EMPLOYMENT TRIBUNALS

claimant: **Mr Arshad**

Respondent: **Kingdom Services Group Limited**

HELD AT: London South (by CVP) **ON:** 14-15 March 2023

BEFORE: Employment Judge Hart

REPRESENTATION:

Claimant: In person

Respondent: Ms Evans-Jarvis

LIABILITY JUDGMENT

The Judgment of the Tribunal is that:

1. The claimant's claim for redundancy pay arising out of the termination of the PGS assignment on 8 February 2022 is upheld. That means that he is entitled to redundancy pay, the amount to be determined at a remedy hearing on 1 August 2023.

2. The tribunal has no jurisdiction to consider the claimant's claim for unfair dismissal or constructive unfair dismissal because there was no dismissal.

3. The claimant's claim for unlawful deduction of wages between 8 February and 25 July 2022 is not upheld, because the contact that the claimant was employed on at the material time was a zero-hour contract.

REASONS

INTRODUCTION

1. The claimant was a security guard employed by the respondent on the same assignment for 13 years. This assignment was terminated on the 8 February 2022, and the claimant claims redundancy pay arising out of this termination.

The claimant also claims constructive dismissal arising out of the subsequent failure to provide him with work, pay wages, respond to his grievance and / or due to a breach of trust and confidence. The respondent states that the claimant has not been dismissed, and in the alternative any dismissal was for a refusal to comply with a mobility clause (some other substantial reason). The claimant's claim for unlawful deduction of wages is based on the fact that with the exception of one day, he was not paid from the 8 February 2022. The respondent states that the claimant was on a zero-hour contract and therefore was not entitled to any payment.

THE HEARING

2. The parties and their witnesses attended by CVP. They are thanked for their assistance and representation during the hearing.

3. It was confirmed at the outset of the hearing that no reasonable adjustments were required by either party.

4. I was provided with a joint agreed hearing bundle of 306 pages, the references to page numbers in this judgment are to the pages in this bundle. I was also provided with written witnesses statements.

5. I discussed with the parties the order of evidence. The respondent proposed that it provided evidence first and that the claimant went second. The claimant was asked for his preference and he agreed with this sequence.

6. The claimant gave evidence on his own behalf. The respondent called Mr Crawley (Contract Manager) and Ms Batters (Colleague Centre Advisor) as witnesses. I provided the claimant, who was not represented, with assistance in formulating questions for cross-examination.

7. On completion of the evidence both parties made oral submissions. Judgment was reserved.

CLAIMS / ISSUES

8. The parties agreed that the claims and issues to be determined by me were as follows:

    8.1 Was the claimant employed on a zero-hour contract?
    8.2 Was the contract subject to a mobility clause?

    Both these questions would require consideration of whether any express term reflected the true relationship between the parties and / or whether there was an implied term of custom and practice?

    8.3 Dismissal
    (a) Whether the claimant's contract had been terminated? There has been no express termination, therefore I will need to consider whether there has been termination by conduct. The burden of proof is on the

claimant. The respondent states that there was no dismissal because the claimant was on a zero-hour contract with a mobility clause.

(b) If the contract had been terminated, who terminated it?

(c) If the contract had been terminated, what was the date of termination?

8.4 If the claimant terminated the contract, was there a constructive dismissal? In particular:

(a) Was there a fundamental breach of the contract? The claimant accepted that there had been no breach of any express terms but relies on implied terms which was identified as failure to pay wages, failure to offer work, breach of trust and confidence and failure to respond to the grievance.

(b) If so what was the date of the breach/s?

(c) Was there a final straw?

(d) Did the claimant resign in response to the breach?

(e) Did the claimant affirm the breach by delaying his resignation?

(f) What was the reason / principal reason for the dismissal?

(g) Was the dismissal fair in all the circumstances?

8.5 If the Respondent terminated the contract:

(a) What was the reason or principal reason for dismissal, redundancy or some other substantial reason? The respondent relied on the mobility clauses stating that the claimant was in breach of contract by unreasonably refusing to change sites. The burden of proof is on the Respondent.

(b) If redundancy, was the claimant's dismissal fair in all the circumstances, taking into account the consultation process and whether reasonable steps were taken to find alternatives?

(c) If some other substantial reason, was the dismissal fair in all the circumstances? The Tribunal will need to consider whether the claimant's refusal to change sites in accordance with the mobility clause was reasonable, and what if anything was the respondent's response to any refusal by the claimant.

8.6 <u>Redundancy pay</u>

(a) Was there a redundancy situation? The respondent stated that there was no redundancy situation because the claimant's contract contained a mobility clause and he was offered reasonable alternative assignments.

(b) Was the claimant offered suitable alternative employment? I will need to consider whether any job offered was suitable and whether the claimant's refusal was unreasonable.

8.7 <u>Unlawful Deduction of Wages</u>

(a) What salary was properly payable to the claimant between 8 February and date of termination or date of claim? This will require consideration of whether the claimant was employed on a zero-hour contract and / or subject to a mobility clause.

(b) Has the respondent made an unlawful deduction of wages?

9. It was agreed that the remedy issues as to whether the claimant would have been dismissed in any event had a fair procedure been followed (Polkey) and whether the claimant contributed to his dismissal should be determined at any remedy hearing due to the need to make a determination as to whether or not there had been any dismissal and if so on what date. The parties will then be in a better position to address the tribunal on remedy matters.

FACTUAL FINDINGS

10. I have only made findings of fact in relation to those matters relevant to the issues to be determined. Where there were facts in dispute I have made findings on the balance of probabilities.

11. The respondent is a national provider of security and other services to end user clients. It employs 5,000 staff on both zero-hour and fixed-hour contracts. Turnover of staff is high and few have the length of service that the claimant had.

12. On 28 October 2004 the claimant commenced employment with Advance Security as a security officer. He was initially assigned to retail outlets, Sainsburys in Epsom for two years and then Primark. At the end of 2006 he moved to 'corporate' and worked for 'Flour' based in Camberley, but this was too far to travel so he was reassigned to Bell Micro in Chessington and then Kirk Gate in Epsom. In 2008 he was asked by PGS if he would agree to be assigned to their site in Weybridge. He agreed and has remained there for the last 13 years. He was employed to work a 59-hour shift, working 6pm to 8am Mondays to Fridays and 8am to 8pm or 8pm to 8am Saturday and Sunday. The only change over the 13 years was that the shift was moved back an hour, other than that the number of hours and pattern of work remained the same, as did his place of work. Another security officer, Mr Yamamoto, worked the opposite shift. Their hours of work were recorded on a rota on a monthly basis. This was the claimant's only assignment during this period, he did not work for any of the respondent's other clients.

13. On 1 February 2010 the claimant and Mr Yamamoto were transferred under TUPE to PCL Whitehall Security Group. On 15 January 2010 the claimant was provided with a PCL standard contract of employment (PCL contract) (pg 49-69). He was also provided with a letter headed 'Transfer of Undertaking' containing the terms and conditions that 'will apply to your employment' whilst working at PGS Weybridge (PGS assignment contract) (pg 43-48). The letter stated that where there was any disparity between the contractual documents then 'the contents of this letter shall stand' (pg 43). Both the PCL contract and PGS assignment contract were signed by the claimant on the 27 January 2010.

14. The relevant provisions of the PCG assignment contract were as follows:
    a. '*Normal Hours of Work: There are no immediate plans to alter your current hours of work'*. The letter goes on to state that PCL reserved the right to amend working hours to meet the requirement of any laws or regulations regarding working hours or to meet the needs of the client.

b. The claimant was to be paid an hourly rate of £8.75 per hour (this was later increased to £10.25 per hour).
c. '*Place of work…. will remain unchanged unless you either elect to transfer or are moved to another site for any reason'*. The letter went on to state that *'the company reserves the right to transfer you to alternative positions or places of work (within reasonable daily travelling distance of your home) and to change the terms and conditions of working in order to meet the needs of the Company. Should the client, to whom the company supplies your services under its terms of business, no longer require services, the Company will try to relocate you. However, if this is unsuccessful, then following appropriate consultation, the Company may have no alternative but to terminate your employment'.*

15. The relevant provisions in the PCL contract were as follows (pg 49-58):
a. The claimant was employed as a 'security officer'.
b. 'Place of work' provided that the respondent was '*unable to guarantee that you will be permanently based on any one assignment. You therefore agree that it may be necessary to change the assignments, dependant on the operational requirements of "the company" at the time"* (clause 4.1) and that the company '*reserves the right to move you (sic) place of work to any location within the United Kingdom (UK), where possible 'The Company' will ensure that reasonable notice is provided*' (clause 4.2) and that '*you agree that you may be required to work at any location in the UK'* (clause 4.3) (pg 50).
c. Remuneration was an hourly rate of £6.50 per hour. The rate of pay was determined by assignment. The Tribunal notes that the rate of pay identified was lower than that under the PGS assignment contract.
d. 'Hours of Work' provided that '*due to the nature of security work 'The Company' cannot guarantee either maximum or minimum hours available. Precise working hours for security officers and other hourly paid staff will be as per the appropriate duty roster and may be varied by "The Company" at any time at its absolute discretion*' (clause 7.2). Clause 7.4 provides that '*'"The Company" reserves the right to increase or decrease your hours of work and / or change our start and or finish times on reasonable notice should it be considered necessary for the needs of the business'.*
e. 'Termination of employment' provided that '"*The Company" reserves the right to terminate your employment immediately, without notice or payment in lieu of notice if it has reasonable grounds to believe you are guilty of… a breach or [of?] a material stipulation of this contract* (sic)' (clause 31.1). I consider that this should be 'of' a material stipulation of the contract rather than 'or'. The notice period provided reflected the statutory position of 1 week per year of service up to a maximum of 12 weeks (clause 31.4).
f. There was also a variation clause reserving the right to unilaterally vary the contract (clause 38.1).

16. The claimant was also provided with a PCL Handbook (pg 70-100). The version that I have seen stated that it is a draft and is dated 3 March 2009; the claimant has not argued that it did not apply ot him. The handbook expressly stated that it is referenced in the claimant's terms and conditions of

employment. The section on Hours of Work and Place of work are almost identical to that provided for under the PCL contract.

17. On 18 October 2021 PGS gave 3 months' notice of its intention to terminate its agreement with the respondent to use its security services (pg 172). This was due to the closure of the Weybridge site and a move to new premises that did not require security services. On receipt of this notice Mr Crawley (Contract Manager) emailed Ms Batters (Colleague Centre Adviser) in the 'People Team' (HR) asking for redundancy figures for the claimant and Mr Yamamoto (pg 194). Ms Batters was on annual leave so the figures were provided by her colleague, Mr Meakins.

18. The same day Mr Crawley informed the claimant by text that PGS '*will be ending their contact on the 31st Jan 2022'* and stated, *'with that in mind I will need to look at other sites for you could you indicate a rough distance you would be prepared to travel to'* (pg 173). The claimant responded the same day by text stating he was '*able to travel about 20 miles maybe 25 it would have to depend on the shift times and maybe the rate of pay'* (pg 174). The claimant then asked how likely it would be to get a site and stated that ideally he did not want to be doing relief work. Mr Crawley did not respond to this text. Mr Crawley stated in evidence that he informed the claimant of the mobility clause, but I find that he did not since there is no reference to a mobility clause in this exchange.

19. On 19 October 2021 Mr Meakins provided Mr Crawley with the requested redundancy costs, stating that notice costs could be reduced by consulting in advance (pg 192-193). Mr Crawley asked Mr Meakins to do what he could to mitigate the notice period costs. He also suggested that redundancy exposure could be mitigated because PGS were prepared to work with the respondent and release the officers early '*if a full-time position came up they want to take*' (pg 191). I find that at this point Mr Crawley was intending to make the claimant and Mr Yamamoto redundant, and pay redundancy, if no alternative employment was found by the date that the PGS contract with the respondent was terminated.

20. On 10 December 2021 the claimant was informed by letter that the place where he worked was closing on 31 January 2022 and that the letter was a '*forewarning of that potential redundancy'* (pg 195). The letter further stated that '*as a result. The company have now commenced a period of consultation'* with him. The letter made no reference to any mobility clause. The letter was drafted by Mr Crawley's lawyers, and signed by Mr Meakins on behalf of Mr Crawley. Mr Crawley in evidence stated that he could not explain why it referred to a redundancy process, since his view was that he was involved in a 'reallocation process' as permitted by the mobility clause. I do not accept his evidence; the letter clearly refers to redundancy and a redundancy process and is consistent with his earlier exchange with Mr Meakins.

21. On 16 December 2021 Mr Crawley sent an email to the claimant with his shifts and apologised for not having had time to meet with him (pg 197).

22. On 9 January 2022, having heard nothing more from the respondent, the claimant sent a text to Mr Crawley asking when the consultation process would commence and suggesting a meeting the next day. Mr Crawley stated in evidence that there had been a number of phone conversations prior to this date, but he could not recall when, did not provide any details of what was discussed, nor could he point to any corroborative evidence. I note that this lack of evidence can be contrasted with Mr Crawley reporting to HR that he had sent texts to the officers on the 18 October 2021 and his report of the meeting on the 10 January 2022 (see below). I consider it unlikely that Mr Crawley would not have informed HR of the phone conversations if they had taken place. Further the claimant's text of the 9 January 2022 is consistent with his case that up to that point there had been no contact, since he is querying when the consultation would commence. In response to the claimant's text Mr Crawley agreed to a meeting and suggested two possible assignments for the claimant to consider in advance of the meeting: Allianz Guildford to start immediately and ABP Beef to start in April (pg 174). The text included informaitno about the shifts pattern, average weekly hours and rate of pay.

23. On 10 January 2022 Mr Crawley had a meeting with the claimant (pg 202) during which three possible assignments were discussed. The claimant declined Allianz Guildford and ABP due to the distance and travel time. A third role, referred to as a support role covering outside London sites (BCA APH Snowhill, Bellrock Hersham plus Guildford sites) was declined because the claimant wanted a shift pattern and to be assigned to one site with guaranteed hours as he was the main provider for his household (pg 202).

24. On 19 January 2022 Mr Crawley emailed HR with a report on his meetings with the claimant and Mr Yamamoto. The email confirmed that '*letters have already been sent to them putting them on notice'.* I find that this is a reference to the redundancy notice of 10 December 2021. Mr Crawley then stated that PGS had advised that it was only liable for 5 years of redundancy cost and enquired: *'in the TUPE information for both officers as they transferred into PCL Whitehall and then to Kingdom is there a mobility clause enforced somewhere prior to PCL Whitehall?*'. He also asked if liability had been reduced in regards of the officers working their notice (pg 202). Mr Crawley stated in evidence that he had reminded the claimant of the mobility clause during the meeting on the 10 January; this is disputed by the claimant. I find that Mr Crawley did not refer to the mobility clause because he would otherwise have recorded this in his email to HR, and not merely requested information about whether a mobility clause existed.

25. On 19 January 2022 PGS requested if it could extend the contract to 8 February 2022 (pg 201). Mr Crawley texted the claimant to ask if he could cover the additional PGS shifts (pg 177). The claimant agreed. On 21 January 2021 Mr Crawley texted the claimant to ask if he could cover some more shifts (pg 187). The claimant responded that he was unable to do so.

26. Other than texts regarding further shifts at PGS, the claimant heard nothing more about the redundancy / consultation process. On 1 February 2022 he sent a text to Mr Crawley stating, *'I was wondering if there is any updates as to*

what is going on and when HR will be in contact in regards to the redundancy procedure?' (pg 179). Mr Crawley responded that he had contacted HR that day for an update and was awaiting a response (pg 180). On 3 February 2022, having heard nothing more, the claimant again sent a text to Mr Crawley asking for an update and asked whether he should contact HR direct. He stated that he was 'quite anxious with this now' (pg 180). Mr Crawley did not respond to this text.

27. On the 8 February 2022 the PGS assignment came to an end. From this date the claimant was not allocated any work and was not paid.

28. On 10 and 15 February 2022 the claimant sent further text messages to Mr Crawley stating that he had had no reply from Mr Crawley and enquiring whether he should contact HR (pg 181-182). Mr Crawley responded on the 16 February 2022, stating that he had chased HR the previous day and that '*an update is required urgently regarding any redundancy pay for you. By all means chase from your side too as not fair being left in Limbu like this*' (pg 182). Mr Crawley provided the claimant with the contact details for HR.

29. On 17 February 2022 the claimant emailed the People Team (HR) asking for an update and stated that he had had no correspondence from the respondent, apart from the 10 December 2021 letter and the consultation meeting on the 10 January 2022 (pg 203). On 24 February 2022, Ms Batters responded stating that HR was 'finalising a few things' and informing him that 'Paul [Mr Crawley] will need to meet with you another 2 times' (pg 203). The same day the claimant texted Mr Crawley informing him of what HR has said (pg 184). On 28 February 2022 the claimant sent a further text to Mr Crawley asking when the meetings will take place. Mr Crawley accepts that he did not respond to these texts, since he was told he needed legal advice before responding.

30. On 2 March 2022, having had no reply to his previous texts, the claimant phoned Mr Crawley. Later that day Mr Crawley and the claimant has a telephone conversation lasting an hour to discuss what assignments were available. The claimant considered that none of the assignments were suitable, either because they were too far or not for a specified shift pattern. Following the meeting Mr Crawley sent an email to Ms Karen Kelly-Williams (Head of HR) and Ms Batters with a summary of what was discussed at the meeting (pg 204).

31. On 3 March 2022 Ms Batters emailed the claimant (pg 209). She referred to the consultation meeting on the 19 January 2022 (this was an error it should have referred to the 10 January 2022) where the claimant was informed *'that the company anticipates having to make redundancies in the near future'.* He was informed that the reason for redundancy was the closure of the PGS Weybridge site, that it placed him at risk of redundancy and that the claimant should consider receipt of this letter (which in fact was an e-mail) *'as forewarning of that potential redundancy'*. The claimant was told that the respondent had commenced a period of consultation with him and that over the period *'I will meet and formally consult with you on a regular basis to discuss alternatives whereby your employment could be protected'* this was with an aim of avoiding redundancy [it is assumed that 'I' should have stated Mr Crawley].

32. On 8 March 2022 Mr Crawley phoned the claimant and had a further 45-minute consultation regarding the available assignments. Again the claimant considered that none were suitable for him, he requested closure and a decision on redundancy. Mr Crawley against sent an email to Ms Kelly and Ms Batters with a summary of what was discussed (pg 211). Ms Batters responded that the third and final meeting was to be held on 17 March and that '*should be the last one in this process*' (pg 211).

33. On 10 March 2022 the claimant emailed Ms Batters complaining about the length of the consultation process and that he felt that he is 'in limbo' having not worked since the 6 February (pg 221). The same day Ms Batters sent a letter to the claimant formally informing him of the next consultation meeting on the 17 March 2022 (pg 213). The letter stated that the purpose of the meeting was '*to allow you another opportunity to discuss any views and suggestions that you feel we ought to take into account, which may avoid the need to make a compulsory redundancy. At this meeting we will discuss any alternative employment and review the consultation process…. If we are unable to find any alternatives to redundancy at this point, then your employment may be terminated. This letter gives you due forewarning of that possibility'.*

34. At the 17 March 2022 telephone ,meeting, Mr Crawley again discussed with the claimant available work, which the claimant rejected on the basis that the sites offered were the same as previously (pg 215). Mr Crawley emailed Ms Batters in relation to his discussion with the claimant (and Mr Yamamoto) stating '*neither officers had had anything suitable that they can pick up and work with*' (pg 215).

35. On 21 March 2022 Ms Batters identified a possibly vacancy with Mr Jerry Green in Chelsea Harbour (pg 220). Mr Green had a discussion with the claimant who turned it down because the distance to travel by car or by public transport was too great (pg 218).

36. The same day the claimant emailed Ms Batters stating that he had received advice from ACAS and CAB that he should have been provided with an alternative role within 4 weeks of his PGS assignment ending, and that since this had not occurred he may be entitled to redundancy pay and have grounds to turn down any positions. He ask the respondent to confirm this (pg 220). He also referred to struggling financially and health wise from the delay.

37. On 22 March 2022 Ms Batters responded, referring to the mobility clause in the claimant's contract and stated that the respondent was in the process of reallocating the claimant to another site and that Mr Crawley had offered a number of alternatives which the claimant had refused. Ms Batters went on to state that: '*we would always try to reallocate you to suitable alternative sites instead of making you redundant, the consultation process is still ongoing, we would still continue to offer alternatives until all options have been exhausted'* (pg 220).

38. On 6 April 2022 the claimant emailed Ms Batters, copied to Mr Crawley, requesting an update and stating in relation to the mobility clause 'it has to be reasonable and suitable for me to travel to' and stating that Mr Green did not think that Chelsea Harbour was suitable 'due to the time it would take to travel, back and forth'. The claimant again asked for confirmation that suitable employment must commence within 4 weeks of the termination of contract. He then stated '*I am again pleading / begging you [illegible] outcome so that I can continue with my life as it is on hold because of this, I do not know what to do. Please end my misery*' (pg 219). It seems that the claimant felt unable to obtain alternative work until the respondent's consultation process was concluded. On 7 April Mr Crawley emailed the claimant asking if he had had a reply (pg 219).

39. On 8 April 2022 the claimant and Mr Crawley had a telephone discussion during which he mentioned that the alternative employment could be offered on a trial period. It was agreed that the claimant would do a trial period at the ABP site in Guildford.

40. On 8 April 2022 Ms Batters emailed the claimant formally offering him alternative employment. The claimant was informed that if he accepted alternative employment this would mean he was not dismissed by reason of redundancy. Further that as the new job was different from his old role he was entitled to a statutory trial period of four calendar weeks (pg 231).

41. On 9 April 2022 the claimant emailed Ms Batters accepting the 4-week trial period at the ABP site in Guildford (pg 231). There is further text exchange between the claimant and Mr Crawley, and the claimant and Ms Batters regarding the terms of the trial period (pg 185, 187, 230).

42. On 5 May 2022 the claimant sent two emails raising a grievance (the second expanded on the first) in relation to the delay and the way that he felt that he was being dealt with under the redundancy process (pg 229-230). He asked why he had not been offered a trial period after leaving PGS. He referred to his experience of previous sites that had closed down and that it had only taken 3 weeks to provide him with a new site. He also referred to the mobility clauses stating: '*I understand the mobility clause, which is the reason why I have travelled to various sites in my 17 plus years, but in truth I cannot see any suitable alternatives …* ' and accusing the respondent of delay tactics (a reference to the 6-month limitation period for submitting a redundancy pay claim) (pg 229).

43. On 6 May 2022 Ms Batters emailed the claimant formally offering him the role of security officer in ABP Guilford to start training on 11 May 2022, and setting out the terms including the shift patters and a start date. He was also asked if he wished to proceed with a formal grievance (pg 228).

44. The claimant confirmed that he did wish to continue with his grievance and again complained about the way in which the consultation process had been conducted and the length of time it had taken and asking a number of questions (largely repeating questions asked previously) (pg 228).

45. On 9 May 2022 Ms Batters emailed the claimant with an almost identical email to that sent on the 6 May 2022 for (pg 255). She did not answer the claimant's questions. There was a text exchange between the claimant and Mr Crawley during which the claimant stated, *'I got the reply with the trial period dates but not a single answer to any of my questions I asked again (with an emoji of someone putting their hand to their head)*' (pg 188).

46. The same day the respondent received a request for a reference for the claimant in relation to taxi work with Courtesy Cars that the claimant had applied for (pg 255). The claimant explained that he did not pursue this option since it was a conditional offer which required him to obtain a special licence that would have cost him £800, which he could not afford.

47. Trial period at the ABC Guildford site commenced on 10 May 2022. The respondent's view was that the redundancy consultation period ended with the commencement of the trial period. Unfortunately, the claimant only attended for one day because he found that it was unsuitable for him. He sent an email to Ms Batters informing her that the smell caused him difficulties with breathing for which he was on medication; the job was based in a portacabin and very different from the corporate security he was used to, his hourly rate was lower than it had been for PGS, the site and the location was 7 miles further than PGS Weybridge, and travel time was longer since he was having to drive with the rush hour traffic whereas previously his start time of 18:00 had meant he was driving against the rush hour traffic (pg 227).

48. On 19 May 2022 the claimant emailed the People Team asking for an acknowledgement of his formal grievance (pg 235). The same day, an unnamed person from the People Team emailed the claimant that a meeting was being arranged in relation to the trial period and then stated: '*I understand you have stated you would like this to be dealt with as a formal grievance. However your concerns do appear to be connected to the process therefore, we felt it reasonable to resolve these matters and conclude the redundancy process in due course*' (pg 235).

49. On 20 May 2022 the claimant emailed the People Centre stating that his grievance was not only about the redundancy process but also about the way he felt he had been treated (pg 238). He confirmed again that he wished his grievance to continue.

50. On 20 May 2022 Ms Batters sent a letter and an email to the claimant on behalf of Mr Crawley inviting him to attend a review meeting on the 24 May 2022 (pg 239-240). The claimant was informed that a possible outcome was the termination of his employment and that '*in this instance, we would look to arrange a final meeting with you to discuss*'.

51. On 24 May 2022 the claimant attended a 'Reallocation Meeting' with Mr Crawford and Ms Kelly-Williams (pg 244-260). Ms Kelly-Williams explained that the purpose of the meeting was to look at suitable alternatives and ways to avoid a redundancy situation (pg 246). The claimant was taken through a list of alternatives assignments within a 20-24 mile radius from the claimant's home

(pg 214). The claimant considered that none of them were suitable for him. Mr Crawley accepted in evidence that some of the assignments were unsuitable due to the claimant's health and that others may have been unsuitable if it involved more than an hour travel time (a number of them were in London). Mr Crawley stated that he considered the three assignments originally offered and the CWU assignment (which was based in Wimbledon) to be reasonable due to reasonable distance and parking on location. The CWU assignment was for less hours but the respondent was prepared to make up the hours by offering other sites. Mr Crawley also stated that if the claimant expressed an interest in an assignment for a lower rate of pay then the respondent was prepared to make up the rate of pay. I accept that this was not explained to the claimant at the time since there is no reference to this in the minutes of the reallocation meeting. The claimant accepted in his evidence that Mr Cawley was 'a brilliant manager' and that he tried very hard to offer suitable alternative sites for the claimant. The meeting concluded with an agreement to work towards an end date of 8 June 2022 (pg 260).

52. Mr Crawley accepted in evidence, and I agree, that the consultation process had taken too long. I accept Mr Crawley's reason for this which was that the respondent did not want to enforce the mobility clause because did not want to lose the claimant but rather support him to find a different assignment. This meant that in fact the mobility clause, although referred to during the various meetings was not invoked, and at no point was the claimant instructed to attend a new site or assignment. I do not accept the claimant's suggestion that the respondent were deliberately delaying concluding the consultation process so that they did not have to pay redundancy pay. Nor do I accept the respondent's suggestion that the claimant was refusing the assignments because he wanted redundancy pay, since his health and domestic circumstances restricted him in what he could do.

53. On 6 June 2022 the claimant emailed Ms Kelly-Williams (copied to Mr Crawley) stating that he had not received any contact from the respondent since the reallocation meeting on the 24 May 2022. In this email the claimant stated that he had been told by a third party that he was still employed by respondent and entitled to back pay from 8 February 2022 (pg 261-262). The claimant requested a response. No response was received.

54. On 8 June 2022 the claimant texted Mr Crawley asking if he was available 'to continue our chat'. Mr Crawley responded and it was agreed to talk the next day (pg 189).

55. On 9 June 2022 the claimant and Mr Crawley spoke for 31 minutes (pg 208). This was the last communication between the parties. Mr Crawley could not remember the contents of this call. I therefore accept the claimant's account that during this discussion the claimant asked Mr Crawley as to the outcome of the meeting but Mr Crawley did not know. Mr Crawley raised that the claimant had refused to partake in any trial periods, but this was not discussed further because Mr Crawley did not want to fall out with the claimant. The claimant informed Mr Crawley that he was applying for other work and Mr Crawley advised him to change his tax code until he got a reply from the respondent.

56. On 12 July 2022 the claimant emailed Ms Kelly-Williams (copied to Mr Crawley) requesting the minutes of the reallocation meeting on the 24 May 2022 (pg 240). The claimant did not receive a response to this email.

57. On the 13 July 2022 the respondent received a reference request for the claimant. Mr Crawley stated he assumed from this that the claimant no longer wished to be employed by the respondent.

58. The claimant commenced new employment on the 25 July 2022. His evidence was that he had concluded in July that he was no longer employed by the respondent because the respondent had not finalised the process by the 8 June 2022. He had started to look for other work from the beginning of June, and considered that his contract with the respondent terminated on 25 July 2022.

59. On the 3 August 2022 the respondent wrote to the claimant stating that he had not worked for the company since 10 May 2022 and incorrectly stating that the *'the Company had had no contact from you since'* (pg 267). The letter then stated that '*I am therefore assuming that it is indeed no longer wish to continue working for the company and that you have therefore resigned*'. The claimant was given 5 days to respond if that was not the case. The claimant did not respond. The claimant stated that did not remember receiving this letter. I find that it was sent and that the claimant does not recall receiving it because at that point he had already found new employment. Ms Batters stated that despite this letter the claimant was not processed as a leaver and therefore was still on their system as an employee.

60. The claimant commenced ACAS early conciliation on 15 June 2022, and was issued with the ACAS certificate on 26 July 2022. He submitted his claim form on 6 September 2022. He ticked 'Yes' in response to the question as to whether his employment was continuing (box 5.1) and stated that he was 'still an employee' of the respondent although he had not had any work since 8 February 2022, apart from the one-day trial (box 8.2). He confirmed before me that he had not receive any legal assistance in completing the claim form.

THE LAW

Contractual considerations

61. It is not in dispute in this case that the claimant was an employee of the respondent.

Specific and global contracts

62. Where an employee is employed on a casual contract with periods of no work, then tribunals should consider the possibility of two different contractual relationships: a specific one attached to particular assignment and a general / global one which continues to exist during the non-work periods: see **McMeechan v Secretary of State for Employment** [1997] ICR 549 (CA); **Commissioners for HMRC v Professional Game Match Officials** [2021]

EWCA Civ 1370 (CA). Both can exist at the same time, and the two contracts will need to be interpreted according to the context within which they operate.

63. The terms of any contract may be express agreed, either orally or in writing, or implied because they are obvious, necessary to give 'business efficacy' to the agreement, part of custom and practice of that industry or can be logically deduced from the conduct of the parties. Where a term is implied, it is presumed that this was the intention of the parties at the point that the contract was entered into.

64. When interpreting an employment contract tribunals should take into account the differential bargaining powers of the parties and consider the true nature of the relationship: **AutoClenz Ltd v Belcher** [2011] UKSC 41; **Uber BV & Others v Aslam & Others** [2021] ICR 657, SC. Thus in **Borrer v Cardinal Security Ltd** (UKEAT/0416/12) the EAT held that a security guard was entitled to 48 hours' work per week, despite the contract stating that hours of work were determined by his line manager. In that case the EAT held that when construing the terms of the contract tribunals should consider all the relevant evidence not just the written terms but also how the parties conduct themselves in practice and their expectations of each other, with reference to the case of **AutoClenz**.

65. In order for a term to be implied by custom and practice, it must be reasonable, notorious and certain, such as a well-known practice in a particular industry, or employer.

Zero-hour contract

66. Section 27A(1) of the Employment Rights Act 1996 (ERA) defines a zero-hour contract as:

'… a contract of employment or other worker's contract under which –

(a) the undertaking to do or perform work or service is an undertaking to do so conditionally on the employer making work or services available to the worker, and

(b) there is no certainty that any such work or services will be made available to the worker'.

Therefore, a key element of a zero-hour contract is that there is no entitlement to a minimum amount of work, in contrast to an agreement to work a fixed number of hours. There may therefore be periods of no work during which the employee or worker is not entitled to any pay.

Place of work / Mobility clause

67. A mobility clause is a contractual provision permitting the employer to alter the employee's place of work. The extent of an employer's power to move an employee under an express mobility clause will be a matter of construction by the tribunal. Mobility clauses should be narrowly construed and employer discretion may be limited by the implied terms of trust and confidence and the requirement not to act in a way which is arbitrary, capricious or irrational.

Dismissal

68. An employee can only claim redundancy pay, unfair dismissal or constructive dismissal if he has been dismissed. The definition of dismissal under section 95(1)(c) of the ERA (for unfair dismissal) and under section 136 (for redundancy pay) includes a situation where there is:
    (a) termination by the employer (whether with or without notice); or
    (b) termination by the employee (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.
    The burden of proving dismissal rests on the claimant.

69. A dismissal may be by word or deed, and these words or deeds may be ambiguous. However in all cases it must be communicated (either expressly or implied by conduct) to the other party: **Sandle v Adecco UK Ltd** [2016] IRLR 941. A dismissal may be implied by conduct for example where an employer stops paying wages or issues a P45, however even in these circumstances the dismissal must be communicated in some way to the other party so that they are aware of the termination of the contract. **Sadler**, was an agency case, where neither the agency worker nor the agency employer had contacted each other following the termination of an assignment by the third-party client. The EAT held that because there had been no communication between the parties there was no express or implied dismissal despite the agency having provided the worker with no work and no pay. It is clear from this case that where an employee is on a zero-hour contract, the failure to offer work will not automatically terminate the contract, and until it is terminated it potentially could continue indefinitely.

70. Another situation where there is no dismissal is where an employer exercises its rights under a contractual mobility clause to move an employee to a different workplace. Where an employer seeks to rely on the benefit of a mobility clause in order to avoid a redundancy situation, then it must make its position clear from the outset. It is not open to an employer to switch between the redundancy procedure and mobility clause: **Curling v Securicor Ltd** [1992] IRLR 549 (CA). This does not prevent an employer faced with a potential redundancy situation choosing to rely on the contractual mobility procedure rather than the redundancy procedure in order to avoid a redundancy dismissal: **Home Office v Evans** [2008] ICR 302 (CA). In **Evans**, the employer had made it clear from the outset that it was following the mobility clause procedure and did not enter into a redundancy consultation process. I therefore do not accept the respondent's submission that both procedures could be run in tandem.

Redundancy Pay

71. Section 136 of the ERA provides employees with the right to redundancy pay where a dismissal was by reason of redundancy. Where an employee is claiming statutory redundancy pay under section 163(2) there is a presumption of redundancy unless the contrary is proved.

72. Section 139 of the ERA, defines a redundancy as a dismissal which is wholly or mainly attributable to—

'(a) the fact that his employer has ceased or intends to cease—

(i) to carry on the business for the purposes of which the employee was employed by him, or

(ii) to carry on that business in the place where the employee was so employed, or

(b) the fact that the requirements of that business—

(i) for employees to carry out work of a particular kind, or

(ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer,

have ceased or diminished or are expected to cease or diminish.'

The 'place' where somebody was employed for the purposes of redundancy is a question of fact to be determined by the tribunal: **High Table Ltd v Horst** [1998] ICR 409. In **Horst** the waitresses worked for a particular client of the employer's catering service for a number of years until the client decided to reduce its requirement for catering staff. The Court of Appeal held that if an employee had worked in only one location under the contract of employment for the purposes of the employer's business, the place of employment could not be widened merely because of the existence of a mobility clause. However the mere fact that there is a redundancy situation does not necessarily mean that the reason for the subsequent dismissal is redundancy: **Kellogg Brown and Root (UK) Ltd v Fitton** (UKEAT/0205/16). In **Fitton** the reason for the dismissal was the refusal to obey a lawful instruction to relocate under the mobility clause and therefore the employees were not entitled to redundancy pay, despite there being a redundancy situation.

73. Under section 138(1) of the ERA there is no dismissal where the employee's contract is renewed or the employee is re-engaged under a new contract. For this provision to apply there must have been an offer by the employer which the employee has accepted. The offer must be made before the termination of the previous contract and must take effect immediately or within 4 weeks of the end of that contract. The offer need not be in writing but it must be capable of acceptance in order to give rise to an immediately binding contract. It must be more than a statement of intent and should specify the main terms such as start date, remuneration and status. If the provisions of the new contract differs wholly or in part from the corresponding provisions in the previous contract then the employee is entitled to a statutory 4-week trial period: section 138(2)(b)(i) of the ERA. During this trial period the employee may terminate the new contract 'for whatever reason' and will be treated as having been dismissed when the original contract came to an end, for the same reason that that contract ended i.e. redundancy: section 138(2)(b)(i) and (4) of the ERA. The statutory trial period only applies if there has been a dismissal: **East London NHS Foundation Trust v O'Connor** [2020] IRLR EAT.

74. Under section 141 of the ERA an employee will lose his entitlement to redundancy pay if he refuses an offer of identical or suitable employment and the refusal was 'unreasonable'. Suitability and reasonableness should be assessed objectively by the tribunal taking into account the employees

individual's circumstances. This can include an employee's health and domestic circumstances.

75. The normal time limit for a claim for redundancy pay is 6 months from the effective date of termination. In both cases the time limits may be extended to take into account early conciliation period and in circumstances where it was not reasonably practicable for the claim to be submitted in time.

Unfair dismissal / constructive dismissal

76. Section 94 of the ERA confers on employees the right not to be unfairly dismissed. Enforcement of the right is by way of complaint to the tribunal under section 111. An employee can only claim unfair dismissal / constructive dismissal if there was a dismissal.

77. Section 98 of the 1996 Act deals with the fairness of dismissals. There are two stages. First, the respondent must show they had a potentially fair reason (in this case some other substantial reason) for the dismissal within section 98(2). Second, if the respondent shows that it has a potentially fair reason for the dismissal, the tribunal must consider, without there being any burden of proof on either party, whether the respondent acted fairly or unfairly in all the circumstances in dismissing for that reason.

78. A claim for constructive dismissal requires a claimant to prove that they have been forced to resign in response to a fundamental breach of contract by their employer. In the claimant's case he is relying on breaches of the implied terms of trust and confidence, failure to respond to a grievance, failure to offer work and failure to pay a wage. Even if there has been a fundamental breach of contract the tribunal will still need to consider if the claimant resigned without delay in response to the breach, and that the claimant had not affirmed the contract. If the claimant has been constructively dismissed then the tribunal will then go on to consider whether the dismissal was unfair under section 98 of the ERA.

Unlawful Deduction of Wages

79. Section 13(1) of the ERA provides that an employer shall not make a deduction from wages of a worker employed by him unless the deduction is required or authorised to be made by virtue of a statutory provision, or a relevant provision of the workers contract, or the worker has previously signified in writing his agreement or consent to the making of the deduction.

80. The right only arises where the amount of wages paid by an employer to a worker is less than the total amount of the wages 'properly payable' by him to that worker. What is 'properly payable' is that which a worker is legally entitled to under their contract or otherwise: **New Century Cleaning Co v Church** [2000] IRLR 27.

81. A worker has a right to complain to an employment tribunal of an unauthorised deduction from wages pursuant to section 23 of the ERA. The time limit for

bringing such a claim is 3 months from the date that the deduction was made, or where there has been a series of deductions 3 months from the date of the last deduction in the series.

DISCUSSION AND CONCLUSIONS

What type of contract was the claimant employed on?

82. The claimant was employed on a casual basis by the respondent and was assigned to provide services to end user clients. I therefore consider that the claimant was employed on two contracts: a specific contract which ran for the duration of each assignment and an overarching contract that included the periods when the claimant was not assigned to work for an end user. My conclusion is supported by the fact that the claimant was provided with two written contacts the PGS assignment contract and the PCL contract, containing different rates of pay and different terms and conditions, and which ran for different periods (the assignment or the contractual relationship with the respondent).

The PGS assignment contract

83. The PGS contract contained no express zero-hour clause or words to that effect. I have not been provided with the original Advance Security contract; however the transfer letter stated that the place of work was to remain unchanged on transfer and that there were no immediate plans to change the hours of work. It refers to the possibility that the hours of work may be changed to meet the needs of the client, but does not go so far as suggesting that the claimant was employed on zero hours. The claimant's undisputed evidence was that PGS invited him to work at Weybridge and that he had been working for them on 59 hours per week continuously for 13 years; this did not change following the transfer to the respondent. On this basis, I find that the true nature of the relationship was that it was a fixed hour contract. The respondent submits that the security industry required flexibility and therefore the true intention of the parties must have been that the agreement was for a zero-hour contract. However I consider that this is inconsistent with the facts of **Borrer** which also concerned the employment of a security guard working in the security industry, over a shorter period than the claimant. Of course every case turns on its own facts and the respondent submits that the contract in **Borrer** specifically stated that hours of work were determined by the line manager whereas in the claimant's case the hours of work were determined by the client. I consider the fact that the claimant's hours were determined by the client to be a factor in his favour on the particular facts of this case, given that the client had asked the claimant to take on the assignment in the first place and the assignment had always been for 59 hour per week.

84. The PGS contract contained a mobility clause, reserving the right to transfer the claimant to alternative positions or places of work (within reasonable travelling distance from his home). This clause is to be construed narrowly and I find that this was a clause that only operated whilst the PGS contract was in place. It therefore could not be relied upon following the termination of the PGS contract

on the 8 February 2022. I also find that it was not intended by the parties to relocate the claimant whilst the PGS assignment was in operation, unless he elected to be transferred to another assignment or there was good reason for him to be moved (eg in response to a client complaint).

Has there been a termination of the PGS contract?

85. I consider that the decision of PGS to close the Weybridge site and cease using the respondent's services on 8 February 2022 terminated the claimant's PGS assignment contract. On 18 October 2022 the claimant was informed by the respondent of the PGS decision to terminate the contract on 31 January 2022, and on 19 January 2022 he was informed of the extension to the 8 February 2022. Mr Crawley in his email dated 19 January 2022 confirmed that the claimant and Mr Yamamoto had been put on notice of the site closure from this date. I therefore find that the assignment was terminated by the respondent and this was communicated to the claimant. He was therefore dismissed from the PGS assignment contract on 8 February 2022.

Claim for redundancy pay arising out of the termination of the PGS contract

86. I consider that the termination of the PGS contract on 8 February 2022 was a redundancy situation as defined by section 139 ERA. In particular I find that the requirement on the respondent business to carry out security work at PGS Weybridge site had ceased. I consider that PGS Weybridge was in fact 'the place' that the claimant worked, despite the existence of a mobility clause in his contract. I make this finding taking into account all the circumstances including:
    - 86.1 That from the commencement of the PGS assignment the claimant was employed to work at the Weybridge PGS site.
    - 86.2 That the claimant had worked at this site continuously for 13 years, during which he had not worked at any other location.
    - 86.3 That on transfer he was informed that his place of work under the PGS assignment contract would remain unchanged.
    - 86.4 That although the PGS contract did contain a mobility clause the reality of the relationship was that whilst employed by the respondent he would continue to work at that site for the duration of the assignment.

87. However that is not the end of the matter. The respondent relies on the mobility clause to argue that there was no redundancy situation with reference to the cases of **Curling** and **Evans**. I consider the applicable mobility clause was that in the PGS assignment contract and not that in the PCL contract. Even if this mobility clause could have been invoked to avoid redundancies altogether, on the facts before me this is more like a Curling-type case than an Evans-type case. On being made aware that the contract with PGS was going to be terminated, the respondent did not choose to rely on the contractual mobility procedure but rather chose to rely on the redundancy procedure. In particular:
    - 87.1 Mr Crawley, on first being informed that the PGS contract was to be terminated, specifically asked Mr Meakins about redundancy costs.
    - 87.2 Mr Crawley's text to the claimant dated 18 October 2021 merely asked how far the claimant would be prepared to travel; it made no mention of the mobility clause.

87.3 On the 10 December 2021 the claimant was given notice of his potential redundancy. Whilst this letter referred to a period of consultation over alternative employment there is no mention of the mobility clause.

87.4 I have found that Mr Crawley did not refer to the mobility clause during the meeting on the 10 January 2022. I do accept that at this meeting alternatives to redundancy (other assignments) were discussed. I consider that this was in the context of consulting over suitable alternative employment under the redundancy process, as the claimant had been informed in the letter of the 10 December 2021, and not consulting over the application of the mobility clause.

87.5 Mr Crawley's email to HR dated 19 January 2022 referred to the claimant and Mr Yamamoto being put on notice in relation to redundancy, it does not say that the mobility clause was invoked but merely asked if there was one.

87.6 In response to the claimant's text on 1 February 2022 about the redundancy procedure, Mr Crawley did not state that this was not the procedure that the respondent was operating.

87.7 On 16 February 2022 Mr Crawley in a text to the claimant referred to having chased HR regarding 'redundancy pay for you'.

Therefore I find that at no point prior to the termination of the PGS contract on the 8 February 2022 does the respondent use the mobility procedure to require the claimant to relocate to another assignment. Therefore I do not find that the reason for the dismissal was due to a refusal to comply with a lawful instruction to relocate and the facts are distinguishable from **Fritton**.

88. The respondent argues in the alternative that the claimant should lose his entitlement to redundancy pay because he refused all offers of suitable alternative employment and the refusal was unreasonable, in accordance with section 138 and 141 of the ERA. Section 141 applies where an offer of renewal or re-engagement is made before the end of the employment. However, I do not consider that such an offer was made prior to the 8 February 2022, which is when the PGS assignment contract was terminated. I accept that Mr Crawley does ask the claimant to consider two assignments by text on 9 January 2022 and these two plus another were discussed at the meeting on the 10 January 2022. However the offer of the ABP Beef assignment does not come within the statutory scheme since it started in April and therefore did not commence within 4 weeks of the termination of the contract. The support role was also not a suitable alternative in that it was not guaranteed hours or a set shift pattern and involved working across a number of sites. The lack of guaranteed hours and change in shift pattern was not suitable for the claimant who was the main provider for his household, and it was reasonable for him to refuse this. I note that Mr Yamamoto also refused the same assignments. Therefore I consider that Allianz Guildford was the only potentially suitable assignment for the claimant, and note that this option was only declined due to distance and travel time. However, whilst this was discussed as an option at the meeting, I find that no actual offer was made such that acceptance would give rise to an immediately binding contract. The text message of the 9 January 2022 merely suggested to the claimant that it was an assignment for him to think about. Whilst Mr Crawley in his note of the 10 January 2022 meeting referred to the

assignment being offered to the claimant he does not set out how the offer was made and provided no details in evidence. Following this meeting nothing was sent to the claimant in writing regarding this 'offer'. At no point was a trial period offered or discussed, something which the claimant later complains about. This can be compared with clear offer of the AMP Guildford post as suitable alternative employment on 11 May 2022, where the claimant was provided with details of the role, a 4 week trial period and informed of the consequences in relation to the redundancy process. The respondent was a large employer with and HR department and I would have expected an offer which was intended to comply with the statutory requirements to have been made to the claimant in writing and in unambiguous terms with the consequences explained, in such as manner as to have enabled acceptance to give rise to a binding contract. In the absence of a clear offer being made, the respondent cannot rely on section 141 of the ERA that the claimant is not entitled to redundancy pay because he unreasonably refused an offer of suitable alternative employment.

The PCL contract:

89. Whilst the PCL contract does not specifically state it is a zero-hour contact I find that it was in that it contained an express clause which provided that there was no guarantee of a maximum or minimum hours of work (contract clause 7.2). Further hours of work could be varied at any time at the respondent's discretion (clause 7.2 and 7.4). It also provided no guarantee that the claimant would be based at any one assignment and contained a mobility clause reserving the right to move the claimant to any location within the UK on reasonable notice. There was also no guaranteed hourly rate of pay. I consider that these contractual terms did reflect the reality of the contractual arrangement, since there would be periods of time between assignments when there was no work to be provided, as the claimant acknowledged in his grievance, and the mobility clause operated to transfer the claimant to other sites when an assignment ended.

Has there been a termination of the PCL contract?

90. I have found this a difficult question to answer.

91. The claimant claims that he has either been dismissed by the respondent or that he resigned in circumstances that would enable him to claim that he was constructively dismissed by the respondent. However his evidence in relation to dismissal was unclear. In the claim form the claimant stated that he was still employed by the respondent. One possible date of dismissal was the 8 June 2022, this being the date that the respondent promised to bring the consultation process to an end. However he did not inform the respondent either orally or in writing that he considered himself to be dismissed from that date. He had a 31-minute telephone conversation with Mr Crawley on 9 June 2022 during which he informed him that he was applying for other jobs but did not say that he was resigning or considered himself to be dismissed. I take into account that it is not unusual for an employee to apply for other jobs whilst still employed. The discussion concluded with Mr Crawley advising him to change his tax code until he got a reply from the respondent. Following this discussion neither party wrote to the other stating that the employment was terminated. The claimant

himself did not appear to consider himself dismissed on the 8 June 2022 since he claims that he considered that he resigned on the 25 July 2022, when he started a new job (and I note that his schedule of loss claims unlawful deduction of wages until the 25 July 2022). However the claimant did not communicate to the respondent that he was resigning on the 25 July 2022, and there is no communication from the claimant after this date.

92. The respondent submits that there has been no dismissal, since the claimant had not been processed as a leaver i.e. he was still on their books. Mr Crawley stated that he assumed the claimant no longer wished to be employed by the respondent on receipt of the reference request on 13 July 2022 and that is what prompted the letter of 3 August 2022. Whilst this letter threatened to dismiss the claimant in fact no action was taken despite the claimant's non-response.

93. It appears to me that whilst there was intention by both parties to terminate the contract, neither of them in fact communicated this intention to the other. In such circumstances I find that there was no dismissal by words or by deeds.

94. Since there was no dismissal, then the tribunal has no jurisdiction to consider a claim for unfair / constructive dismissal arising out of the termination of the PCL contract.

Unlawful deduction of wages

95. The claim for unlawful deduction of wages only relates to the period from 8 February 2022 onwards, and therefore the relevant contract is the PCL contract. The claimant is only entitled to wages that he is legally entitled to under his contract. I have found that the PCL contract was a zero-hour contract which means that there was no guarantee of work. Accordingly the claimant was not entitled to wages for the periods that he was not provided with any work and this claim is unfounded.

_____
Employment Judge Hart
Date: 18 May 2023