contained a term regarding normal weekly working hours. In Mr Singh’s case this was 56 hours per week. The contracts also contained a mobility clause which states that the employer is entitled to transfer the employee to any location within the area or region or in the adjacent area or region. That clause also states, “You are not employed on a site or a store specific location basis.”

17. For his entire period of employment from 1 September 1997 Mr Singh worked as a security operative at the CIS Tower site. On 15 September 2020 that client informed the respondent that it intended to close the CIS Tower for approximately 2 years. As a result, the respondent’s contract with the client was due to come to an end on 24 December 2020.

18. The respondent made the claimants aware of this and informed them that a consultation exercise would be conducted in relation to their continued employment and potential redundancy.

19. A series of consultation meetings were held with the claimants. After the first meeting on 29 September 2020 the respondent sent Mr Singh a letter on 1 October 2020 explaining that the respondent was exploring ways of avoiding compulsory redundancies and invited suggestions from the claimants as to how redundancy might be avoided. In the event of compulsory redundancy, the respondent informed Mr Singh that he would receive a payment of £13,863.74. The same information was conveyed in an email to Mr Singh on the same date.

20. At a respondent’s meeting with Mr Singh on 6 October 2020 he was informed that redundancy was still a possibility, but he was advised to look at alternative roles within the respondent company and a list of vacancies was provided to him to assist him. The respondent at that time was actively seeking alternatives to redundancy for Mr Singh and the other claimants were aware of that. This is documented in the email from Suzie Batters to Mr Singh dated 16 October 2020.

21. A further consultation meeting was held with Mr Singh on 19 October 2020 to discuss vacancies and reallocation to other sites. In a letter from Susie Batters to Mr Singh on 2 December 2020 she invited Mr Singh to attend a meeting with Mr Lloyd Burton on 8 December 2020 at which Mr Singh “...could discuss further vacancies available and any other issues that you may have.”

22. On 17 December 2020 Karen Kelly of the respondents HR department emailed Mr Singh informing him that the respondent had decided not to make him redundant. Miss Kelly told Mr Singh that the respondent had been able to identify suitable reallocation options and attached a list of those to her email. Mr Singh was reminded of the mobility clause in his contract. With reference to Mr Singh's terms of employment Ms Kelly wrote "*This requires you to work at whatever location or hours are available to the company.*"

23. On 21 December 2020 Mr Singh responded to Miss Kelly's email of 17 December 2020 and asked the question whether he would be paid for his minimum guaranteed hours of work under his contract which is 56 hours per week.

24. Someone in the respondent's HR department (the email is not signed) replied to Mr Singh on 23 December 2021, repeating precisely the same terms that "*This requires you to work at whatever location or hours are available to the company.*" Mr Culshaw correctly identifies that this form of words is at the heart of his clients' case.

25. It is the claimants' case that the form of words used by the respondent was an indication that it was refusing to honour its guarantee minimum weekly hours or alternatively by repeating that form of words the respondent was refusing to confirm whether or not it would honour that fundamental term of the contract of employment.

26. The respondent's case is that it did not refuse to guarantee that the claimants would receive their minimum number of hours. The respondent's position is that those hours were guaranteed. It is also the respondent's case that the claimants have no reasonable grounds for believing they were to be denied those minimum hours.

27. Mr Singh and the other claimants submitted their resignation on 25 December 2020. In his email, Mr Singh stated that he was resigning because his employer was refusing to honour his right to guaranteed minimum hours, describing this as a fundamental breach of his contract and a breakdown in trust.

28. The next day an unidentified employee in the respondent's human resources department emailed Mr Singh alerting him to the fact that the list of reallocation options provided to him included hours in excess of his contracted hours. In evidence, Mr Singh's response to that suggestion was that the total number of hours offered at a particular location could have been divided up between a number of security operatives which meant he might not be given the minimum number of hours required by his contract.

29. Mr Burton addressed this point in his evidence. Mr Burton explained that the preferences of the individual claimants would have been taken into account, so for example, if Mr Singh had indicated that he was interested in taking up the assignment at the Swinton Morrisons store, which offered 103 hours per week, Mr Singh would be allowed to work his 56 hours at that site and the remaining hours would have been allocated to another member of staff. Mr Burton explained that sites would be allocated on a first come first served basis, which I find to mean a claimant's preference would have been met by the respondent unless another

operative had indicated the same preference first. Mr Burton added there were more than enough vacancies and hours available to the respondent to meet the contractual hours of each of the claimants. I find this to be true when one looks at the hours on offer in the vacancy list provided to the claimants at page 74 of the pdf bundle.

30. I therefore find that Mr Singh had no reasonable basis for believing that he would not have been given the minimum hours he was entitled to, and I find that he did not genuinely believe that was the case because of the many alternative site locations provided to him and the excess of hours offered at various locations which would have met Mr Singh's contractual entitlement.

31. I find that the respondents took a flexible approach to providing alternative sites for each claimant which included working all of their hours at one site or alternatively splitting their hours at different sites as I heard one of the operatives, Mr Burrows, chose to do.

The Law

32. The relevant law is to be found in the Employment Rights Act 1996 at:

Section 94(1) *An employee has the right not to be unfairly dismissed by his employer.*

Section 95(1) *For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2) —*

(a) the contract under which he is employed is terminated by the employer (whether with or without notice),

(b)

(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.

33. The case of *Hogg v Dover College* [1990] ICR 39 EAT was also applied in this case.

Applying the law to the facts

34. It was agreed by the parties and accepted by the Tribunal that any refusal by the respondent to honour the minimum working hours laid down in the contracts of employment would engage the findings of the EAT in *Hogg v Dover College* and would constitute unfair dismissal. However, the Tribunal found no such refusal or suggestion of intent to reduce the claimants' working hours.

35. I find that the respondent did not refuse to guarantee the claimants' minimum weekly hours. There is no written evidence in the bundle to support that assertion and Mr Singh did not make that contention in oral evidence. His case is that he asked the question whether or not the respondent would guarantee his minimum hours and he did not receive sufficient assurance from the company that it would. He claims to have formed the belief that the respondent would not or might not honour this fundamental term of his contract because it twice stated that he would work the hours that were "available to the company".

36. In his evidence, Mr Burton provided his explanation of the meaning of the above form of words. To him, reference to working the hours available to the company was nothing to do with the minimum number of hours each security operative was guaranteed but concerned particular working patterns. For example, some locations such as retail premises like Morrisons did not require security operatives at night whereas other clients required round the clock cover. I accept this explanation as to the meaning of the words used but I also find that it was possible such words would cause confusion and concern to Mr Singh and the other claimants. However, I do not find such confusion or concern, if it genuinely existed, provided reasonable cause for Mr Singh and the other claimants to believe that they were to be denied their contracted hours. I find that Mr Singh or any of the other seven claimants could easily have clarified the position if they wished to. I find that they chose not wish to do so because of the absence of further communication on their part.

37. I find that the words used in the emails of 17 and 23 December 2020 were ambiguous and were stock phrases used by the respondent's HR department, but I find that any ambiguity could have been resolved by Mr Singh and the other claimants if they were genuinely interested in remaining as employees of the respondent.

38. I find that Mr Singh did not wish to remain as an employee of the respondent. it was clear from his oral evidence and from his email of 21 December 2020 that he was very unhappy about his assignment at the CIS tower being brought to an end. He was not attracted at all by the idea of relocation to any of the other sites on offer. A fundamental term of his employment was that he was not employed at a specific site or a specific location. Mr Singh was very fortunate to have been employed at the same location for 23 years. I heard that it was a site that was not too far from his home, and it was a location that he enjoyed working at. Mr Singh clearly had concerns about his ability to adapt to working at a new location where routines might be quite different to what he was used to. But relocation was a distinct possibility which was made clear to him in his contract of employment as far back as one September 1997.

39. I find that neither Mr Singh nor his colleagues the other claimants made any genuine effort to clarify the position regarding minimum hours. The choice of words used by the HR department on 17 and 23 December 2020 did not, I find, reflect the respondent's true position on minimum hours, which was to guarantee them in each claimant's case.

40. Mr Singh could easily have contacted Mr Burton who would have provided the necessary reassurance about his minimum weekly hours. I did not accept Mr Singh's evidence that he made attempts to clarify the position. He claimed that he raised the question through his management command but provided no evidence in the form of emails to support this and no persuasive examples of conversations with line managers was offered, just vague assertions that he asked questions but received no answers.

41. In correspondence from the respondent Mr Singh was specifically told in an email from Suzie Batters on 16 October 2020 and in a letter from Suzie Batters on 2 December 2020 that he could speak to Mr Burton about any of the vacancies or "*...about any other issues Mr Singh might have*". I find that the door to Mr Burton was open to Mr Singh and Mr Burton would have assured Mr Singh and the other claimants that their contracted hours were secured if they had contacted him.

42. Mr Singh said he did not have Mr Burton's email address. That assertion was patently untrue from the correspondence contained in the liability bundle. Emails from Susie Batters to Mr Singh on 1 October 2020 and 16 October 2020 were also copied to Mr Burton, thus providing Mr Singh with Mr Burton's email address. The email from the HR department on 23 December 2020 contained Mr Burton's email address in the body of that email. I find Mr Singh was untruthful on this specific point and I find he was untruthful in an effort to maintain a false narrative that he was being refused his minimum hours.

43. I have neither heard nor seen any specific evidence from any of the other seven claimants, but Mr Culshaw's position is that the claims are identical. Accepting that to be the case, I find there were seven other individuals who received the same indication from the respondent about working hours which caused each of them to form the same concern about their working hours, yet not one of them decided to contact Mr Burton for clarification or confirmation that their contracted hours were safe. That failure by all eight claimants leads me to find they were not genuinely interested in relocation within the respondent company, nor did they genuinely believe their contracted hours were threatened.

44. I find that the respondent did not refuse to guarantee the claimants' contracted minimum hours and I find that the claimants did not genuinely believe their contractual hours were to be changed or at any risk of being changed.

45. Mr Singh described the point when the risk of redundancy was removed by the respondent as a "bombshell". I find that Mr Singh was disappointed by that fact. He had previously been made aware that he would receive a sizeable payment if made redundant. I find that he did not want to move to any of the locations offered by the respondents. His preference and that of the other claimants was to take redundancy and find employment with another company. When redundancy was no longer on offer and when not attracted by any of the alternative sites offered, the claimants chose to terminate their contracts. I find that they did so entirely of their own volition because they did not want to be relocated from the CIS Tower.

46. I find that the respondent did not terminate the claimants' employment contracts because they did not refuse to honour the minimum hours term of that contract, nor did they suggest that they would.

47. I find the claimants terminated their contracts of employment because they did not wish to be relocated and not because of any reason of the respondent's conduct.

48. I find that the respondent did not terminate the claimants' contracts of employment, therefore they were not dismissed contrary to Section 95(1)(a) of the ERA 96 and consequently they were not unfairly dismissed contrary to Section 94(1) of the ERA 96.

49. I also find that the respondents conduct did not give the claimants reason to terminate their contracts of employment without notice because they did not intend to reduce weekly working hours nor was the same indicated to the claimants. Therefore, the claimants were not dismissed by the respondent contrary to Section 95(1)(c) of the ERA 96 and consequently they were not unfairly dismissed contrary to Section 94(1) of the ERA 96.

50. I therefore dismiss the claimants' claims of ordinary unfair dismissal and I dismiss the claimants' claims of constructive unfair dismissal.

Judge C J Cowx
14 May 2022

REASONS SENT TO THE PARTIES ON
24 May 2022

FOR THE TRIBUNAL OFFICE

SCHEDULE

Case Number	Claimant Name
2402046/2021	Mr Narinder Singh
2402047/2021	Mr Michael Hamer
2402048/2021	Mr Colin Thompson
2402049/2021	Mr Salisu Mohammed
2402050/2021	Mr Paul Hamill
2402051/2021	Mr Sadiq Hanif
2402052/2021	Mr Godfred Afum-Baidoo
2402053/2021	Mr Donald Hastings
2402554/2021	Mr Michael Hamer
2402555/2021	Mr Paul Hamill
2402556/2021	Mr Saqib Hanif
2402557/2021	Mr Donald Hastings
2402562/2021	Mr Salisu Mohammed
2402566/2021	Mr Narinder Singh
2402568/2021	Mr Colin Thompson
2402572/2021	Mr Godfred Afum-Baidoo