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## EMPLOYMENT TRIBUNALS

*Claimant*

*Respondent*

Mr W Gould

AND

Crew Employment Services Camelot

### PRELIMINARY HEARING

**HELD AT:** London Central                      **ON:** 29 & 30 May 2019

**BEFORE:** Employment Judge Russell (sitting alone)

***Representation:***

**For Claimant:** Mr G Anderson, of Counsel

**For Respondent:** Mr A Ohringer, of Counsel

### JUDGMENT

The Employment Tribunal does have jurisdiction to deal with the Claimant's claim pursuant to EU Regulation 1215/2012 and Pursuant to the Employment Rights Act 1996 following his dismissal with effect from 26 June 2018.

### REASONS

Background

1. The Claimant presented his claim on 25 September 2018. He was employed as the Captain, of a yacht named the Amaryllis ("Amaryllis") from 13 July 2015 (although he was only captain from May 2017) until his dismissal on 26 June 2018 on the alleged ground of gross misconduct. The proposed final hearing was, through a case management hearing of 5 February, converted to an open preliminary hearing heard by me on 29-30 May 2019 to determine matters of jurisdiction. The issues were stated in the case management summary of 5 February 2019 as being:

- (1) Whether the Claimant falls within the peripatetic exception in Lawson v Serco or

- (2) Is there a sufficiently strong connection between the Claimant's employment and UK law so that the Employment Tribunal has jurisdiction to hear the Claimant's unfair dismissal claim

Agreed Facts

2. A striking feature of this complaint is that there is agreement between the parties as to most of the relevant facts combined with a wholesale disagreement as to the application of the relevant law to those facts. The agreed facts are:

- 2.1 The Claimant's employment with the Respondent commenced on 13 July 8 2015, initially as Relief Captain/Chief Officer of the yacht Amaryllis.
- 2.2 The Claimant held the post of Captain with effect from 4 May 2017, on which date Amaryllis was in Antigua.
- 2.3 The Respondent is a cell of Crew Employment Services PCC Limited, a company registered in Guernsey, with its only premises situated in Guernsey.
- 2.4 The Claimant's normal place of work was the yacht Amaryllis.
- 2.5 During the employment the Claimant was required to work in such locations as Amaryllis happened to be in from time to time.
- 2.6 In the period from 4 May 2017 to the termination date Amaryllis was variously located in Antigua, Falmouth, Portsmouth, Greenock, West Palm Beach Miami, the Turks and Caicos, St Martin and St Kitts.
- 2.7 The periods spent by Amaryllis in various locations throughout the Claimant's tenure as Captain of Amaryllis are:
  - 5 May 2017-16 May 2017 - crossing from Antigua to United Kingdom
  - 17 May -25 October 2017 – UK (mainly Falmouth)
  - 16 October 2017 – 6 November – crossing from the UK to Florida
  - 7 November 2017-23 March 2019 – Florida
  - 26 March 2018-14 April 2018 Bahamas and Turks and Caicos
  - 15 April 2018-27 April 2018 – Florida
  - 30 April 2018-11 May 2018 – St Martin and St Kitts
  - 12 May 2018-23 May 2018 – Crossing to the UK
  - 23 May 2018-7 October 2018 – UK (although the Claimant's employment terminated on 28 June 2018)
- 2.8 The first voyage captained by the Claimant was from Antigua to Falmouth, UK.
- 2.9 Upon arrival in Falmouth on 17 April 2017, the Claimant signed a contract of employment in relation to the role of Captain.
- 2.10 The Claimant's salary was paid in Euros.
- 2.11 On all but one occasion it was paid into a personal bank account located in the USA.

- 2.12 As the Claimant's request, on 6 June 2017 a single payment of €21,569.46 was made in the Claimant's bank account in the UK.
- 2.13 The Claimant was responsible for payment of his own tax and social security or similar.
- 2.14 The Claimant was paid tax in the USA.
- 2.15 At the time of the Claimant's dismissal on 28 June 2018, Amaryllis was located in the United Kingdom.
- 2.16 The Claimant's contract of employment was expressly stated to be governed by the laws of Guernsey and the parties agreed to submit to the jurisdiction of the Courts of Guernsey in all matters arising out of the agreement.
- 2.17 The Cayman Islands statutory provisions as set out in the Merchant Shipping Law 2008 Section 101 were stated in the Claimant's contract of employment to be applicable to the Claimant's employment.

#### Facts relating to the Claimant

- 2.18 The Claimant is a British citizen.
- 2.19 Throughout the employment the Claimant was resident in the United States of America.

#### Background facts

- 2.20 Amaryllis is owned by Amaryllis Solution Limited, a company registered in the Cayman Islands.
- 2.21 Throughout the employment Amaryllis was registered in the Cayman Islands.
- 2.22 Amaryllis's managers were Hill Robinson Yacht Management Consultants SARL, a company registered in France with offices in Monte Carlo, Antibes, Fort Lauderdale, Limassol, Isle of Man, West Palm Beach and London.

#### Evidence

3. In addition to comprehensive submissions by Counsel for the respective parties I heard witness evidence from the Claimant himself and from Mr Carrington, Director of Crew Employment Services PCC Limited. The Respondent company (and employer) of the Claimant is a cell of Crew Employment Services PCC Ltd. The word "cell" is perhaps peculiar to Guernsey law but to the extent it is relevant it has a similar meaning to "subsidiary" and in any event Mr Carrington gave evidence on behalf of the Respondent.

#### Findings on Disputed Facts and Initial Legal Findings

4. These are my findings on the facts which have not been agreed and following from the evidence given by the Claimant and the Respondent and submissions by Counsel.

5. Mr Borobin, living in Henley on Thames near London and with offices in Central London, was the effective owner by which I mean decision maker and paymaster of Amaryllis and, with his spouse, gave regular instruction to the Claimant in particular in respect of operational matters relating to the yacht. This included decisions as to the payment of employees (including bonuses), resolving disputes and the location of the yacht. Mr Borobin also interviewed the Claimant and it was his decision to hire the Claimant in July 2015, albeit this was communicated to the Claimant by a third party. I find the evidence of Mr Cunningham, stating that Mr Borobin may not have been the effective owner and decision maker and had limited involvement with the Claimant to be evasive and less than credible. I observe in this respect that Mr Cunningham accepted that he had limited knowledge of the Amaryllis yacht (he had never been on it), admitted that he was not involved in operational matters concerning the yacht, had never met Mr Borobin, did not know where he lived and did not know he had an office in London. The Claimant on the other hand gave undisputed evidence as to his interview by Mr Borobin at home and Mr Borobin's close involvement with the Claimant when he was interviewed and a number of subsequent times where Mr Borobin spoke and/or dealt personally with the Claimant on matters concerning the yacht and/or its employees.

6. Mr Borobin was not however the legal owner of the yacht. This was Amaryllis Solution Limited a company registered in Cayman Islands. Nor was Mr Borobin the Claimant's employer. This was Crew Employment Services Camelot. The Respondent and Amaryllis was managed by Hill Robinson, Yacht Management Consultants SARL (Hill Robinson) a company registered France, albeit with offices in, Inter alia, Monte Carlo, Fort Lauderdale, Palm Beach and London. Amaryllis itself was registered in the Cayman Islands and flew under the Cayman Island flag. Much of the corporate structure in place and no doubt the location of the yacht on many occasions took account of tax advantages available through one jurisdiction or another and or advantageous corporate structure as well as the effective owner's wish for privacy. The corporate structure was more complicated by the fact that Voyonic Crewing Limited were contracted by Crew Employment Services PCC Limited to provide administration services to them including HR, payroll and accounting (with a similar agreement with Hill Robinson in respect of the provision of HR administration services) which also affected the Claimant and the crew of some twenty five staff who worked on and looked after the yacht.

7. In practice Hill Robinson as the Managing Agents did very little other than act as a post box for the contracts of employment of Amaryllis' employees, together with payroll and expenses particularly given the work undertaken by Voyonic. The contract of employment given to the Claimant specified, inter alia, that the Cayman Islands statutory provisions as set out in the Merchant Shipping Law 2008 s.101 was applicable to his employment, that the port of engagement was West Palm Beach Florida and the place of repatriation, if relevant, was Fort Lauderdale Florida and the contract itself was dated to be governed by the laws of Guernsey. The second contract of employment that he received in May 2017 on his promotion to Captain was consistent with this albeit the contract was signed in Falmouth, England (on

22 May 2017). Even though the Claimant is British and the effective owner resided in England and Hill Robinson had a branch office in London the apparent connection with England (particularly basic “contractual” documents) is therefore limited.

8. In practice however, and during the Claimant’s contract, his involvement with the Respondent and/or Hill Robinson and/or Voyonic was also very limited and I accept his evidence that Hill Robinson (as the Managing Agent) only had a “behind the scenes” role as the running of the yacht. I have found that Mr Borobin, having determined the Claimant’s recruitment and promotion to Captain, was (directly or indirectly) meaningfully involved in the Claimant’s role and I find that, on a day to day basis, the Claimant was (perhaps understandably) expected to simply get on with the running and other operational needs of the yacht. I find for instance that when the yacht visited the UK, and it was necessary to apply for visas for yacht staff and/or comply with crew manning requirements, that the Claimant undertook this work. He also dealt with the compassionate leave requested by one employee due to family bereavement (partly due to the lack of input from Hill Robinson) and dealt with other sensitive employment situations one involving the yacht’s Second Officer and another (conduct issues) concerning two other crew members in November 2017 and in January 2018. He did not contact (nor had any requirement to contact) the Respondent or the managing agents in respect of staff sickness or vacation (other than in respect of the Purser which would have affected the administration of the yacht) and made other decisions that in his mind assisted the smooth running of Amaryllis such as purchasing a UK mobile telephone and using his own cell phone account to allow better communication (where it was needed) and use of data on a US mobile. He did not have total autonomy, and for instance was obliged to get approval for expenditure above €5,000, but he regularly purchased products/services for Amaryllis and there was a least a dotted line of command to and from Mr Borobin even if the effective owner, as I have determined he was, also relied on managing agents to deal with accounting and administrative matters.

9. Mr Carrington, on behalf of the Respondent, states the Claimant was subject to the terms of a crew handbook containing the (British) Merchant Navy’s Code of Conduct as well as a Hill Robinson issued Yacht and Administration Guide. I do however accept the Claimant’s evidence that he did not see either of these documents during the course of his employment and find that both documents were published in France or Hill Robinson’s French office in Antibes. Whilst it is apparent that these documents were prepared specifically for the Amaryllis there seems to be a discontent between the crew handbook and the administration guide and the way in which the Claimant was asked to go about his day to day operational duties. I do not find that the crew handbook is evidence of the UK jurisdiction being applicable to the Claimant however (in respect of the disciplinary procedure or otherwise e.g. clause 2.1 of the crew hand book which refers to the relevant flag state as well as the legislation of England and Wales) nor is the crew handbook presented as a UK contractual document. My principal finding in respect of both the crew handbook and the yacht administration guide is limited to the fact that they were not known to, or made available, to the Claimant. I

suspect that the terms of the disciplinary procedure in the crew handbook were not the ones followed by the Respondent when the Claimant was suspended and subsequently dismissed but I make no findings as to the circumstances leading to the dismissal or the dismissal itself other than it seems to have been unexpected (certainly by the Claimant) and that there are question marks as to the process. And also, as this point may be relevant to territorial issue of jurisdiction, that the Claimant was suspended in May 2018 when he was on Amaryllis in UK waters and his dismissal determined whilst he was in the UK albeit notice was sent on behalf of the Respondent on 28 June 2018 to the Claimant in Florida, USA. The Claimant only left the UK because of the (impending) dismissal. This is what lead to the Claimant's appeal to Mr Carrington which was rejected leading to the Claimant's complaint of unfair dismissal.

10. I accept the Respondent's evidence that the location of the yacht (which was the Claimant's home and place of work other than on the brief occasions that he visited his home in Florida when the yacht owner allowed it) was dependent on the request of the effective owner Mr Borobin, where it needed to be for maintenance and where it needed to be if it was being chartered on a commercial basis. In respect of the first two categories this meant that the yacht was often in UK waters. Mr Borobin being based in the UK and ports such as Falmouth in Cornwall being particularly appropriate (having deeper waters as well as the necessary yacht maintenance repair operations) for larger yachts such as Amaryllis which is after all over 250 feet in length and over 2100 tonnes. This may account for the fact that the yacht was in the UK, principally docked in Falmouth, for five and a half months from 17 May 2017 to 25 October 2017. I find that it is also likely that it would have had a similar length of time based in the UK in 2018. The reason I make the finding that this is likely is because no evidence was supplied to suggest this was not the case (against the Claimant's contention that it was), this had been the pattern in the previous year and also the yacht had been registered as a commercial vessel instead of a private yacht. I accept the Claimant's evidence that this (again not disputed by the Respondent) happened (for whatever reason perhaps for tax purposes) whenever the yacht came to the UK and had in May in 2017. I accept his point that this would not have happened if the vessel was there only for a temporary period. I do not accept the Respondent's submission that if this had been the case then certain visas would have been applied for and this had not happened, given that Mr Cunningham had no knowledge of this and also accepted that no such visas had been applied for the previous year when the yacht had been in dock for some five and a half months in the UK.

11. The parties agreed that the Claimant had been Captain of Amaryllis for some 410 days before his dismissal. They disagree as to how many of those days Amaryllis (and therefore the Claimant) had been in the UK (meaning UK waters rather than international waters even if on the way to the UK at the time). It is however likely that this is almost 200 days therefore around 50% of that time. This is less than as claimed by the Claimant but the Respondent does accept that around 50% of the time the Claimant was in the UK.

12. The Claimant is a well qualified yacht master with considerable experience particularly given his young age and the extent of his responsibilities as Captain of Amaryllis whilst he remained in his job. However, his particular qualifications including the Maritime Coastguard Agency Master Yachts 3000 GT Certificate of Competency and other ancillary qualifications simply reflect where he determined he would complete his sailing qualifications as well as the fact that as he is a British rather than US citizen so he could not complete any US Maritime professional qualifications. The qualification he did have was an international one and no doubt respected throughout the sailing community and he was subjected to oversight by the Maritime and Coastguard Agency in respect of negligence and breach of its rules anywhere in the world rather than just in the UK. In short, I find his qualifications have no relevance to his place of work.

### Further Legal Findings

13. As stated above Counsel for the Respondent and Claimant respectively disagree to a considerable extent on how UK law applies to the facts of this case. It is also clear from the authorities that they referred to (sometimes both relying on the same authority to make a different submission) that the issue of territorial jurisdiction is far from a straight forward one. It is also clear that in this particular case there are facts which, in turn, support the Respondent and facts which, support the Claimant position that he should benefit from protection from the jurisdiction of the Employment Rights Act 1996. I remind myself however, that when considering s.94(1) of the Employment Rights Act 1996 and whether the Employment Tribunal has international jurisdiction over the claim pursuant to EU Regulation 1215/2012 this is a question of law for me to determine. Either the Employment Tribunal has jurisdiction or it does not. This is not a matter of my discretion as was stated by Mr Justice Langstaff in the EAT judgment in Olsen v Gearbulk Services Limited (2015) a case where the Respondent's Counsel Mr Ohringer appeared and one in which he asked me to pay particular attention to. But I have also to bear in mind, as stated by Lord Hoffmann in Lawson v Serco that even though the question as to whether a case falls within a territorial scope as s.94(1) should be treated as a question of law "it is [also] a question of degree on which the decision of the primary fact finder is entitled to considerable respect". In this case I am the primary fact finder and in looking at questions such as what is a "sufficiently close connection" this must inevitably be answered by, at least in part, my findings of fact whilst of course directing myself as to the applicable law in how those facts are applied.

14. I have been directed to a number of what are considered by one or other or both of the respective parties, to be relevant cases. These included

### On the Brussels 1 Regulations (Recast)

1. Somafer SA v Saar-Ferogas AG [1979] 1 CMLR 490
2. Rutten v Cross Medical Ltd [1997] ICR 715
3. Weber v Universal Ogden Services [2002] ICR 979
4. Koelzsch v Grand Duchy of Luxembourg [2012] ICR 112

5. Voogsgeerd v Navimer SA [2012] ILPr 16
6. Simpson v Intralinks Ltd [2012] ICR 1343
7. Mahamdia v Peoples Democratic Republic of Algeria [2013] ICR 1
8. Olsen v Gearbulk Services Ltd [2015] IRLR 818
9. Nogueira v Crewlink Ireland Ltd [2018] ICR 244

In the international scope of the Employment Rights Act 1996

10. Lawson v Serco Ltd [2006] ICR 250
11. Pervez v Macquarie Bank Limited (London Branch) [2011] ICR 266
12. Duncombe v Secretary of State for Children, Schools and Families [2011] ICR 1312
13. Ravat v Halliburton Manufacturing and Services Ltd [2012] ICR 389
14. Bates van Winkelhof v Clyde and Co LLP [2013] ICR 883
15. Fuller v United Healthcare Services Inc (UKEAT/064/13)
16. Windstar Management Services Ltd v Harris [2016] ICR 847
17. British Council v Jeffery [2016] IRLR 935 [2016] IRLR 935 (EAT)
18. Wittenberg v Sunset Personnel Services Ltd [2017] ICR 1012
19. Seahorse Maritime Limited v Nautilus International [2017] ICR 1463
20. Nica v Xian Jiaotong Liverpool University 2018] ICR 535
21. Jeffery v The British Council [2019] IRLR 123 (Court of Appeal)
22. Ravisy v Simmonds and Simmonds LLP and anor. UKEAT 30 November 2018

And the Maritime Labour Convention 2006

International Jurisdiction

15. The Respondent's Counsel deals first with this issue which is taken as a second issue by the Claimant's Counsel but both refer me to Articles 20(2) and 21 of s.5 of the Brussels I regulations. Article 20(2) states "where an employee enters into an individual contract of employment with an employer who is not domiciled in a Member State but has a branch, agency or other establishment in one of the Member States, the employer shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that Member State".

16. In this case the Respondent employer is based in Guernsey and does not have a settled branch agency, agency or other establishment in England nor does or can the dispute arise out of any operations of such branch, agency or other establishment. Whilst I found that M Borobin exercised control over Amaryllis yacht which went beyond that of (for instance) an absentee or less interested owner, he was not the employer and nor was the Managing Agent Hill Robinson (which did have a branch in London albeit no one from the branch was active in the arrangements between the Claimant and the Respondent involving Amaryllis) and so Article 20(2) does not provide the Claimant a "gateway" as the Respondent's Counsel put it (into our jurisdiction).

17. Turning to Article 21 this states:



1. An employer domiciled in a Member State may be sued
  - (a) in the Courts of the Member State in which he is domiciled or
  - (b) in another Member State
    - (1) in the courts for the place where or from the employee habitually carries out its work or in the courts for the last place where he did; or
    - (2) if the employee does not or did not habitually carry out his work in any on country, in the courts of the place where the business which engaged the employee is or was situated
2. An employer not domiciled in a Member State maybe be sued in a court of a Member State in accordance with point (b) of paragraph 1.

Clearly the Claimant's employer is not domiciled in a Member State and therefore to the extent that Article 21 assists the Claimant it must be by virtue of Article 21(2) applying Article 21(1)(b). In the Webber v Universal Ogden Services (2002) case the ECJ considered how the place of "habitual work" was to be determined when (as here) the Claimant employee spent time in different jurisdictions. The Court stated, inter alia, that "failing other criteria that will be the place where the employee has worked the longest" and "it will only be otherwise if, in the light of the facts that the case, the subject matter of the dispute is more closely connected with a different place of work". Neither the Claimant or Respondent referred to the dictionary definition of habitual but I find it helpful to do so and note that this adjective is defined as "doing something constantly or regularly" and having found that the yacht on which the Claimant worked was regularly in British waters it is, as a separate legal finding, legitimate to also determine that the Claimant could have habitually "carried out his work in Great Britain" I also take into account, the decisions of the Supreme Court in Duncombe the Secretary of State for Children's Cause and Families (2011) and Rovat v Halliburton Manufacturing Services Limited (2012) making it clear that the correct approach was not to treat employees as being in a fixed category but to compare it and evaluate the strength of the competing connections with the place of work on the one hand and with Great Britain on the other. In the Claimant's case his work was wherever Amaryllis was and clearly his "home base" was not in Great Britain. However, in Nogueria v Crewlink Ireland Limited (2018) the suggestion that habitual work was akin to "home base" was rejected in favour of a (preferred) reference to "the place where, or from which, the employee in fact performs essential part of his duties vis a vis his employer". Whilst the Claimant's employer was based in Jersey it had no day to day involvement with the Respondent and Amaryllis had never visited Jersey. The place the Claimant habitually carried out his work was the UK and indeed this was only EU Member State in which Amaryllis had visited whilst he was Captain. It was also the place he was working when the Respondent determined to dismiss him. Much of his instruction came from the UK because the effective owner lived there and the fact that his home was in Florida is far less relevant than the fact that Mr Borobin's home was in Henley as reflected by the fact that for around 50% of his time as Captain with the Amaryllis the yacht had been in the UK. And certainly, he was in the UK longer than he was in any other jurisdiction.

### Territorial Scope

18. Determining this question is of course made more difficult by the fact that the Employment Rights Act 1996 is silent about territorial scope. The scope must therefore be implied. This in part reflects the number of case authorities that have dealt with this issue. The Respondent's Counsel states that the definitive test was set up by Lord Hope in the case of Rovat v Halliburton Manufacturing and Services Limited (2012). He emphasised the importance of the Claimant's (and I recognise that it is the Claimant's responsibility to establish jurisdiction in this case) "connection" between Great Britain and the employment relationship and to show that this is sufficiently strong that s.94(1) of the ERA 1996 should apply to them. The Respondent in paragraph 28 of his submission sets out nine factors to be taken into account arising out of the authorities and it is clear from my findings that the Claimant does not "tick the boxes" in respect of many of these. He is employed by a Guernsey registered company, the choice of law under that contract is Guernsey, he is resident (even though he is British) in Florida when he was not on the *Amaryllis* he pays tax in the USA, he is paid in Euros (albeit he was occasionally paid in the UK) and the managing agents were not based in the UK. However, against that, I have found that he spent more time working in England than any other jurisdiction (indeed that he "habitually" worked in the UK) and there was a strong connection to the effective owner Mr Borobin even if he was not the employer. The Claimant is not a "peripatetic" employee in the same way that a teacher who travels from place to place working at one school or college and then another, because his work was always (in one sense) in one place – on board the *Amaryllis*. It is simply that the yacht sailed from place to place but again all this for short periods because for around half of his Captaincy the yacht was in the UK. Another analogy might be to workers who move from place to place ("international mobile employees") but this is not a particularly helpful comparison in the case of Captain of a yacht. But I have found that control was effectively determined by Mr Borobin who was in the UK and that what the Claimant's Counsel refers to as "an array of entities apparently involved in the running of the *Amaryllis*" did not play any significant part in the Claimant's employment relationship. By which I mean having material input into his day to day work.

19. These cases (including the guidance of Kurrij) in Rovisy v Simmons and Simmons LLP (2018) and Elias LJ v Bates Van Winkelhov Clyde & Co (2013) determined that I must satisfy myself that the connection between the Claimant and Great Britain is sufficiently strong to enable it to be said that the Employment Tribunal should appropriately deal with the Claimant's claim. I am so satisfied (and this reflects my findings of fact) that there is such a sufficiently strong connection with Great Britain and British Law. I do not accept (using the Claimant's Counsel's summary) that this is a type A case (referring to the summary of the then Employment Judge Auerbach in Rovisy v Simmons and Simmons LLP (2018)) but I do believe it is a type C case, i.e. one in which the Claimant lived and worked at least for part of the time in Great Britain. And, further, that there was a strong enough connection with Great Britain that the Employment Rights Act should apply to this employment. In this respect I also take into account the very limited

connection to other jurisdictions. The connection with Florida was greater than anywhere else (other than Great Britain) but it is accepted that the Amaryllis spent limited time there and that although the Claimant lived in Fort Lauderdale that he was only there briefly whilst working on Amaryllis. In addition, although he paid tax in the USA he was paid in Euros by the Respondent company placed in Guernsey and through a managing agent registered in France and with limited day to day involvement with the Claimant or the operation of the yacht. Certainly, the link with Guernsey was very slight. Neither the yacht nor the Claimant went to Jersey during his employment and the payroll administration in Guernsey was very much a paper exercise. I do take into account the fact that his contract of employment in Guernsey contains a choice of law clause in favour of Guernsey and obviously the choice of law remains relevant but it is not definitive. A standard form contract is being used reflecting no doubt the corporate/tax advantages of the company being registered in Guernsey and the question before me is the wider one of jurisdiction and determining the jurisdiction as to whether or not the Claimant can or cannot make a claim in the UK and determining the territorial extent of his UK employment rights. Section 204 Employment Rights Act 1996 states that the governing law of the contract is not relevant and having found as a matter of fact that the Claimant's connections with Great Britain are stronger than with anywhere else in the world I accept the Claimant's proposition that the territorial question should be answered in the Claimant's favour.

20. In British Counsel v Jeffrey 2016 the EAT and later the Court of Appeal in that case reminded the Employment Tribunal that it should focus on where the Claimant was working immediately prior to his dismissal and of course in the Claimant's case this was in Great Britain. This is where he had been ordinary working when the Respondent (indirectly) turned up to suspend and subsequently dismiss the Claimant. The fact that the Claimant was in the UK at this time gives support to the "connection" argumental though I also accept the Respondent's submission that where the Claimant – Amaryllis happened to be at one particular time (including when the Claimant was dismissed) should not be determinative of the question of jurisdiction. Indeed, although it was stated in Lawson v Serco that the application of s.94(1) Employment Rights Act 1996 should depend on whether the employee was working in Great Britain at the time of his dismissal it was also stated that the prior history of the working and contractual relationship might be relevant to whether the employee is really working in Great Britain. The Respondent's Counsel states that his last visit to Great Britain was of a "casual" nature, and he was there by coincidence (because that is where Mr Borobin wanted him to be and/or the yacht needed maintenance work which was best done in Great Britain). Whilst accepting that was perhaps the reason for the yacht and the Claimant being in Great Britain in the late Spring of 2018 my earlier findings highlight that this was not merely a "casual" visit given the connection with, in particular, the effective owner, Mr Borobin. And it is in finding that the Claimant habitually carried out his work in Great Britain (and not simply that this is where he was based immediately before his dismissal), that has led me to find, applying the appropriate legal test, that the Employment Tribunal has jurisdiction to hear his unfair dismissal complaint. The fact that the dismissal

was also instigated whilst he was in Great Britain merely adds an extra layer to that legal determination.

21. In my judgment the Claimant does fall within the peripatetic exception in *Lawson v Serco* and there is a sufficiently strong connection between the Claimant's employment and UK law so that the Employment Tribunal has jurisdiction to hear the Claimant's unfair dismissal claim.

22. The circumstances of the Claimant's alleged misconduct leading up to the dismissal after 28 June 2018 should be brought under the spot light of the Employment Tribunal by virtue of the decision that the claim comes within the territorial jurisdiction of the Employment Rights Act 1996.

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Employment Judge Russell

Dated: 10<sup>th</sup> July 2019

Judgment and Reasons sent to the parties on:

11<sup>th</sup> July 2019

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For the Tribunal Office