

TUPE: Change in location was not a substantial change to employee's material detriment

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In this case the EAT considered whether, following a TUPE transfer, a relocation of three and a half miles was a repudiatory breach of contract and/or a substantial change to the affected employees' working conditions to their material detriment.

Facts

The four claimants were employed by CentreWest as bus drivers. They were based at CentreWest's Westbourne Park depot. Their contracts contained a mobility clause under which CentreWest reserved the right to move them to any of its work locations, as defined in its contracts of employment folder. With effect from 30 January 2010, CentreWest transferred the relevant bus route to London United Busways (LUB). That transfer was a TUPE transfer. As a consequence the Westbourne Park depot was no longer available as a base to work from. The Claimants were required to transfer to LUB's Stamford Brook depot, some three and a half miles away. Stamford Brook was not one of the depots referred to in the CentreWest contracts of employment folder.

The claimants had concerns about the change in location, which would extend their working day from between 30 minutes to one hour, and resigned. They brought claims for constructive dismissal; claiming the relocation to the Stamford Brook depot was a repudiatory breach of contract. They also argued that the change was a substantial change to their working conditions to their material detriment, entitling them to resign and be treated as dismissed under regulation 4(9) of TUPE 2006. The tribunal dismissed their claims. In reaching its decision, the tribunal took into account the facts that:

- The transfer to Stamford Brook placed no greater burden on the Claimants than a transfer to the other depot locations to which they could have been relocated in accordance with their CentreWest contract;
- The relocation was not a substantial change as the Claimants' jobs were preserved at a location that was more convenient to them than the five alternative locations they could have been required to move to under the terms of their contracts; and
- The relocation resulted in additional commuting time of a maximum of 30 minutes each way for the Claimants. These increases, in context, were not substantial, and it was not reasonable for the claimants to regard them as such.

The Claimants appealed and the EAT dismissed their appeals. The EAT considered that the two claims were inter-linked: if the change in working conditions was not substantial it would follow that the breach of contract would not be substantial. The EAT noted that the evaluation of whether a change in working conditions was substantial was a factual assessment for the employment tribunal to make in each case. The tribunal had been entitled to reach the decision it had on the particular facts.

What this means for employers

The decision is helpful for employers as it highlights that each case under regulation 4(9) of TUPE 2006 must be decided on its own particular facts. This case was similar to a case in 2012 (*Abellio London Ltd v Musse*) in which the EAT upheld a tribunal's decision that a relocation of six miles following a TUPE transfer was a substantial change in bus drivers' working conditions to their material detriment. That case suggested it is very easy for employees to establish material detriment. This case shows it will not always be easy. This case was decided under TUPE 2006. The amendments which were made to TUPE earlier this year specifically included change of location as a potential ETO reason for dismissal. Had this case been decided under the 2014 Regulations the employer would have been in an even stronger position to defend the claims.

[Cetinsoy and others v London United Busways Ltd](#)

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