



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

Mrs N Rogerson

v

Dreamstore Norwich Limited

**Heard at:** Norwich

**On:** 16 January 2020

**Before:** Employment Judge Postle

**Appearances**

**For the Claimant:** In person

**For the Respondent:** Mrs Karavadra, Director

## JUDGMENT

1. The Claimant was constructively unfairly dismissed.
2. The Claimant is entitled to compensation in the total sum of **£4,933.40** to which the Respondents are Ordered to pay the said sum.
3. Recoupment does not apply to this award.

## REASONS

1. This is a claim by the Claimant that she was constructively unfairly dismissed by the Respondents. There is also a claim for unpaid wages in respect of statutory sick pay.
2. In this Tribunal, unfortunately neither party complied with the Case Management Orders so there is no joint bundle and there are no written witness statements. What I do have is a collection of documents from the Respondent and a number of wage slips from the Claimant going back as far as 5 June 2018 to 13 May 2019.
3. The facts of this case show that the Claimant was employed by the Respondents which is a convenience store in Norwich. She was originally employed by a Mr Silverwood in June 2016, he sold the business to the current owners in May 2019. It is clear from the Claimant's pay slips that

throughout her employment with Mr Silverwood, she worked consistently more than 24 hours as her pay slips clearly show. There is no doubt about that.

4. The new owners come in and the Claimant's hours are unilaterally reduced. The Claimant raises this with the Respondents, particularly Mrs Karavadra at a meeting on 31 May, at which the Respondents make it clear that whether it was going to be 16 hours or 4 hours, they were not going to honour what the Claimant had previously been entitled to over the last couple of years working consistently more than 24 hours. As a result of the impasse, the Claimant resigned and claims that she had been constructively unfairly dismissed.

### **The Law**

5. The law in this matter is relatively straightforward. Section 95(1)(c) of the Employment Rights Act 1996 states that there is a dismissal where the employer terminates the contract with or without notice in circumstances such that he or she is entitled to terminate it without notice by reason of the employer's conduct. This form of dismissal is commonly referred to as constructive dismissal. In order to claim constructive dismissal, an employee must establish that there was a fundamental breach of contract on the part of the employer, the employer's breach caused the employee to resign and the employee did not delay too long before resigning thus affirming the contract and losing the right to claim constructive dismissal.

### **Conclusion**

6. The Tribunal's conclusion in this matter is quite straightforward. Clearly the reduction by an employer of an employee's hours from 24 plus hours per week to either 16 or 4 hours per week is a fundamental breach of contract by the Respondents. Clearly, that breach caused the employee to resign, she resigned immediately when she realised the Respondents were not going to move from the position and there was no delay in her resigning. Therefore, her claim for constructive unfair dismissal succeeds.
7. I do not find that there has been an unlawful deduction of wages in the statutory sick pay claim. I will deal now with compensation for the constructive dismissal.
8. It is clear, looking at the Claimant's pay slips and working on the basis of the average of the last 12 weeks' pay, which I have to do according to case law and the apportionments and the last 12 week's pay gross shows £3,292.06 which gives an average weekly gross of £274.33. The net pay works out on average basis of £243.22. The Claimant is entitled to a basic award which is assessed based on the Claimant's age at the time of dismissal, 39 years and the number of complete years' service she carried out with the Respondents, which is two years. That gives a multiplier of 2 x gross pay which amounts to £548.66. The Claimant, fortunately for the Respondents, mitigated her loss as she is required to do, by finding

alternative employment as soon as reasonably practical, which she did in October with Burger King. She was therefore out of work for 17 weeks. Based on her net pay x £243.22 gives a compensatory loss of £4,134.74. The Claimant was also entitled to an award for loss of her statutory rights in that she no longer has protection from unfair constructive dismissal and for that I award £250. I do not make any Acas uplift on the award.

9. That makes the total amount payable by the Respondents to the Claimant of £4,933.44.
10. The Claimant received no state benefits while she was unemployed and therefore recoupment does not apply to this award.

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Employment Judge Postle

Date: 24 February 2020

Sent to the parties on: 3 March 2020

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For the Tribunal Office