EMPLOYMENT TRIBUNALS

Claimant:		**Respondent:**
Miss V Akotha	and	British Gas Trading Limited

Heard at: Reading **On:** 15 and 16 August 2018

Before: Employment Judge SG Vowles (sitting alone)

Appearances
For the Claimant: Mr R Harris, FRU
For the Respondent: Mr D Maxwell, counsel

RESERVED JUDGMENT

Evidence

1. The Tribunal heard evidence on oath and read documents provided by the parties. The Tribunal determined as follows.

Unfair Dismissal

2. The Claimant was dismissed by reason of "some other substantial reason" on 5 June 2017 and that was the effective date of termination. The dismissal was not unfair. This complaint fails and is dismissed.

Breach of Contract – Redundancy Payment

3. The Claimant was not dismissed by reason of redundancy and was not entitled to a contractual redundancy payment. This complaint fails and is dismissed.

Reasons

4. This judgment was reserved and written reasons are attached.

REASONS

SUBMISSIONS

Claimant

1. On 25 September 2017 the Claimant presented complaints of unfair dismissal and for a contractual redundancy payment (breach of contract) to the Tribunal.

2. On 8 November 2017 the Respondent presented a response and resisted all the claims.

EVIDENCE

3. The Tribunal heard evidence on oath on behalf of the Respondent from Mrs Carla Massey (Director of Group Functions Financial Control and the Claimant's line manager) and Mrs Kerry Weir (Human Resources Manager, Finance).

4. The Tribunal also heard evidence on oath from the Claimant Miss Victoria Akotha (Finance Analyst (Information Services)).

5. The Tribunal also read documents in a bundle provided by the parties.

6. From the evidence heard and read the Tribunal made the following findings of fact.

FINDINGS OF FACT

Background

7. The Claimant was employed as a Finance Analyst from 25 June 2012 until her dismissal on 5 June 2017. Throughout her employment she worked at the Staines office.

8. The Claimant had lived in Croydon all of her life and commuted from Croydon to Staines on a daily basis 3 days per week. The other 2 days she worked from home. She initially turned down the job offer following the interview in 2012 because she thought that the commute of 1 hour 45 minutes each way would be too long. Eventually, she was persuaded to accept the job offer by the Respondent's hiring manager who assured her that the company would be flexible with her working patterns. For example, by allowing her to have flexible arrival and leaving times, to work remotely from home when she was not required to be in the office for meetings, and to manage her own time.

9. The Claimant's commuting route, which took on average 1 hour 45 minutes, was as follows. She would walk from her home to the Gravel Hill tram stop, then take the tram to East Croydon station, followed by the train

to Clapham Junction station. Then she took the train to Staines station from where she travelled in the Respondent's minibus to the Staines office.

10. The Claimant's contract of employment included the following provision:

4. Place of Work

4.1 You will be based at the Company's offices in Staines – The Causeway but you may be required to work flexibly which may include working at any other establishment of the Group within the UK in accordance with the Company's relocation policy as it applies from time to time.

4.2 You will be expected to live within a reasonable travelling distance of your place of work. The Company reserves the right to change your place of work to any other place within a reasonable daily travelling distance of your residence.

Reorganisation

11. In October 2016 the Respondent started a collective consultation process with finance staff regarding a proposal to have three hubs for finance operations. Employees would be expected to work from offices in Windsor (UK), Houston (USA) or Bangalore (India). Windsor is approximately 6 miles from Staines.

12. The rationale behind the reorganisation was that the organisation of 3 teams into hubs was to bring together individuals carrying out the same role, creating a team dynamic and economies of scale. It would also allow sharing of best practice and bring business benefits. There were no outright objections to these reasons which were generally accepted by employee representatives during the collective consultation process.

13. Some finance staff in the UK were based at more remote locations such as Leeds and Leicester. They were consulted regarding a move from their current location to Windsor but most of these individuals who were not based in Staines left by reason of redundancy. The Respondent decided that Staines-based employees would not be made redundant and the Respondent would rely upon the mobility clause in their contracts. This was because Staines was so close to Windsor, approximately 6 miles, and about 20 minutes travel time away.

Grievance

14. In March and April 2017 the Claimant expressed her concerns to Mrs Massey about moving to the Windsor office. She said that her overwhelming concern was with location and commuting. Mrs Massey explained to her that following the restructure, the only finance jobs available would be in the Windsor office and that redundancy would not be

considered an option for any employees whose jobs were moving from the Staines office to the Windsor office.

15. On 10 April 2017 the Claimant presented a formal grievance which included the following:

"I recognise that there is a clause in my contract concerning potential changes to work location. However, this same clause also states that this should be kept "within a reasonable daily travelling distance of your [my] residence". I would like to take this time to point out that my residence has not changed since joining the company.

Again, I understand that my role as IS Finance Analyst no longer exists, and a suitable, similar and comparable role in a reasonable location does not exist for me either. As it stands, the company (as represented by HR/yourself) has offered no resource for resolution or suggestions. Under these circumstances it is clear to me that this is clear grounds for redundancy as a result of strategic decisions made by the company. To say that I would "effectively be resigning" under an inability to commute to Windsor is insensitive, uncompromising and evasive."

16. Mrs Massey forwarded the Claimant's concerns to HR and Mrs Weir attended a meeting with the Claimant and Mrs Massey on 25 April 2017. During the course of the meeting, minutes were taken which were later sent to the Claimant who responded by adding comments to the record of discussions. A further such meeting was held on 27 April 2017.

17. At the meeting on 25 April 2017 the Claimant explained that it currently took her 1 hour 45 minutes to travel from her home in Croydon to Staines. She said that the journey to Windsor by train would take around 2 hours 20 minutes due to the fact that trains are quite often delayed and the train from Clapham Junction to Windsor is slower, only once every half hour. If she missed a connection she would have to wait up to half an hour for the next train. She accepted that the journey on paper, via Google, would take 1 hour 50 minutes, but she said this was not a true reflection as in reality it took much longer.

18. The Claimant said that options which she would consider that would enable her to make the move to Windsor were:

    14.1 Increase of salary by £12,000 per annum to compensate for the inconvenience and additional cost through being based in Windsor;

    14.2 An increase from 2 days to 3 days working at home;

    14.3 A sabbatical to allow time to rebalance, reset and pursue other interests as the whole process had been negative and exhausting for her.

19. Another option discussed was the Respondent's offer to allow the Claimant to start work around 10.30am. This would enable her to make her existing journey to Staines and then catch the Respondent's minibus to Windsor. The Claimant rejected this option as she was not happy with an additional leg in her commute as she was already "maxed out" on the commute she was currently doing.

20. The Claimant also rejected the offer to travel later in the day as this could possibly extend the journey time as often there were fewer trains off peak.

21. Mrs Weir and Mrs Massey then did some research into train journeys and timings and discussed the statistics with the Claimant. It was put to the Claimant that as a result of the information obtained, they were unable to justify the additional 45 minutes journey the Claimant said it would take to get to Windsor as opposed to Staines as on paper the journey should only be an extra 5 minutes. The Claimant said that she disagreed with the estimate on paper and her personal experience was that it would take an additional 45 minutes travel time.

22. Once again the Claimant was given the option of continuing to travel to Staines and then catch the Respondent's minibus to Windsor. It would add an additional 20 minutes to her journey but she would be considered to have arrived at work when she arrived at Staines even though she had the minibus journey to get to Windsor thereafter. The Claimant again rejected this option saying she was not willing to add an extra leg to her journey. There was also a discussion of the Claimant getting a train from East Croydon to Slough and then to Windsor but the Claimant rejected this option as it would mean in totality a longer commute.

23. Mrs Weir confirmed that the Respondent was prepared to offer the Claimant a sabbatical but did not agree to an increase in salary or to increase the number of days working at home. She confirmed that there would be no compensation for any additional costs and travel time.

24. On 4 May 2017 Mrs Massey wrote to the Claimant as follows:

"Following our meeting on 27 April 2017, you will know that we are proposing to exercise the mobility clause in your contract of employment. This is due to a change in our location strategy as part of Finance Transformation …

We have considered the points that you have raised to date throughout our consultation meetings about why you do not agree to us exercising the mobility clause, to summarise you have explained that the additional travel time would extend your journey beyond what you consider to be reasonable, as this would take an additional 45 minutes each way, due to train delays and slower train services. You said that you were already maxed out on the commute you were prepared to do and were not prepared to extend this further.

We have investigated the points you have raised and were unable to find evidence to suggest an extra 45 minutes each way, based on evidence regarding the frequency and extent of train delays. We also suggested an alternative route, travelling via Slough to Windsor, which has more frequent minibuses running at each end of the day. A further suggestion made was to continue travelling to Staines and then catch-up the inter-office minibus.

Having considered all of the above, we have made the decision that we will be implementing the mobility clause in your contract and with effect from Monday 8th May 2017 you are required to report to the Windsor office.

If you are not in agreement to this change we will have to consider terminating your contract of employment for some other substantial reason.

We have arranged an individual meeting with you to discuss the proposed termination of your contract of employment. We propose to hold this meeting, in the event that you do not agree to report into Windsor, on 8th May 2017 at 11h00 in WS5, Windsor. The meeting will be conducted by myself and Kerry Weir will also be present. The meeting will be your chance to let us know how you feel about the proposed termination of your contract of employment…"

25. The meeting on 8 May 2017 was attended by the Claimant and Mrs Weir and Mrs Massey. There was no change in the Claimant's position and the Claimant continued to insist that she could not move to the new location at Windsor.

Dismissal

26. After the meeting, Mrs Weir and Mrs Massey discussed the situation and decided that they had exhausted all possible options and that dismissal was the only option in the circumstances. Accordingly, on 8 May 2017, Mrs Massey wrote to the Claimant as follows:

"I am writing to confirm the outcome, following our meeting held today, at which Kerry Weir was also present. Michelle Jamieson was also present as your employee representative.

It was decided that the outcome of the meeting is that your employment with British Gas be terminated with notice for Some Other Substantial Reason (SOSR), due to your failure to agree to the business exercising the mobility clause in your contract, which would result in the move from Staines to Windsor.

We have investigated the points you raised and were unable to find evidence to suggest an extra 45 minutes each way, based on the statistical data we obtained showing the historical frequency and extent of train delays on what would be your new route into the Windsor office. This

data showed that over the last 100 days there had been at most up to 6 minute delays on the route from East Croydon to Windsor & Eton Riverside and the trains were on time in excess of 90% of the time. We discussed a couple of alternative options for travel namely:

- *An alternative route, travelling via Slough to Windsor*
- *Continue travelling to Staines and then use the free and direct inter-office minibus*

We also offered flexibility and discussed alternative start and finish times with you to avoid travelling at peak times, which you again declined.

Based on our investigations, we do not believe the move from Staines to Windsor is unreasonable, in light of the commute you are already doing, through your own choice, and have therefore accepted as reasonable.

The additional travel time and cost that you referred to as reasons for not agreeing to carry out your role from our Windsor office are adequately mitigated by the fact that there is an inter office mini bus which would shuttle you from Staines to Windsor, with minimal disruption and at no extra cost. We are also happy for you to undertake that journey (which is only an additional 6 miles) outside of peak time to ensure this takes a minimum amount of time, which would be approximately 15 – 20 minutes. We do not consider this an unreasonable request….

…. Your employment is terminated today on notice, and your final day of employment is therefore Monday 5th June 2017, as you are entitled to 4 weeks' notice. You will remain on 'garden leave' throughout you notice period…

… You have the right to appeal against your dismissal. If you wish to do so, please write to me within seven days of the date of this letter, stating your grounds of appeal in full."

Appeal

27. The Claimant presented an appeal and an appeal hearing was held on 15 May 2017 chaired by Ms Rav Bhatti. The outcome of the appeal was sent to the Claimant on 23 May 2017 and included the following:

"Commuting time …

I agree that the change in location from Staines to Windsor has an impact on your commute time, however I feel this is a reasonable increase relative to your commute from your residence to Staines office. Whilst I accept that there is no reference to 'relativity' within your contractual terms, by agreeing to the terms of your contract you have already accepted that your current commute time is acceptable.

Based on this I do not uphold this part of your appeal.

No reasonable alternatives offered …

Having reviewed this aspect of your appeal, I feel that the company have already been flexible with your working patterns as they have enabled you to work from home twice a week, as well as accommodating your start and end times due to your commute. With regard to the increase in salary, we discussed the option of travelling to Windsor office via Staines on the Company minibus whereby no additional costs would be incurred by you. The Company have agreed to give you a sabbatical, and continued flexibility and based on this I cannot uphold this part of your appeal.

Grounds for termination

You felt that redundancy would be most appropriate grounds for termination of your employment. Whilst I accept that there has been a change in location, this change is permitted by the mobility clause. There is also a continued need for you to perform your role. Therefore, there are no grounds for a dismissal by reason of redundancy.

Based on my findings, as detailed above, I cannot uphold this element of your appeal and feel that 'Some other Substantial Reason' is the most appropriate grounds for termination of your employment.

The decision

I have decided to uphold the original decision to terminate your employment for Some other Substantial Reason, due to your failure to agree to the business exercising the mobility clause in your contract, which would result from the move from Staines to Windsor."

Claimant's Written Submissions

28. The Claimant claimed that her dismissal by the Respondent was:

    (a) In breach of contract because rather than being dismissed for "some other substantial reason" (SOSR), she should have been made redundant and been given a contractual enhanced redundancy payment in accordance with the Respondent's GSSO Redundancy Compensation Scheme; and

    (b) Unfair and thus contrary to her right not to be unfairly dismissed as protected by section 94 of the Employment Rights Act 1996.

29. The Claimant claimed that her current commute was already unreasonable because it took 1 hour 45 minutes. Although the Respondent had asserted that the commute by train would only take an extra 5 minutes, the Claimant asserted that it would in reality have involved an additional 45 minutes making her commute from home to Windsor 2 hours 30 minutes. She regarded this as unreasonable and unacceptable.

30. Although the Respondent had offered the option of the Claimant continuing with her current commute to the Staines office and then take the Respondent's minibus from the Staines office to the Windsor office, and although this would have ensured that the Claimant's commuting costs did not increase, the Claimant rejected it because it would require her to add an extra leg to her commuting journey of 20 minutes and perhaps substantially longer, due to the minibus timetable. Also, it would require the Claimant to finish work in time to catch the last return minibus from Windsor to Staines resulting in her only actually being in the Windsor office for a few hours each day. This would be inefficient from the perspective of work productivity and would have contributed to the negative perceptions amongst the Claimant's team that she was only a part time worker.

31. The Claimant also challenged the Respondent's interpretation of the mobility clause at clause 4.2. She said that the mobility clause's requirement of reasonableness is neither relative (i.e. requiring a comparison between the original commute and the proposed new commute) nor about how far the workplace had moved. Instead, the correct interpretation is that the clause required simply an objective assessment of the new commute time, considered in and of itself.

32. The Claimant claimed that her current commute was already unreasonable and the move to Windsor would make it even more unreasonable.

33. The Claimant claimed that the real reason for the Claimant's dismissal was redundancy because a redundancy situation within the meaning of section 139 Employment Rights Act 1996 was apparent. The Respondent could not rely upon the mobility clause in the Claimant's contract because Windsor was not *"within a reasonable daily travelling distance of your residence"*. Accordingly, the reason for the Claimant's dismissal should be redundancy and not some other substantial reason. The mobility clause did not give the Respondent a right to require the Claimant to move the Windsor office as the right was a restricted one by virtue of the requirement for the proposed new commute to be *"reasonable".*

34. The Claimant claimed that because she was dismissed by reason of redundancy, she was entitled to receive an enhanced redundancy payment under the GSSO Redundancy Compensation Scheme. If the principal reason for dismissal was redundancy, the dismissal was unfair because the Respondent did not treat redundancy as the reason for dismissal at all and it follows that it cannot have acted reasonably in treating redundancy as a sufficient reason for dismissal.

35. In the alternative, if the principal reason for dismissal was SOSR, the test whether the employer acted reasonably in treating SOSR as a sufficient reason for dismissal for the purposes of section 98(4) Employment Rights Act 1996 could be summarised as set out in the case of Kellogg Brown &

Root (UK) Limited v (1) Fitton and (2) Ewer [2016] UKEAT/0206/16/BA as follows:

1. *Was the employer's instruction to change place of work legitimate, i.e. was it capable of being given under the contract of employment?*

2. *Was the employer's instruction reasonable?*

3. *Was the employee's refusal to comply reasonable?*

36. The Claimant claimed that the instruction to move was not legitimate, that the instruction was not reasonable and that the Claimant's refusal to comply was reasonable, as argued above.

Respondent's Written Submissions

37. The Respondent submitted that there was no need for the Tribunal to consider whether a redundancy situation existed because the clear reason given for the dismissal was SOSR.

38. It also referred to the Kellogg Brown case and it was said that the issues of dismissal, redundancy and reasonableness should be kept distinct. (Quoting High Table Ltd v Horst [1997] IRLR 513 CA.)

39. The Respondent also submitted that the three questions referred to in the Kellogg Brown case was not a checklist provided by the EAT but was simply counsel's submissions in that case which amounted to criticisms of the Employment Tribunal's decision. The EAT was not endorsing this as a checklist or guidance on the application of section 98(4) to such cases. It claimed that the cases of BHS v Burchell [1980] ICR 303 and Iceland Frozen Foods Ltd v Jones [1983] ICR 17 required the Tribunal to review the reasonableness of the Respondent's decision. The test was whether the Respondent had a reasonable belief that clause 4.2 gave the Respondent an entitlement to require the Claimant to move her place of work from Staines to Windsor. The Tribunal does not need to decide whether it was correct in its belief. The question was did it have reasonable grounds for its belief even if the belief was wrong.

40. The Respondent submitted that there was a genuine and reasonable belief in the entitlement to require the Claimant to move her place of work and that the Respondent had done all that was reasonably necessary by way of investigation and consultation with the Claimant. The meaning of reasonable daily travelling distance of your residence in clause 4.2 of the Claimant's contract must be informed by the Claimant's daily travelling distance at the point when the contract was entered into and the manner in which the parties operated the contract in practice, that is, the Claimant's daily travelling distance throughout the almost 5 years of her employment.

41. There was a separate contractual expectation in clause 4.2 that the Claimant would live within a reasonable daily travelling distance of her place of work and this reinforced the meaning of the relevant words as incorporating her current commute.

42. Additional factors were that the change involved a modest increase in distance/travel proposed, the Respondent's willingness for the Claimant to continue with her existing commute to Staines, then be conveyed at the Respondent's expense, to the Windsor office, the Respondent's willingness to treat the Claimant's working day and paid time as beginning at Staines and including the minibus to Windsor which would enable the Claimant to leave home and return home at the same time as she had done for the previous 5 years, and the Respondent's willingness to vary her start and end times to avoid travelling at peak hours if that was helpful.

43. The Respondent had made a business decision on proper grounds to consolidate the function in which the Claimant was employed at Windsor to achieve efficiency and best practice.

44. All the other affected employees (approximately 100) from the finance department at Staines agreed to move to Windsor. Only the Claimant objected.

45. The Respondent asserted that the terms of the contractual enhanced redundancy payment required the Claimant to have been dismissed by reason of redundancy and in this case, that was not the reason for dismissal.

46. The Respondent also relied upon Abernethy v Mott, Hay and Anderson [1974] ICR 323 CA where it was said that: *"It was for the employer to show the reason for dismissal and that it was a potentially fair one. A "reason for dismissal" was described as "a set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee".*

RELEVANT LAW

Employment Rights Act 1996

47. Section 94. The right

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

48. Section 98. General

    (2) In determining for the purposes of this part whether the dismissal of an employee is fair or unfair, it is for the employer to show –

(a) the reason (or if more than one the principal reason) for the dismissal, and

(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(3) A reason falls within this subsection if it-

… (c) is that the employee was redundant, …

(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –

(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

(b) shall be determined in accordance with equity and the substantial merits of the case.

49. Section 139. Redundancy

(1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal 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 the business –

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

(iv) 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.

50. The Tribunal took account of the case of Kellogg Brown case (above) which involved similar facts to this case. An ET had found that the claimants had been dismissed by reason of redundancy and were therefore entitled to statutory redundancy payments. The ET also found the dismissals to have been unfair whether by reason of redundancy or, as the Respondent had argued, for conduct or some other substantial reason (SOSR). The EAT's conclusions in that case included the following:

44 The ET was concerned in these cases with two claims: of unfair dismissal and for a statutory redundancy payment (at least, those are the two claims with which this appeal is concerned). It was admitted that both Claimants had been dismissed. The first question was: what was the reason for those dismissals?

45 The dismissals undoubtedly took place against what might commonly be described as a redundancy situation: the Respondent was either ceasing to carry on business in the place where the Claimants were employed or certainly had a diminishing requirement for employees to carry out the work that the Claimants were employed to do in that place (section 139 ERA), but was that the reason for the dismissals? If not, the Claimants would not have been dismissed by reason of redundancy for either statutory purpose (even allowing for the presumption of redundancy as the reason for dismissal under section 163(2) ERA). …

47 Returning then to the reasons for the dismissals, as Mr O'Brien says, determination of this issue was a matter for the ET; it involves a finding of fact as to what were the set of facts, or beliefs, operating on the mind of the relevant decision maker at the relevant time. I should not lightly interfere with an ET's finding of fact in that respect. In the present cases, however, I consider the ET's reasoning discloses an error of approach. It has started from its finding that there was a redundancy situation for the purposes of section 139 and allowed that to inform its finding as to the reason for the dismissal. That, however, was not the correct direction of travel. The ET first had to ask what it was that the Respondent genuinely had in mind. It had in fact answered that question. …

48 The ET's explanation of its conclusion thus reveals its error: it failed to keep its focus on what the Respondent genuinely thought as a matter of subjective fact and instead imported its view as to the reasonableness of relying on that reason, not properly the question for the ET at that stage.

49 Although there may have been a redundancy situation, on the findings made by the ET the Respondent's belief was that it had a right to instruct the Claimant's to relocate under the mobility clause, and it was, as the ET plainly found, their refusal to obey that instruction that caused the Respondent to determine that they should be dismissed. That meant no statutory redundancy payment was due (I make no observations as to any entitlement to a contractual redundancy payment, because that is not a matter that has been properly raised on these appeals).

50 ….. the ET simply did not consider the issue of fairness looking at it through the right lens; it failed to ask the right question for a conduct unfair dismissal case and its reasoning was tainted by its view that these were redundancy cases; to the extent that it made alternative findings, those were insufficient as they failed to properly consider the question of lawfulness and reasonableness from the Respondent's perspective and were inadequately reasoned.

DECISION

Unfair Dismissal

51. A redundancy situation existed as at the date of the Claimant's dismissal under section 139(1)(b) Employment Rights Act 1996. The requirements of the Respondent for employees to carry out work of a particular kind (finance work) at the place where the employee was employed by the employer (Staines) had ceased or diminished or were expected to cease or diminish. The place where the Claimant was employed was Staines, regardless of the existence of a mobility clause (see High Table Ltd v Horst [1997] IRLR 513 CA).

52. However, just because a redundancy situation exists at the date of dismissal does not mean redundancy was the reason for the dismissal. In this case the Respondent had considered, and ruled out, a dismissal by reason of redundancy.

53. The reason for dismissal was clearly stated in the dismissal letter of 8 May 2017 as *"some other substantial reason (SOSR) due to your failure to agree to the business exercising the mobility clause in your contract which would result in a move from Staines to Windsor"*. As stated in the Kellogg Brown case, even where there is a redundancy situation, the Tribunal should focus on what the Respondent genuinely thought as a matter of subjective fact. In this case, as in the Kellogg Brown case, the Respondent reasonably believed that it had a right to instruct the Claimant to relocate under the mobility clause. It was the refusal to obey that instruction that caused the Respondent to determine that the Claimant should be dismissed for SOSR.

54. In Hollister v National Farmers' Union [1975] ICR 542 CA, the Court said:

"A sound good business reason" for reorganisation was sufficient to establish SOSR for dismissing an employee who refused to accept a change in his or her terms and conditions. The reason is not one the Tribunal considers sound but one which management thinks on reasonable grounds is sound. It is not for the Tribunal to make its own assessment of the advantages of the decision to reorganise or change an employee's working location. The employer need only show that there were "clear advantages" in introducing a particular change to pass the low hurdle of showing SOSR for dismissal."

55. In this case, the Claimant did not dispute there was a sound good business reason for moving the Finance department to Windsor. Indeed, the Claimant said in her witness statement (paragraph 10): *"When I first found out about the company's plans for a global restructure, I recognised that it made sense from a globally strategic perspective, but was naturally concerned about the impact it would have on my own job."*

56. The Respondent had a genuine and reasonable belief that the mobility clause at clause 4.2 entitled it to instruct the Claimant to move her place of work from Staines to Windsor. The Respondent's submissions on this point are accepted.

57. In this case SOSR was the reason for the dismissal, and SOSR was a potentially fair reason for dismissal under section 98(1)(b) of an employee who refuses to accept a change of location or to comply with a mobility clause.

58. The Tribunal must then consider the reasonableness of the change and of the dismissal under section 98(4) Employment Rights Act 1996. There is a requirement for the Tribunal to balance the needs of the employer and the employee.

59. The needs of the Respondent in this case were clear. The move of the Finance department from various locations around the UK to one location in Windsor was necessary to improve efficiency and best practice.

60. It was not necessary for the Tribunal to make findings of fact regarding the actual increase in the length of the Claimant's commute involved in a move to Windsor. The Respondent reasonably believed that the terms of clause 4.2 involved a consideration of the difference between the Claimant's current commute and the new commute. Based upon a reasonable investigation involving published data on train timings, journeys, and delays, it concluded that the train journey to Windsor would only take an extra 5 minutes and there was sufficient reason for them forming that belief.

61. Moreover, the Respondent had done everything it reasonably could to avoid dismissing the Claimant, including offering her the option of taking the company minibus from Staines to Windsor which would have enabled her to maintain her current commute to Staines. It would also have been cost-free and, although adding 20 minutes to the Claimant's travelling time, the travel between Staines and Windsor would be done within the Claimant's working time. It would enable her to leave home at the same time and arrive back home at the same time as her existing commute.

62. The Claimant's request for a £12,000 per annum increase in salary was an arbitrary figure and not based upon any calculation of additional costs. The Respondent's rejection of it was reasonable. Additionally, the claim for an additional day per week working from home was reasonably rejected because the Respondent's policy was to allow only one day homeworking

but was prepared to maintain the Claimant's working pattern of two homeworking days. The request for a sabbatical was granted.

63. The majority of finance department employees (around 100) had agreed to the move without objection and it was only the Claimant who objected.

64. In Chubb Fire Security Ltd v Harper [1983] IRLR 311, the EAT commented that even if it was reasonable for an employee to refuse to accept the new terms, it did not necessarily follow that it was unreasonable for the employer to dismiss.

65. Taking into account the above matters, the decision to dismiss in all the circumstances of this case was within the range of reasonable responses. The Claimant having refused to relocate, there was no alternative employment available for her other than with the rest of the finance department at Windsor. Nor was it ever suggested by the Claimant that there was alternative work available for her at Staines. She suggested that she, and she alone, could work remotely from Staines and only travel to Windsor when required, but that would defeat the main objective of the Respondent's reorganisation which was to have all the finance departments co-located as one team and working together producing efficiencies and best working practice.

66. The Respondent acted reasonably in exploring all reasonable options but all were rejected by the Claimant.

67. The Tribunal found that the dismissal was for Some Other Substantial Reason and was not unfair.

Redundancy Payment

68. So far as the claim for a redundancy payment under the GSSO scheme was concerned, the relevant scheme included the following:

"This Scheme is intended to provide for the compensation of GSSO employees (Level 7 and 8) employed by British Gas Trading Limited and British Gas Service Limited ("British Gas") who are made redundant as a result of circumstances covered by Section 139 of the Employment Rights Act 1996. The application of this Scheme is limited to those employees whose employment contracts incorporate the GSSO collective agreements. …

An employee who is made redundant will be eligible for consideration under this Scheme subject to completion of one year's continuous service in British Gas and/or another Centrica Group Company."

69. The Tribunal accepted the Respondent's submission that the terms of the scheme meant that only those dismissed by reason of redundancy were eligible under the scheme. In this case, as found above, the Claimant was

not dismissed by reason of redundancy and therefore she had no contractual entitlement under the Scheme.

70. The claim for a contractual redundancy payment therefore fails.

_____
Employment Judge Vowles

Date: ……06.09.18……

Sent to the parties on:

……18.09.18…….....

.....
For the Tribunal Office

Public Access to Employment Tribunal Judgments

All judgments and reasons for judgments are published, in full, online at *www.gov.uk/employment-tribunal-decisions* shortly after a copy has been sent to the Claimant and Respondent.