

School's change to a teacher's working patterns amounted to repudiatory breach of contract

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A school's decision to change a teacher's working patterns from three days per week to five days per week has been found to amount to a repudiatory breach of the teacher's contract of employment entitling her to resign and claim constructive dismissal.. Whilst the contract stated that working hours may be 'subject to change', this did not give the school the ability to make such changes without the teacher's agreement.

Mrs Hart was employed by St Mary's School as a learning support teacher. From the commencement of her employment in September 2001, Mrs Hart worked part-time. Her hours, whilst not initially fixed, were set at three days per week by a contract of employment entered into in March 2003. The contract stipulated that the part-time working hours 'may be subject to variation depending upon the requirements of the School Timetable'.

In 2013, the school decided to change its timetabling to allow for teaching of core subjects in the mornings. As a result of this, the school asked Mrs Hart to spread her working hours over five days. A consultation process was followed, but did not result in an agreement, due in part to the fact that family commitments prevented Mrs Hart from working on Fridays. The school proceeded to implement the changes without Mrs Hart's agreement; in response, she resigned on 3 September 2013 and brought a claim for constructive unfair dismissal.

The Employment Appeal Tribunal held that the change to Mrs Hart's working hours amounted to a repudiatory breach of contract and entitled Mrs Hart to claim that she had been constructively unfairly dismissed. Mrs Hart's working patterns were set and the variation clause in the contract did not give the school a carte blanche to change them. Whilst the clause allowed the school to suggest changes to Mrs Hart's working

hours, Mrs Hart was entitled to refuse those changes, and vice versa.

Following this case, employers seeking to rely on broadly drafted variation clauses to alter employees' terms and conditions should take caution. It is advisable to seek to agree any suggested changes with the affected employees but, as in this case, agreement cannot always be reached and the consequences of insisting upon those changes could prove costly.

Hart v St Mary's School (Colchester) Ltd UKEAT/0305/14

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