



EMPLOYMENT TRIBUNALS

Claimant: Mr A Ahmed
Respondent: SVL Healthcare Services Ltd
Heard at: London South Hearing Centre (by Cloud Video Platform)
On: 25 and 26 March and 17 April 2024
Before: Employment Judge Hallen- Sitting Alone

Representation

Claimant: In person
Respondent: Ms. B. Omotosho- Tribunal Advocate

JUDGMENT

This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was by Cloud Video Platform. A face-to-face hearing was not held because the relevant matters could be determined in a remote hearing.

The unanimous judgment of the Tribunal is that: -

1. The Claimant's claims for holiday pay and notice pay were dismissed upon withdrawal.
2. The Claimant's claim for unfair constructive dismissal is made out and succeeds as does the claim for unpaid wages between 1 May to 27 July 2023. The claim for automatic unfair dismissal in respect to a reason connected to a transfer of undertaking is not made out and is dismissed.
3. The remedies hearing is listed for 24 July 2024.
4. Directions will be sent out separately in respect of preparations for this hearing. It is hoped that the case can be settled without a remedies hearing based on the guidance given to the parties in this judgment.

REASONS

Background

1. The Claimant was employed as an Ambulance Controller working for the Respondent from 7 July 2020 until 27 July 2023 which was the effective date of termination. He asserted in his Claim Form submitted on 25 August 2023 that he was constructively unfairly dismissed, automatically unfairly dismissed under the **Transfer of Undertakings (Protection of Employment) Regulations 2006** ('TUPE'), had unlawful deductions made from his wages, was owed holiday pay and notice pay. The Respondent in its Response Form dated 9 November 2023 denied the Claimant's above claims.

2. At the hearing the Claimant withdrew his holiday and notice pay claims which were dismissed upon withdrawal. I identified the issues for the Tribunal to consider in respect of Unfair dismissal and Regulations 7(1) TUPE claims as follows: -

3.1 Was the claimant dismissed? Was the reason or principal reason for dismissal the transfer? Did the Respondent have an ETO reason?

3.2 Constructive dismissal Claim:

3.2.1 Was an express and or implied term of the Claimants contract breached?

3.2.2 Specifically, the Claimant alleges a breach of the following:-

- a. Change of location within his contract of employment;
- b. Failure to pay him his wages during the period he did not work from 1 May to 27 July 2023.

3.3 If there was a breach, was it 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. Did the respondent act in repudiatory breach of the claimant's contract of employment by:

- a. Changing or proposing to change the location of his contract following the transfer;
- b. Failing to pay him his wages during the period he did not work from 1st May to 27 July 2023

3.4 Did items (3)(a) to (3)(b) individually or cumulatively amount to conduct which was calculated or likely to destroy or seriously damage the relationship of trust and confidence which should exist between employer and employee, and if so, was there reasonable and proper cause for that conduct on the part of the Respondent? The Respondent relies upon an ETO reason.

3.5 Did item 3(a-b) above represent a breach of the implied/expressed term set out at above? If so, was that breach repudiatory? Did the Claimant affirm the contract of employment and thereby lose the right to complain of constructive dismissal? If so, was there a "last straw" which alone or taken together with the earlier alleged matters amounted to a repudiatory breach of contract?

What does the Claimant rely upon as the last straw? Failure to pay his wages from 1 May to 27 July 2023. Did the claimant resign in response to such repudiatory breach? Or did the Claimant delay in resigning? If the Claimant was constructively dismissed, was that dismissal fair?

- 3.6 Arrears of Pay Claim: Was the Claimant contractually entitled to his pay for the period of 1 May until 27 July 2023, in the circumstances where he did not work. Has the respondent unlawfully deducted the Claimants pay?

3. The Tribunal had before it an agreed bundle of documents made up of 198 pages and heard first from the Claimant. He had not prepared a witness statement. However, the Respondent was content with me taking his evidence in chief orally and neither party wished for the hearing to be postponed. The Respondent attended with three witnesses namely David Genevesa, Operations Director, Lee Barham, Clinical Director and Kaylie Law, Operations Manager. All of these witnesses prepared witness statements and were subject to cross examination and questions from the Tribunal. I delivered my oral judgement at the conclusion of the liability hearing on 17 April 2024. However, the Respondent requested written reasons for the judgment, and these are those reasons.

Facts

4. The relevant facts in this case are relatively straightforward and are not for the most part in dispute. The Claimant was employed as an Ambulance Controller with continuous service from 6 July 2020 until the date of his resignation on 27 July 2023 which was the effective date of termination. He was employed under a contract of employment which stated that his place of work was in Stratford and that he may be required to work at different locations which would be reviewed on a regular basis. The contract stated that he may be transferred to a different location within the UK provided that this was no more than 10 miles from his current base in Stratford. His employer at the time of the commencement of his service was Falck UK Ambulance Ltd ('Falck') Which later became Community Ambulance Services Limited ('CAS').

5. In January 2023 there was a proposed transfer of employees from CAS to the Respondent which would take place on or around 1 May 2023. This was as a consequence of the transfer of the non-emergency patient transport services contract for Kings College hospital NHS Trust which contract had been with CAS and won subsequently by the Respondent after a competitive tender. As a consequence, there were consultations with impacted employees that began at the end of January for the transfer of those employees working in the non-emergency patient transport services contract to be transferred to the Respondent. The Claimant was one of the Ambulance Controllers that would be transferred as a consequence of TUPE. The parties in this case did not dispute that the TUPE applied to the Claimant and that his employment transferred across to the Respondent on 1 May 2023 as a consequence of TUPE. The Ambulance Controllers that were to be transferred elected an employee representative who was MV. MV was involved in the consultations between CAS and the Respondent for the period end of January to the date of the transfer in May 2023.

6. The Ambulance Controllers were informed by MV on 14 March 2023, that they would be required to work at the Respondent's head office which was based in Greenhithe and they would be required to move from Stratford. The Respondent's head office was

more than 10 miles away from Stratford, which the Claimant viewed as a breach of contract following this notification. Unless he could be fully and reimbursed for his extra travel costs for an indefinite period from Stratford to the Respondent's head office, he was not prepared to move to the Respondent's head office. The reason for the move of the Ambulance Controllers function to the Respondent's head office was to coordinate the Respondent's existing ambulance control function with the new Kings Cross contract so that the Respondent could be better able to assess the operation of that contract and the Ambulance Controller function. The Respondent needed to have the Ambulance Controllers at the head office at least initially to assess how the new contract would function in a cost-efficient way.

7. The Claimant made MV aware of his concerns with regard to the additional travel costs by e-mail on 4 February 2023 which the employee representative made the respondent aware of at consultation meetings that were ongoing.

8. On 14 March 2023, the Respondent made CAS aware in writing that the base location for the Ambulance Controllers would be moved from Stratford to the head office for operational reasons and that it was aware that this would cause difficulty to employees including the Claimant.

9. At a consultation meeting on 15 March 2023, MV notified the Respondent of the concerns of the extra travel time for the Claimant and others which would substantially increase their travel costs from Stratford to the Respondent's head office. At this meeting, the Respondent confirmed that employees could choose not to transfer to the Respondent although the Respondent would continue to discuss and consult with the employees with regard to the matter.

10. The Claimant met with Kaylie Law on 6 April 2023 at an individual consultation meeting in which he confirmed that he would incur significant additional travel costs from Stratford to the Respondent's head office as well as additional travel time which would extend his travel from home in west London to the Respondent's head office in Kent even more. He confirmed that he wished to be reimbursed for his additional travel costs for an indefinite period if he was to be persuaded to continue working for the Respondent. He also indicated that he would be interested in other roles for the Respondent. Ms. Law confirmed that she would investigate and revert to the Claimant with the Respondents' proposals.

11. On 24 April 2023, the Claimant raised a formal grievance with the Respondent confirming that the requirement to work at the Respondent's head office directly impacted on his contractual obligations and that his contract confirmed that he could not be made to work more than 10 miles from Stratford and relocate to Greenhithe in Kent which was more than 10 miles away. He stated that this requirement would amount to a breach of contract. He inquired as to why he had not been offered an alternative role at a comparable site within the 10-mile radius of his current location in Stratford. This written grievance was acknowledged by the Respondent on 25 April 2024.

12. On 27 April 2023, the Respondent wrote to the Claimant to confirm that his employment would transfer to the Respondent on 1 May 2023 and that his work location would change to the Respondent's head office. The letter confirmed that the Respondent would continue to consult with the Claimant once his employment had transferred to the

Respondent. Furthermore, it was confirmed that he would be paid his additional travel costs from Stratford to Greenhithe and that he would receive an additional allowance for 30 minutes of extra time travelled. These payments would continue for a period of three months after the transfer on 1 May 2023 and would not apply for an indefinite time.

13. The final consultation meeting attended by MV on behalf of the Claimant occurred on 28 April 2023. It was again reiterated that the employees' concerns related to the extra travel time and the limitation of three months on the reimbursement period for travel costs. The Claimant and his nighttime Ambulance Controller, Mr. IR confirmed that they would not be attending the head office pending the resolution of their grievance and that they were not willing to travel to the head office. It was also confirmed that the Claimant was ready to work remotely or from home or at Kings Hospital pending the resolution of his grievance.

14. On 8 May 2023, the Claimant wrote to the Respondent chasing up his grievance confirming that the change in location was a breach of contract and that he expected to be paid his wages pending the outcome of his grievance and that he was ready willing and able to work from home. The Claimant repeated these matters in a further e-mail dated 13 May 2023 to the Respondent. The Respondent via George Wren spoke to the Claimant on 17 May 2023 about the additional travel costs that the Claimant would be incurring as well as the additional time that he would spend travelling.

15. On 22 and 23 May 2023, the Claimant again contacted the Respondent by e-mail repeating his concerns and confirming that he was ready willing and able to work from home. On 30 May, the Claimant repeated his earlier grievance of 24 April in writing to the Respondent. By this time the Respondent had still not dealt with it. He repeated his concerns about the change in his location in breach of his contract, the additional travel costs and travel time that that would involve a potential breach of employment law which could give rise to claims for breach of contract and constructive dismissal. He desired a prompt reply.

16. On 2 June, the Respondent via its personal officer, Ms. Elisa Deary, responded to the Claimant reconfirming the Respondent's offer to reimburse travel costs for three months and pay an additional amount for 30 minutes travel to the Claimant for his travel to the head office in Kent. In this response, the Respondent confirmed that there were no alternative roles for him to undertake and that there were business reasons for him not being able to work from home although these were not stated. In this e-mail, the Respondent for the first time asserted that the Claimant was in breach of contract for not attending work and that his absence from 1 May to 2 June was deemed to be unauthorized absence and would be unpaid.

17. I did not hear from Ms. Deary as to how she had concluded that the Claimant's absence from 1 May was unauthorized or what efforts if any had been made by her or the Respondent to ascertain how the Claimant could continue to be paid whilst working from home in his role. No oral evidence of specific actions taken by the Respondent was adduced to me at the hearing and the grievance officer, Mr. Barham confirmed that he had not discussed the matter with Ms. Deary or anyone else as to what actions had been taken to facilitate the Claimant's request to work from home as part of his grievance investigation. He sought to clarify the matter on supplementary questions asked at the hearing by his representative. However, this important issue was not covered in his

witness statement, so I placed little weight on what he had to say in this regard. I find that he could not therefore give any evidence as to how the Respondent specifically addressed the Claimant's offer to continue to work from home or remotely undertaking his duties pending the outcome of his grievance. Furthermore, I could not understand in the absence of Ms. Deary's evidence as to how and why she had come to the conclusion on 2 June over a month after the Claimant's transfer that he had been on unauthorized and unpaid absence without understanding what efforts if any the Respondent had made to address the Claimant's offer to continue to work pending the outcome of his grievance..

18. On 7 June, if the Respondent via Kaylie Law met with the Claimant prior to the grievance meeting to confirm that it was offering the Claimant an Ambulance Controller role within a 10-mile radius of Stratford office based at King's College Hospital in Deptford on the same terms and conditions of employment as he was currently enjoying. The Claimant confirmed that he would consider this role but that he would not be able to accept it until his grievance had been resolved and his two main concerns addressed. These were that his travel costs to Greenhithe would be paid on an indefinite basis and that he would be paid his wages pending the outcome of his grievance.

19. A grievance meeting eventually took place on 9 June which was nearly a month and half after the Claimant first raised his grievance with the Respondent. This meeting was conducted by Mr. Barham. An outcome letter was sent to the Claimant on 16 June 2023 in which the grievance officer confirmed that the Claimant had been offered reimbursement for three months travel as well as being offered an alternative offer as an Ambulance Controller at Kings College Hospital which was within a 10-mile radius of his old office in Stratford. He had been on unauthorized absence since 1 May, and he would not be paid for this period.

20. Mr. Barham did not deal with the limited duration of the reimbursement of travel costs to the Claimant, which was limited to three months. The outcome letter did not deal with this point at all even though this was a main concern for the Claimant. In addition, the grievance outcome did not deal with the non-payment of the Claimant's wages from 1 May which was another main concern of his. The grievance officer came to the conclusion that the Claimant was on unauthorized absence since 1 May but was not able to give any evidence to me as to how specifically the Respondent addressed the Claimant's offer to work from home or remotely pending the resolution of his grievance as I have said earlier. The outcome letter did not refer to these efforts at all. In his evidence to the Tribunal, the grievance officer could only speculate on this matter given his failure to interview Ms. Deary who had written the e-mail to the Claimant on 2 June 2023 confirming that he was on unauthorized absence. Indeed, the grievance officer did not interview any other company officers as to how specifically they had dealt with the Claimant's offer to continue to work pending the resolution of his grievance so that he could continue to receive an income during this period. The Respondent was aware that the Claimant wished to be paid during this period as the Claimant had indicated this as I have specified above. Furthermore, the Respondent must have been aware that without pay, the Claimant would not be able to pay his living costs or support his family. Yet, the grievance officer came to the conclusion in the absence of addressing these questions that the Claimant had been on unauthorized leave and would not be paid.

21. The Claimant waited until 27 July 2023 to give the Respondent an opportunity to pay his wages. As no wages had been paid by the Respondent for three months after the

transfer, the Claimant decided to resign from his employment on 27 July 2023 in writing confirming that he was resigning after given the Respondent a reasonable offer opportunity to pay his wages and that such non-payment amounted to a breach of contract which was the main reason for his decision to resign.

Law

22. Section 95 Employment Right Act 1996 (ERA).

(1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2), only if) –(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.

23. A term of an employee's contract can only be implied if:

- a. it is necessary to give the contract 'business efficacy', or
- b. it represents the custom and practice in that employment and is 'reasonable, certain and notorious' — **Devonald v Rosser and Sons 1906 2 KB 728, CA.**
- c. it is an inherent legal duty central to the relationship between employer and employee — for example, the duty to provide a safe system of work or the duty not to undermine trust and confidence.

24. The test for constructive dismissal is whether the employer's actions or conduct amounted to a repudiatory breach of the contract of employment (**Western Excavation Limited v Sharp**).

"If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed."

25. Whether or not the employer intended to break the contract is irrelevant (**Bliss v South East 713 [1987] ICR 700 (CA)**).

26. It is an implied term of any contract of employment that the employer shall not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee: (**Malik v Bank of Credit and Commerce International [1998] AC20** 34h - 35d and 45c-46e).

27. Any breach of the implied term of trust and confidence will amount to a repudiation of the contract: see, for example, Browne-Wilkinson J in **Woods v WM Car Services (Peterborough) Limited [1981] ICR 666 at 672, Morrow v Safeway Stores [2002] IRLR 9.**

28. The test of whether there has been a breach of the implied term of trust and confidence is objective (Lord Nicolls, Malik page 35c) The conduct relied on as constituting the breach must impinge on the relationship that, looked at objectively, it is likely to destroy or seriously damage the degree of trust and confidence that the employee is reasonably entitled to have in its employer.

29. A breach occurs when the proscribed conduct takes place: See Malik.

30. Reasonableness is one of the tools in the employment tribunal's factual analysis kit for deciding whether there has been a fundamental breach, but it is not a legal requirement: See **Bournemouth University v Buckland [2010] ICR 908** at para 28.

31. The Claimant must not affirm the breach: Lord Denning said in Western Excavating v Sharp (referring to an employee who had been the subject of a repudiatory breach):

"the employee must make up his mind soon after the conduct of which he complains. If he continues for any length of time without leaving, he will be regarded as having elected to affirm the contract and will lose his right to treat himself as discharged.":

32. Court of Appeal's decision in **Marriott v Oxford Co-operative Society [1970] 1 QB 186** is an authority for the proposition that, provided the employee makes clear their objection to what is being done, they are not to be taken to have affirmed the contract by continuing to work and draw pay for a limited period of time after the breach, even if their purpose is to enable them to find alternative work.

33. The Claimant must show that it resigned in response to this breach, not for some other reason. However, the breach does not need to be the sole or primary cause of the resignation; only an effective cause (**Nottinghamshire County Council v Meikle [2004] IRLR 703**).

34. In **Kaur v Leeds Teaching Hospital NHS Trust [2018] IRLR**, the Court of Appeal approved the guidance given in *Waltham Forest LBC v Omilaju* (at paragraph 15-16). Those authorities give the following guidance on the "last straw" doctrine:-

The repudiatory conduct may consist of a series of acts or incidents some of them perhaps quite trivial, which cumulatively amount to a repudiatory breach of the implied term of trust and confidence: **Lewis v Motorword Garages Ltd [1986] IRLR 157**, per Neil LJ (p167C).

35. The **Transfer of Undertakings (Protection of Employment) Regulations 2006** ('TUPE') provide protections where there has been a "relevant transfer". A relevant transfer does not operate to terminate the contract of employment of any person employed by the transferor and assigned to the organised grouping of resources or employees that is subject to the relevant transfer, which would otherwise be terminated by the transfer, but any such contract shall have effect after the transfer as if originally made between the person so employed and the transferee: reg 4(1). Regulation 7(1) provides that where either before or after a relevant transfer, any employee of the transferor or transferee is dismissed, that employee is to be treated for the purposes of Part 10 of the Employment Rights Act 1996 as unfairly dismissed if the sole or principal reason for the dismissal is the transfer or a reason connected with the transfer that is not an economic, technical or organizational reason entailing changes in the workforce. At paragraph 7 (3)

(A), it states, *'in paragraph 2, the expression 'changes in the workforce' includes a change to the place where the employees are employed by the employer to carry on the business of the employer or to carry out work of a particular kind for the employer'*.

Tribunals Conclusions

36. I find that the Claimant objected to the change of his work location from Stratford to Greenhithe in his formal grievance dated 24 April 2023 which was before the transfer and followed up with a similar objection on 30 May 2023 in his further grievance after the transfer. The Respondent offered to pay the additional travel costs from Stratford to Greenhithe on 27 April 2023 just before the transfer and later offered the Claimant a position as an Ambulance Controller working from King's College Hospital in Deptford which was within a 10-mile radius of Stratford office and compliant with his original contractual terms on 7 June 2023. The Claimant did not accept either of these proposed changes to his contract of employment with regard to his location preferring to wait until the conclusion of his grievance. The reason for this was that he wanted the Respondent to pay for his additional travel costs from Stratford to Greenhithe for an indefinite time rather than the limited period of three months. Understandably, from the Claimant's position, he would continue to accrue additional travel costs from Stratford to Greenhithe beyond the three months following the transfer. He wanted to ensure that those travel costs would be paid for for an indefinite time as he would indeed be incurring those additional travel costs whilst he continued to work for the respondent. The Claimant also wanted to ensure that pending the outcome of the grievance, he would receive his normal wages which was also part of his grievance.

37. It should be noted that the Claimant offered to work remotely or from home on 28 April 2023, prior to the transfer, for the Respondent pending the outcome of his grievance objecting to the change in his contractual location. This was clearly stated at page 151 in a consultation meeting note that says, *'Two night despatchers, Ianto Roberts (John) & Abdirazak Ahmed (Abdi) will not come in until the grievances have been resolved. They have said if there is a set up work remotely or working Kings. They are not willing to travel to Greenhithe due to contracts.....'* It should also be noted that the Claimant prior to the transfer and for a continuing and ongoing period after the transfer informed the Respondent that he was ready, willing and able to work from home or remotely and expected to be paid whilst the grievance was being determined. The Respondent did not engage with the Claimant's offer to work remotely or from home as long as he was paid pending the outcome of the grievance. Nor did it take any constructive steps to investigate whether the Claimant could be offered any work remotely whilst the grievance was being concluded. The Respondent called no evidence to the Tribunal as to what steps it specifically took in relation to the Claimant's offer to work from home or remotely. The Respondent simply stated at the hearing that the Claimant could not work from home for business reasons but provided no evidence as to what engagement it made with the Claimant's offer to work from home or remotely. Furthermore, the outcome of the grievance process on 16 June 2023 did not address this subject at all. Mr Barham sought in supplementary questions asked by his representative to fill in the gaps in the Respondent's evidence in this regard. However, such evidence was not in his witness statement and not in the grievance refusal letter. As a result, I decided that it carried little weight. In relation to the grievance outcome, the grievance officer, Mr Barham, confirmed that he came to the conclusion that the Claimant was on unauthorised absence from the date of the transfer on 1 May 2023 until the conclusion of the grievance and that, therefore, as he was not available for work, he would not be paid.

38. Perplexingly from my point of view, the grievance officer did not interview the person that had decided to treat the Claimant as being on unauthorised absence before coming to this conclusion. In failing to do this, he could not understand the rationale for that conclusion. Furthermore, the grievance officer could not address what efforts if any the Respondent had taken to engage with the Claimant's offer to work from home and indeed be paid pending the outcome of his grievance. I noted that the Claimant's formal grievance was raised on 24 April 2023 which was before the transfer and was not concluded until 16 June a month and half after the grievance was made in writing. The decision not to pay the Claimant his wages pending the outcome of the grievance was taken on 2 June 2023 over a month after the date of the transfer. Mr Barham also came to the conclusion that the Respondent was correct to offer to reimburse the Claimant additional travel costs for only three months. However, he did not deal with the Claimant's main concern that he wanted to be paid his travel costs for an indefinite period as these costs would have discontinued after the three-month period that was offered to the Claimant. The grievance outcome did not deal with this aspect of the limited duration of the travel cost reimbursement at all nor did it address why the Respondent would not be prepared to pay for the Claimant's additional travel costs indefinitely.

39. Given my above observations and findings, I conclude that the Respondents failure to pay the Claimant his wages pending the outcome of the grievance amounted to a fundamental breach of contract going to the root of the contract of employment entitling the Claimant to resign from his employment. This failure to pay the Claimant his wages from 1 May 2023 which was the date of the transfer to 27 July 2023, which was the date of resignation, amounted to a fundamental breach of contract for a number of reasons. Firstly, the Respondent did not engage at all with the Claimant in respect of his offer to work remotely or from home pending the outcome of this grievance. Instead, the Respondent made a unilateral decision not to pay him his wages from 1 May which was backdated from the date of the decision on 2 June 2023. I did not hear any evidence from the decision maker that had come to this conclusion given the Claimant's confirmation that he was ready willing and able to work, expected to be paid pending the resolution of the grievance. The Respondent was aware of the issues that concerned the Claimant, yet I heard no evidence from the decision maker as to what efforts if any the Respondent made to engage with the Claimant in relation to his offer to work from home or remotely. Mr Barham, the grievance officer, could not provide any useful evidence on this point as all he could do was speculate.

40. Secondly, the grievance itself was deficient as it did not address what efforts were made by the Respondent to give work to the Claimant either from home or remotely when he was ready, willing and able to do it. Indeed, I heard no evidence from the Respondent at all as to what specific efforts were made to facilitate his continued working from home so that he could be paid pending the outcome of the grievance.

41. Finally, Mr Barham did not deal with the Claimant's concerns about his additional travel costs only being paid for three months and not indefinitely. Mr Barham simply came to the conclusion that the Respondent was right in making the offer of travel reimbursement for three months only without addressing the broader concerns of the Claimant.

42. The Respondent's failures to address the Claimant's concerns raised in his grievance were surprising to me given the Respondent's own evidence that it was prepared to be flexible and to resolve the outstanding issues of the Claimant. I could not see how the Respondent was being flexible or prepared to resolve the outstanding issues when it did not address the Claimant's concerns about being paid pending the outcome of the grievance or his legitimate concern that travel reimbursement would only be for the first three months after the transfer. Such failures to properly and adequately deal with the Claimant's legitimate concerns raised in his grievance amounted to a breach of the implied term of trust and confidence. The very serious failure to pay the Claimant pending the outcome of his grievance given his offer to undertake work from home or remotely amounted to a breach of contract on the Respondent's part. It meant that the Claimant was reduced to extremely financially trying circumstances during the three months post transfer. It could not be argued by the Respondent that it did know that this would be a consequence of its actions especially as the Claimant had on numerous occasions reminded the Respondent that he needed to be paid to support himself and his family. I accept that the Respondent did make a travel reimbursement offer and did eventually offer the Claimant another similar role at King's College in accordance with his contract of employment. However, these efforts did not deal with the Claimant's two principal concerns mentioned above which were conveyed to the Respondent from the date of the transfer in his written grievance.

43. The Respondent submitted that the Claimant waited until 27 July 2023 which was over a month and half after the conclusion after the grievance outcome before he resigned. The Respondent said that the Claimant waited too long to resign and that such delay defeated the fundamental breach which it submitted occurred at the date of the grievance outcome letter on 16 June 2023. I considered this submission but concluded that the Claimant did not wait too long to resign. The primary concern of the Claimant was to continue to work and to continue to be paid for that work. He made himself available for work from the date of transfer and the Respondent simply did not address this issue at all as I say above. Furthermore, the Respondent made no attempt to pay the Claimant for three months from 1 May until the end of July. I find that it was entirely reasonable for the Claimant to give an opportunity to the Respondent for it to rectify its breach by continuing to pay him and for the Claimant to give the Respondent a reasonable opportunity to do this. When it became clear to the Claimant at the end of July that no such payment would be made, the Claimant resigned from his employment stating "*I am writing to Inform you of my resignation from my position as Night Controller at SVL, effective immediately. As you know, I have been In negotiations with your representatives regarding my unpaid wages. Unfortunately, these negotiations have been unfruitful. I am therefore tendering my resignation on the grounds of constructive dismissal and non—payment of wages*".

44. For the sake of completeness, I find that the Claimant's constructive dismissal was unfair for the reasons stated above and I do not consider that he contributed to his constructive unfair dismissal at all.

45. In respect of the claim for automatic unfair dismissal pursuant to TUPE, the Respondent also submitted that the dismissal was fair for an economic technical or organisational reason. I accept the Respondent's evidence that in respect of the Claimants dismissal in respect of TUPE, there were economic, technical and organisational reasons for requiring the Ambulance Controllers to move to Greenhithe. These were the need for the Respondent to centralise the ambulance control function at the Head Office, pending the Respondent getting to know the operational requirements on

the new contract that it had just succeeded in winning. As a consequence, I accept the Respondent's submission that the dismissal was not automatically unfair pursuant to regulation 7 (1) and that the change in location from Stratford to Greenhithe amounted to a justified economic, technical or organisation reason. Accordingly, I find that based on regulation 7(3) (A) of TUPE that as changes in the workforce include changes in the place of work the employee was required to work, there could not be an automatic unfair dismissal under TUPE in this case.

46. In respect of what would have occurred had the Claimant not resigned from his employment due to the Respondent's fundamental breach of contract in failing to pay him from 1 May 2023, I find that on the basis of the Claimant's non-attendance at work from 1 May and continuing to the end of July (which was the date of his resignation), he would have been fairly dismissed within 6 weeks of his resignation pursuant to the Respondent's disciplinary procedure for unauthorised absence. I find that had the Claimant not been constructively unfairly dismissed, it was very likely that the Respondent would have instituted its disciplinary procedure for unauthorised absence against the Claimant. Given that he had already been off work for three months by then, I find that he would have been fairly dismissed for this reason on or around 7 September 2023. This means that his compensation would be limited to his three months loss of wages from 1 May to the end of July 2023, his basic award for unfair constructive dismissal, his loss of wages from 27 July to 7 September 2023, his loss of statutory rights and any incidental costs of him searching for alternative employment after his constructive dismissal.

47. In respect of his claim for unpaid wages under section 13 of the ERA, as I say above, I find that the Claimant was entitled to arrears of wages from 1 May to 27 July 2023 as these should not have been deducted by the Respondent pending the outcome of the grievance for the reasons stated above. Of course, these wages are only to be paid once even though the Claimant has succeeded with his claim for unfair constructive dismissal and arrears of wages.

48. The remedies hearing is listed for 24 July 2024 and directions for this hearing will follow. It is hoped that the parties can come to an amicable agreement on compensation given the guidance I have given above to the parties.

Employment Judge Hallen
Date: 24 April 2024