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EMPLOYMENT TRIBUNALS

Claimant: **O**

Respondent: **FFI Ltd**

Heard at: **East London Hearing Centre**

On: **11 October 2018**

Before: **Employment Judge Jones**

Representation

Claimant: In person

Respondent: Ms L Jacob (Operations Director)

JUDGMENT

The judgment of the Employment Tribunal is that: -

(1) The Claimant was not working in Great Britain at the time of her dismissal. The Claimant's employer was not based in Great Britain.

(2) The Tribunal does not have jurisdiction to hear the Claimant's complaints.

(3) The claim is dismissed.

REASONS

1 At the start of the hearing the Claimant applied for an anonymisation order in relation to the names of the parties in this case. The Claimant has a new employer and although she has disclosed her disability to it and is aware of the legal protections in place under the Equality Act 2010; she was concerned about this judgment being accessible on the database and the possible consequences if her colleagues and/or managers found out about this case. The Respondent reserved its position on the application. The Tribunal considered the matter and granted the Claimant's application

using its power under Rule 50 of the Employment Tribunals Rules of Procedure 2013. These proceedings are anonymised as far as this judgment is concerned.

2 The Claimant presented her claim form on 13 October 2017 for unfair dismissal, wrongful dismissal, sex discrimination and disability discrimination. The Respondent resisted her complaints and submitted that the Tribunal did not have jurisdiction to hear them.

3 The Tribunal considered the parties submissions and all the documents presented by both sides. It also considered the following law in determining the jurisdiction issue in this case.

Law and submissions

4 It was the Respondent's position that the Claimant transferred from its employment to an affiliate company in the US and therefore was not ordinarily working in the UK or employed by it at the time of her dismissal. The Respondent contends that the Employment Tribunal has no jurisdiction to hear these complaints. The Respondent also submitted that the Claimant's complaints were out of time. It was the Respondent's case that the discrimination complaints were not part of a continuing act and that therefore, the Tribunal did not have jurisdiction to hear them.

5 The Claimant submitted that the Tribunal did have jurisdiction.

6 The same rules that govern the territorial jurisdiction of the UK Employment Tribunals to hear complaints of unfair dismissal also apply to complaints of discrimination. The Equality Act 2010 has no express provision in it relating to territorial jurisdiction. In the case *of Hottak v Secretary of State for Foreign and Commonwealth Affairs* [2016] IRLR 534 it was held that the principles applicable to unfair dismissal claims under the Employment Rights Act 1996 (ERA) by the employees engaged abroad provide relevant guidance as to the territorial reach of the anti-discrimination provision that are in Part 5 of the Equality Act 2010 (EA).

7 The right not to be unfairly dismissed is enshrined in section 94(1) of the Employment Rights Act 1996 (ERA, which states that an employee has the right not to be unfairly dismissed by her employer). The main case setting out the principles that should be used to decide whether the UK Employment Tribunals have jurisdiction to hear a claim is the House of Lords case of *Lawson v Serco* [2006] IRLR 289. In that case the Lords confirmed that the right under section 94(1) ERA not to be unfairly dismissed generally applies to an employee who is working in Great Britain at the time of her dismissal. The question is simply whether she is working in Great Britain at the time that she is dismissed. In the case of peripatetic workers, such as airline pilots and salesmen – they would have the right not to be unfairly dismissed if they were based in Great Britain.

8 The Lords stated that in deciding where the employee is based, the terms of the contract are not always helpful and that what must also be looked at is the conduct of the parties and the way they have been operating the contract. What was contemplated at the time when the contract was made and the prior history of the

contractual relationship between employer and employee may be relevant to whether the employee is really working in Great Britain or whether he is merely on a casual visit. The Lords stated that expatriate employees who worked and are based abroad are very unlikely to be within the scope of section 94(1) ERA unless they are working for an employer based in Britain and had equally strong connections with Great Britain and British employment law. One example given by the Lords was the situation of a foreign correspondent employed by a British newspaper, who was posted abroad for the purposes of a business carried on in Great Britain, was an employee of the business in Great Britain and could be posted elsewhere by the same business. That employee would be able to rely on section 94(1) ERA. Another example was of an expatriate employee of a British employer who is operating within what amounts for practical purposes to an extra-territorial British enclave in a foreign country. The Lords made it clear that the categories of exceptional cases outlined by Lord Hoffman was not closed. That was a point taken up in the case of *Ravat v Halliburton Manufacturing and Services Ltd* [2012] IRLR 315, which the Claimant referred to the Tribunal.

9 In that case Lord Hope stated that the starting point in each case was to determine whether the employment relationship had a stronger connection with Great Britain than with the country in which the employee did his or her work. In that case the factors of the employee's residence in England, his status as a commuter, the assurances he had been given that British employment law would apply to his contract and the fact that his employer was British outweighed the facts that his work was done abroad, and for a different, foreign, subsidiary of the parent company. Lord Hope concluded that the starting point in each case must be that the employment relationship must have a stronger connection with Great Britain than with the foreign country where the employee works. In those cases, it could be presumed that, although the person was working abroad, Parliament must have intended that the statutory protection should apply to those employees.

10 In the case of *Lodge v Dignity & Choice* [2015] IRLR 184 an employee who was based outside of the UK, was not a British citizen but who did all her work for her British employer and who returned to London 3 times a year was held to fall within the category of expatriate workers recognised by Lord Hoffmann in *Lawson*. Judge Clark considered relevant the fact that the grievance the employee had raised had been handled in London. The EAT concluded that overall, there was a sufficiently strong connection with Great Britain to overcome the single fact that the claimant was located, and performed her work, abroad.

11 The Tribunal was also referred to the case of *Jeffery v British Council* [2016] IRLR 935 in which it was held that the employee had established an overwhelmingly closer connection with Great Britain and with British employment law than any other system. He was recruited in the UK to work for a UK company and his employment contract provided for English law to be applicable. He was entitled to a Civil Service pension. His salary was subject to a notional deduction for UK income tax. These factors, together with the nature of the employer - the British Council - established an exceptional degree of connection with the UK as opposed to any connection with Bangladeshi employment law. The employee in that case was only expected to stay in Bangladesh for a limited period and then to move on elsewhere, as he had done throughout his career. He was held to have established territorial jurisdiction and his case could be dealt with by the UK employment tribunals.

12 That case was referred to in the case of *Green v SIG trading Ltd* [2017] ICR 1274 in which Judge Eadie QC held that in assessing the degree of connection between an employee and British employment law, the tribunal should view the relevant factors in a broad context and on an objective basis; not subjectively as the parties might seek to explain them. While the legal test of jurisdiction was that of a sufficiently close connection with British employment law, it was a question of fact for the employment tribunal as to whether that connection was made out on the facts of the case. Both of those judgments were recently upheld in the Court of Appeal ([2018] EWCA Civ. 2253).

13 From the parties' submissions and from the documents, the Tribunal found the following facts.

Findings of fact

14 The Claimant began her employment with the Respondent in October 2013. She was employed as a senior analyst. The Claimant is South African by birth and a UK citizen. She was living in London at the time.

15 The Respondent specialises in consumer data and trend analysis and employs approximately 37 people in the UK. The Respondent holds a franchise in Stockholm and runs a branch out of Singapore. It was the Respondent's evidence that the US company, was incorporated in 2013 as a wholly owned subsidiary of the Respondent as opposed to a branch office.

16 The Claimant was signed off work with depression and anxiety in March 2015. It is her case that she is a disabled person because of a mental impairment.

17 In June 2015, the Respondent received correspondence from South London and Maudsley NHS Foundation Trust which confirmed that the Claimant was suffering from generalised anxiety disorder and that she appeared to have been suffering from this condition since 2014.

18 The Respondent produced an organogram showing the company structure. The Respondent's Directors are Christophe Jouan, Meabh Quoirin and Melanie Howard. Mr Jouan and Ms Quoirin are Directors of the UK company, FFI Ltd which has operations in Singapore and Stockholm, which are noted as branches. They are also Directors of the US company which is called FFI Inc. FFI Inc. is based in New York and is a separate limited company. This is different from the branches which are part of FFI Ltd. The UK office is described as Head Office of FFI Ltd.

19 The Tribunal was told that the Respondent provided a loan to FFI Inc. to set itself up which has been repaid over the years. FFI Inc. is now fully self-sufficient. There was in the bundle of company incorporation fees paid by Ms Jacob, the Respondent's Operations Director, to set up the FFI Inc. in 2013. FFI Inc is therefore a separate legal entity.

20 The Tribunal finds that although FFI Inc. is separate from the UK company, Ms Jacob, Mr Jouan and others continue to provide management services to it. I was

told that the Respondent would continue to recharge to the FFI Inc. for those services. Ms Jacob informed the Tribunal that she was an official authorised person for the Head Office and in that capacity, would provide some paid services to FFI Inc.

21 The Tribunal was drawn to an invoice at page 108 for £45,000, which was a management fee charged to FFI Inc. on 18 August 2016. That sum was equivalent to $55,663.93. The *recent account activity* statement from the US business' Citibank business account shows that there were two transfers of international funds to the Respondent on 14 October and 25 October 2016 of $27,730.18cents and $27,933.75cents respectively, which equals a total of $55,663.93cents. The Respondent also invoiced FFI Inc. for access to FFI online for 2016 to 2017. The invoice on page 110 referred to sums of £7,500 per month being owed over six months between April 2016 and September 2017. That was a total amount of £45,000. This was paid to the Respondent by FFI Inc. by international funds transfer on 18 January 2017 of $56,358.

22 The Claimant responded to an internal communication about an available Data Insights Analyst position with FFI Inc. at the New York office on 31 July 2016. She expressed her interest in the role and submitted her CV to Ms Corker with a covering letter.

23 The Claimant was interviewed for the post at FFI Inc. in London by Christophe Jouan, the CEO and founder of the company. Heather Corker, who was the person who ran the New York office, dialled into the interview. The Claimant had been working on US data while working in London for the Respondent so she was familiar with the work. Mr Jouan was involved in discussing the Claimant's offer of work with her although it is clear that the Claimant's application for work (page 130 of the bundle) was addressed to Ms Corker. Her emails asking for details of the job were also addressed to and responded to by Ms Corker.

24 The Claimant also told the Respondent that she had friends and/or relatives living in the US.

25 In August, Mr Jouan sent an email to Ms Corker stating that*: "Lucy and I have worked out an offer to Sasjkia. So is it time for me to speak to her … unless you tell me otherwise."* '*Lucy*' was a reference to Ms Jacob the Respondent's Operations Director. In her response, Ms Corker said: *"Wait, what? I mean, can we talk about this first? It's probably the right thing, but strange this was already decided without speaking to me".* Mr Jouan replied and confirmed that it was Ms Corker's decision and that he had understood that Ms Corker wanted to go ahead with the employment, which was why he sent that email. Ms Jacobs described this in the hearing as Mr Jouan being enthusiastic about the Claimant getting this opportunity.

26 The Claimant was informed about her success in securing the job in the US by email dated 23 September 2016 from Lucy Jacob. The offer of employment was described as follows: *"The position of Data Insights Analyst to be based in our New York office".* The offer of work was subject to the Claimant successfully obtaining and maintaining L1B visa status for the entirety of her employment with the US entity.

27 Ms Jacobs outlined the following terms in her letter: That on being granted an L1B visa, the Claimant's employment with the UK company would cease and a new contract would be issued through the US entity. That the Claimant's normal place of employment was to be the company offices at 120 East 23rd Street New York and her hours of work would be between 9.30 and 5.30pm. That remuneration, with effect the date of her commencement in the US would be $47,000 and she would also receive a contribution in the amount of $5,904 towards a personal health care arrangement. The Claimant was informed that once she transfers to her employment with FFI Inc. she would not continue to be covered by the Respondent's travel insurance policy. Her total paid leave entitlement would be 25 days per annum and the Respondent also recognised 10 of the US Federal holidays. She was told that any unused holiday accrued to the Claimant in the UK would be transferred over.

28 The offer letter informed the Claimant that she would be initially employed for a settling in period of three months. During this time her UK role would be kept open for her so that she could return on the same conditions of employment. After that time, her employment in the US would be for an unspecified time on an '*at will'* basis. The Claimant was informed that she would be required to give and entitled to receive written notice on termination of employment of three months. She would not have the right or entitlement to return to her UK role. Ms Jacob confirmed, in response to the Claimant's enquiry about the possibility of a two-year secondment; that even then she would still not be entitled to return to her UK role at the end of that time as the Respondent's position was that it could not keep her job open for that long. She was told that if that did happen, she would be able apply to work for FFI Ltd again, if there was a vacancy and left the job at FFI Inc.

29 The Respondent offered to cover her reasonable flight costs up to two flights to assist with her relocation to the US and to give her up to £2,000 to assist with shipping her belongings to the USA. The company offered to pay her to purchase some new items rather than shipping them, if that was her preference. Also, the Respondent offered pay her two weeks accommodation in either a hotel or an Airbnb as she first arrived in the US before she had organised herself some accommodation. The Claimant was advised that she would need to file her own federal income tax return every April in the US and that she would be responsible for US tax.

30 Those were the initial terms offered to the Claimant but negotiations between the Claimant and Ms Jacobs on behalf of FFI Inc. and Mr Jouan on the terms of her taking up employment in New York continued over a couple of months.

31 On 23 September 2016, Ms Jacob wrote to the Claimant to confirm that Mr Jouan had agreed to cover the Claimant's New York accommodation cost while she remained under her UK contract. Ms Jacob advised the Claimant that she ought to fully research and understand the cost of living in New York and all the things that she would need to sort such as obtaining a social security number, getting a bank account, getting medical cover, filing annual tax returns, city taxes etc as part of her consideration in taking this offer of employment. Ms Jacob estimated that the incidental costs of living in New York could be approximately $3,000 a month.

32 There are emails in the bundle from the Claimant to Ms Jacob in October asking for further details about her notice period, her salary and other incidental matters as the negotiations continued.

33 On 11 October, Ms Jacob wrote to the Claimant to confirm that she understood that the Claimant was to fly out to the US for an initial period of two weeks upon which the Claimant would return to the UK to attend to any personal matters before a date was agreed for her to return to the US on one of the following options: Option 1 was that the Claimant remained on her UK salary and continued to be contracted and paid through the UK in pounds for the first three months in the US. Under that option, the Claimant would continue to receive all contractual benefits under a UK contract i.e. pension contributions, travel and life insurance cover. During that time, the Respondent would arrange for and pay for the Claimant's accommodation and if she wished to return to her UK role, she would need to let the Respondent know within one month before the expiry of her three-month probationary period. If the Claimant decided to stay at the end of the three months she would need to transfer to a US contract and start receiving the benefits outlined in it without accommodation costs.

34 Option 2 was that the Claimant would transfer to her US contract on arrival in the US and start receiving the US salary plus contributions to her health care straightaway - in US dollars. She would receive US contractual benefits and would no longer be entitled to UK contractual benefits. She would have a probationary period.

35 With the second option, the Respondent would arrange for and pay for the Claimant's first four weeks of accommodation plus £2,000 towards her relocation cost. The Claimant's UK role would remain open to her for three months under that option.

36 The Claimant was asked to indicate which option she preferred so that Ms Jacob could draw up a letter of intent to formalise her acceptance of the role. In her email response on 12 October 2016, the Claimant clearly opted for option 2.

37 From the email correspondence and despite what was said in Ms Jacob's emails, neither the Claimant nor her line manager, Georgina Sapsted, realised that the Claimant would be subject to a three-month probationary period on taking up the US post. There was an email from Ms Sapsted querying why the Respondent had used the words '*probationary period'* in correspondence with the Claimant. Discussions about this continued into December. There is an email from Mr Jouan on 12 December in which he informed the Claimant that it was normal to have a probationary period with a new contract and that while the Respondent was confident that her move to the US would be successful, they needed to protect themselves. The Claimant was of the belief that the three-month period at the start of her time in the US would be considered a *'settling in period'*. That term was used early in the discussions about the job.

38 One of the main sticking points for the Claimant in negotiating the terms on which she would take up the offer of work in the US was the entitlement to sick pay and paid sickness leave. The Claimant had a maximum of 12 weeks sick pay entitlement in her UK contract. She had been informed that US contracts do not have any paid sick leave. Given that she considered herself to be disabled because of her mental impairment, the Claimant felt that she needed sickness cover to be in place. At this

stage in the negotiations, the Claimant got the Respondent's agreement that she would have seven days paid sick leave which Ms Jacob confirmed in her response email on 12 December. The Claimant would be entitled to that level of sick pay after completion of her probationary period. In the letter, Ms Jacob reminded the Claimant that payment of sick leave is discretionary in any event.

39 Ms Jacob submitted that she conducted these negotiations with the Claimant on behalf of FFI Inc. and not for the Respondent.

40 By mid-December, the Claimant had given up her room in her rented accommodation and was living in temporary accommodation while the details of her moving to New York to take up the job were finalised with the Respondent. It is the Claimant's case that it was after she moved out of her accommodation that the Respondent started to change the terms and make them less favourable towards her. This is disputed by the Respondent. At that time, most of the Claimant's possessions had already been shipped to New York.

41 On 12 December Ms Jacob wrote to the Claimant to say that the Respondent understood that moving to the US was a huge life event for her and that although it was an opportunity for her that she applied for; she was not being forced to make the move if she had any doubts. The Claimant was given an opportunity to back out of the employment in New York if she felt that it was no longer what she wanted to do.

42 By 14 December, the Respondent told the Claimant in an email that because of her continuous service since 2014, Ms Jacob had amended the contract to allow for up to 12 weeks discretionary sick pay to reflect the benefits that the Claimant had in her UK contract.

43 Also on 14 December, Ms Jacob wrote to the Claimant to attach a copy of the final offer to her for the role of Data Analyst in the New York office. A copy of FFI Inc.'s contract of employment was attached to Ms Jacob's earlier email for the Claimant's to look at. The 14 December email stated that the Claimant had to make her decision by the end of the day and that if her decision was not received by that time, the offer would be withdrawn. The Claimant was informed that if she decided not to accept the offer, she would continue in her UK role with all rights and entitlements retained. The company intended to cease funding her temporary accommodation but was prepared to discuss with the Claimant how that would work in practice.

44 It is likely that the Claimant indicated her acceptance of the contract because on 18 January, Ms Jacob set out the final terms concerning the Claimant taking up the post with FFI Inc. in an email. The Claimant's last day in the UK office was to be Friday 20 January 2017. The Respondent would cover the Claimant's accommodation in the UK up to and including Sunday 22 January 2017 and FFI Inc. was to cover the Claimant's accommodation costs from Monday 23 January to Sunday 19 February. The Claimant was to be paid in sterling for the month of January and remain under the UK contract until 31 January. The US contract was due to start on 1 February. At this point, the Claimant had not yet signed the US contract. The Claimant's UK role was to be held open for a period of three months of the commencement of the US contract and the Claimant was to inform the UK immediately if she did not want to remain in the US so that the UK could decide whether there were any vacancies that she could fill or whether some other arrangement needed to be made.

45 The Claimant was to indicate to the UK company no less than one month prior to the end of her three-month US probationary period, if she wished to return to the UK. If she did return to the UK within her probationary period, her continuous employment with the UK company would be maintained. In those circumstances, the Claimant would be liable for her repatriation cost. It was clearly stated that should her US probationary period be unsuccessful due to poor performance or misconduct, she would not be allowed to return to the UK company in any capacity. The email confirmed that the Claimant's UK holiday entitlement for 2017 would be transferred over to her US role. Ms Jacob ended the email by advising the Claimant of things she needed to do on her arrival in the US.

46 The Claimant had a tenancy in London. The Respondent believed that she gave up the tenancy before she went to New York and that is why they paid for temporary accommodation for her before she left. The evidence of text messages provided in the hearing show that she was involved with her flatmates in the process of choosing someone to occupy the room. The Claimant has since returned to live at the property on her return to the UK in 2018. It is therefore unlikely that she gave up her tenancy. It is more likely that she simply vacated the room.

47 While in New York the Claimant maintained her voting rights by proxy in the UK.

48 The Claimant understood that Ms Sapsted continued to be responsible for her day-to-day line management duties from London. Some of the work that the Claimant did in the US was for the London office. Ms Sapsted is stated in her contract with FFI Inc. as being one of her managers in her new post. Ms Sapsted was Head of Data. Mr Jandricek was to be the Claimant's line manager in the US.

49 The Claimant moved to the US on 22 January 2017. On 1 February, the Claimant started to receive her salary in US dollars. There is a dispute between the parties as to whether the Claimant's salary was funded by the UK. The Claimant believes that she was the only US employee to be paid from London. The Respondent was adamant that the Claimant's wages was paid by FFI Inc. The payslips confirm this. There were copies of the Claimant's payslips in the bundle of documents issued by FFI Inc. to the Claimant at a New York address. Those payslips are dated 23 February 2017, 23 March 2017, 21 April 2017, 23 May 2017 and 23 June 2017 and show the Claimant's salary paid net of local taxes.

50 Mr Jouan had weekly Skype meetings with the US company. The Claimant was working on a virtual desktop programme when she was based in London and a lot of the data she produced and analysed were for the benefit of clients of the FFI Ltd as well as FFI Inc. It is the Respondent's case that many of the clients are international companies and that therefore there were hardly any of its corporate clients that are solely UK or US companies. It was also the Respondent's position that the data that is produced by a data analyst can be accessed and used by more than one company.

51 The Claimant needed to have a US working visa so that she could work for FFI Inc. Ms Jacob instructed the US Immigration lawyer and FFI Inc. paid the legal fees incurred in securing the visa for the Claimant. In addition to Mr Jandricek who was likely to have been acting as manager after Ms Corker left; the Claimant and Nathan

Stringer who was the Chief Account Director for North America, were the only other two employees in FFI Inc. it did not have HR or personnel support. It was not a big enough operation to have its own Operations Director. Ms Corker left before or around the time that the Clamant moved to New York. Mr Jouan and Ms Jacob from Head Office assisted with the management of the office and to support Mr Jandricek.

52 The Claimant had been unable to get health insurance in the US and the Respondent agreed to continue to fund the Claimant's health insurance for three months. The Claimant signed the US contract on 4 March 2017 and sent this back to Ms Jacob by email. In the covering email the Claimant stated that she was signing the contract with the understanding that her health coverage would continue under the company's travel insurance scheme. However, when the Claimant signed her US contract, the Respondent informed its insurance company of the situation and the insurance company confirmed that the Claimant was no longer covered. The Respondent was using travel insurance to provide this cover for the Claimant but since by this time, she had lived and worked in the US from January to March, the insurance company considered that she was settled and that it could no longer cover her. Ms Jacob replied to the Claimant to inform her that she was no longer covered by the Respondent's travel insurance policy.

53 The employment contract stated that it would be governed by the laws of the State of New York. It was countersigned by Mr Jouan as the co-owner of FFI Inc.

54 The Claimant has some complaints about the way in which she was managed by Mr Jandricek. She alleged that he made sexually discriminatory comments to her about women and about her, and that she was unhappy with the way he treated her. The Claimant submitted a grievance or made a complaint about this to Head Office. Ms Jacob informed the Tribunal at the hearing that Mr Jandricek had been appointed to sort out complaints about the Claimant's actions whilst in the US and that, contrary to the Claimant's belief, he was not asked to investigate the Claimant's complaint about him. She was unable to provide any clarification about what the Respondent had done about the Claimant's complaint about Mr Jandricek's alleged inappropriate behaviour towards her.

55 The Claimant was involved in a road traffic accident in New York soon after she was informed that she was no longer covered by the Respondent's travel insurance. The Claimant had to be taken to hospital. The Claimant took off President's Day which is a US Bank Holiday. This is not a Bank holiday that is kept in the UK.

56 Ms Jacob had also made a complaint about what she considered to be the Claimant's conduct when she was getting the Claimant to sign the contract of employment with FFI Inc. The Tribunal did not see the complaint. It is likely that this complaint had been made much earlier as the Claimant signed the contract on 4 March. Mr Jandricek had been asked to deal with this grievance.

57 The reasons for her dismissal are in dispute between the parties but it is agreed that at the termination meeting on 7 June 2017, Mr Jandricek informed the Claimant that her contract was being terminated. There were no records of meetings or telephone calls with Ms Jacob or Mr Jouan to discuss the Claimant's alleged misconduct. There was in the bundle an exchange of emails between Mr Jandricek

and Mr Jouan on 7 June in which Mr Jandricek explained that he was going to dismiss the Claimant. He stated his reasons for this, which related to her been absent without leave from the office and her attitude when confronted about it. He confirmed that '*he was just waiting to receive and review everything she signed in regard to her work with the US office before confirming his decision to dismiss her'.*

58 In his reply of the same day, Mr Jouan confirmed his agreement to that course of action and wished Mr Jandricek good luck with it.

59 It is also the Claimant's contention that in the dismissal meeting, Mr Jandricek informed her that the *'people in London'* had also had enough of her and indicated that they had agreed to her dismissal. This was not stated in Mr Jouan's email referred to above. The email did not show that Mr Jandricek sought Mr Jouan's approval to dismiss her.

60 Mr Jandricek wrote the Claimant's letter of dismissal dated 7 June 2017. The letter stated that the decision to terminate the Claimant's employment had been taken because of her deliberate unwillingness to follow the lawful and reasonable direction of the company, refusal to comply with policy and procedures and disrespectful and uncooperative behaviour towards a managing partner and operations director.

61 It is the Claimant's case that the only policies and procedure she ever signed were those that she signed with the UK company. Ms Jacob told the Tribunal in the hearing that there was an error in the letter and it ought to have referred to the Claimant's contract. In the contract that the Claimant signed with FFI Inc. it stated under the heading:

> *"***Termination for violation or misconduct"**
>
> "If you are found to be in violation of this Agreement, commit misconduct in the workplace or otherwise fail to perform to the reasonable satisfaction of the company, the company may terminate your employment without notice and the compensation only to the date of such termination. The compensation paid under this agreement shall be exclusive remedy."

62 Ms Jacob submitted today that the Claimant had failed to adhere to the terms of the contract she had with FFI Inc., which was the reason for her dismissal.

63 On 9 June, Ms Jacob wrote to the Claimant to inform her that her employment with FFI Inc had been terminated on 7 June. She confirmed many outstanding matters with the Claimant that would normally be done by an HR person such as reminding her of the non-solicitation, non-competition and confidentiality clauses in her contract; confirming her final payments and reminding her that if she required a reference from the company for future employment, the company would provide one with only the dates of her employment, job title and duties.

64 Ms Jacobs' letter was on FFI Inc.'s headed paper and she signed the letter for and on behalf of FFI Inc.

65 The Claimant had to make her own way back to the UK which was likely to have been stressful for her.

66 The Respondent provided documents in the bundle which show that the Claimant had registered a company in the US called Carpool Vote. The information in the bundle of documents shows that the company strapline was that it intended to connect volunteer drivers with anybody who needed a ride to vote in an election. The Claimant's evidence was that she had been involved in this company which was set up in 2016 but that she was no longer actively involved in it. She had been looking for someone to take it over. She also stated that although it had been a good idea, it had not been particularly active.

Analysing the facts above

67 At the time that the Claimant was dismissed on 7 June 2017 she had been working in New York, USA. She had been based in New York since 22 January and contracted to FFI Inc. since 4 March, although FFI Inc. had been paying her wages since the 1 February. The Claimant was not on secondment, she had not been posted abroad and had not been transferred/sent there by Respondent who had employed her up to 31 January.

68 In this Tribunal's judgment the Claimant is properly considered an expatriate employee.

69 This is therefore a case of an expatriate employee falling to be determined by reference to the strength of the connection with Great Britain and British employment law. As Lord Hope stated in Ravat, the starting point is to determine whether the employment relationship had a stronger connection with Great Britain than with the country in which the employee actually did her work.

70 The Claimant's circumstances do not fit into either of the exceptions outlined in the Serco case.

71 The facts in this case stack up as follows: on one hand the Claimant's employer is a separate legal company, FFI Inc. based in New York. The Claimant had previously worked for the parent company, the Respondent, but applied separately for this job and was interviewed and appointed to it by FFI Inc. She negotiated and signed a new contract with a clear probation period with Lucy Jacob and Christophe Jouan acting on behalf of FFI Inc. The Respondent is based in Great Britain. The two companies share directors and the Respondent provides management services to FFI Inc. for a fee.

72 The Claimant worked in New York between January and June 2017. She was paid in US dollars and lived in New York. I was not told that she visited the UK after she started working for FFI Inc. It was made clear to her that in accepting the job and once she signed the contract, she would no longer be employed by the Respondent and that she should find out how to deal with US taxes and other incidental expenses involved with living in New York. The Respondent did not do that for her. FFI Inc. paid her wages and paid for her to get the US work visa.

73 The Respondent did not give the Claimant any assurances that UK employment law would apply to her employment. The contract explicitly stated that it was governed by the laws of the State of New York.

74 The Respondent was quite clear to the Claimant in its correspondence to her when she was considering taking up the job, that if she did so, her employment with it would cease and that she would start a new contract with a new probationary period. The Claimant chose option 2 out of the 2 choices she had been given in the letter dated 11 October. Her January salary was paid by the Respondent. On 1 February FFI Inc. took over her salary payments and paid her rent for a few months. The contract was actually signed on 4 March.

75 The Claimant was employed by FFI Inc indefinitely. This was not a continuation of her contract with the Respondent.

76 The Claimant's was working under an L1 visa at the time of the termination of her contract of employment with FFI Inc. by Mr Jandricek who was the manager of FFI Inc in New York.

77 It is clear from the emails from Ms Jacob that the Claimant was told in September and October that the intention was that she would start a fresh position with FFI Inc. and that it would not be a continuation of her employment with the Respondent. She managed to negotiate a position whereby she could return to the UK within the 3-month settling in period or the probationary period, if she considered that the job was not suitable for her. It may be that the Claimant felt that by this time she had already made plans to move to the US and therefore could not turn back but it is this Tribunal's judgment that the Respondent was clear about its intentions that the Claimant would be employed by the US company and not continue to be employed by the UK company. It also offered her opportunities to change her mind if that was what she wanted to do.

78 On the other hand, the Claimant is a British citizen and she maintained ties with Great Britain including her tenancy in London. She was able to move back into the flat on her return last year from the USA so it is likely that she had not given it up. She also retained the right to vote by proxy in the UK. The Claimant's work continued to be managed by Ms Sapsted in the UK.

79 Mr Jouan and Ms Jacob were involved in the Claimant's recruitment to the post at FFI Inc. and Mr Jandricek suggested to the Claimant when terminating her employment that '*London'* had approved.

80 I considered whether the Claimant was still connected to the Respondent in Great Britain although she was living and working for another company, which was a subsidiary, in the US. The Claimant was working to an international platform and producing data which could be used by UK as well as US clients. Also, the staff at FFI Inc. was made up of two individuals in addition to Mr Jandricek which meant that it relied on the Respondent for most of its admin and HR support.

81 There was confusion in the hearing as to who had received and addressed the grievance against the Claimant and who had been responsible for looking at the grievance she raised about Mr Jandricek's conduct towards her. In his email to Mr Jouan informing him of his decision to dismiss the Claimant, Mr Jandricek referred to the Claimant's absenteeism and her attitude when he tried to speak to her about it. He did not refer to any grievances.

82 In my judgment, there was insufficient evidence from which the Tribunal could conclude that the Claimant's dismissal had been orchestrated, ordered or requested by the Respondent. It was highly likely that Mr Jandricek made that decision himself, as her main line manager, which is why he could dismiss the Claimant without consulting with Ms Sapsted. He sent the email to Mr Jouan as he wanted to let London know what he was doing, especially as he did not have HR support in the New York office.

83 The Claimant was in London when she was recruited to work for FFI Inc. Her interview was conducted jointly by Ms Corker and Mr Jouan. Although he was keen for her to get the post, her appointment was not confirmed by Mr Jouan until Ms Corker agreed. Mr Jouan confirmed in his email to Ms Corker that it was her decision.

84 In this Tribunal's judgment, the balance weighs against the Claimant.

85 It is this Tribunal's judgment that the Claimant was working for FFI Inc. which was a company based and registered in the United States of America at the time of her dismissal. She had not worked for a company based in Great Britain between February and June 2017. The two companies are separate legal entities. The Claimant ceased to live and work for the Respondent in Great Britain in January 2017. It is also this Tribunal's judgment that the Claimant did not maintain sufficient contacts with Great Britain and British employment law between February and June 2017.

86 In this Tribunal's judgment, the Claimant's employment relationship was with FFI Inc. and not with the Respondent. She produced data reports which went on to the platform that the Respondent shared with its subsidiaries and branches. She continued to report to Ms Sapsted as was set out in her contract but she was line managed from New York by Mr Jandricek.

87 Mr Jouan is the CEO of the whole company which includes the branches based in Singapore and Stockholm as well as the franchise in New York. Therefore, he was involved in the Claimant's recruitment and why she complained to him about Mr Jandricek's conduct towards her in the office. There was no one else to complain to as Mr Jandricek was the most senior person in FFI Inc. Mr Jouan and Ms Jacob provided management services to FFI Inc, for which it was invoiced.

88 I considered whether the grievance that Ms Jacob raised against the Claimant meant that the Claimant was in fact working for the UK company at the time she was in the US. Ms Jacob's grievance was in relation to her frustrations with the way in which the Claimant had handled the process of signing the contract with FFI Inc. It is not this Tribunal's judgment that the grievance was justified and there was no evidence about it today. However, it is this Tribunal's judgment that the grievance concerned the work that Ms Jacob was doing for FFI Inc. rather than for the Respondent.

89 It is therefore this Tribunal's judgment having considered and weighed up all the factors above and having applied the law set out above that the Claimant did not have a sufficiently close connection to British employment law while employed by FFI Inc. The Claimant did not have a strong enough connection with British employment law to overcome the fact that she was located and performed her work abroad and in her employment with a US company, FFI Inc. This Tribunal has no jurisdiction to consider this Claimant's complaints of unfair dismissal and discrimination.

90 The Claimant's claims are dismissed.

Employment Judge Jones

Date 6 December 2018