



CHANGING AN EMPLOYEE'S TERMS AND CONDITIONS

How to alter an existing employee's terms and conditions of employment has always been a difficulty for employers. Strictly speaking, the terms of any contract cannot be altered without the consent of both parties; however business needs often dictate that changes are necessary for the survival of the business or the effective running of the business. A recent decision in the Employment Appeal Tribunal in London sheds light on how an employer can effectively implement changes and limit any tribunal claim.

Mr Robinson was employed as a territorial manager for Tescom Corporation – a company that manufactures pressure regulators and valves for the oil and gas industry and pharmaceutical industry. Mr Robinson's role was to sell components in a designated sales region which necessitated travelling round the country. The Company decided to establish a separate systems operation in the UK and discussed with Mr Robinson the proposed changes. It was suggested to him in February 2006 that he should take over 80% of the systems work and keep 20% of the component work – a new role which would involve travelling nationwide. Mr Robinson made it clear that he wished to continue in his existing role and region. The Company made some alterations to its restructuring plan in an effort to accommodate the employee's wishes. The Company's view was that, in practice, the travel requirements would be no more onerous than before even though the area was greatly increased. Mr Robinson was issued with a new job description in line with this restructuring. In July 2006, Mr Robinson raised a grievance relating to the increased time that he would have to spend away from home staying in hotels and stating that he wished to remain in his existing position. At the same time his other three colleagues agreed to change their roles. A grievance meeting was held, after which the Employer wrote to the employee stating that his new sales territory would take effect from the 1st September 2006 but that the position would be monitored over a twelve month period with review meetings at three monthly intervals.

On 25th September 2006, Mr Robinson wrote a letter stating, among other things: 'I will work under the terms of the varied job description, Territory Manager – Components but under protest. I do not accept the terms and I am treating the change as a breach of contract and dismissal from the original contract. I retain the right to seek damages from my employer for a breach of contract and/or a declaration from the courts that my employer must abide by the original terms of my contract'.

On the 29th September 2006, Mr Robinson appealed the grievance decision. The MD, after hearing the appeal, concluded that the coverage of the new area was necessary and the impact on the Claimant's role was reasonable and manageable and that it would be implemented from the 16th October 2006. On 25th October 2006, Mr Robinson wrote to the employer stating: 'write to confirm that I still do not accept the new terms and conditions and will continue to work for the Company in the role of Territory Manager' and he referred to his previous region. The employer wrote to him confirming that his new role was effective from 16th October 2006.

Mr Robinson did not work his new terms and conditions and was consequently requested to attend a disciplinary hearing to discuss his failure to follow a reasonable management instruction. At the meeting he made it clear that he would not be accepting the changes to his new areas and he was dismissed thereafter for gross misconduct, he appealed but the appeal was unsuccessful.

He issued Tribunal proceedings. The Tribunal stated that as Mr Robinson had not resigned and claimed constructive dismissal but had instead wrote his letter of the 25th September 2006, he had 'limited any claim that he may have for breach of contract to a claim for damages for that breach.

In this situation it is unreasonable to suggest the Claimant can continue in his job but only perform the tasks under his original contract, when the employer requires him to undertake other tasks. The contract that the Claimant was affirming was the contract as amended by the Respondent'. He appealed to the Employment Appeal Tribunal which dismissed his appeal stating: 'The contract of employment was extant, the Claimant had agreed to continue working under it and under the varied job description but then failed and refused to do. Dismissal in response to the Claimant's refusal was, as the Employment Tribunal found, within the band of reasonable responses'.

Employers with concerns should always seek legal advice prior to dismissing an employee to avoid the costs of litigation.