



EMPLOYMENT TRIBUNALS

Claimant: Miss L Green

Respondent: Tim Parry Jonathan Ball Peace Foundation

HELD AT: Manchester (by CVP)

ON: 14 October 2022

BEFORE: Employment Judge Johnson

REPRESENTATION:

Claimant:

unrepresented

Respondent: Mr A
Ismail (counsel)

JUDGMENT

The judgment of the Tribunal is that:

- (1) The complaint of unfair dismissal is not well founded and does not succeed. This means that the claimant was not constructively unfairly dismissed when she resigned on 28 April 2022.
- (2) The complaint of unpaid annual leave (holiday pay) was not well founded and is unsuccessful.

REASONS

Introduction

1. This is the final hearing of this case.
2. The claimant was employed by the respondent as a domestic or cleaner from 1 October 2002 until 28 April 2022 when she resigned with immediate effect.

3. She presented a claim form to the Tribunal on 2 July 2022 following a period of early conciliation from 9 May 2022 until 20 June 2022. She indicated that she was bringing a claim of unfair dismissal. This was constructive unfair dismissal arising from her resignation. Although reference was made to a holiday pay complaint during the final hearing, the claimant did indicate when she completed section 8.1 of the claim form that such a complaint was brought and accordingly, I concluded that I was expected to hear an unfair dismissal complaint and a holiday pay complaint during the final hearing.
4. The respondent presented a response resisting the claim, arguing that the claimant was not dismissed and simply resigned and this was not a case where she was facing redundancy.
5. The case was listed for a final hearing today and the Notice of Hearing enclosed case management orders.

The issues

6. I did not receive details of a list of issues before the hearing began, but as this was a constructive unfair dismissal case, the standard issues typically used in cases such as these were applied in the following way.

Dismissal

- a. Can the claimant prove that there was a dismissal?
 - i. Did the respondent do the following things, (based upon the claimant's grounds of complaint and discussions at the beginning of the final hearing):
 1. Threaten to make the claimant redundant
 2. Seek to change her hours of work
 3. Remove/vary security provision for her existing shift worked from 3am to 6am each weekday?
 - ii. Did that breach the implied term of trust and confidence? Taking account of the actions or omissions alleged in the previous paragraph, individually and cumulatively, the Tribunal will need to decide:
 1. whether the respondent had reasonable and proper cause for those actions or omissions, and if not
 2. whether the respondent behaved in a way that when viewed objectively was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent.
 - iii. 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.

- iv. Was the fundamental breach of contract a reason for the claimant's resignation.
- v. Did the claimant affirm the contract before resigning, by delay or otherwise? 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.

Reason

- b. Has the respondent shown the reason or principal reason for the fundamental breach of contract?
- c. Was it a potentially fair reason under section 98 Employment Rights Act 1996?

Fairness

- d. If so, applying the test of fairness in section 98(4), did the respondent act reasonably in all the circumstances in treating that reason as sufficient reason to dismiss the claimant?
- e. Did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant?

Remedy

- f. What basic award is payable to the claimant, if any?
- g. Would it be just and equitable to reduce the basic award because of any conduct of the claimant before the dismissal? If so, to what extent?
- h. If there is a compensatory award, how much should it be? The Tribunal will decide:
 - i. What financial losses has the dismissal caused the claimant?
 - ii. Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?
 - iii. If not, for what period of loss should the claimant be compensated?
 - iv. Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?
 - v. If so, should the claimant's compensation be reduced? By how much?
 - vi. Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
 - vii. Did the respondent or the claimant unreasonably fail to comply with it?

- viii. If so is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?
- ix. If the claimant was unfairly dismissed, did s/he cause or contribute to dismissal by blameworthy conduct?
- x. If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?
- xi. Does the statutory cap apply?

Evidence used

- 7. The claimant prepared a witness statement and she also obtained a witness statement from her former colleague, Sharon Lomax.
- 8. The respondent provided a witness statement from Wendy Parry who in addition to her statement which was exchanged with the claimant's evidence, sought to rely upon a supplemental witness statement. This was produced to rebut matters raised in the claimant's witness statement and which required an application to be made before it could form part of the evidence that I heard in this final hearing.
- 9. The claimant confirmed that she would agree to its inclusion if Mr Steve Hands who was another former colleague and who was referred to in Ms Parry's supplemental witness statement, could be permitted to give oral witness evidence restricted to rebutting matters where his name was referenced by Ms Parry.
- 10. Mr Ismail took instruction from his instructing solicitor and it was agreed that it would be appropriate to adopt this approach.
- 11. Accordingly, I allowed Mr Hands to give evidence in support of the claimant and I obtained his evidence in chief by asking a number of questions relating to his background and knowledge of the claimant and the paragraphs in Ms Parry's supplemental statement. It did become clear that Mr Hands had his own grievance concerning the way that he was treated by the respondent and in particular by Ms Parry, but I made clear that insofar as my deliberations were concerned, I would only take into account his relevant evidence dealing with the basis upon the claimant's employment was terminated.
- 12. The respondent provided a joint final hearing pdf bundle of more than 100 pages enclosing the proceedings, contracts and policies and procedures and correspondence relating to changes within the workplace relating to the claimant and a witness statement pdf bundle and the claimant confirmed that she had access to these documents during the CVP hearing.

Findings of fact

The respondent

- 13. The respondent (which I will describe as '*The Peace Foundation*') is an independent charity which was created following the Warrington bombing by

the Irish Republican Army (known as the 'IRA') on 20 March 1993 which resulted in many injuries and the tragic deaths of 3 year old Jonathan Ball and 12 year old Tim Parry. The Peace Foundation was created by Mrs Parry and her husband Colin with the aim of working for peace and related issues. It was described as being a small charity, based in Warrington and at the time of this hearing, employed 9 people. Until 2020/21, they had employed 20 members of staff and a CEO, but financial difficulties had resulted in staffing reductions.

14. The Peace Foundation occupies a building in Warrington which is half owned by the large charity, the NSPCC and building costs, which includes security and cleaning are shared on a 50/50 basis. I understand that the premises were built on land which was donated by the organisation Homes England.
15. Mrs Parry was not only one of the founders of the Peace Foundation, but was also employed as the Interim Centre Manager. She explained that because of the staffing reductions which included losing staff dealing with Facilities matters, she had taken over responsibility for managing cleaning and security and also confirmed that she currently carried out cleaning duties herself because of insufficient staff being available.

The claimant

16. The claimant (whom I shall describe as Miss Green), was employed by the Peace Foundation as a cleaner/domestic from 1 October 2002 until she resigned with immediate effect on 28 April 2022.
17. Her contract of employment was included in the hearing bundle and her date of commencement was confirmed within this document. Her working hours when this contract was produced in 2005 were described as being Monday to Friday, with 6.30am to 9.30am each day and on Friday, an additional session of 2.00pm to 4.30pm. This amounted to 17.5 hours per week, and I understood that when carrying out her cleaning duties, Miss Green and her other cleaner colleagues had to work when the Peace Foundation's building was not open for meetings and activities. Although these hours involved cleaners working what might be considered as unsocial hours, I understand from Miss Green's position at least, these hours allowed her to attend to child-care or do other work elsewhere.
18. In terms of security at the premises, it was understood that the Peace Foundation had engaged security guards to be present at the building during the hours when the centre was not open during the week and during the weekends. The doors within the premises were opened using swipe access cards and there were CCTV cameras operating over the site. The claimant's contract confirmed that she was subject to the Peace Foundation's policies and procedures and the Employee Handbook provide confirmation of its duties to employees including safe premises.
19. Following a period of maternity leave, Miss Green returned to work and a letter dated 10 February 2010 that she would return to working 3 hours per

day, Monday to Friday, but would be afforded some flexibility as to when these hours were worked because of her childcare commitments. This was agreed as being a start time each day of 3am and a finish time of 6am. Although temporary, the arrangement continued until her resignation on 28 April 2022. Inevitably, this meant that Miss Green was often working when the premises were in darkness, long before they were open for attendance and meetings and when only a security guard would be present in the building. She accepted that the arrangement had been agreed as being temporary, albeit one which lasted for 12 years without interruption.

Financial challenges for the The Peace Foundation

20. Unfortunately, in recent years, the Peace Foundation ran into financial difficulties as a result of the lockdowns caused by the Covid pandemic which meant that financial savings needed to be considered. Mrs Parry said that all employees needed to be informed that their positions were at risk of redundancy as all potential options needed to be considered in order that the charity could continue to operate.
21. Miss Green was called by Steve Hands who was her line manager on 1 October 2021 to explain that the Peace Foundation was having to consider redundancies, and nobody was safe. I accepted that this conversation had taken place, but accepted Mrs Parry's evidence that this was simply a warning to employees that all jobs should be considered at risk and nobody was being informed that their positions were redundant at this point. That is not to say that redundancies did not happen. The Catering Manager and the Programme Manager were made redundant.
22. However, more significantly for Miss Green, the Peace Foundation decided that one its most significant costs was the security contract, and it was necessary to vary the existing contract providing a guard from 21.30 to 7.00 Monday to Friday and 18.30 Friday continuously until 7.00 Monday. Instead, the continuous security would only remain during the weekend and with an attendance at the site on weekdays at 7.30am to let the cleaners in and to check the building before leaving. Their insurer required additional locks to be installed, but otherwise agreed to the proposal. This variation to security arrangements reduced the annual security expenditure from £90,000 to £40,000 per annum. It did, however, have a potential impact for Miss Green given the hours which she worked, and which would finish before the 7.30am security opening of the building proposed to take place on Monday to Friday.

The impact upon Miss Green and the Peace Foundation's proposals

23. Mrs Parry called Miss Green on 16 March 2022 and asked her to attend a meeting. Miss Green queried during her evidence whether Mrs Parry knew her phone number so that she could contact her at this time. However, I accepted Mrs Parry's evidence and the supporting attendance note dated 17 March 2022 that Miss Green was invited to attend a meeting at around this time, and she was present at the time recorded.

24. The purpose of the meeting was to inform Miss Green of the change to security arrangements and the implications for her with her working hours of 3am to 6am. There were two proposed options:
- a) Miss Green could become a key holder and continue with her 3am to 6am shifts; or,
 - b) Miss Green could vary her shift to 6.30am to 9.30am.

The attendance note recorded that Miss Green informed Mrs Parry that neither of these options were acceptable and as far as she was concerned her job was redundant. Although Miss Green disputed the offer of the existing hours with key holder responsibilities, I found that on balance, Mrs Parry's evidence was more likely to reflect what had been discussed. Moreover, I accept that Miss Green believed she was redundant if she did not accept the proposals made, there was no suggestion made that the need for her services as a cleaner for the Peace Foundation had ceased or diminished.

25. Miss Green did accept in evidence that she had been willing in previous months that she would be willing to be made redundant if it would mean avoiding other colleagues losing their jobs, as she felt she was better placed to find alternative work than others. She accepted however, that she had never been told by her employer that she was going to be made redundant.
26. Accordingly, the issues which confronted Miss Green following her meeting with Mrs Parry were the need to consider a variation of hours or working existing hours without a security guard being on site. I noted that while the Peace Foundation had a responsibility to protect her health and safety as an employee, there was no contractual obligation to have a security presence when she worked. I did not hear convincing evidence that there was a heightened risk of Miss Green becoming a victim of crime as a result of the proposed changes to security and the issue was one of perception of risk and the potential requirement for her to hold a key if she continued to work the early hours which she had worked since 2010. What was clear to me, was that Mrs Parry did not want to lose Miss Green as a cleaner as she clearly was highly regarded in the work which she did and a number of efforts were made to provide a means for Miss Green to remain working for the Peace Foundation.
27. On 7 April 2022, Miss Green emailed Mrs Parry and explained that she needed to consider her options and asked for a copy of the 2010 letter referred to above, stressed her concerns regarding security and requested a risk assessment concerning working the building alone. Mrs Parry replied the same day confirming that she will send out the documents that she requested and also added:

"I am trying to arrange someone to be in the building at 6am so you are not here on your own, so please do not stress about that. We are doing everything we can to make sure you are able to continue working [at] the Peace Centre in a safe environment."

Mrs Parry was clearly seeking to find a mutually acceptable solution and acknowledged Miss Green's concerns. She provided the a copy of Miss Green's contract and the 2010 letter the next day.

28. Mr Colin Parry, the then CEO also sent a letter to Miss Green on 8 April 2022, explaining the need to reduce costs and the impact that this would have upon the hours of attended security at the charity's premises. He referred to Mrs Parry's conversation with her on 17 March 2022 and added that they were "*[t]rying to be creative, so we can avoid the termination of your employment*" and adding a further third option for her to consider. The options were now proposed as follows:

- i) *"to remain working your present working hours from 3am to 6am, Monday to Friday and will be provided with a key to enter and exit the building at your start and finishing times. You have declined this offer.*
- ii) *You have been offered alternative working hours, as per your original contract, of starting at 6.30am and finishing at 9.30am. You have declined this offer.*
- iii) *You have been offered a third option of working from 6am to 8am, but with payment for 3 hours. You have responded to this by asking when these working hours would come into effect and for how long. I can only give you a partial answer to your question, in that the new arrangement would begin on Monday 2 May 2022. The answer to your question of how long it would run, is not one I can answer at this time, because it depends upon the outcome of discussions currently being undertaken with Warrington Borough Council. If those discussions are successful, we anticipate that a security guard will be present on site. In that event, we would expect you to revert to your normal hours of 3am to 6am (and being paid for the hours you work).*

He concluded the letter by asking Miss Green to confirm by 12 April 2022 whether option 3 would be acceptable to her. There appeared to be some confusion concerning the correct contract of employment being sent to Miss Green and consequently, Mrs Parry extended the time for a reply to the revised proposal to 25 April 2022.

29. On 20 April 2022, Miss Green replied and said that she was unable to agree to the proposed change of hours. Mrs Parry responded on 22 April 2022 and explained that in order that she could retain her existing hours of 3am to 6am, she would:

- a) provide a key for the gate and door and a security code for the building;
- b) classify her as a lone worker and provide her with the Lone Worker Policy;
- c) provide for her to call the security company (CDX) when she arrived at work each day and every hour they would call her to check she was fine; and,
- d) the other 2 cleaners would start at 6am when her shift ended.

The Lone Worker Policy was provided 2 days later and confirmation (at the request of Miss Green), that Peace Foundation's insurance provider allowed for lone workers.

Miss Green's decision to resign

30. Becoming anxious about the absence of a reply from Miss Green, Mrs Parry sent an email to her on 28 April 2022. She reminded Miss Green that the new security arrangements would commence the following day and sought her decision concerning the proposed working options by return.
31. A few hours later, Miss Green provided her notice of resignation in an email sent at 14:17. She addressed her email to Ms Parry and explained that she was resigning *'with immediate effect'*. She described the letter as providing *'formal notice of my resignation and termination of my employment contract with you'*. It is helpful to repeat the reasons for the resignation which were given in the letter and were as follows:

'Due to being force to either accept a change in hours or work alone in building without appropriate security and safety procedures, together with issues regarding the provision of incorrect contractual information, I feel that I have no other alternative but to resign from my position.'

Due to your behaviour as outline above, I believe the employment relationship has irrevocably broken down and I resign as a result of the fundamental breach of employment contract. I consider this to be fundamental breach of employment contract on your part, in particular the duty of trust and confidence.'

32. It was clear to me that the claimant did not seek to rely upon a proposed redundancy for the resignation and instead argued that she was being forced to change her existing working hours and/or be required to work alone without security being in place. I therefore found on balance that these were the two reasons which she believes caused the resignation.
33. The respondent accepted the resignation with immediate effect and without expecting her to work out her notice. The date of termination was therefore 28 April 2022.
34. Miss Green was not out of work for very long and secured alternative employment as a cleaner with Warrington Youth Zone the next month. I accepted Mrs Parry's evidence that the Peace Foundation continues to require cleaners working a total of 8 hours each day. Although they continue to employ 2 cleaners, both working 3 hours each, there is a daily shortfall of 2 hours work and I accepted on balance that both Mrs Parry and her colleague have been working this shortfall between themselves, even though it does not form part of their duties, while they wait to recruit an additional cleaner.

Accrued unpaid annual leave

35. Miss Green also claimed that she was owed 2 ½ days untaken and unpaid annual leave, which she believe she had accrued at the date of her resignation. Her contract of employment provided at section 7.1 that she was *'entitled to 25 session's holiday in addition to public holidays in any 12-month*

period. Section 7.2 provided that *[u]less notified otherwise, the holiday year begins on 1 January.*

36. Her staff annual leave form for 2021 to 22 identified her annual leave entitlement as being 30 days. It 'straddled' 2021 and 2022 and the first recorded leave requested was for 4 August to 9 August 2021. The form recorded Miss Green's birthday and the first leave entry under the column headed 'Additional notes', states 'B'day not taken yet'.
37. Having considered the evidence of both Miss Green and Mrs Parry, I preferred Mrs Parry's argument that by the date of her resignation, Miss Green's leave year ran from 1 April to 31 March. This is supported by the leave form using the period 2021 to 22. Moreover, I also accepted Mrs Parry's evidence that Miss Green was given an additional day's annual leave on her birthday, which while laudable, was not part of her contract of employment. The note in the column on the annual leave form referred to in the previous paragraph supports this conclusion.
38. I was taken to the hearing bundle which provided a copy of a Barclays e-payments transactions record which showed that Miss Green received a payment following her resignation on 18 May 2022 recorded a bill payment as 'HOLIDAY PAY BBP' amounting to £71.25. I accepted that this reflected the 2 ½ days accrued and unpaid annual leave for the first month of her 2022-23 annual leave year and accordingly, Miss Green was paid the annual leave entitlement which remained payable following her resignation. Although she has not claimed notice pay, for the avoidance of doubt, Miss Green's resignation without notice was accepted by The Peace Foundation and accordingly she was paid her contractual pay when she resigned.

The law

Constructive unfair dismissal

39. Section 95(1)(c) of the Employment Rights Act 1996 provides that an employee is dismissed by his employer if 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.
40. In Western Excavating (ECC) Ltd v Sharp 1978 ICR 221 it was held that in order to claim constructive dismissal an employee must establish:
- (i) that there was a fundamental breach of contract on the part of the employer or a course of conduct on the employer's part that cumulatively amounted to a fundamental breach entitling the employee to resign, (whether or not one of the events in the course of conduct was serious enough in itself to amount to a repudiatory breach);
 - (ii) that the breach caused the employee to resign – or the last in a series of events which was the last straw; (an employee may have multiple reasons which play a part in the decision to resign from their position. The fact they

do so will not prevent them from being able to plead constructive unfair dismissal, as long as it can be shown that they at least partially resigned in response to conduct which was a material breach of contract; and,

- (iii) that the employee did not delay too long before resigning, thus affirming the contract and losing the right to claim constructive dismissal.

41. All contracts of employment contain an implied term that an employer shall not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee: Malik v BCCI [1997] IRLR 462. A breach of this term will inevitably be a fundamental breach of contract; see Morrow v Safeway Stores plc [2002] IRLR 9.

42. In Croft v Consignia plc [2002] IRLR 851, the Employment Appeal Tribunal held that the implied term of trust and confidence is only breached by acts and omissions which seriously damage or destroy the necessary trust and confidence. Both sides are expected to absorb lesser blows. The gravity of a suggested breach of the implied term is very much left to the assessment of the Tribunal as the industrial jury.

43. It is open for an employer to argue that, despite a constructive dismissal being established by the employee, that the dismissal was nevertheless fair. The employer will have to show a potentially fair reason for the dismissal and that will be the reason why the employer breached the employee's contract of employment; see Berriman v Delabole Slate Ltd 1985 ICR 546 CA. The employer will also have to show that it acted reasonably. If an employer does not attempt to show a potentially fair reason in a constructive dismissal case, a Tribunal is under no obligation to investigate the reason for the dismissal or its reasonableness; see Derby City Council v Marshall 1979 ICR 731 EAT.

44. Mr Ismail referred me to one case in his final submissions, namely Dutton & Clark v Daly [1985] IRLR 363 (with particular reference to paragraph 785). This is a case where the Employment Appeal Tribunal reminded us that in the Employment Tribunals jurisdiction, a judge cannot use its judgment as to whether steps taken by an employer were reasonably adequate when considering an employer's duty to take reasonable care to see that employees are not exposed to unnecessary risks, even it be the risk of injury to criminals. Instead, we must ask the question:

'whether the reasonable employer could be expected to have done more or to have acted differently. If the answer is that no reasonable employer would have expected the employee to work in the conditions under which she did, then there was a fundamental breach of the contract of employment entitling her to treat it as a repudiation. But if it is possible that some reasonable employers might have done no more and no less than this employer did, then there was not a fundamental breach of contract and the employee was not entitled to say that she was forced to resign.'

Unpaid annual leave

45. Regulations 13, 13A and 16 of the Working Time Regulations 1998 read together provide that a worker is entitled to 5.6 weeks (up to a maximum of 28 days) paid leave in any leave year. A worker's contract may provide an entitlement in excess of the statutory minimum.
46. Regulation 14 provides that a worker is entitled to be compensated for accrued but untaken leave upon termination of her employment. The leave entitlement in Regulation 13 may only be taken in the leave year in which it is due. Regulation 13A provides that a relevant agreement (such as a workforce agreement or any other legally enforceable written agreement between the employer and employee) may provide for leave to be carried forward into the following leave year.
47. The entitlement to paid leave under the 1998 Regulations is the minimum entitlement that an employer must provide to a worker and without prejudice to any greater contractual entitlement granted to the worker by the employer.

Discussion

Constructive unfair dismissal

48. There was no dispute that Miss Green was an employee who had worked continuously for the Peace Foundation for more than 2 years at the date of her resignation in accordance with section 108 Employment Rights Act 1996 ('ERA') and she presented her claim form to the Tribunal within 3 months of the effective date of termination (the resignation), in accordance with section 111 ERA. Accordingly, the Tribunal had jurisdiction to hear the claim of unfair dismissal (and holiday pay), brought by Miss Green.
49. It was clear from her letter of resignation that the acts which caused Miss Green to resign were:
- a) *'being forced to accept a change in hours'*; or,
 - b) *'work alone in building without appropriate security and safety procedures'*.
- She also mentioned *'...issues regarding the provision of incorrect contractual information'*.
50. Having considered the evidence and taking into account my findings of fact above, I was satisfied that the real reason for Miss Green's decision to resign was a combination of having to reconsider her hours of work and/or the issue of a change in security arrangements if she elected to retain her existing hours of work from 3am to 6am. I do not think the provision of incorrect contractual information was a genuine reason for the resignation as this appeared to be an additional factor added to *'make weight'* to the resignation letter.
51. In terms of her contractual hours, it appears that pre maternity leave, she worked from 6.30am until 9.30am each weekday. This was varied to the earlier shift upon her return from maternity leave, although this was offered on a trial basis, reviewable after 3 months. No subsequent documentation was

provided, nor did I hear any oral evidence which convinced me that Miss Green's hours of 3am to 6am remained a temporary measure. I am satisfied that a practice acceptable to both parties resulted in Miss Green working these hours for 12 years before she resigned and both parties accepted that these were her usual hours of work and they replaced her original hours.

52. While this might be the case and while the contract of employment and employee handbook recognised the Peace Foundation's duty of care as an employer, there was no contractual entitlement to a designated staffed security presence when she was working her admittedly very early shift. There was no evidence that her decision to work these hours from 2010 were contingent upon security staffing and instead her decision was based upon childcare or other needs.
53. I accept that the Peace Foundation was entitled to review its security provision and it was reasonable for it vary the arrangements, especially given the financial challenges that it faced, that the very survival of the charity was at stake and that it avoided redundancies of core staff supporting the charity's operation. There was no convincing evidence (such as from the Police, Police and Crime Commissioner or the local authority) that the premises faced a particularly significant issue with anti-social behaviour and that Miss Green faced a greater risk of harm than she would elsewhere in the community.
54. Moreover, once the Peace Foundation became aware of the anxieties expressed by Miss Green, they explored adapting one of the proposals made so that she could contact security when arriving at work at 3am and being called every hour while she was working by security to check she was fine. Under these circumstances (and acknowledging the decision in *Dutton*), I was satisfied that some reasonable employers in similar circumstances would have done no more and no less than the respondent would have done. Accordingly, the decision made regarding security did not amount to a fundamental breach entitling Miss Green to resign.
55. It requires less time to consider the other reason for the resignation given the finding made in relation to security. This is because Miss Green was not being forced to accept a change of hours as all of the options proposed were reasonable and importantly, she was able to continue working her existing hours if she wished. For the reasons given above, the variation to the security provision was not a measure which made this choice an unreasonable one for her to be expected to take and accordingly she could have continued to work her contractual hours had she wished to do so.
56. As I concluded that neither of the acts relied upon by Miss Green could amount to fundamental breaches of contract, entitling her to resign, her complaint of constructive unfair dismissal must fail.
57. For the avoidance of doubt, I agree with Mr Ismail's submission that redundancy did not feature as a relevant factor in this case and Miss Green's letter of resignation did not identify this as a cause behind her decision to resign. It was clear that cleaning remained an in house job role and indeed remains one where work remains available and further recruitment is required to ensure the necessary daily hours are met.

58. I agree with his submission that the respondent acted fairly and reasonably and had Miss Green continued to refuse any of the options made by Mrs Parry, the legal advice which she says she would have taken, would probably have resulted in a dismissal on grounds of some other substantial reason. An impasse had been reached and there appeared to be no likelihood that Miss Green would not have accepted any of the options proposed by the Peace Foundation, despite their willingness to be flexible, insofar as their limited resources would allow. This was not a case of placing an employee in a position where they would have no option but to resign and strenuous efforts were made to retain her, as Miss Parry gave clear evidence that she was a hardworking and valuable employee. While this might be the case, the respondent behaved reasonably in all the circumstances.

Holiday pay

59. In terms of the holiday pay complaint, Miss Green accepted that the annual leave form for 2021/22 was an accurate record of her leave, during her final complete leave year. I was satisfied that the leave year ran from 1 April until 31 March and accordingly, the 2 ½ days untaken and accrued annual leave for the 2022/23 leave year was paid to her shortly after her resignation in May 2022. As a consequence, no holiday pay remained outstanding.

Conclusion

60. It was clear from this case that the Peace Foundation was experiencing a particularly difficult and challenging time in its history and was keen to survive. While some redundancies were necessary, it was never the case that Miss Green was faced with a redundancy consultation that resulted in her at risk notice developing into a redundancy notice. Instead, efforts were made to make savings which enabled the charity to continue to operate in some shape or form.

61. It is understandable that Miss Green was concerned when she was told that her job was at risk, but it was the impact of the security changes which caused her concern. Like many hardworking people with family commitments, she had established a working pattern which while involving unsocial hours, enabled her to manage her other family commitments.

62. While this might be the case, as in all forms of employment, changes can happen which might affect how and when an employee works. However, this was not a case where an employee was compelled to vary their contractual hours or where contractual obligations relating to health and safety were breached. The respondent behaved reasonably and attempted to retain Miss Green, but ultimately, she had to make a choice as to what she was prepared to accept. However, while this ultimately led to her decision to resign, it did not give rise to a fundamental breach of contract entitling her to resign.

63. Accordingly, the Tribunal's decision in this case is as follows:

- a) The complaint of constructive unfair dismissal was not well founded and does not succeed.

b) The complaint of unpaid holiday is not well founded and does not succeed.

Employment Judge Johnson

Date 17 October 2022

JUDGMENT SENT TO THE PARTIES ON
21 October 2022

FOR THE TRIBUNAL OFFICE