



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Ms L Ogundimu

v

British Broadcasting Corporation

Heard at: London Central (CVP)

On: 17 - 18 Aug 2020

Before: Employment Judge E Burns

Representation

For the Claimant: Mr S Robson (solicitor)

For the Respondent: Ms K Moss (counsel)

RESERVED JUDGMENT

The claimant was not an employee of the respondent between 16 April 2018 and 13 March 2019.

REASONS

BACKGROUND

1. By a claim form presented on 13 March 2019, following a period of early conciliation from 4 to 18 February 2019, the claimant brought complaints of disability discrimination, breach of contract and unlawful deduction of wages.

THIS PRELIMINARY HEARING

2. At a case management hearing held on 9 October 2020 it was agreed that a preliminary hearing should be held in public to determine the issue:

Did the Claimant remain an employee of the Respondent when she moved to work in Nigeria in or about April 2018 and remain so at 13 March 2019 (i.e. the date of issue of her ET1)?

3. The preliminary was conducted using the cloud video platform (CVP) under rule 46. The parties agreed to the hearing being conducted in this way.
4. In accordance with Rule 46, the tribunal ensured that members of the public could attend and observe the hearing. This was done via a notice published on Courtserve.net and members of the public attended the hearing accordingly. The participants were told that it is an offence to record the proceedings. No requests were made by any member of the public to inspect the claimant's witness statement or to see any other written materials that were before the tribunal.
5. From a technical perspective, there were minimal difficulties. One observer (who was present to support the claimant) joined by telephone and although she was able to hear everything that the tribunal could hear, she could not see what we could see. I highlighted this concern to the parties and the individual involved. All parties agreed they wished to proceed.
6. There was an agreed hearing bundle of documents of 461 pages. An additional document was admitted on the morning of the second day with the agreement of the parties. I refer below to the page numbers of key documents that I relied upon when reaching my decision.
7. Evidence was heard from:
 - The claimant
 - Hilary Bishop, Managing Editor, World Services Languages for the respondent
 - Dominic Mould, former HR Business Partner for the respondent
8. The tribunal ensured that the parties had access to unmarked copies of the relevant written materials. I was satisfied that they were alone while giving evidence and were not being coached or assisted by any unseen third party.
9. Counsel for the respondent provided a short written skeleton. Both representatives made helpful closing oral submissions.

FINDINGS OF FACT

10. My findings of fact are set out below. Where there were disputed facts, I have made my finding on the balance of probabilities.
11. The respondent is the British Broadcasting Corporation, the national public service broadcaster in the UK. It is a public corporation incorporated by Royal Charter.
12. The respondent is the parent company of a complex organisation with a large number of subsidiary companies. The group has an extremely recognisable logo. Very often when people refer to the "BBC" they are

referring to the group as a whole, rather than to the legal entity which is the respondent in this case.

13. It is not disputed that before 16 April 2018, the claimant was an employee of the respondent. There is a difference between the parties regarding the claimant's actual start date and whether it was in 2004 and 2005, but this is not material.
14. As well as broadcasting in the UK, the respondent also broadcasts internationally through the World Service. World Service Programs are broadcast in English and local languages.
15. From 2016 onwards, the respondent commenced the World 2020 Project. The project was funded by a grant from the UK government over a four-year period. It enabled the respondent to further develop its strategy that the World Service should be less London centric and have editorial output teams located closer to the audiences they were serving.
16. One of the ways in which the respondent is able to achieve local output is through partnering with local TV stations.
17. BBC Africa is a department within World Service. Some BBC Africa staff are based in the UK in New Broadcasting House and are employed by the respondent.
18. Some BBC Africa employees are employed on UK contracts with the respondent, but are based in Africa. Such arrangements are temporary. The terms secondment or attachment are used in the organisation to describe them.
19. Many BBC Africa employees are employed by local subsidiary companies registered in the relevant countries. These are often referred to as local bureaux. Employees employed by the local subsidiary companies are engaged on local terms and conditions. Their contracts of employment are subject to local laws. They also need to have a right to work in the particular countries.
20. The respondent used the World Project 2020 to build an office in Lagos in Nigeria and hire more than 120 staff to work there. The staff were employed by a company incorporated in Nigeria on 30 December 2015. Originally the company was called WS Media & Communication Limited, with the WS standing for World Service. This was changed to the British Broadcasting Corporation Nigeria Limited on 20 December 2016 (114A). BBC Nigeria Limited is a wholly owned subsidiary within the BBC group.
21. In addition, the respondent entered into a co-production agreement with a local TV station based in Lagos, called Channels TV. The production in question was a weekly current affairs programme. Under that agreement, the respondent was required to provide editorial staff who were to be selected through a joint recruitment process between the respondent and Channels TV, but employed and paid by the respondent (411 - 412).

22. The respondent advertised the role of Co-Production Editor (the editor job mentioned in the Partnership Agreement) internally and externally. The claimant who was at that time working for BBC Radio 1/1 Xtra saw the advert via an advert on the respondent's on-line platform for recruitment in the UK at www.bbc.co.uk/careers.
23. I note that is the only recruitment platform which the BBC group operates. The same site is used across the world for internal and external candidates, but with different access rights. Employees of subsidiary companies are treated as internal candidates.
24. The advert (117A) contained the following information:
- Contract type Permanent – Full Time
 - Salary Local terms and conditions apply
 - Job title Co- Production Editor
 - Department BBC Africa Service
 - Location Lagos, Nigeria

It also included in bold the statement: Applicants must have a valid Right to Work in Nigeria before submitting an application.

25. A job description was also produced for the role. It contains very similar information to the job advert save that it says the role reports to the Senior Partnerships and Production Manager and instead of describing the contract type as "Permanent" it used the word "Continuing" (115).
26. Neither the advert nor the job description say that the employing entity would be a company called BBC Nigeria Limited.
27. The claimant has dual nationality, British and Nigerian, although she has spent the majority of her life in the UK and thinks of herself as a Londoner. She had previously undertaken a secondment in Nigeria working for BBC Media Action between 21 September 2015 and 21 November 2017. She described herself as passionate about projects in Africa and this, no doubt, influenced her decision to apply for the role of Co-production Editor.
28. The claimant says, and I accept her evidence on this point, that she did not intend to permanently relocate to Nigeria.
29. The claimant submitted an application form for the role. In the form she was asked to provide her current annual basis gross salary. She gave the answer £34,978. She was also asked to indicate her annual salary expectation for this role in local currency, and gave the figure N12 million. This is around £10,000 less when converted to pound sterling. (117G)
30. The application form also asked: "*This role is based in Lagos. Are you willing to work there? [Note – there is no relocation package.]*" to which she responded yes (117G).

31. The claimant was interviewed for the role on 6 March 2018. The calendar invite for the interview gives the location as Lagos (120). The claimant did not need to travel to Lagos to attend the interview, however, which was conducted by Skype. This was sensible because she was physically in London as was at least one other member of the interview team.
32. The claimant was offered the role. She received the offer initially via a phone call on 15 March 2018 (120). She was not happy with the salary offered (N10 million) and sought to negotiate a higher salary. Although she suggested otherwise when giving her evidence, I find that the claimant did expect that the salary she would receive for the role would be less than her current salary with the respondent. She states this expressly in her email on 20 March 2018 to HR seeking an increase in the salary offer (118).
33. Written confirmation of the offer was sent to her in the form of an email sent on 21 March 2018 (126). The email contained an overview of the offer in the following terms:
- | | |
|---------------|----------------------------------------------------------------------------------------|
| Salary | NGN 12,000,000 gross per annum |
| Contract Type | continuing |
| Start date | 16th April 2018, please can you confirm this date in writing by replying to this email |
| Location | BBC Lagos Bureau |
34. The email asked for certain information from the claimant, then added: *“Following confirmation of the above, a member of the Lagos Bureau will be in touch shortly with your formal offer and confirmation of terms.”* (127). I note the email made no mention of the fact that the employer was to be BBC Nigeria Limited.
35. The start date of 16 April 2018 was to enable the claimant to participate in training taking place in Lagos starting on 16 April 2018. On 20 March 2018, Nisha Kapur, Editorial Lead 2020 Africa TV & Digital Video (the claimant’s future line manager’s line manager) emailed the claimant’s then line manager, Head of Production at Radio 1 & 1Xtra, to ask if it was possible to release her from her role by 16 April 2018. This was agreed two days later (122).
36. On 4 April 2018, the claimant had still not been sent a contract of employment. She therefore chased for a contract by email at the same time as asking questions about a relocation package. It was later agreed that the claimant would be reimbursed for her one way travel to Lagos with excess luggage and receive an allowance to pay for 4 weeks of temporary accommodation.
37. The claimant was sent a contract of employment by email on 9 April 2018. The email came from an individual with the job title Project Co-ordinator, HR in her email signature together with the name and address of BBC Nigeria Limited (129). The same person was responsible for emailing the claimant on 10 April 2018 to confirm her relocation package (130).

38. The claimant's contract of employment (82-88) has the following features:
- It shows the BBC logo
 - It has "British Broadcasting Corporation Nigeria Limited" in large letters at the top where it also says "Permanent Contract of Employment"
 - It opens with a recital saying:
39. "The BBC Nigeria Limited of Fourth Floor, Oackland Center, Aguiyi Ironsi, Street, Maitama, Abuja FCT would like to offer you employment on the following local terms and conditions. You should note that this supersedes any other contract offered previously in verbal or written terms."
- It names British Broadcasting Corporation Nigeria Limited as the employer (paragraph 1)
 - It says it is a permanent contract, and gives a start date of 16 April 2018. There is also a probationary period of six months (paragraph 3)
 - The claimant's previous service is not recognised
 - The place of work is said to be Lagos, Nigeria (paragraph 7)
 - The gross remuneration is N 12m (paragraph 8)
 - There is reference to entitlement to Nigerian public and religious holidays (paragraph 9)
 - There is no contractual entitlement to sick pay, but the contract records that normal practice is to pay up to 12 days sick pay in each calendar year (paragraph 10)
 - The contract is governed by Nigerian Law (paragraph 18)
 - The retirement age is in line with Nigerian law (paragraph 19)
 - The contract is signed by Jackie Christie, Head of Partnership, Africa TV, for and [on] behalf of the British Broadcasting Corporation Nigeria Limited (88)
40. The contract makes reference to an Employee Handbook. The claimant says she did not receive this. The version of the Employee Handbook contained in the bundle is dated June 2017 (289) which is after the contract was issued. Had a Handbook been sent twiht the contract it would have been dated earlier. I note that BBC Nigeria Limited only came into existence on 20 December 2016. It is entirely plausible that the handbook was not finalised until some months later. I find that the handbook was not sent to the claimant with the contract.
41. The claimant admitted in her evidence that she did not read the contract of employment. She said that she had had several contracts of employment issued to her when working for the respondent and she saw no reason why this one would be different. It was a very busy time as she was still working for Radio 1/1Xtra and she was preparing to leave for Nigeria in less than a week. She did not sign and return the contract, nor did she ask anyone any questions about the contract before she started a new role.
42. I note that the document the claimant was sent when she was assigned to work in Nigeria for BBC Media Action is very different to the contract with BBC Nigeria Limited. It says:

“You shall remain employed by British Broadcasting Corporation ("BBC") during the secondment and your current terms of employment shall remain unchanged, except as set out in this letter. In particular, your period of continuous employment will remain unbroken. At the end of the secondment, BBC currently intends that you will return to your current position on the terms applying before the secondment.”

43. The claimant worked her last shift at Radio 1 & 1Xtra on 14 April 2018, flew to Nigeria the following day and started work in her new role on 16 April 2018. The claimant was not required to formally resign from her employment with the respondent. She was not invited to attend an exit interview.
44. Initially the respondent's HR function did not generate a leaver form for the claimant, and she remained on the respondent's payroll. This led to her being overpaid in April 2018. This was later resolved. From May 2018 onwards the claimant received her pay in Nigerian currency directly into her Nigerian bank the correct reduced salary. The overpayments were recovered from her (393).
45. The claimant was provided with paper copy payslips. These were in a different format to the on-line payslips she had received in the UK. The payroll for BBC Nigeria Limited was provided by an external accountancy firm (431 – 440). The payslips do not say BBC Nigeria Limited on them. They have the BBC logo and British Broadcasting Corporation (393 – 396).
46. The claimant attended an induction in Lagos with other new starters at BBC Nigeria Limited. The second day of the induction (18 April 2018) covered the local HR policies that were in place (142).
47. The claimant's line manager was Jackie Christie. I note that Ms Christie's, job title was Head of Partnerships (Senior Editorial Partnerships, Training & Production Manager). Ms Christie was employed by the respondent. The respondent had tried to find a local hire in Africa for this role, but no suitable candidates had been identified and Ms Christie was filling the role temporarily. Ms Christie's the role was not exclusive to Nigeria and covered partnership arrangements across the whole of Africa.
48. In her role, the claimant managed a team of employees who were employed by BBC Nigeria Limited.
49. The claimant told the tribunal that relatively early on in her time in Lagos she had two meetings with her new line manager when she expressed unhappiness. The claimant says her conversations with Ms Christie included raising concerns about some of the terms in the contract and that she asked Ms Christie to look into certain matters. There is no written record of any follow-up at that time. From what the claimant said in her evidence, it appeared that Ms Christie did not consider the claimant was raising formal concerns. In response Ms Christie highlighted the positives

of the move for the claimant including the fact that she had an editor role and was responsible for managing a team.

50. The claimant said in order to be able to “escape” the situation she was in, she applied for a different role in Nigeria. She was invited to an interview for this role in mid-July, but was unable to attend because she was in hospital in London around the time of the interview. The fact that the claimant believed that she needed to find a new role in order to resolve the concerns she had with her contract leads me to infer that she believed she was employed on that contract by BBC Nigeria Limited and “stuck” in that situation subject to getting a new role.
51. The claimant became unwell when she was visiting London for work meetings on 8 July 2020. She had a stroke and was treated at St Thomas’ Hospital in London. The claimant has sickle cell anaemia and her stroke was connected with the underlying condition. She has been treated at St Thomas’ for many years.
52. The claimant’s stroke was on 9 July 2018. She was admitted to hospital that day and discharged on 12 July 2018. She was well enough to return to work at new Broadcasting House on 16 July 2018, flying back to Nigeria on 21 July 2018.
53. On 19 July, while she was in the UK, the claimant emailed HR and asked about her contract of employment. Her email says the following:
- “Hello HR*
- I still need some advice please around my 'local contract'*
- 1) What is my sick leave entitlement*
- 2) what does the health insurance cover? What cover is provided by Zenith Health Insurance*
- 3) What has happened to my 14 years of service at the BBC? Am I still on the UK HR system to acquire Long Leave Days?*
- If UK HR unable to answer, please do ask HR who handles W2020*
- The Contract is attached.*
- I require guidance urgently please.” (148)*
54. The claimant attached the contract she had received on 9 April 2018. I infer from this that, although she was not happy with the terms of the contract, she believed that the contract applied to her.
55. The query was referred to Mr Mould, an employee of the respondent, who had been recently appointed to the role of HR Business Partner for the World 2020 Project in Africa. He emailed her email her back to confirm her sick pay entitlement was 12 days as per her contract, referred the query about health insurance to Lekan Onasanya, the Lagos Bureau Manager and said he would need to look into the position with regard to her continuous service (148).

56. In his evidence to the tribunal Mr Mould said that at the time he mistakenly believed that the claimant might have been entitled to recognition of her continuous service. He continued to be of this view for quite a long time while he was dealing with the case. He had learned subsequently, however, that the respondent treated service with an international subsidiary as breaking service.
57. Only a few days after arriving back in Nigeria, on 27 July 2018, the claimant became critically ill and was admitted to hospital.
58. As the claimant's life was in danger, the respondent arranged for an air ambulance to evacuate her on 4 August 2018 to London where she was admitted to St Thomas's hospital in London. The claimant was understandably completely unaware of the communications between the respondent and BBC Nigeria Limited or the internal authorisation process of the respondent at the time.
59. The paper trail and witness testimony confirms the following:
- The claimant was initially required to pay for some of her hospital treatment in Nigeria. However, she was subsequently reimbursed for this by BBC Nigeria Limited
 - BBC Nigeria also paid the remainder of the Nigerian hospital bills. Part of this was paid by the provider of medical insurance for the employees of the company
 - Retrospective approval was given by the respondent's News Board Group for the cost of the claimant's medical evacuation (190-195). The respondent paid for this directly out of the World 2020 Project budget.
60. There are a number of paragraphs in the News Board Group paperwork that are relevant and worth setting out in full:

"BACKGROUND

1. [The claimant] is a BBC employee in Nigeria on local terms and conditions.... She worked as a UK employee for the BBC [Radio 1/Radio 1 Extra] in London from 2004 to 2018.

2. In 2017 [the claimant] went on an international assignment to Lagos to act as Launch SBJ for the new Nigerian languages - Pidgin, Yoruba and Igbo as part of the World 2020 project. When a suitable permanent, local hire vacancy with Africa 2020 TV came up in Lagos she applied and was successful. She relocated to Nigeria on Nigerian terms and conditions of employment with the BBC effective 16 April 2018.

3. [The claimant] therefore has a combined 14 years' service with the Corporation. She holds British and Nigerian nationalities." (191)

“CONCLUSION

14. Clearlysuch a course of action would be an exception to BBC procedure as other local hire employees in Nigeria or elsewhere in the region would not be able to travel to the UK to access medical treatment.

15. However we believe that this is an exception because [the claimant] has been in the long-term care of the NHS and this current situation appears to have been precipitated by treatment undertaken at St Thomas's on the 19 July.....

.....

18. We also consider that the urgency and life-threatening nature of the medical situation and [the claimant's] long and UK associated service with the Corporation merits such support.” (194 – 195)

61. I find that the respondent did not pay for the emergency evacuation because it believed that the claimant was its employee. The references to the claimant being a “BBC employee” in the paper are a reference to her being an employee of the BBC group rather than the respondent. All present at the meeting would have understood this for two reasons:
- First, the approval was only necessary because the claimant was not covered by the respondent's insurance. Had she been an employee of the respondent there would have been no need for the paper to have been written.
 - Secondly those present would have understood that the reference to the claimant being employed on local terms meant that she was employed by a subsidiary company in Nigeria.
62. The claimant survived her illness and was discharged from hospital in early September. She was still very unwell and moved in with her mother in London.
63. The claimant continued to be paid her Nigerian salary into her Nigerian bank account though Nigeria BBC Limited's payroll until the end of September 2018. She received 45 days sick pay altogether. This was more than the maximum 12 days' sick pay referred to in the contract of employment with BBC Nigeria Limited. The respondent confirmed in writing that the extended payment of sick pay was a “goodwill gesture” and also that the claimant was not eligible for statutory sick pay (205).
64. Mr Mould arranged for the claimant to be assessed by an Occupational Health specialist. Two reports were obtained altogether, the first was dated 15 October 2018 which found that claimant was not fit to fly for the next four months. She was therefore unable to return to her role in Nigeria during this period. The report did indicate however that the claimant could return to work within 2 – 4 weeks, provided her role did not involve heavy lifting and a 4 week phased return could be accommodated (222-224).

65. The second Occupational Health report was dated 8 April 2019. It found that the claimant was then fit to return to work but, as she needed access to good medical care, effectively ruled out a return to Nigeria (365-366).
66. The claimant believed that she was well enough to return to work, from 2 November 2019 on a phased return basis, provided this was in London. She looked to the respondent to facilitate this. Because she was not happy with the respondent's approach, she decided to raise a formal grievance.
67. The claimant's grievance was dated 3 December 2018. It was said to be raised by claimant under the BBC Nigeria Limited Employee Handbook (227-230). The claimant said she was told that the grievance had to be considered under the BBC Nigeria Limited Employee Handbook and that was the sole reason why she referred to it in her grievance letter. I accept her evidence on this point,
68. The grievance was considered by Nick Ericsson, Assistant Editor, Africa Planning. He was an employee of the respondent working in the UK for BB Africa and had no connection with BBC Nigeria Limited. Mr Mould told the tribunal that there were no managers at BBC Nigeria Limited who were experienced enough to hear the grievance. The grievance meeting was conducted in London.
69. Mr Ericsson's produced a grievance outcome letter dated 7 February 2019. Although he did not uphold the claimant's grievance, he recommended that the UK policy called the Guide to Supporting, Retaining and Recruiting Disabled Staff was applied to the Claimant as a gesture of good will (351-356).
70. Mr Mould met with the claimant to discuss her future in early May 2019. He explained that the Claimant would be given priority consideration for roles in the UK under the Guide to Supporting, Retaining and Recruiting Disabled Staff. For her to qualify for redeployment she had to be under notice of termination. I do not know why there was such a long delay of 3 months between the grievance outcome and this meeting. It must have been a particularly difficult time for the claimant who had been on nil pay at this point for eight months.
71. On 10 May 2029, Mr Mould wrote to Ms Christie, the claimant's line manager to say that he had met with the claimant and intended to issue her with notice of termination. He confirmed that this meant that Ms Christie could appoint a permanent replacement in her role. Up until then the role had been covered temporarily (373).
72. Mr Mould subsequently issued a letter to the claimant dated 16 May 2019 giving her three months' notice of termination under the contract with Nigeria BBC Limited. The termination date was to be 16 August 2019 (374 – 375).

73. The claimant was successful in an application for a fixed term role lasting 10 months as a Producer in BBC sounds. She wanted to start the role from 1 July 2019.
74. The respondent informed the claimant that it was not possible to move her immediately onto a UK contract. Instead due to a policy of the respondent, she would need to continue on the BCC Nigerian Limited payroll, including being paid in Nigerian currency into her Nigerian bank account. This was because the role she had been offered was for a fixed term rather than being a permanent role.
75. The claimant was told that, if she wished to move straight onto a UK contract, she would need to resign from BBC Nigeria Limited. The claimant therefore wrote a resignation letter to Ms Christie (389).
76. I am satisfied that the respondent applied a genuine existing policy to the claimant's situation that was not designed to deliberately frustrate the claimant. However, the decision to apply that policy (and it was a decision not a legal requirement) put her in an impossible position with no choice but to write a resignation letter. In the circumstances, it would be unfair to treat that letter of resignation as evidence that the claimant believed she was an employee of BBC Nigeria Limited.
77. The claimant was duly issued with a fixed term contract with the respondent, which has subsequently become permanent.

THE LAW

78. At the heart of any employment relationship heart is a contract of employment.
79. For any contract to have been formed, there are a number of essential components: an intention to create legal relations; offer; acceptance; consideration and sufficient certainly as to the terms.
80. There is no legal requirement for an employment contract to be in writing. It therefore follows that there is no requirement for a contract to be signed by both parties to be binding. Contracts of employment can be formed, varied and terminated through express agreement, whether in writing or orally. They can also be formed and varied through conduct. Acceptance of a new or varied contract can be implied where an employee has been issued with a contract and works under it, even though they do not sign and return it.
81. The test as to whether a contract has been formed, varied or terminated is objective. The tribunal must have regard to what a reasonable observer would think. That is not to say that the subjective states of the minds of the parties involved are entirely irrelevant. They are part of the overall factual matrix that needs to be considered.

82. Where there is a written contract, the starting point is that it should be treated as definitive. This principle has a number of exceptions, however, such as where the written document does not reflect what the parties intended or is a sham (*Autoclenz Ltd v Belcher* [2011] 4 All E.R. 745) or is sparse and sheds little light on the actual arrangement envisaged (*Carmichael and another v National Power plc* [1999] 1 WLR 2042).
83. Where there is doubt about the reliability of the written document, it will be necessary to examine the course of dealings between the parties, their oral exchanges and conduct to determine whether a contract of employment is in existence. This can also include what happened after the said contract came into existence (*Maggs (t/a BM Builders) v Marsh* [2006] EWCA Civ 1058).
84. Although one person can have two jobs with separate employers at the same time, case law affirms that an employee cannot usually be employed by two employers at the same time on the same work (*Patel v Specsavers Optical Group Ltd* UKEAT/0286/18).

ANALYSIS AND CONCLUSIONS

85. I conclude that the claimant was employed under a contract of employment between her and BBC Nigeria Limited. She did not have a contract of employment with the respondent between 16 April 2018 and 1 July 2019.
86. Although the job advert and job description say that the claimant would be employed on local terms and conditions, by itself this was not sufficient to indicate a change of employer. This does not influence my conclusion, however, because the claimant was issued with a contract of employment that could not have been clearer about her new employer. This superseded the earlier documentation, which was not, in any event, intended to have legal effect.
87. Similarly, I do not consider that the use of the word “continuing” in the job description or email containing the outline offer of employment to be material. Using the word “continuing” to describe the contract type, rather than permanent, has the capacity to be confusing, but any confusion ought to have been resolved when the claimant received the contract of employment.
88. There are four references to BBC Nigeria Limited in the contract of employment. The name is shown in large font at the top of the contract; it is present in the opening recital, it is expressly said to be the other party to the contract and defined as the employer; and the contract is signed for and on behalf of BBC Nigeria Limited. In addition, she was sent the contract by email from a person with a clear email signature that contained the name BBC Nigeria Limited.
89. Although the claimant did not sign and return the contract, she worked under it and therefore can be taken to have accepted it applied to her by

her conduct. It is not material that she was not sent a copy of the Employee Handbook with the contract.

90. The contract was provided to the claimant a week before her role began. This was not a great deal of time, but it was still long enough to give her time to read it and ask questions about it. Even if she did not read it at this point, she read it later and discussed it with her line manager Ms Christie in mid-April 2018. She then continued to work without protesting that the contract should not be applied to her. Her email of 19 July 2018 to HR does not question the applicability of the contract to her, but instead asks questions about it.
91. The claimant relies on the fact that the familiar BBC logo was used on her payslips and these had the name British Broadcasting Corporation on them, rather than BBC Nigeria Limited. She has also invited me to find it was significant that the BBC Values applied to her and that her line manager was employed by the respondent.
92. I do not consider that any of things undermine my conclusion. I would expect the BBC logo and values to be adopted by all companies within the BBC group. This is common in organisations with a number of subsidiaries, as is matrix line management. The claimant's line manager had a specific role dealing with partnership working across a number of African bureaux and so I would not have expected her to necessarily be an employee of the same company as the claimant. In contrast, the claimant was employed on a solely Nigerian project and was managing a team of people based in Nigeria.
93. It is surprising that the claimant's payslips did not expressly name BBC Nigeria Limited. However, this does not change the fact that the claimant was paid in local currency into a Nigeria bank account by a payroll provider on behalf of Nigeria BBC Limited.
94. The claimant also relies on the fact that her earlier contract with the respondent was not brought to a formal end and she did not have an exit interview. I find that the claimant's contract with the respondent was brought to an end by her conduct. On 16 April 2018 she ceased to be engaged in doing any work for the respondent. None of the facts point to the possibility of an ongoing contract with the respondent while the claimant was working for BBC Nigeria Limited.
95. It is understandable why the claimant has pursued this claim against the respondent. The claimant believed that she was well enough to return to work, from 2 November 2019 on a phased return basis, provided this was in London. Rather than facilitating her return to work, decisions were taken by employees of the respondent, that left the claimant on nil pay and without a role until 1 July 2019.
96. Those decisions were taken on behalf of the claimant's employer, BBC Nigeria Limited, however. The respondent at no time during the relevant period behaved in a way that suggested that it believed it was the

claimant's employer. This includes the steps taken to evacuate the claimant from Nigeria. This was an exceptional decision that was taken because of the claimant's particular circumstances and not because of any legal obligation the respondent was under to the claimant.

Employment Judge E Burns
23 August 2020

Sent to the parties on:

.24/08/2020

For the Tribunals Office