Case No: 2208214 /2017

EMPLOYMENT TRIBUNALS

Claimant: Mr A Rehman

Respondent: British Council

Heard at: London Central **On:** 25 April 2019

Before: Employment Judge JL Wade (Sitting alone)

Representation

Claimant: In Person

Respondent: Ms B Criddle, Counsel

JUDGMENT

The judgment of the tribunal is that it does not have jurisdiction to hear the claims and they are struck out.

REASONS

1. This two-day preliminary hearing was listed on 19 March. At 17.45 yesterday the claimant emailed the tribunal to ask for a postponement on the basis that his witness was not available for the hearing or to submit his statement due to a family medical emergency. The application was not dealt with yesterday and so that was the first thing to consider at the start of this hearing today.

2. The Claimant lives in Pakistan and had asked to attend this hearing by skype, as he had done at the preliminary hearing on 16 October but when contacted via my judicial email account there was no response (this had worked successfully for EJ Tayler on 16 October). There was also no response to several telephone calls made using the number on which he had been successfully contacted by EJ Hodgson on 19 March.

3. EJ Wade therefore emailed the claimant to his known email address to inform him that he needed to participate in the hearing at which the application to postpone would be decided, that the start of the hearing was postponed to 12 noon to give him the chance to participate, and that the hearing would begin at

that time even if he was absent.

4. No contact was received from the claimant and I tried to skype him again at 12.05 but he did not respond. I therefore began the hearing. I had to decide:

1. Should I agree to the postponement request?
2. If I did not, should I dismiss the claim, or should the hearing go ahead in the claimant's absence?
3. If it went ahead should I strike the claim out because the tribunal did not have territorial jurisdiction over the claim?

Should I agree to the postponement request? If I did not, should I dismiss the claim or should the hearing go ahead in the claimant's absence?

5. Rule 47 says that where there is a failure to attend, the tribunal has the power to dismiss the claim or to proceed in the claimant's absence. First I should "consider any information which is available … after any enquiries that may be practicable, about the reasons for the party's absence". Enquiries have been made but no reasons were forthcoming.

6. The absence appears to be explained by the application to adjourn as there were no technical reasons why the claimant could not participate from Pakistan as he had done in the past. The claimant clearly knew about the hearing but had decided not to make himself available this morning despite the fact that he was not experiencing a medical emergency.

7. The ground that the claimant's witness is not available is not sufficient reason to postpone this preliminary hearing because witness evidence from a third party is not needed when the only question is whether the tribunal had territorial jurisdiction. In fact, the documents are the most important evidence and the witnesses simply have to speak to the documents. Therefore, I would not agree to postponement on that basis.

8. However I thought carefully about whether the hearing should go ahead without the claimant being present, particularly because he had not participated in the preparation for the hearing and had failed to adhere to the tribunal orders of 19 March that he provide disclosure and exchange witness statements with the respondent on 12 April. Therefore, nothing was known about the claimant's viewpoint in relation to this preliminary issue.

9. On the other hand, of course, this was due to the fact that the claimant had failed to participate, even though he had attended the hearing on 19 March by telephone and knew what he had to do. He had also received the respondent's skeleton argument and knew the legal issues. The respondents had not been inactive in the lead up to the hearing and chased him on 11 April for his disclosure and on 18 for his witness statement. They had sent the claimant both soft and hard copies of the bundle, and soft copies of the witness statement, the skeleton and the relevant case law. They had not received any response.

10. A postponement at this late stage, counsel having thoroughly prepared for the hearing, the respondent's witness having prepared a witness statement and standing by to give evidence, the solicitors having done all the preparatory work, would be prejudicial and expensive in time and cost. Also, there were individuals who have had allegations of victimisation hanging over them since December

2017, and it is important for them that matters are brought to a close.

11. On balance, I decided to proceed with the hearing on the basis that the claimant had wilfully and without excuse failed to cooperate by preparing for and attending the hearing. He knew how to cooperate and had done so in the past. This was likely to be a case of the claimant having nothing to say rather than being unable to say it. Despite this, I decided that I should consider the arguments rather than dismissing the claim as that I could have done under rule 47, thus doing all I could to ensure that justice was done.

12. I have read the skeleton argument, referred to the documents and considered the relevant authorities. I also read the witness statement of Mr J Hampson, deputy country director, Pakistan and heard short submissions from Ms Criddle. The arguments were fully, albeit briefly, aired.

Conclusions on territorial jurisdiction

13. I find that the tribunal does not have jurisdiction over the claims because they were brought outside the territory over which the tribunal has jurisdiction.

14. The legal position is the same in relation to the victimisation and the unlawful deduction from wages claims; essentially a claimant who was employed outside the UK has to have had a sufficiently strong connection with the UK to make it appropriate for a London based tribunal to hear a claim which arose in Pakistan.

15. No such connection exists in this case, and indeed this claimant is the counterpoint to the expatriate employee with sufficient connection. If an individual works overseas, and was not posted overseas from the UK as an expatriate employee, they need particular and exceptional circumstances to sever the territorial pull of the legal system in the country in which they live. As a national of Pakistan, employed under local terms and conditions in Pakistan, always working in Pakistan, paid in rupees in Pakistan and not subject to UK tax, those circumstances did not exist for the claimant.

16. In *Bryant v FCO* (March 2003), Mrs Bryant worked for the foreign and commonwealth office in the British Embassy in Rome on matters of police and judicial liaison, but she lived locally and was employed in Rome under local terms. In that case it was held that the Tribunal did not have jurisdiction. This claimant did not work for the British government, and he worked for the commercial wing of the British Council in its examinations team so he had a less strong claim than Mrs Bryant to a connection with the UK.

17. In *Lawson v Serco Ltd* the Supreme Court held that *Bryant* was correctly decided. In a more recent case Lade Hale maintained the same approach. In *Duncombe v DfES* [2011] she says that the employment must have an overwhelmingly closer connection with Britain and with British employment law than with any other system of law for a judge to conclude that Parliament must have intended that employees should enjoy a protection in Britain. In this case, the claimant's only connection is that he was employed by the British Council, there was nothing more.

18. These cases establish a high bar when arguing a "strong connection" for

people who are locally employed like the Claimant. It is clear that being British is not enough and that working for an entirely British business or organisation, even the government, is not enough.

19. There is no more striking example of how hard it is to show a sufficiently strong connection than the case of the Afghan interpreters in *R (Hottak and another) v the Secretary of State for Foreign and Commonwealth Affairs* in 2016. They provided their services to the army, based in Camp Bastian while the British army was fighting in Afghanistan. The Court of Appeal held that the Equality Act provisions had no wider reach than the provisions of the Employment Rights Act and it should not be assumed that Parliament intended that this legislation should operate on a worldwide basis. The interpreters, whilst working for the British Army in exceptional and dangerous circumstances, did not have a sufficiently strong connection to UK employment law. This claimant was clearly not in such a position and his connection was relatively very weak.

20. Finally, I should note that part of the claimant's unlawful deduction from wages claim is actually for payments which he would be entitled to under Pakistani but not under UK law. This just emphasises how tenuous his link to the UK was. Of course, the correct test is not whether he would be better off with British law, as opposed to Pakistani law. Also whether he had an equivalent recourse to legal remedy in Pakistan is not a strong point, although it if he had no recourse to a legal system at all that might be significant. Finally, as Lady Hale said, it would be quite wrong for a British tribunal to assume that Pakistani law was not appropriate or fit for purpose, which is effectively what the claimant is asking us to do.

21. All the claims are accordingly struck out.

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Employment Judge Wade

Date 25 April 2019

REASONS SENT TO THE PARTIES ON

26 Apr. 19

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FOR THE TRIBUNAL OFFICE