



# EMPLOYMENT TRIBUNALS

**Claimant:** Stuart Elcock

**Respondent:** Kellogg Brown & Root (UK) Ltd

## JUDGMENT ON JURISDICTION

**Heard at:** London South by CVP      **On:** 7 December 2021

**Before:** Employment Judge Rahman

### Appearances

For the claimant: Ms Churchhouse, counsel

For the respondent: Ms Shepherd, counsel

### Preliminary Issue – Jurisdiction REASONS

1. The Claimant was employed by the Respondent as a Deputy Project Manager based in Afghanistan. The Claimant was dismissed by reason of redundancy with an effective date of termination of 23 April 2020.
2. The Claimant seeks to bring two claims before the Tribunal: a claim for unfair dismissal under the Employment Rights Act 1996, and a claim for unlawful deduction from wages relating to alleged unpaid pension contributions.
3. Early conciliation started on 18 May 2020 and ended on 18 June 2020. The claim form was presented on 21 August 2020.
4. The claim for unlawful dismissal and unlawful deductions is resisted by the respondent.
5. This preliminary hearing has been listed to consider jurisdiction.
6. The Tribunal is grateful to both counsel for their assistance at this hearing and their comprehensive skeleton arguments filed in advance of this hearing. The Tribunal also heard evidence from the Claimant and Mr Davies on behalf of the Respondent.

7. The Tribunal has considered all the arguments, written and oral and all the evidence and papers, even if this is not specifically referred to below.
8. In terms of the legal framework this is not set out in detail but has been helpfully set out in the skeleton arguments.
9. The starting point is to observe that the Employment Rights Act 1996 is silent as to the territorial scope of the right to unfair dismissal.
10. The territorial scope of the Employment Rights Act 1996 has however been elucidated through a number of authorities, most notably the House of Lords in Lawson v Serco [2006] UKHL 3, and Supreme Court in Duncombe v Secretary of State for Children, Schools and Families (No2) (citation below).
11. Lawson v Serco involved three different claims for unfair dismissal, each involving the question of the territorial jurisdiction of the Employment Rights Act 1996. The claimant Lawson, who was of British nationality and domiciled in England, worked as a security supervisor for Serco, a company registered in the UK and based in England. The job required Lawson to carry out all his work on Ascension Island in the South Atlantic, where the company was contracted to provide security services to the Royal Air Force.
12. In Lawson Lord Hoffman held that Parliament must have intended, as a general principle, for the unfair dismissal rules to apply to '*the employee who was working in Great Britain*'. Lord Hoffman divided employees in to three categories for the purpose of establishing whether a UK employment tribunal has territorial jurisdiction to hear a claim of unfair dismissal under section 94(1) ERA 1996. Of the three categories the last was relevant to this case, namely '*expatriate*' employees working and based abroad may in exceptional circumstances be entitled to claim unfair dismissal. Lord Hoffmann gave two examples of circumstances where such an employee would enjoy unfair dismissal protection. The first was of an employee posted abroad by a British employer for the purposes of a business carried on in Great Britain — for example, a foreign correspondent on the staff of a British newspaper. By contrast, an employee working for a business that the paper of an associated company conducts in the US, for example selling advertising space in the American edition of the paper, would not be protected. The second was of an expatriate employee of a British employer '*who is operating within what amounts for practical purposes to an extraterritorial British enclave in a foreign country*'. Lord Hoffman accepted that there may be other qualifying situations but stated that in order to come within the scope of section 94(1) ERA 1996 employees would need to show '*equally strong connections with Great Britain and British employment law*'.
13. In Duncombe v Secretary of State for Children, Schools and Families (No2) [2011] ICR 1312 SC, Lady Hale, giving the judgment of the Court, summarised Lawson v Serco to the effect that, to be covered by the ERA, the employment must have much stronger connections both with Great Britain and with British employment law than with any other system of law.

14. The Tribunal has had regard to all the relevant cases it has been referred to but is not restricted to match the facts of this case to any particular authority.
15. The issue of jurisdiction was determined at this hearing as follows:
  - 15.1 The Tribunal concluded it had jurisdiction in respect of the claim for unfair dismissal. It concluded this was an exceptional case that fell within the territorial jurisdiction of section 94(1) ERA 1996 and that the Claimant falls within the expatriate position identified by Lord Hoffman in the House of Lords decision in Lawson v Serco; further that the Claimant had stronger connections to Great Britain and with British employment law than any other system of law.
  - 15.2 On the issue of jurisdiction in respect of the claim for unlawful deductions relating to pension contributions, the Tribunal has reserved judgment and directions were made for further submissions.
16. The Tribunal's decision is based on the following.
  - 16.1 The Tribunal is not restricted to match facts exactly to the authorities but in this case the Tribunal finds the facts mirror, in a significant way, those facts described in the 'expatriate' category described in Serco. The Claimant in this case was working for a UK company but was physically situated in an area that was initially a British military base but later became a NATO base.
  - 16.2 He may not have been resident in the UK for the duration of the time he was employed but the Tribunal considers the Claimant had stronger connections to Great Britain and with British employment law than any other system of law. This is because of the following:
    - The Claimant was employed by a UK company at all times, whether his work was with the Ministry of Defence (in the UK) or the NSPA (outside UK) – his actual employment was with KBR which was the Respondent company.
    - The Terms and Conditions of his employment refer to his employment being governed by the ERA 1996 and subject to the jurisdiction of the Tribunal. This is not a determinate factor on its own, but in the Tribunal's judgment is relevant.
    - The Claimant's redundancy was managed by Respondent company's UK Head Office and the redundancy payment was calculated in line with UK law. This is not a determinate factor on its own, but in the Tribunal's judgment is relevant.
    - The Claimant was paid in pounds through an HMRC PAYE (UK) system.
    - He was allocated a tax code in the UK.
    - He was on the UK electoral roll .
    - He was required to submit an annual self-assessment tax form to HMRC – the Tribunal has seen a draft document. This may not have been the actual document submitted but the Tribunal is satisfied the Claimant was required to submit a tax form for the UK authorities.
17. On this basis the Tribunal is satisfied it can depart from the general rule in this case that an employee who is working and based abroad at the time of his dismissal will not be within the territorial jurisdiction of section 94(1) ERA 1996.

This is an exceptional case. The Claimant did have stronger connections both with Great Britain and with British employment law than with any other system of law.

**Employment Judge Rahman**

13 December 2021

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