EMPLOYMENT TRIBUNALS

Claimant		Respondent
Mr A Noor	**v**	**1. Poseidon Human Capital** **2. Government of Bahrain**

OPEN PRELIMINARY HEARING

Heard at: **Central London Employment Tribunal** **On:** **9 December 2019**

Before: **Employment Judge Brown**

Appearances

For the Claimant: **Did not attend and was not represented**
For the Respondents: **(1) Did not attend and was not represented**
(2) Mr N de Silva, Counsel

JUDGMENT

1. **The Claimant's claims against the First and Second Respondents are struck out because:**

   1.1. **The Tribunal does not have jurisdiction to consider the Claimant's claims of breach of duty of care, negligence or defamation;**
   1.2. **The Tribunal does not have territorial jurisdiction to consider the Claimant's claims.**

REASONS

1. By a claim form presented on 1 December 2018, the Claimant, a Consultant Obstetrician and Gynaecologist, brought complaints of unfair dismissal, race discrimination, disability discrimination, "negligence", "breach of duty of care" and "defamation" against the Respondents.

2. The Claimant contended that he was recruited through the First Respondent and then employed by the Second Respondent to work at the Bahrain Defence Force Hospital in Bahrain from 20 July 2018, but that his employment was terminated there on 6 August 2018. He contended that the termination was because of his preexisting "health issue" and because he was not a Bahraini citizen.

3. On 5 February 2019 the Tribunal sent a strike out warning in relation to the Claimant's unfair dismissal claim because the Claimant did not have the 2 years' service required to bring an unfair dismissal claim under *s108 Employment Rights Act 1996.*

4. The Second Respondent presented a Response which asserted state immunity under the *State Immunity Act 1978*. It also stated that the UK courts do not have jurisdiction over the claim because the Claimant's employment was in Bahrain and that the Bahraini civil courts have exclusive jurisdiction over any claims in relation to it.

The Claims

5. The Claimant attended a Preliminary Hearing on 8 November 2019.

6. At that Hearing, I asked the Claimant what claims he was bringing against the First Respondent. He confirmed those claims as "breach of duty of care" and "negligence", as set out in paragraphs [34] and [35] of his particulars of claim. I explained to the Claimant that the Employment Tribunal has jurisdiction derived from particular Statutes, but that it does not have common law jurisdiction. The claims he listed against the First Respondent were not within the jurisdiction of the Employment Tribunal, but might be within the jurisdiction of the County Court.

7. The Claimant then said he was bringing a "defamation" claim against the First Respondent. I told him that the Tribunal did not have jurisdiction over such a claim, either.

8. Later, the Claimant said that he was bringing a claim of harassment against the First Respondent. This was not stated in his particulars of claim.

9. The Claimant has not made an application to amend his claim to add a harassment claim against the First Respondent.

10. At the Preliminary Hearing the Claimant also said that he was bringing a race discrimination complaint against the Second Respondent – and a disability discrimination complaint, if the Second Respondent considered that his health condition was a disability. I understood that he was bringing a claim based on perceived disability. These complaints related to his dismissal.

11. I listed an Open Preliminary Hearing for **3 hours on 9 December 2019**, to consider whether to strike out all the Claimant's claims because:
    11.1. The Tribunal does not have jurisdiction to consider the Claimant's claims of breach of duty of care, negligence or defamation;
    11.2. The Tribunal does not have territorial jurisdiction to consider the Claimant's claims;
    11.3. The claims do not have reasonable prospects of success.

12. A record of the Case Management Discussion, including notification that the Open Preliminary Hearing was listed for 9 December 2019, was sent to the parties on 11 November 2019.

This Open Preliminary Hearing

13. The Claimant did not attend the Hearing on 9 December 2019.

14. I asked that the Tribunal check whether any communication had been received from the Claimant. Two emails from the Claimant then came to light. The Claimant had written to the Tribunal on 13 November 2019 saying that he would not be able to attend the hearing on 9 December 2019, "..due to pre-arranged commitments which are extremely difficult, if not, impossible to re-arrange." He asked that the hearing be rearranged for a later date and said, "This will also give me more time to ask for legal advice, draft my witness statement and prepare for the hearing." The Claimant had copied his email to the Respondents. On 4 December 2019 the Claimant had chased a response to his email. Again he copied his email to the Respondents.

15. I considered that it was very unfortunate that the Tribunal had not processed the Claimant's correspondence and had, therefore, not replied to it.

16. Nevertheless, I decided that the Claimant had not provided any good reason for the Tribunal to postpone the hearing on 9 December 2019. He had not specified what his "pre-arranged commitments" were, nor had he provided any documentary proof of such commitments.

17. I considered that the Claimant had had time to prepare for this Open Preliminary Hearing on 9 December. The Second Respondent's Response, asserting state immunity and that the Tribunal did not have territorial jurisdiction in relation to his claims, was sent to the Claimant on 1 October 2019. He had known, since then, that these matters were in issue and he had had ample opportunity to obtain advice in relation to them. I had also taken some care, on 8 November 2019, to discuss the Claimant's claims with him, and explain the difficulties in relation to them.

18. The Claimant had not been told that this Open Preliminary Hearing had been postponed and ought, therefore, to have known that it was going ahead. A Notice of Preliminary Hearing was sent to him on 4 December 2019, confirming that the Hearing was listed for 9 December 2019.

19. I decided that it was fair, and in accordance with the overriding objective, to proceed in the Claimant's absence.

Strike Out

20. The only claims pleaded against the First Respondent were "breach of duty of care" and "negligence", as set out in paragraphs [34] and [35] of the Claimant's particulars of claim. The Tribunal does not have jurisdiction to consider such claims. They are struck out.

21. Insofar as the Claimant brings a defamation claim, the Tribunal does not have jurisdiction to hear it. It is struck out.

22. On the facts stated on the Claimant's Claim Form, the Claimant was approached through a UK mobile number by the First Respondent, in relation to a job offer at the Bahrain Defence Force (BDF) Hospital in Bahrain. On 7 February 2018, the First Respondent sent the Claimant a job offer from the Bahrain Defence Hospital. The Claimant has a health condition and disclosed this to the First Respondent on 28 March 2019. The First Respondent reassured the Claimant that this would not be an issue in relation to his employment by the Second Respondent.

23. The Claimant was provided with Bahrain visas for himself, his wife and three of his children. He left his job in Ireland and travelled to Bahrain, with his wife and family, to commence work for the Bahrain Defence Force (BDF) Hospital in Bahrain. The Claimant's contract with the BDF Hospital was for a year. The Claimant rented a property in Bahrain and bought a car there. The BDF Hospital terminated the Claimant's contract on 6 August 2019. He left Bahrain on 18 August 2018 because he was not permitted to stay there after his employment had ended.

24. The Claimant is a British Citizen.

25. An employee who both lives and works abroad, but wishes to bring a claim before a British employment tribunal, is subject to a territorial jurisdiction test. In *Ravat v Halliburton Manufacturing and Services Ltd* [2012] UKSC 1, [2012] IRLR 315 Lord Hope (with whose judgment Lady Hale, Lord Brown, Lord Mance and Lord Kerr agreed) described such an employee as a 'true expatriate' (para 28) and held that for true expatriates there must be 'an especially strong connection with Great Britain and British employment law before an exception can be made for them' (para 28). The employee must show that his or her employment relationship has a stronger connection with Great Britain than with the foreign country where the employee works (para 27).

26. In *Duncombe v Secretary of State for Children, Schools and Families (No 2)* [2011] UKSC 36, [2011] IRLR 840, the Supreme Court that a Tribunal must determine whether the true expatriate 'has such an overwhelmingly closer connection with Britain and with British employment law than with any other system of law that it is right to conclude that Parliament must have intended that the employees should enjoy protection' (per Lady Hale JSC at para 16).

27. Lord Hoffmann in *Lawson v Serco* [2006] UKHL 3, [2006] IRLR 289, said that being British, having been recruited in Britain and working abroad for a British employer, so that the relationship was "rooted and forged" in this country, "… should not in itself be sufficient to take the case out of the general rule that the place of employment is decisive.." (para 37).

28. Taking account of the case law, factors relevant to the comparative exercise for territorial jurisdiction will include: (i) the law of the contract, why it was chosen and whether the employee had any influence over its choice; (ii) any jurisdiction clause in the contract, why it was chosen and whether the employee had any influence over its choice; (iii) in which country the employee's salary, pension and benefits are paid and in which currency; (iv) in which country the employee pays tax; (v) the

identity of the employer and the extent of its connection with Great Britain; (vi) the nationality of the employee; (vii) the amount of time spent living and/or working in Great Britain versus the foreign country; (viii) where and why the employee was recruited; (ix) what representations were made by the employer about the applicability and protection of British employment law available to the employee; (x) the employee's line management structure and administrative support and where they are based; and (xi) how long the employee has been and is likely to be an expatriate and what the situation was before and after this status.

29. In this case, the only factors linking the Claimant's employment by the Second Respondent to Great Britain are the fact that the Claimant was recruited by the First Respondent, a British company, and is a British citizen. Otherwise, his employment by the Second Respondent was connected to Bahrain and not Great Britain. The Claimant was employed in Bahrain by the Bahrain Defence Force (BDF) Hospital. He had moved with his family to live in Bahrain. There was no evidence that his contract specified any link to Great Britain. There was no evidence that he was to be paid other than in local currency and subject to the Bahraini taxation system. There was no evidence that his management structure or administrative support was other than in Bahrain.

30. Applying Lord Hoffmann's dictum in *Lawson v Serco* [2006] UKHL 3, [2006] IRLR 289, being British and having been recruited in Britain is not sufficient to take the case out of the general rule that the place of employment is decisive.

31. The Claimant was employed in Bahrain by a Bahraini employer. The overwhelming connection in his employment was to Bahrain, not Great Britain.

32. The Tribunal has no territorial jurisdiction over the Claimant's claims against the Second Respondent. They are struck out.

Dated: 09/12/2019

Employment Judge Brown

JUDGMENT SENT TO THE PARTIES ON

10/12/2019

.....
FOR THE TRIBUNAL OFFICE