



RM

# EMPLOYMENT TRIBUNALS

**Claimant:** Mr S Askari

**Respondent:** Securitas Security Services (UK) Ltd

**Heard at:** East London Hearing Centre

**On:** 20 April 2018

**Before:** Employment Judge Ferguson (sitting alone)

## Representation

**Claimant:** In person

**Respondent:** Ms J Owusu-Akyaw (In-house counsel)

## RESERVED JUDGMENT

**It is the judgment of the Tribunal that:**

1. The Claimant's holiday pay claim is dismissed upon withdrawal.
2. The Claimant's complaint of unfair dismissal is dismissed.

## REASONS

### INTRODUCTION

1. The Claimant (DOB: 8/1/73), who had been employed as a mobile security officer since 1 September 2004, transferred to the Respondent's employment on 1 September 2017 by virtue of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE"). He resigned on 12 October 2017. By an ET1 presented on 18 December 2017, following a period of early conciliation from 28 October to 28 November 2017, he brought a claim for unfair dismissal and unpaid holiday pay.

2. At the start of the hearing the Claimant withdrew the holiday pay claim and it was agreed that the issues to be determined were as follows:

- 2.1 Was the Claimant dismissed by virtue of Regulation 4(9) of TUPE, i.e. did the Claimant treat the contract of employment as having been terminated because the transfer involved a substantial change in working conditions to his material detriment? The Claimant relies on the following:
  - 2.1.1 A change in the location of his van
  - 2.1.2 A requirement to work on contracts other than the BT contract
  - 2.1.3 A change in the interval of salary payments
  - 2.1.4 Failure to honour annual leave authorised by the transferee
  - 2.1.5 Failure to pay the Claimant on 10 October 2017
- 2.2 Alternatively, was the Claimant constructively dismissed? He claims that the conduct above constituted a breach of the implied term of trust and confidence and that he resigned in response to it.
- 2.3 If the Claimant was dismissed, was the sole or principal reason for dismissal the transfer or a reason connected with the transfer that is not an economic, technical or organisational reason entailing changes in the workforce? If so, the Claimant was unfairly dismissed under Regulation 7 of TUPE.
- 2.4 If not, has the Respondent shown that the Claimant was dismissed for a potentially fair reason? The Respondent relies on some other substantial reason.
- 2.5 Did the Respondent act reasonably within the meaning of s.98(4) of the Employment Rights Act 1996 ("ERA")?

3. I heard evidence from the Claimant and, on his behalf, from Muhamad Ramzan and Bilal Safdar. On behalf of the Respondent I heard from Neil Mossen and Peter Savva.

## FACTS

4. The Claimant was originally employed as a mobile security officer by Cardinal Security Services, commencing on 1 September 2004. He was assigned to a contract providing security services to BT and his employment transferred under TUPE on a number of different occasions. His normal hours were on a night shift, 7pm to 7am. Apart from a period between 2010 and 2011 when a variation was agreed, the Claimant always started and ended each shift at the BT site at Mill House, Ilford. He was allocated a van which was parked at that site and during his shift would drive to various other BT sites, conducting patrols and responding to any security alerts.

5. It was not in dispute that a written contract of employment between the Claimant and Reliance Security signed by the Claimant on 25 February 2011 was applicable at

all relevant times. This gives the Claimant's job title as "Patrol Net Officer" ("Patrol Net" being a division of Reliance responsible for mobile security). The place of work is stated in clause 1.6 to be "London PatrolNet". Clause 3 of the contract states:

"You are required to work at your normal place of work as set out at clause 1.6 or such other place within a reasonable distance of your beat as the Company may require."

6. The Claimant's evidence was that for an 11-month period around this time his van was parked at the Patrol Net office in Peckham. He said this was by agreement, following a period of consultation.

7. In August 2011 the Claimant's employment transferred to Mitie Security Limited.

8. On 28 July 2017 Mitie wrote to the Claimant to inform him that it had been unsuccessful in retendering for the BT contract and the Respondent had been appointed as the new contractor. It was said that TUPE applied and the Claimant's employment would transfer to the Respondent on 1 September 2017. The letter confirmed that under TUPE the Respondent was required to honour all existing terms and conditions of employment as well as the Claimant's continuous service. The right to object to the transfer and the consultation process were explained.

9. The Respondent arranged 1-2-1 meetings with those employees due to transfer to it. The Claimant's meeting took place on or around 1 August 2017 with Neil Mosson, Branch Manager for the Respondent.

10. On 4 August 2017 the Claimant emailed Mr Mosson to ask for confirmation that his van would remain parked at Mill House after the transfer. Mr Mosson emailed all of the transferring BT employees on the same day, saying that the location of the vehicles was the one issue he had been uncertain about during the 1-2-1 meetings. The email continued:

"To this end I have the following news:

'...all vehicles will need to be brought back from their current location to the Securitas Office they are assigned to'

This statement is part of a communication forwarded to me. I understand that this decision has been agreed with BT &, in addition, I have instruction to collect the vehicles on the morning of the 1<sup>st</sup> September 2017.

This change will affect each of you in a different way. Therefore, in order to fully understand these implications, I would appreciate your thoughts on the following as soon as possible.

- Any feedback on moving the vehicle to the local office
- Any further comments or concerns

I understand this may be disappointing to many of you but, for those of you who have been with Reliance/PatrolNet/Securitas, this is probably not a massive surprise."

11. The Claimant replied saying that he believed it would be a breach of the conditions of his employment for the vehicle to be relocated from its existing location at Mill House.

12. The Securitas office to which the Claimant's vehicle would be assigned was in the Isle of Dogs, E14. The Claimant lives in Ilford and travels to work by car. The distance by car from his home to Mill House is approximately 0.7 miles. The distance from his home to the Respondent's office is approximately 7.7 miles. There was some dispute about how long these journeys took so, with the parties' agreement, I entered the journeys into Google Maps for an estimate of the journey time at the time of day that the Claimant travelled to and from work. The journey from the Claimant's home to Mill House was "typically 5-12 min" and the return journey "typically 3-6 min". The journey from the Claimant's home to the Respondent's office was "typically 18-30 min" and the return journey "typically 16-22 min". Although these estimates are said to factor in typical traffic conditions at the time, I of course recognise that they are not completely reliable because of the unpredictability of London traffic. When travelling a distance of some 7 miles there is always a risk of being caught in particularly bad traffic.

13. The Claimant's evidence was to the effect that the extra travel time would have a serious impact on his life because he worked 12-hour night shifts and therefore every minute at home during the day was precious, to sleep and see his family.

14. On 9 August 2017 the Respondent informed Mitie of the measures it envisaged in relation to the forthcoming transfer. These included the following:

"It is Securitas's intention to review the location at which the BT vehicles are located with the view to transferring these to the nearest Securitas office. This will enable Securitas to ensure the vehicles are maintained and the vehicles are available for use during any unplanned periods of absence. It is understood that this proposal will affect everybody in a different way and therefore Securitas will be engaging with all affected staff individually."

15. The Respondent's unchallenged evidence was that the decision to move the BT fleet of vehicles to the Respondent's premises was made by Guy Muir, the Respondent's BT Project Manager, and BT at the time that the Respondent was tendering for the contract.

16. On 15 August 2017 Mr Mosson emailed the BT employees again to ask for confirmation of their work pattern in the week of the transfer. On the subject of the location of the vehicles, he quoted the statement from the email of 9 August 2017. Mr Mosson went on to say that he was aware this news "may play a part in any decision you make in respect to TUPE & I can understand any second thoughts you may have since our 1-2-1 meetings."

17. On 21 August 2017 the Claimant chased a response to his email claiming that changing the location of the vehicles would constitute a breach of the conditions of his employment. Mr Mosson responded on 23 August 2017 as follows:

"If your employment terms and conditions specify that you &/or your vehicle

are based permanently from Ilford please can you highlight this and forward me a copy. (HR will obviously need to know if there is any indication that Ilford is your permanent workplace). Currently our HR department are unaware of any conditions to this effect (within the standard Mitie contract) but there are many officers under differing agreements. Ultimately it will need to be seen if this is a substantial change to your working conditions – if not there will be no breach of conditions/contract.

While the decision to bring the vehicles to the Isle of Dogs is unpopular I would stress that this decision has been made to enable Securitas to ensure the vehicles are maintained, and that the vehicles are available for use during any unplanned periods of absence. In addition to this, while it appears that the current BT contract with Mitie may allow the parking of the van at the BT properties, the Securitas contract with BT does not permit such an arrangement.

The revised vehicle location arrangements will also address the customer concerns about what happens to the keys, cards and sensitive information that are required for the service if the vehicle is parked at a BT site. (The control of keys under BS 7984 indicates that, when not in use, keys should be kept within a response centre or secure facility located within the premises (sic) owned or leased by the organization to which access is restricted to the organization's employees. In this instance the response centre will be the Securitas Isle of Dogs office)."

18. The Claimant emailed Mr Mosson on 31 August 2018 saying that he wished to raise a formal grievance against the decision to relocate the vehicle from its current location at Mill House. The Claimant was invited to a meeting on 7 September 2017.

19. The Respondent moved all of its vehicles from Mill House on 1 September 2017.

20. The Claimant did not attend work after 1 September and claims that he was on authorised annual leave up to and including 23 September 2017. He accepts that he never informed the Respondent of the dates of his annual leave, but claims that he mentioned in his 1-2-1 that he had booked some annual leave. Mr Mosson denies this, but it is unnecessary to make a finding about it. The relevant facts are that the Claimant did not inform the Respondent that he would be taking annual leave for most of September 2017 and did not respond to Mr Mosson's email requesting confirmation of his work pattern in the first week of September. Mr Mosson's evidence, which I accept, is that Mitie did not inform the Respondent of the Claimant having booked any annual leave after the transfer. When the Claimant did not attend for his normal shift on 4 September 2017 another colleague contacted him and the Claimant said he was on annual leave.

21. The grievance meeting took place on 7 September 2017, conducted by Mr Mosson. The Claimant attended with a union representative. The Claimant argued that it had become part of his terms and conditions, by "custom and practice", that the vehicle was located at Mill House. He said that travel and family time would be affected by a change of parking location. He also argued that the concerns about keys could be addressed by having a secure locker at Mill House.

22. Mr Mosson sent a grievance outcome letter to the Claimant on 27 September 2017. He said that Mitie had been informed that the vehicles would be transferred and that this complied with the requirements of TUPE. He accepted that the vehicle had been parked at Mill House "for a period of time" but did not consider that there was any contractual requirement that it would be parked there. He repeated the final paragraph of the email of 23 August 2017 relating to procedures for storing keys. He confirmed that the grievance was not upheld and that the Claimant was expected to report for duty on 28 September 2017 at 7pm.

23. On 28 September 2017 the Claimant emailed to say that he was not well enough to report for duty for the next four days. The following day he appealed against the grievance outcome and an appeal meeting was scheduled on 4 October 2017.

24. The appeal was heard by Peter Savva, Mobile Director, London and East Anglia, and the Claimant was again accompanied by a union representative. The Claimant argued that it would take between 45 minutes and 1 hour and 15 minutes to drive 7 miles, so the change would add "up to 14 hours". He said he wanted to see family and be at home. He also complained that he had not been properly consulted about the change and that the vans should not have been moved on 1 September, before his grievance had been heard. Mr Savva responded that the Claimant had not been at work for a month and it was not reasonable to leave the van there when other officers needed to use it. Mr Savva also suggested at the meeting that Mitie may have failed to consult on this issue and said he might be able to find a "work around". Towards the end of the meeting the Claimant complained that his pay date had been changed without warning.

25. It is not in dispute that before the transfer the Claimant was paid on a four-weekly basis and after the transfer he was paid monthly, on 10<sup>th</sup> of each month.

26. After the appeal hearing Mr Mosson issued the Claimant with an ID card and uniform. The Claimant claims that during this meeting Mr Mosson told him that he might have to work on contracts other than the BT contract. When the Claimant objected Mr Mosson said that he could be disciplined if he refused. Mr Mosson's evidence was that there was a discussion about the possibility of needing to help out if, for example, there was an alarm at a nearby property not covered by the BT contract. He denies threatening disciplinary action. I accept that the Claimant was given the impression during this meeting that he might be required to do work that does not fall under the BT contract and that he had not previously been required to do.

27. On the same date Mr Savva sent an email to Guy Muir saying that there were some concerns about Mitie's communication to the BT officers and asking whether "in the short term only" the Claimant's vehicle could be relocated back to Mill House until the matter is resolved. Mr Muir sought approval from BT and on 5 October 2017 Justin Bignell, Head of Security Services at BT responded as follows:

"My concern are;

- If we do this for one van, would more follow?
- Where would the keys and cards be stored during the down time?

- Would Brentwood by acceptable, we currently have a 24-7 security officer who could store the pouch.
- Where is the nearest Securitas office?"

28. Mr Savva responded the following day saying that he agreed with Mr Bignell's concerns and that the vehicle would remain at the Respondent's office.

29. On 6 October the Claimant informed Mr Mosson he had hurt his back and could not come to work. On the same date Mr Savva sent a letter to the Claimant rejecting his grievance appeal. He said that a request to relocate the vehicle back to Mill House in the interim had been rejected by BT. He also repeated the assertion about BS 7984 and the storage of keys. He said that the Respondent had followed the TUPE process and that the travel distance ("on your own admission its 20-25 min on a good day") was not considered unreasonable.

30. The Claimant was due to be paid on 10 October 2017 but did not receive his pay on that date. He emailed Mr Mosson to query this and said, "Are you not honouring my holidays that were approved by MITIE?". Mr Mosson replied saying that the Claimant's holidays had had to be processed manually. He did not know why the Claimant had not been paid and said he would look into it.

31. The Claimant emailed Mr Savva on 11 October stating that he did not accept the decision. He also disputed that he had admitted the journey time was 20-25 minutes on a good day. He claimed he had said it takes 25-30 minutes to get from Mill House to his home.

32. On 12 October 2017 the Claimant resigned by email timed at 12.53. The email states:

"I feel that I am left with no choice but to resign in light of my recent experience regarding the Fundamental Breach of TUPE law.

1. Change of location of vehicle without consultation
2. Change of frequency of wages without consultation
3. Not honouring my entitled annual holidays authorised by Mitie TSM

I feel like these changes are imposed on me, not negotiated that will make my working condition significantly worse and effect my custom and practice.

Not honouring my entitled authorised holidays left me with no money in my account which is against the TUPE law.

I consider this to be a Fundamental Breach on TUPE Law of the contract on your part."

33. Mr Mosson acknowledged the Claimant's resignation on the same date and said that the holiday pay should have appeared in the Claimant's account. The Claimant's evidence is that the money appeared in his account at 15.20 on 12 October.

34. Mr Mosson's evidence was that the delay in paying the Claimant was largely because he had not worked for the Respondent since the transfer and therefore was

not set up on the payroll system. It was not until after the appeal hearing on 4 October that the Claimant was given his uniform and ID card, with the expectation that he would commence work on 6 October. That, together with the confusion about his annual leave, meant that his pay was not processed in time for normal pay date of 10 October.

35. It is not in dispute that at least two other security officers resigned following the transfer because of objections to changes to their working conditions. Muhamad Ramzan resigned on 28 September 2017 because of the change to the vehicle location, which he claimed would add 1 to 2 hours extra driving on top of his shift, the requirement to work on other contracts than the BT contract and the change in frequency of wages without consultation. Bilal Safdar also resigned because of the requirement to work on contracts other than the BT contract. His evidence was that he did not mind about the change to the location of the vans.

## THE LAW

36. Regulation 4(9) of TUPE provides, so far as relevant:

...where a relevant transfer involves or would involve a substantial change in working conditions to the material detriment of a person whose contract of employment is or would be transferred under paragraph (1), such an employee may treat the contract of employment as having been terminated, and the employee shall be treated for any purpose as having been dismissed by the employer.

37. In *Tapere v South London and Maudsley NHS Trust* [2009] IRLR 972 the Employment Appeal Tribunal considered Regulation 4(9) in the context of an employee whose place of work was changed following a transfer. The Claimant resigned following the change, saying that it created childcare difficulties for her because of the longer journey time. The EAT held that the employment tribunal had erred in considering that the issue of material detriment under Regulation 4(9) should be “objectively determined”. The correct questions were whether the employee regarded the changes to her working conditions as detrimental and whether that was a reasonable position to adopt.

38. The relevant paragraphs of Regulation 7 of TUPE provide:

(1) 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 1996 Act (unfair dismissal) as unfairly dismissed if the sole or principal reason for the dismissal is the transfer.

(2) This paragraph applies where the sole or principal reason for the dismissal is an economic, technical or organisational reason entailing changes in the workforce of either the transferor or the transferee before or after a relevant transfer.

(3) Where paragraph (2) applies—

(a) paragraph (1) does not apply;

(b) without prejudice to the application of section 98(4) of the 1996 Act

(test of fair dismissal), for the purposes of sections 98(1) and 135 of that Act (reason for dismissal)—

(i) the dismissal is regarded as having been for redundancy where section 98(2)(c) of that Act applies; or

(ii) in any other case, the dismissal is regarded as having been for a substantial reason of a kind such as to justify the dismissal of an employee holding the position which that employee held.

(3A) In paragraph (2), the expression “changes in the workforce” includes a change to the place where 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 (and the reference to such a place has the same meaning as in section 139 of the 1996 Act).

39. Section 95(1)(c) of the ERA provides:

**95 Circumstances in which an employee is dismissed**

(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.

Dismissals pursuant to section 95(1)(c) are known as constructive dismissals.

40. Four conditions must be met in order for an employee to establish that he or she has been constructively dismissed:

- 40.1 There must be a breach of contract by the employer. This may be either an actual or anticipatory breach.
- 40.2 The breach must be repudiatory, i.e. a fundamental breach of the contract which entitles the employee to treat the contract as terminated.
- 40.3 The employee must leave in response to the breach.
- 40.4 The employee must not delay too long before resigning, otherwise he or she may be deemed to have affirmed the contract.

(*Western Excavating (ECC) Ltd v Sharp* [1978] ICR 221 and subsequent cases)

41. An employer owes an implied duty of trust and confidence to its employees. The terms of the duty were set out by the House of Lords in *Mahmud v Bank of Credit and Commerce International SA* [1997] ICR 606 and clarified in subsequent case-law as follows:

“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 confidence and trust between employer and employee.”

Any breach of this term is necessarily fundamental and entitles an employee to resign in response to it (*Morrow v Safeway Stores Ltd* [2002] IRLR 9).

42. Pursuant to section 98 ERA it is for the employer to show that the reason for dismissal is either a reason falling within subsection (2) (capability, conduct, redundancy, breach of statutory duty) or “some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held”. According to section 98(4) 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 employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee” and “shall be determined in accordance with equity and the substantial merits of the case.”

## CONCLUSIONS

43. The principal dispute concerned the change to the location of the vehicle, which also governed the start and finish location of the Claimant’s shift.

44. Dealing first with the terms of the Claimant’s contract, I do not accept that he had a contractual right to begin and end his shift at Mill House. That had been the practice for most of the Claimant’s employment on the BT contract, but there was a period when his van was parked at an office in Peckham. The Claimant has not produced any evidence that he has ever had a written contract of employment specifying that the location of his van or the place where he should start and end his shift was Mill House. He accepts that the Patrol Net contract was in force at the time of the transfer. This provided for a different place of work, namely Patrol Net’s London office, and expressly contained a mobility clause enabling the employer to require him to work at any location “within a reasonable distance of your beat”. The fact that the van was usually parked at Mill House is not sufficient to override those express terms in the contract. There was very little evidence as to the area that the Claimant would cover in his “beat”, but he said that his job would involve him travelling all over East London and he has never argued that the Securitas office in the Isle of Dogs was outside the area that he would cover; his only objection is to the start and finish location. I find that the Securitas office fell within the scope of this mobility clause.

45. Clearly, however, the change in the location of the van amounted to a change in the Claimant’s working conditions, so Regulation 4(9) of TUPE is potentially engaged. The Respondent did not dispute that it was a “substantial” change and I find that it was. The distance between the two locations is more than 6 miles and the Claimant’s van had been based at Mill House since 2011. Nor was it disputed that the change was to the Claimant’s detriment. Ms Owusu-Akyaw’s sole argument on this issue was that it was not “materially” to the Claimant’s detriment. That is a very fine distinction to make and I do not accept the argument. I note that the Claimant lives less than a mile’s drive from Mill House and more than 7 miles’ drive from the Respondent’s office. Even assuming, conservatively, that this would only have resulted in an additional 30 minutes’ travel time a day, in the context of working 12-hour night shifts this amounts to a significant reduction in the amount of time available to the Claimant to rest and spend time with his family. Applying the subjective test outlined in *Tapere*, he considered the change to be detrimental and that was a reasonable position for him to adopt.

46. Since this issue was always the Claimant's main concern about the transfer and it was the first issue mentioned in his resignation email, I accept that Regulation 4(9) applied and the Claimant should be treated as having been dismissed by the Respondent.

47. I do not consider that the other issues complained of by the Claimant had any significance. Although Mr Mosson had told him that he might be required to work on contracts other than the BT contract, the Claimant has not established that this would amount to a breach of contract or that it would be to his material detriment. In any event it was not a reason for his resignation.

48. As to the change in pay frequency, again the Claimant has not established any contractual entitlement to be paid on a four-weekly basis; on the contrary, his Patrol Net contract states that he will be paid on the 12<sup>th</sup> of each month. The change to being paid on the 10<sup>th</sup> of each month does not amount to a fundamental breach of contract or a change to the Claimant's material detriment. He accepted in his evidence that it did not cause him any difficulties; his only complaint was that he was not warned or consulted about it. The Respondent has not asserted that the Claimant was consulted about the change, and has put forward no evidence to suggest that he was, but given that it was not unfavourable to him any failure to inform or consult cannot have amounted to a breach of the implied term of trust and confidence.

49. The alleged failure to honour authorised annual leave and failure to pay the Claimant on 10 October 2017 are in reality the same complaint. It is not in dispute that the Respondent had not been informed, either by the Claimant or by Mitie, that the Claimant had booked annual leave for most of September 2017. Once the Claimant had complained about the failure to pay him on 10 October, the annual leave was retrospectively authorised and he was paid for the whole period. The claim that the Respondent "failed to honour" the annual leave is not therefore made out. As for the failure to pay him on 10 October, I accept Mr Mosson's evidence that there was nothing deliberate or vindictive about this. The Claimant had by this stage still not attended work for the Respondent and his annual leave was not entered onto the Respondent's system. In those circumstances the slight delay in paying him is understandable and does not amount to a breach of the implied term of trust and confidence.

50. Having found that the Claimant should be treated as having been dismissed by the Respondent, I must consider whether Regulation 7 of TUPE applies such that the dismissal was unfair. This is not a case where the "sole or principal" reason for dismissal is the transfer itself. I find that the principal reason for the dismissal was the change in the location of the van. In light of paragraph (3A) of Regulation 7 I accept the Respondent's argument that this was an organisational reason entailing changes in the Respondent's workforce. That paragraph expressly states that a change in place of work amounts to a "change in the workforce" for the purposes of paragraph 7(2). Although it was not expressed as such, the change to the location of the Claimant's van amounted in practice to a change in his place of work.

51. Pursuant to paragraph (3) of Regulation 7, the dismissal is regarded as having been for a potentially fair reason, namely redundancy or "some other substantial reason". Neither party has ever suggested that there was a redundancy situation and there was insufficient evidence before me to make a finding on that issue. I therefore

proceed on the basis that the dismissal was for some other substantial reason. In any event, the remaining issue is the same: did the Respondent act reasonably?

52. The two main issues to be considered are whether the decision to move the location of the Claimant's van was reasonable and whether the Respondent acted reasonably in the way the change was implemented, including by consulting the Claimant.

53. As to the decision to move the location of the van, I consider that the most significant factor is that the change was either requested by or agreed with BT and they indicated that they were not prepared for the vans to remain at Mill House in the long term. There was little documentary evidence about this, but I consider that the email from Justin Bignell of BT is sufficient to establish that this was a requirement of the client. It also supports Mr Savva's evidence that the change was agreed as part of the tender process. Whatever the operational reasons for it, therefore, it would be difficult to say that it was unreasonable of the Respondent to act on a requirement of its client. In any event I accept that there were good operational reasons for the change. The Respondent did not produce any evidence to support the argument that the change was necessary to comply with BS 7984, but I accept that that was the belief of both Mr Mossom and Mr Savva. It also makes sense that the Respondent would want to keep the vans at a place where keys could be stored securely, and at a location where they could easily be accessed by the Respondent when not in use, for maintenance or other purposes.

54. Of course the Respondent was obliged to consider the impact of the change on its employees. I have found above that the impact on the Claimant was significant. It was, however, within the scope of his contract of employment and I do not consider that imposing a change of place of work entailing an increase of 7 miles each way in the Claimant's commute fell outside the range of reasonable behaviour by the Respondent. The Claimant had benefited from a very short commute for most of his employment, but 7.7 miles is still a relatively short distance to have to travel to work. The Claimant did not put forward any reason why the increased journey time would cause him particular difficulties. The detriments relied on were those that would be experienced by any employee, namely less time to rest and enjoy leisure activities.

55. As to the manner in which the change was implemented, I do not accept that the Respondent acted unreasonably. The Claimant was informed of the change as early as 4 August 2017, only one week after the transfer had been announced. Although he claims that he had to push for information from the Respondent, I consider that Mr Mossom kept the employees informed, including by explaining the reasons for the decision, and responded relatively quickly to the Claimant's queries. The Claimant then submitted a grievance, which was dealt with thoroughly and fairly. Although the change was presented as a decision that had already been made, the Respondent demonstrated that it was open to discussion on the issue and Mr Savva's response to the Claimant's appeal shows that it was prepared to consider alternative solutions, at least in the short term. The correspondence with BT around this time also demonstrates that the physical removal of the vans from Mill House on 1 September 2017 was not irreversible.

56. Overall I accept that the decision to change the location of the vans was to the Claimant's detriment and I understand why he objected to it, but I do not consider that

the Respondent acted unreasonably.

57. The Claimant's dismissal was therefore fair and the claim is dismissed.

Employment Judge Ferguson

9 May 2018