EMPLOYMENT TRIBUNALS

Claimant: Mr Stanley Horner

Respondent: City Response Ltd

Heard at: Manchester **ON:** 19 November 2020 and in chambers on 23 November 2020

Before: Employment Judge Wheat (sitting alone)

REPRESENTATION:

Claimant: In person
Respondent: Ms L Quigley (Counsel)

JUDGMENT

1. The claimant's claim of unfair dismissal is not well founded and is dismissed.

2. The Remedy Hearing fixed for 6 January 2021 is not required.

3. The case is at an end.

REASONS

Introduction

1. This has been a remote hearing not objected to by the parties. The form of remote hearing was a Code "V" hearing – a partly remote video hearing with the parties appearing remotely and the Judge and clerk at the Tribunal. A face to face hearing was not held because it was not practicable due to the COVID-19 pandemic, and specifically the second national lockdown. All issues could be determined in a remote hearing. This was a final hearing in public.

2. The claimant represented himself and gave sworn evidence.

3. The respondent, represented by Ms L Quigley (Counsel) called sworn evidence from:

- Ms Dawn Anderson-Foster, Senior HR Manager for Guinness Partnership group, which includes the Respondent company.

- Ms Nicole Edwards, Head of HR Services for the Respondent.

4. I considered documents from an agreed bundle of 246 pages. All references are references to the pagination in that bundle. I was provided with witness statements from Mr Horner, Ms Dawn Anderson-Foster and Ms Nicole Edwards.

5. I heard submissions from the claimant and from Ms L Quigley (Counsel) for the respondent. The respondent provided the Tribunal with a written outline of its submissions and a chronology setting out the timeline of events.

6. The claimant was continuously employed by the respondent as a Multi Skilled Joiner (previously Joiner) from 18 October 2010 until his dismissal on 10 February 2020.

7. The respondent, City Response Limited, is part of the Guinness Partnership group providing a range of affordable housing and services. The respondent provides repairs and planned works for the group.

8. The claimant claimed he was unfairly dismissed after he refused to sign a new contract/agree to new contract terms. The claimant stated the new contract was unlawful, in that it did not accord with Regulation 2(1) of the Working Time Regulations 1998 ("WTR"). His view was that his working day started when his vehicle checks started at home. He said the effect of his new contract would have led to a) going over his contracted hours of 39 per week and potentially over the WTR of 48 hours per week and b) that his pay should start when his working day started as he was a mobile worker, not an office worker. The new contract he was asked to sign specified a start and finish time to his working day.

9. The respondent contests the claim. It stated the reason for the claimant's dismissal could be characterised such as to fall into two potential categories: redundancy, as its requirements for employees to carry out work of a particular kind in the place where the employee was employed had diminished; and/ or for "some other substantial reason" – in that the new contract terms were necessary as part of wider changes made to secure the future of the business.

Issues

10. At the outset of the hearing, I agreed with the parties the issues for me to decide.

11. The issues in this case were narrow and centred around the reason for the dismissal and whether it was fair or unfair. Both parties agreed that the reason for dismissal was the claimant's refusal to sign a new contract of employment with amended terms and conditions. The respondent stated that the reason for dismissal in these circumstances could potentially be characterised as redundancy and/or some other substantial reason, which I will return to in my conclusions.

12. The claimant accepted that his old contract was lawfully terminated and that there was a genuine redundancy situation within the respondent business. The

claimant took no issue with any of the processes of consultation, grievance and appeal which took place during the re-organisation of the business and the harmonisation of contracts prior to his dismissal.

13. Although remedy would only arise if the claimant's claim for unfair dismissal was successful, I agreed with the parties that I would consider the issue raised by the respondent of a reduction to any compensatory award for contributory conduct at this stage. The respondent made clear that it was not raising any issues of blameworthy conduct by the claimant, it was seeking a reduction on the basis that it was unreasonable of the claimant not to sign the new contract. I invited the parties to deal with the issue in evidence and submissions.

Background

14. On 18 October 2010 the claimant commenced employment with the respondent as a Joiner (D61). His hours of work were 40 per week, 8am – 8pm. During the course of his employment this was subsequently varied to 39 hours a week and his title changed to Multi Skilled Joiner.

15. In 2018 the claimant took out a grievance (D73) with regard to travelling to Sheffield for jobs and not being offered overnight accommodation. He questioned whether the "EU ruling in 2015" regarding travel time was acknowledged by the respondent.

16. On 30 April 2018 the Grievance Hearing took place (D77) and on 4 May 2018 the claimant was sent the outcome (D80). His grievance was partly upheld. The respondent confirmed that travel time to work is "working time" for the purposes of the Working Time Directive 2003.

17. The claimant appealed and the Grievance Appeal Hearing was dealt with on 29 May 2018, the appeal confirmed that working time commenced when the Claimant checked his vehicle prior to driving and ended when he arrived back home.

18. In 2019, the respondent company was suffering from serious performance issues. Urgent changes to ways of working were said to have been required to restore productivity and profitability and radically improve customer and employee satisfaction. A Business Announcement was made on 24 September 2019 (D101). Proposals included a realignment of the terms and conditions of contracts (D110) to reduce the workforce and to ensure the right skills in right geography (D121). One of the proposals was to introduce a software system that dealt with booking in appointments for customer works, with the intention of best utilising staff based upon their geographical distance from jobs allocated.

19. On 26 September 2019 the first Collective Consultation Meeting (D141) took place. Meetings were attended by Trade Union Representatives. Proposed changes to terms and conditions were outlined: a 39 hour working week to improve efficiency and planning, a fixed call out rate and an increase in annual leave were discussed.

20. A second collective consultation meeting (D148) took place on 8 October 2019, as did the first "1-2-1" consultation with the claimant (D152) at which he expressed an interest in voluntary redundancy and requested clarification on start

times under the new contract, as he had previously understood his shift started when his engine was switched on.

21. As part of the restructuring process, the claimant was put at risk of redundancy. Out of a pool of 21 people, five staff were eventually made redundant. The Claimant was offered a new contract to do the same job on different terms and conditions.

22. Between 10 October and 31 October 2019, there were four more consultation meetings at which proposals were made regarding, amongst other issues, terms and conditions. Feedback received was responded to. The meeting on 31 October 2019 clarified that work started on site at 8am until finishing time.

23. On 5 November 2019, the claimant had his second "1-2-1" consultation (D187). He again re-iterated that he had had an agreement that his shift "start once his engine starts" and expressed his unhappiness at the proposal for fixed hours under the new contract.

24. On 7 November 2019 a seventh Collective Consultation Meeting (D189) took place at which changes were made as a result of feedback (D191), with the eighth collective consultation meeting taking place on 14 November 2019 (D195). At this meeting, concerns were again raised about the proposed start and finish times, which were dealt with by way of an email on 13 December 2019 from David Siddals, Director of Operations, Guinness Property (D212). He clarified that for the calculation of "working time" as per the Working Time Regulations 1998 (WTR) for mobile workers, it would start from the time they leave home and continue until a return home. He also stated that travel time to and from work was unpaid, with the company "working hard" to reduce travel time. He stated that "we aim to keep travel to and from the first and last job reasonable", and that "there has to be an expectation that, at times, travel will be higher some days and lower others, but this will be managed locally".

25. On 1 December 2019, the new ways of working were implemented.

26. On 6 December 2019, the claimant was sent a letter with the title "Termination of your current contract and re-engagement on new terms" (D201). Read as a whole the letter gave notice that the current contract would end on 10 February 2020 unless the claimant agreed to move to the new terms any earlier. A copy of the new contract was enclosed with the letter (D204).

27. The new contract, under the heading "Hours of Work", set out:

> "Your normal contractual hours are 39 a week, Monday to Friday.
>
> The standard contractual hours of work are 39 a week between 8am and 4.30pm Monday to Thursday, and 8am and 3.30pm on a Friday, with half an hour unpaid for lunch each day.
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> The starting time is arrival at the first job of the day and the finishing time is the leaving time from the last job of the day."

28. On 17 December 2019, the claimant wrote to HR to inform them that he could not accept the contract. He set out his understanding that the contract said his working hours start when he arrived on site and finish when he left. He explained his position as a mobile worker and stated, "I find this unacceptable and I believe illegal under European Law" (D215).

29. On the same date, the Claimant wrote a further letter of complaint, suggesting a failure to action a letter he had previously sent to HR, a lack of empathy on the part of a senior HR advisor, and a claim of discrimination as he had not been offered redundancy (D216). The Claimant lodged a grievance in similar terms on 4 January 2020 (D218).

30. On 17 January 2020, a Collective Grievance meeting took place (D220) and a Collective Grievance outcome (D226) was provided to the claimant in writing on 29 January 2020. That letter stated:

> "It is clear that the nature of your work fits the definition of a mobile worker. This means that for the purposes of the Working Time Regulations your working week must not be in excess of 48 hours on average over a 17 week reference period. Guinness Property is committed to ensuring that this is complied with……."
>
> It went on to state:
>
> "The Working Time Regulations places no requirement for all working hours to be paid. The arrangements regarding paid time are provided for in the contract of employment, which states that your annual salary is based on a 39 hour working week, which is to be worked between the hours of 8.00am and 4.30pm Monday to Thursday and 8.00am to 3.30pm on a Friday."
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> The Collective Grievance was not upheld on the basis that after consultation a new operating model was introduced with new terms and conditions and that travel time between home and first and last customer would be managed appropriately.

31. On 29 January 2020, an Individual Grievance meeting took place (D223). The Individual Grievance outcome was communicated in writing to the Claimant (D228) - it upheld that a letter had been lost and personal data may not have been protected but rejected the contention that the claimant was discriminated against by him not being offered voluntary redundancy.

32. On 4 February 2020, the claimant lodged an appeal against the Collective Grievance outcome (D230).

33. In an undated letter, (sent after a meeting the claimant had with the respondent on 10 of February 2020), headed "Termination of employment", it was confirmed that termination of the claimant's employment would take effect on 10 February 2020 following the completion of his 9- week notice period [D233]. The letter stated:

> "You indicated that you were not willing to accept such a change (to terms and conditions) in spite of the organisation fully explaining the circumstances behind the request, including the reasons why it is necessary from a business standpoint"

The letter confirmed that termination of the original contract now took effect.

34. The claimant appealed against his dismissal in a letter dated 23 February 2020 (D234). This was dealt with at an Appeal Hearing on 5 March 2020, at which his appeal against the Collective Grievance outcome was also considered (D235). The outcome of these appeals was communicated by letter to the claimant. In summary, the respondent re-iterated its position with regard to the distinction it made between working time monitoring for the WTR and contracted hours for the purpose of salary payment. Nicole Edwards, who conducted the Appeal hearing, also undertook a comparison of hours worked by the claimant under the existing terms and ways of working in 2019, and those worked from 1 December 2020 when the new scheme was already in place. In her view these were not noticeably different. The claimant's appeals were not upheld (D242).

Legal Framework

35. Section 94 of the Employment Rights Act 1996 ("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. The employee must show that he was dismissed by the employer under section 95, but in this case the Respondent admits that it dismissed the claimant (within section 95(1)(a) of the 1996 Act) on 10 February 2020.

36. Section 98(1) ERA deals with the fairness or otherwise of the dismissal. It is for the employer to show a) the reason (or, if more than one, the principal reason) for the dismissal and 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.

37. In this case the respondent submits that the reason can be characterised as redundancy (S98(2)(c) ERA). Redundancy is defined in s139(1) ERA: "an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to b) the fact that the requirements of that business 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 respondent submitted that the claimant was offered a contract with new terms and conditions as suitable alternative employment.

38. This is a reason that can be regarded as potentially fair. The respondent must show that the claimant was in fact dismissed by reason of redundancy.

39. The respondent also submits that the reason for dismissal fell into the category of "some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held" under S98(1)(b) ERA ("SOSR") – the respondent submitted that the new terms and conditions were

offered as a result of a wider business re-organisation. This reason for dismissal is also capable of being regarded as potentially fair.

40. Employers will frequently need to vary contract terms to meet business needs. To establish SOSR as the reason for dismissal where there has been a business reorganisation, the employer does not have to show that a reorganisation or rearrangement of working patterns was essential. In Hollister v National Farmers' Union 1979 ICR 542, CA, the Court of Appeal said that 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. This reason is not one the Tribunal considers sound but one 'which management thinks on reasonable grounds is sound' — Scott and Co v Richardson EAT 0074/04. It is not for the Tribunal to make its own assessment of the advantages of the employer's business decision to reorganise or to change employees' working patterns. However, the Tribunal will not second-guess the employer's rationale, thus the employer must do more than simply assert that there was a 'good business reason' for a reorganisation involving dismissals. A Tribunal must be satisfied that changes in terms and conditions were not imposed for arbitrary reasons — Catamaran Cruisers Ltd v Williams and ors 1994 IRLR 386, EAT. Employers will also be expected to prove the reason for dismissal and, as a result, to submit evidence showing just what the business reasons were and that they were substantial.

41. If the respondent shows a potentially fair reason for dismissal, the determination of the question whether the dismissal is fair or unfair depends on whether, in the circumstances, including the size and administrative resources of the employer's undertaking, the Tribunal considers that the employer acted reasonably or unreasonably in treating that reason as a sufficient reason for dismissing the employee (S98(4)(a) ERA). The Tribunal will determine this in accordance with equity and the substantial merits of the case. (S98(4)(b) ERA).

42. The Tribunal must not substitute its own view in determining the reasonableness of the changes in terms made to the claimant's contract of employment as a result of a wider business re-organisation. In answering the question as to whether the decision to dismiss was reasonable, I will ask if it fell within the band of reasonable responses that a reasonable employer might adopt. It is immaterial what decision I would have made in the position of the employer.

43. If there is a sound business reason for a reorganisation, the reasonableness of the employer's conduct must be judged in that context. The needs of the business and the employee should be balanced. The reasonableness of a dismissal must be looked at in the full context of a business reorganisation: no one factor should be concentrated on to the exclusion of others. The reasonableness of the new terms on offer is not the crucial or sole test of fairness. Both employer and employee may be acting reasonably according to their own legitimate interests, which may be irreconcilable – St John of God (Care Services) Ltd v Brooks and ors 1992 ICR 715, EAT.

44. In considering the reasonableness of the Respondent's actions, other factors will also be relevant, in particular:

- Whether or not proposed new terms have been agreed with a recognised trade union. In Catamaran Cruisers Ltd v Williams and ors (above) the employer had agreed the new contracts with the recognised trade union.

- Whether the employee has been properly consulted as to the proposed changes (Trebor Bassett Ltd v Saxby and anor EAT 658/91)

- The number of employees who ultimately agree to accept the changes to terms and conditions. In St John of God (Care Services) Ltd v Brooks and ors (above) 140 out of 170 employees accepted the changes and the Employment Appeal Tribunal ("EAT") held that this was relevant to fairness.

- Whether the employer had reasonably explored all alternatives to dismissal

45. There is accordingly no onus of proof and the Tribunal will determine the reasonableness of the dismissal on the individual facts of the case.

Submissions

Claimant's Submission

46. Mr Horner submitted that he had done everything he could to avoid being dismissed. He explained that he went to HR, engaged in consultation and with the procedures for grievance and appeal. He submitted that in his opinion, he was "working" from when he commenced vehicle checks on his van at his home address using a company device.

47. He submitted that the respondent, through its employee David Siddals, had sought to class him as an office worker for the purposes of the new contract, which in his opinion was incorrect, as he used his van for everything including eating, and he did not have any toilet facilities. He submitted he was a mobile worker. He re-iterated that he based his working hours on when he started at 7.15am, with his vehicle checks. Using the company tracker to track working hours was not, in his opinion an accurate way of tracking working time. He submitted that the new contract he was asked to sign, with set start and finish times for working, would not have allowed him to base his hours per day on when he commenced his vehicle checks in the morning.

48. The claimant referred the Tribunal to the case of Federacion de Servicos Privados del sindicato Comisiones Obreras v Tyco Integrated Security SL:[2015] IRLR 935, ("Tyco") which established that time spent travelling from home to first assignment and back from the last, was "working time" for workers without a fixed place of work. Mr Horner said that Tyco was a case about travelling, and in his case he also used a company device (his mobile telephone) to complete his vehicle checks before setting off.

Respondent's Submission

49. The respondent provided written submissions which are summarised here.

50. The respondent submitted that it had two potentially fair reasons for dismissing the claimant.

51. It submitted that it was accepted between the parties that there had been a genuine redundancy situation with the claimant being part of a pool of employees which was reduced from 21 to 16. No issue was taken with the redundancy process. The claimant was identified as an employee to be retained within the original pool. It was further accepted that the claimant was offered the role of Multi-Skilled Technician – Joiner in the Repairs Department (D201) and that the Claimant refused the same on the basis that he considered the new contractual terms were unfavourable and consisted an infringement of the WTR.

52. The respondent contended that the respondent offered suitable alternative employment and that the claimant unreasonably refused the same based on a misconception of the position regarding working time and remuneration.

53. The respondent submitted that if the Tribunal does not find that the principal reason for dismissal was redundancy, the respondent relies on "some other substantial reason" ("SOSR") in the alternative.

54. The respondent referred the Tribunal to the case of Hollister v National Farmers' Union 1979 ICR 542, CA, in which the Court of Appeal held that 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. Further, it submitted, as per Kerry Foods Ltd v Lynch 2005 IRLR 680, EAT, the mere fact that there were clear advantages to the employer in introducing a new rota for managers was held to be sufficient to pass the 'low hurdle' of showing some other substantial reason for dismissal. It was not necessary to show what the tribunal referred to as the 'quantum of improvement achieved' if the changes were made, as that was to put too high an onus on the employer.

55. The respondent placed reliance upon its witness statements which, it submitted established sound, good reasons for the harmonisation of contracts, submitting that the new contract was equal or more favourable to the claimant in the following aspects: Same salary, same contractual hours of 39 per week, same type of work, increased holidays, life assurance, increased sick pay and a budget for non-work related training.

56. As per the statements, it was submitted that it was not practical or reasonable to allow the claimant to continue to operate on his old contractual terms. The new automated system required harmonisation. If the claimant was retained on his old terms this would have meant the claimant would not be able to participate within the automated system the consequent effect was that customers would not be able to book the claimant and manual planning would be required. This would necessitate an additional staffing resource purely for the claimant. It was submitted that this would fundamentally undermine the integrity of the new system and efficiency drive.

57. With regard to the respondent's position on Working Time Regulations and remuneration, it accepted that the claimant was a "mobile worker" within the definition as per Regulation 2(1) of the Working Time Regulations 1998 ("WTR").

58. The respondent accepted that pursuant to Regulation 2(1) and the leading authority of Federacion de Servicos Privados del sindicato Comisiones Obreras v Tyco Integrated Security SL:[2015] IRLR 935, "working time" for the purposes of the

WTR commences when the claimant departs home and finishes when he returns home. The respondent submitted however, that the "Tyco" case does not deal with the issue of pay.

59. The respondent referred to the subsequent case of Ville de Nivelles v Matzak: C-518/15, [2018] IRLR 457 in which the European Court of Justice(ECJ) confirmed that the Working Time Directive's purpose is intended to improve workers living and workers conditions and does not govern remuneration. Accordingly, it stated that remuneration is a matter for national domestic law and contracts of employment.

60. The respondent also referred the Tribunal to the domestic case of Thera East v Valentine [2017] IRLR 878, which, it was submitted, confirmed the separation between the issues of working time and that of renumeration, with the later to be determined by reference to the contract of employment.

61. The respondent averred that the claimant misunderstood the effect of the Tyco case and the distinction between "working time" and contractual hours. The respondent stated that it had clarified the position on multiple occasions: through collective consultation, frequency answered questions, in the email from Dave Siddals, through the grievance outcome and the appeal outcomes. Therefore, the respondent, said, it took reasonable steps to ensure that the claimant understood the distinction.

62. The respondent submitted that of the 394 employees who were offered the new contractual terms, only the claimant refused.

63. The respondent submitted that in all the circumstances it was reasonable to dismiss the claimant.

Conclusion

64. I first considered the reason that the claimant was dismissed. It is clear from the letter of dismissal (D201, as confirmed at D233) that the respondent terminated his employment as the claimant was unwilling to sign the new terms and conditions. The respondent and claimant both agree that this was the reason.

65. I next considered the categories of potentially fair reason that the respondent said they relied upon in so dismissing the claimant. It was not in dispute that as part of the process of the restructure proposed by the respondent, the claimant was put at risk of redundancy and was one of 16 employees out of a pool of 21 considered for a new role doing the same work but on the new contract terms. That the claimant refused to accept the new contract terms was agreed. Although there was a redundancy situation, the reason for issuing the letter of termination at D201 was not the need for fewer employees, it was because the Claimant was unwilling to sign the new terms and conditions. Therefore, I did not find the respondent had shown redundancy as a potentially fair reason for dismissal.

66. It was not in dispute that there was a restructure of the respondent business, with the aim to stop the haemorrhage of money, to achieve major efficiencies in ways of working and the aim to radically improve customer and employee satisfaction. Nicole Edward's evidence, which I accepted, was that the main driver behind changing employee terms and conditions as opposed to the wider restructure was to move colleagues onto more advantageous and fairer terms

consistent with others in the group. She confirmed that the respondent wanted to ensure a consistency in terms to fit with the new ways of working that were being introduced. Having regard to the case law as outlined above, I find that the respondent has shown "a sound good business reason" for the restructure and changes to contract terms. A dismissal for refusing to agree a change of contract terms does therefore fall into the category of "some other significant reason" as set out in S98(1(b) ERA 1996 and is potentially fair.

67. In determining the question of whether the dismissal was, in fact, fair or unfair (having regard to the reason shown by the employer) I reminded myself of the provisions of S98(4)(a) and (b) ERA – and whether in the circumstances (including the size and administrative resources of the employer) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, in accordance with equity and the substantial merits of the case.

68. To assess the reasonableness of the respondent's actions, I asked the question whether the decision to dismiss the claimant fell within the range of reasonable responses that a reasonable employer might adopt. I was careful not to substitute my own view and to look at the claimant's dismissal in the full context of the restructuring undertaken by the respondent, balancing the needs of the employer and employee.

69. I considered the process of consultation upon the proposed business restructure and changes to contract terms, undertaken both collectively and individually by the respondent with its employees in conjunction with their trade union representatives. I noted the documentation from eight of those collective consultations contained within the agreed bundle of documents, which took place as a result of the Business Announcement on 24 September 2019 and continued through to 14 November 2019. I accepted the evidence of Dawn Anderson-Foster that the issue of start times was raised within the collective consultation process and that this was clarified by the respondent. The claimant raised his concerns regarding the proposed changes to his contract terms in relation to start and finish times on a number of occasions. He took part in the collective consultation processes and was also consulted with individually. The claimant accepted in evidence that the trade union did not pursue the issue of start times, albeit that in his opinion that was because they were "useless". I find that the respondent's actions in undertaking extensive consultations, including with trade union representatives, in which they responded to questions and counter proposals about the proposed changes, and sought to explain and clarify their position regarding working time and contractual salaried hours were reasonable in all the circumstances.

70. The claimant was part of a collective grievance procedure which raised the issue of the proposals for fixed start and finish times and whether they were compliant with the Working Time Regulations 1998 (WTR), the outcome of which he appealed. He further appealed against his dismissal. Neither of the claimant's appeals were successful. He took no issue with any of the processes or procedures undertaken by the respondent in dealing with the grievances or appeals. The claimant's evidence was that he disagreed fundamentally with the conclusions the respondent had reached in distinguishing working time as defined by the WTR from time which was salaried in line with contractual start and finish times.

71. I accepted the evidence of Nicole Edwards in relation to her handling of the appeals against dismissal and the collective grievance procedure. She stated that she accepted the claimant's letter appealing against dismissal even thought it was considerably out of time given the importance of the issue to the claimant. In considering his appeal, she carried out a number of investigations, including ascertaining whether, since the implementation of the new ways of working on 1 December 2019, there had been breaches of Working Time Regulations (in her opinion there were none). She considered whether the claimant's new contract would have led to any increase in his hours, by comparing hours worked in 2019 and hours worked since 1 December 2019, when the new way of working was implemented. The claimant maintained that he was assigned to several jobs in Crewe around that time, which was not local to his home address. He questioned how the comparisons were made. I considered the evidence contained within the outcome letter (D242) and Nicole Edward's evidence to the Tribunal and I find that she had taken the information provided about Crewe into account. I accepted her conclusion that the claimant's hours were not noticeably different.

72. I find that the respondent's actions in investigating the concerns of the claimant were thorough and fair, and a reasonable response to the concerns raised by the claimant.

73. The respondent considered whether it could keep the claimant on his existing terms (D242). Nicole Edward's evidence was that it would have been very difficult to have applied a system where the claimant's contractual hours were deemed to start on leaving home when everyone else was working on the basis that contractual hours started on arrival at the first job. Whilst the claimant disputed the way in which jobs were allocated and the need for everyone to be on the same terms, he accepted that he was not involved in the planning for the restructure or the implementation of an automated system of booking in jobs. I accepted Nicole Edward's evidence that to have one employee operating under different start times and terms would not have fit the new automated system and would have required employing someone to manually make adjustments thus reducing the efficiencies the respondent was trying to make. In the context of the business reorganisation aiming to make efficiencies, I find that this was a reasonable exploration by the respondent of an alternative to dismissal.

74. The claimant's evidence was that pay and working time are the same thing, and that in his view when he started work he got paid, which was the reason for him refusing to accept the new contract terms. His submission was that the new terms breached working time legislation and that he would work more hours for less pay under them. He advanced these views across the consultation meetings and in his grievance and appeal procedures. The respondent had a different view, that the calculation of working time for the purposes of the WTR, began when the claimant completed his van checks (D243), as he was classed by them as a mobile worker, but that salary was paid on the basis of contracted hours, these being completed from the first to last job locations. I reminded myself that I was not required to resolve this difference of opinion. I was required to decide whether, in the context of a business reorganisation, and balancing the needs of the employer and employee, the conclusions of the respondent were such that their decision to dismiss the claimant for not accepting the new terms fell within the range of reasonable responses. I find that it did. The respondent held the view that "working time" does

not mean time that is required to be remunerated, which it submitted was dependent on the terms of the contract, as per the EAT's decision in Thera East v Valentine (2017) IRLR 878. Its view was based upon domestic case law and was clarified and re-iterated to the claimant at several stages (as documented above) of the consultation process, and within the grievance and appeal meetings and outcome letters. The respondent had also sought to re-assure the claimant throughout these processes that the new system, which matched workers by geography to jobs allocated, was intended to reduce travelling time and that local arrangements were being put in place to reduce excessive travel (D226 – Collective Grievance outcome letter) (D212 the email from David Siddals).

75. I also had regard to the number of employees who signed the new contract. Dawn Anderson-Foster's unchallenged evidence on this issue, which I accepted, was that 393 employees moved to the new contract terms, which were generally perceived by them to be more favourable. The claimant was the only employee who did not. I find that this number of employees accepting the new terms was relevant to the fairness of the respondent's dismissal of the claimant for not accepting them.

76. For the reasons set out above, I find that the claimant was fairly dismissed.

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Employment Judge Wheat

Date 27/11/2020

JUDGMENT AND REASONS SENT TO THE PARTIES ON

2 December 2020

FOR THE TRIBUNAL OFFICE

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