



EMPLOYMENT TRIBUNALS
London Central Region

Heard by CVP on 4/3/2022

Claimant: Mr R Pretorius

Respondent: Al Arab Publishing House Limited

Before: Employment Judge Mr J S Burns

Representation

Claimant: In person

Respondent: Mr Paterson (Consultant)

JUDGMENT

1. By consent the name of the Respondent is amended so it reads as above.
2. The claims are dismissed as outside the territorial jurisdiction of the UK Employment Tribunal.

REASONS

1. The claims are for arrears of pay, notice pay, holiday pay and a redundancy payment. There was a dispute between the parties as to whether the Claimant was or was not an employee of the Respondent, which I did not have to determine unless I concluded that the UK ET had jurisdiction which I dealt with as a preliminary issue. I took evidence from the Claimant and was referred to a short document dated 11/6/2015 which was all he had as a contract regulating his relationship with the Respondent.

Findings of fact

2. The Claimant is a USA citizen currently living in Washington DC. In June 2015 he was recruited to work mainly remotely from his home (which was then Hong Kong) as a Chief Copy Editor for the Respondent, which is a company registered in the UK, also with an office in London. The Claimant was recruited and subsequently line managed by Mr O Romdhani, who was based in another Respondent office in Tunis, Tunisia, and in practice most of the day-to-day dealings and communication between the Claimant in relation to his work was with the Tunis Office. The Claimant when working for the Respondent lived first in Hong Kong and then in various places in Europe - particularly in Madrid. He visited the UK during that time for 6 weeks and during that visit attended the Respondent's London office for a few hours on one occasion to "look around and socialize". The Claimant work was on an English language newspaper published by the Respondent called The Arab Weekly which was printed in London, Dubai and Michigan and sold in the UK, the Middle East, and the USA. The Claimant was paid in US dollars into a Hong Kong Bank and paid taxes in Hong Kong on his salary. He did not pay taxes or NI contributions in the UK. His short "contract" did not refer in any way to the law which would apply to the contract nor did it contain any reference to the country in which any disputes would be resolved. He was summarily dismissed on 1/4/2020.

The Law

3. Lawson v Serco 2006 IRLR 289 established that the rights conferred by the UK employment statutes such as the Employment Rights Act 1996 (which provide for protection of wages, notice pay, fair dismissal, redundancy payments etc) applies to employees working in the UK

at time of dismissal. Persons on casual visit not protected. Employees working in foreign lands are not protected by the Employment Tribunals in the UK, but that this is subject to various exceptions. The same will apply to employees who seek to enforce contractual claims in the ET after their employment has ended.

4. Peripatetic employees who travel abroad such as airline pilots, international management consultants and salesmen etc will be protected where their work base is in the UK. The base must be identified by what happens in practice rather than by the terms of the contract.
5. Only a narrow category of expatriates will be protected – including for example representatives of businesses conducted at home, such as foreign correspondent on the staff of a British newspaper who is posted abroad but who is nevertheless a permanent employee of the newspaper who could be posted to some other country.
6. Since Lawson v Serco there have been a series of further reported cases including Creditsights Ltd v Dhunna, in which the Court of Appeal has established that the exceptions mentioned in Lawson are just examples illustrating a general principle, which is that persons working abroad will be protected in the UK Employment Tribunals if they can show that there is a particularly close connection between them and the UK and between their employment and UK employment law. Where these connections are close enough an exception will be made so these persons can claim. The Court of Appeal held that a tribunal correctly decided it did not have jurisdiction to hear claims brought by an employee who lived and worked in Dubai at the time of his dismissal. A tribunal simply has to decide whether an employee is able to except him or herself from the general rule that his or her place of work is decisive in determining territorial jurisdiction by demonstrating that he or she has sufficiently strong connections with Great Britain and British employment law.
7. Similarly in Walker v Church Mission Society, UK/EAT 0036/11/ZT it was held that the tribunal had no jurisdiction to hear the unfair dismissal claim of a regional manager who was working in Africa for an Oxford-based employer.
8. The Employment Tribunal will look at claims on a case by case basis but the main factors which tend to be relevant in deciding territorial jurisdiction are: where the employee was recruited, where the work is done, where the main business of the employer is conducted, from where the employee was line-managed, where he has his home to which he returns after work or on leave, where he is paid, whether he is paid in UK sterling, and whether he has paid UK tax and NI contributions on his salary.
9. In some cases the fact that the employment contract contains a choice of law clause stating that UK law will apply has been regarded as important factor. However other cases have not followed this approach because of section 204 ERA 1996 and the fact that ET jurisdiction is a matter of statute and cannot be created by private agreement.

Conclusion

10. The only connections to the UK are that the Respondent is registered in the UK, has an office in London (which however the Claimant had little to do with) and the fact that the end product was published and sold in the UK (as well as other places). I regard these connections as tenuous.
11. It is clear that the employment/work was not based in the UK. The Claimant was not a peripatetic employee travelling to and from the UK for purposes of a London based business. He was different from the example given in Lawson v Serco of a London based journalist for a British newspaper who is posted abroad to various locations for purposes of that publication. The control centre was in Tunis and the work was all done and paid for outside the UK for purposes of an international publication.

12. Had the parties wished to include UK employment law and submit to the jurisdiction of the UK ET they could and should have entered into a written contract to this effect, but failed to do so.
13. As a matter of fact and degree there was an insufficiently close connection between the employment/work and the UK. Hence the tribunal does not have jurisdiction and the claims must be dismissed.

J S Burns Employment Judge
London Central
4/3/2022
For Secretary of the Tribunals
Date sent to parties :4/3/22
