EMPLOYMENT TRIBUNALS

Claimant: **Miss L Joynat**

Respondent: **The English School for Girls**

PRELIMINARY HEARING

Heard at: **London Central (by video)** **On: 1 February 2022**

Before: **Employment Judge C H O'Rourke**

Representation
Claimant: **Not in attendance, or represented**
Respondents: **Not in attendance, or represented**

JUDGMENT

The Claimant's claims of discrimination on the grounds of sex, race and religion or belief and for 'other payments' are dismissed, for want of territorial jurisdiction, subject to Rule 8(2) of the Tribunal's Rules of Procedure 2013.

REASONS

Background and Issues

1. The Claimant brought claims of discrimination, on several grounds and a claim for 'other payments' against the Respondent, on 28 July 2021. At a case management hearing of 22 November 2021, the Tribunal considered that it might not have territorial jurisdiction to hear these claims, as the Claimant's employment, as a teacher, was in Kuwait, where the Respondent school is based. That is the sole issue to be decided at this preliminary hearing ('the preliminary issue').

2. The Claimant did not attend today's hearing, or give any indication as to her intentions in that respect. She was contacted by the Tribunal at 10.00 am and told that if she did not attend, the hearing would proceed, in her absence, at 10.30 am. The Respondent has been informed that until the

preliminary issue was determined, they were not required to present a response to the Claim. The burden of proof in respect of satisfying me that the Tribunal does have jurisdiction to hear the claim rests on the Claimant. Applying Rule 41 of the Tribunal's Rules of Procedure 2013, I considered it appropriate to proceed with the Hearing, in the Claimant's absence.

3. The case management order following the last hearing ordered the Claimant to do the following, with which she has not complied:

   a. To provide a complete copy of her ET1 (the current copy only running to page 12), by 29 November 2021; and
   b. (she and the Respondent) to provide all relevant documents, legal authorities and submissions and witness evidence upon which they intended to rely, by 10 January 2022.

The Law

4. Rule 8(2) of the Tribunal's Rules of Procedure 2013 states the following:

   (2) A claim may be presented in England and Wales if—
   (a) the respondent, or one of the respondents, resides or carries on business in England and Wales;
   (b) one or more of the acts or omissions complained of took place in England and Wales;
   (c) the claim relates to a contract under which the work is or has been performed partly in England and Wales; or
   (d) the Tribunal has jurisdiction to determine the claim by virtue of a connection with Great Britain and the connection in question is at least partly a connection with England and Wales.

5. In respect of the issue of a 'connection' with Great Britain I referred myself to the following authorities:

   a. **Lawson v Serco Limited [2006] UKHL ICR 250**. Mr Lawson was a security supervisor working at the RAF base on Ascension Island, the only habitation on the Island. A conjoined case, heard at the same time, involved a Mr Botham, who had been a youth worker with the then British Forces Germany Youth Service. A second conjoined case was of a Mr Crofts, who worked for a Hong Kong based airline company, but was himself based at London Heathrow and he lived in UK. The principles from that judgment (as I consider relevant to this claim) are as follows:

      i. While the circumstances would have to be unusual for an employee who works and is based abroad to come within the scope of British employment law, there are some who do.
      ii. Merely being employed by an employer based in Great Britain, or being British, or having been recruited in Britain is insufficient in itself.

iii. 'Something more' is needed, such as were an expatriate employee of a British employer operates in an extra-territorial British enclave in a foreign country (as in Mr Botham's case and perhaps, to a lesser extent, in Mr Lawson's case – both appeals being allowed. Mr Crofts' was dismissed).

b. **Duncombe v SoS for Children, Schools and Families [2011] UKSC 36**. Ms Duncombe was employed by the Secretary of State to work as a teacher in a European school (attended by the children of EU staff, working in international enclaves). Allowing the appeal, the Court identified the following factors:

i. The employer was the UK Government, the closest connection with Britain that any employee can have.

ii. The appellant was employed under a contract governed by and with terms and conditions compliant with English law.

iii. The Appellant was employed in an international enclave, having no particular connection with the country in which she happened to be situated (in that case, Germany).

iv. She did not pay local taxes.

v. These factors (a '*very special combination'*) distinguished the appellant from locally engaged employees. Such people were employed under local labour laws and pay local taxes and cannot expect to enjoy the same protection as an employee working in Britain.

c. **Ravat v Halliburton Manufacturing and Services Ltd [2012] UKSC 1**. Mr Ravat had been an accounts manager for a British employer and at the time of his dismissal, had been working in Libya, on secondment to a German company. He worked entirely in Libya, but received exactly the same benefits, as if he had been working in UK. He was paid in Sterling, into a UK bank account and paid UK income tax and National Insurance (NI). His human resources support was from UK. When he was dismissed on grounds of redundancy, the decision was taken in UK. He invoked the employer's UK grievance procedure and all of the relevant hearings (to include an appeal) took place in UK. The Court, finding that s.94(1) ERA was engaged, set out the following principles:

i. The employment relationship must have a stronger connection with Great Britain than with the foreign country where the employee works.

ii. The general rule is that the place of employment is decisive, but is not an absolute rule.

iii. The circumstances would have to be unusual for an employee who works and is based abroad to come within the scope of British law, stating '*the case of those who are truly expatriate because they not only work but also live outside Great Britain requires an especially strong connection with Great Britain and British employment law before an exception can be made for them.'*

iv. The fact that the employee's home was in UK had a real bearing on the relationship.

v. The question is ultimately one of degree.

The Facts

6. In the absence of any witness evidence from the Claimant, I considered the only relevant documents available to me, her incomplete ET1 and the previous case management order, which recorded what the Claimant had told the Judge at that hearing.

7. That ET1 states, in summary and as relevant, the following:

    a. She had been employed as a supply physics teacher at the Respondent school, in Kuwait city, for just over a year and a half, her employment terminating on 26 June 2019.

    b. On an unspecified date, she was sent an email from the Respondent (copied to others) instructing her to cease references to the word 'Yoga', in a health and wellness program she was undertaking. It also instructed her that there should be '*no poses, words, gestures, history or philosophy. Please do not tie any stretches to animals.'* She considered this to be evidence of discrimination, in relation to her race, religion and diet.

8. The case management summary, following a case management hearing at which she did attend, recorded the following:

    a. The Respondent is based in Kuwait and the Claimant confirmed that while it employed exclusively UK-qualified teaching staff, it had no corporate presence in UK.

    b. The Claimant worked exclusively in Kuwait, under a local employment contract.

    c. The Claimant stated that she had been recruited in UK.

    d. She believed that while her line manager worked for the Respondent in Kuwait, she lived in UK.

    e. She had suffered post-termination discrimination by virtue of the Respondent providing prospective employers with unfavourable references.

9. Applying Rule 8(2), I found that there was no evidence as to the following:

    a. that the Respondent resided or carried on business in England and Wales;

    b. that any of the alleged acts of discrimination complained of took place in England and Wales. While the Claimant asserted that she had suffered post-termination discrimination, which may or may not have occurred in England and Wales, she provided no evidence of such alleged discrimination;

    c. that the claim relates to a contract under which the work has been performed partly in England and Wales; or

    d. that the Tribunal had jurisdiction to determine the claim, by either the claim having a connection, or at least partial connection, with England and Wales.

10. In respect of that latter point, as to 'connection' with England and Wales, it is clear, applying the authorities set out above, that the claim has not even a partial connection to this jurisdiction. I find this for the following reasons:

    a. The Claimant worked exclusively in Kuwait, under a local contract.

    b. Merely being British, or having been recruited in Britain is insufficient in itself.

    c. Applying **Lawson v Serco**, there was no 'something more'.

    d. There is no question of her employment having a stronger connection with UK than Kuwait.

    e. Where her line manager lived is irrelevant.

11. Judgment. For these Reasons, therefore, the Claimant's claims of discrimination and for 'other payments' are dismissed, for want of jurisdiction.

Employment Judge C H O'Rourke

Date **1 February 2022**

JUDGMENT SENT TO THE PARTIES ON
01/02/2022

FOR THE TRIBUNAL OFFICE