



EMPLOYMENT TRIBUNALS

Claimant
Mr. T. Bumbalov

v Harding Brothers Limited

Respondent
(Guernsey)

JUDGMENT AT PRELIMINARY HEARING

Heard at: Bristol

On: 20th March 2017

Before: Employment Judge R. Harper

Appearances

For the Claimant: Mr. Bumbalov

For the Respondent: Mr. Warnes (Peninsula) (Peninsula were re-instructed by the respondent 30 minutes before the hearing).

JUDGMENT

The tribunal does not have jurisdiction to consider the claims of unfair dismissal, public interest disclosure, race discrimination, religion and belief discrimination, breach of contract and unlawful deduction from wages.

REASONS

1. This Preliminary hearing was conducted on the telephone, on loudspeaker, by the Judge sitting in a court room to which the public had access. Had members of the public been in the room they would have been able to hear the entire hearing.
2. The Preliminary hearing had been arranged at a telephone Preliminary hearing on 17th February 2017. At that time the respondent was represented by Peninsula. By an email to the tribunal dated 13th March 2017 Peninsula came off the record as acting for the respondent. Peninsula stated that all future correspondence should be sent to the respondent directly. It is of significance to note that at the preliminary hearing on 17th February 2017 orders were made for disclosure by 27th February 2017, preparation of the bundle of the documents by the respondent by 6th March 2017, and exchange of written submissions and legal authorities by 6th March 2017. At the time of the expiry

of those deadlines the respondent was still represented. The respondent has completely failed to comply with any of the Orders made. This is despite a reminder sent to the parties by the tribunal on 15th March 2017. 30 minutes before this hearing Peninsula were re-instructed. The Judge expressed his displeasure at the non compliance by the respondent (which includes Peninsula, their representative) with Tribunal Orders. The claimant has complied with the orders as best he can and has provided a thorough written submission. The Judge is grateful to him for the clarity of his oral and written arguments.

3. The claims of unfair dismissal and public interest disclosure are governed by the Employment Rights Act 1996 (“ERA”). The claims of race discrimination and religion and belief discrimination are governed by the Equality Act 2010 (“EA”). The ERA and the EA are silent as to their territorial scope. The claim of breach of contract is governed by the Employment Tribunal Extension of Jurisdiction (England and Wales) Order 1994 (“1994 Order”). The 1994 Order applies to claims which a court in England and Wales would have jurisdiction to hear. The words “Extension of Jurisdiction” do not mean an extension of jurisdiction outside England and Wales.
4. The jurisdiction of the Employment Tribunal to hear a claim is governed by Rule 8(2) of the Employment Tribunal (Constitution and Rules of Procedure) Regulations Schedule 1 (“Tribunal Rules”).

4.1 The claimant is a Bulgarian national who lives in Varna, Bulgaria. He worked in a shop on a ship sailing under a Maltese flag operated by a joint venture between TUI AG, a German company and Royal Caribbean Cruises, an American Company. The ship was called Mein Schiff 4. Its schedule did not have any embarkation and debarcation at Great Britain ports – it cruised worldwide. The claimant stated that a typical pattern of cruising was for a cruise to start in Spain and finish in Germany. The ship had no connection at all with Great Britain.

4.2 The sole respondent is now Harding Brothers (Guernsey) Limited which was the claimant’s employer. This company is registered in Guernsey. Proceedings have been previously withdrawn against Harding Brothers Retail Operations Limited. It was highlighted by the Judge that there is absolutely no ambiguity from the Order dated 8th December 2016 that proceedings against Harding Brothers Retail Limited were dismissed. Indeed paragraph 14(i) of the issues part of that document states, “ *The claim against the first respondent [Harding Brothers Retail Operations Limited] is withdrawn. Helpfully the claimant provided the tribunal with a copy of his contract of employment sent to him on 16th March 2016. The contract indicates that he was employed at the material times by the second respondent [Harding Brothers (Guernsey) Limited] and not the first respondent.*”

4.3 The claimant’s contract of employment does not have a provision that its content or obligations are subject to the law of England and Wales or that the courts and tribunals of England and Wales are deemed to have jurisdiction. The claimant confirmed that the two different versions of the contract relating to different date periods were exactly the same. Clause 23 of the contracts make reference to the Maritime Labour Convention 2006. Title 5 of that Convention

provides, *“the provisions of this Title do not determine legal jurisdiction or a legal venue.”*

4.4 The claimant commenced employment on 10th January 2016 which came to an end on 27th July 2016. The ET1 was filed on 1st October 2016. The claimant had sought legal advice before starting this claim and then subsequently dealt with ACAS. At the time of commencing proceedings there were two respondents with one being registered in England and Wales. Now there is one Respondent registered in Guernsey.

4.5 The expressions “Great Britain” and “United Kingdom” do not include Guernsey which is a Crown Dependency.

4.6 The claimant made it very clear that one of the main reasons for bringing the claim was to highlight how workers on board the ship were discriminated against if they were not German nationals.

4.7 The claimant stated that on the internet he had found “a lot of cases” and there were also “a lot of exceptions.” He hoped that some of the exceptions would apply to allow one or two of his claims to proceed.

4.8 The claimant asked whether, in the event of the Employment Tribunal declining jurisdiction, he was able to bring a claim in Guernsey and whether the time spent clarifying these issues in the Employment Tribunal of England and Wales would help, or hinder, him bringing a claim in Guernsey. The Judge explained that he had no knowledge of Guernsey law, courts, and procedures. In any event it is not for the Judge to advise either party as he is strictly neutral and independent of both parties.

4.9 Apparently shortly before the hearing Mr. Warnes had sent details of two cases by email to the tribunal and to the claimant. Neither the Judge nor Mr. Bumbalov had seen these. However Mr. Warnes carefully went through the two cases and his submissions and the claimant was then asked for his comments upon them and he was able to make informed comments in response.

5. Under Tribunal Rule 8 the test relating to jurisdiction is as follows:

Did the respondent reside or carry on business in England and Wales ?

The respondent is registered in Guernsey and does not carry out business in England and Wales. A company resides in England and Wales if it is incorporated in England and Wales or if its central management and control are exercised there. Where an employee is dismissed by a company that does not reside or carry on business in Great Britain and the letter of dismissal is sent to the employee abroad the act may be deemed to have taken place outside the territorial limits – **Tweddell v. Irish Shipping Ltd** ET case 33517/78. Here the offer letter was sent from Harding Brothers Retail Operations Limited – registered in England and Wales but the documentation is crystal clear that the contract of employment was with the respondent. The dismissal was undertaken outside Great Britain by Mr. Buddenbohm, a German national living in Germany. He has no relevant connection with England and Wales.

Did one or more of the acts or omissions complained of take place in England and Wales ? None of them did.

Did the claim relate to a contract under which the work is or has been performed partly in England and Wales ? No. The contract was made by a Bulgarian national, resident in Bulgaria, with a Guernsey company and did not provide for English Law to be the governing jurisdiction. This is in contrast to the case referred to by the claimant of **Windstar Management Services Limited v. Harris** UKEAT/0001/16/LA where the contract provided for English law to apply in the event of a dispute.

Does the tribunal have jurisdiction to determine the claim by virtue of a connection with Great Britain and the connection in question is at least partly a connection with England and Wales ? There is no connection at all with Great Britain and England and Wales.

6. There is no evidence that any of the criteria in Section 199 ERA applies especially having regard to Section 199(7) ERA. The vessel was not registered to a port in Great Britain.
7. The leading case on territorial jurisdiction is **Lawson v. Serco Limited** 2006 ICR 250 HL. The tribunal has carefully considered and applied it.

The basic rule is that under the ERA that Act only applies to employment in Great Britain. There are exceptions such as where an employee works partly in Great Britain and partly abroad. This is not the case here. Another exception is where the employee works and lives abroad but the employment relationship has much stronger connections both with Great Britain and with British employment law than with any other system of law. Since this contract was with a respondent registered in Guernsey this exception does not apply. That connection with British employment law was considered by Baroness Hale in **Duncome v. Secretary of State for Children, Schools and Families (No.2)** 2011 ICR 1312 where she set out four factors that would indicate such sufficiently strong connections with British law. None of those factors apply in this case. In that case the teachers were seconded by the British Government. In the present case the claimant had no connection with the British Government.

The connection with England and Wales was also considered in **Ravat v. Halliburton Manufacturing and Services Limited** 2012 ICR 389.

In **Olsen v. Gearbulk Services Ltd and Gearbulk UK Limited** UKEAT/0345/14 RN the EAT ruled that Mr. Olsen did not have a sufficient connection with the UK even though he spent most of his time working in the UK for a Bermudian company. In **Jeffery v. British Council** UKEAT/0036/16 JOJ the claimant was found to have sufficient connection with the UK. However that decision was because he had been recruited in the UK to work for a UK employer; the contract was subject to UK law; the claimant was entitled to a UK civil service pension; the claimant's salary was subject to a notional deduction for UK income tax; and the employer was an important UK body providing an important overseas role for the UK.

8. It is quite clear that none of the relevant statutes were intended to apply to a respondent registered in Guernsey where there was no connection with England and Wales and the claimant always worked outside England and Wales.
9. In **Diggins v. Condor Marine Crewing Services Limited** 2010 ICR 213 a Guernsey registered company employed the claimant on a ship registered in the Bahamas but operating between the Channel Islands and Portsmouth. The Claimant lived in Lowestoft. The Court of Appeal held that the claimant was based in Britain. In the present case the claimant was not based in Britain, he lives in Bulgaria. The ship never came to Britain.
10. In **Dhunna v. Creditsights Ltd** 2013 ICR 909 Slade J distilled the principles emerging from the Decisions in **Duncombe, Ravat** and the case of **Bates van Winkelhof v. Clyde and Co LLP** 2013 ICR 883. She stated that the overarching question is whether Parliament intended that S.94 ERA (in relation to unfair dismissal) should apply. In that Parliament specifically did not extend S.94 to cover Guernsey or a Guernsey registered company which provided worldwide employment it is very clear that Parliament did not so intend. Parliament specifically did not intend the EA and the 1994 Order to apply in these circumstances either.
11. For all the above reasons the Employment Tribunal does not have jurisdiction to hear any of these claims. Since it does not have jurisdiction to hear the claims it follows that it does not have the jurisdiction formally to dismiss the claims. However, for all practical purposes these claims, in the Employment Tribunal of England and Wales, have now come to an end.

Employment Judge R Harper

Date : 20TH March 2017

Sent to the parties on:

.....

For the Tribunal:

.....