EMPLOYMENT TRIBUNALS

Claimant:		**Respondent:**
Mr A. Shah	**v**	Xerox Limited

Heard at: Reading (by CVP) **On:** 26 July 2022

Before: Employment Judge S. Matthews (sitting alone)

Appearances
For the Claimant: In Person
For the Respondent: Mr Kelly (Counsel)

RESERVED JUDGMENT

The tribunal does not have territorial jurisdiction to decide the claimant's claim. The claimant's complaints fail and are dismissed.

REASONS

The claim and the issues

1. By a claim form presented on 26 July 2021 the claimant brought a complaint of unfair dismissal. The respondent defends the claim and says that the tribunal does not have territorial jurisdiction to consider the claim. The ET3 was submitted on 21 October 2021.

2. On 25 February 2022 the tribunal directed that there would be a public preliminary hearing to decide the question of territorial jurisdiction. Case management orders were made for that hearing.

3. The respondent made an application on 11 May 2022 to strike out the claim on the grounds that is has no reasonable prospect of success. The claimant made an application on 25th May 2022 to amend his claim to substitute complaints of protected disclosure detriments and automatic unfair dismissal under sections 103(A) and 105 (A) of the Employment Rights Act 1996, as well as a claim for unfair dismissal and a redundancy payment.

4. The public preliminary hearing took place before me on 26 July 2022. The hearing was conducted by video using CVP. The parties and the respondent's representative attended by video.

The hearing and evidence

5. The respondent had prepared an agreed bundle with 272 pages. Numbers in brackets below are references to page numbers in the bundle.

6. At the hearing I heard evidence from the claimant and from Mr. Teti on his behalf and from Mr. Dyas on behalf of the respondent. All witnesses had prepared witness statements for the hearing. References to their statements are in brackets identified by their initials and paragraph number.

7. The respondent's representative had prepared written skeleton arguments and produced a bundle of authorities. Both the respondent's representative and the claimant made closing submissions.

8. I reserved judgment.

The preliminary issues to be decided

9. The preliminary issues for me to decide are:

   9.1. Whether the Tribunal has territorial jurisdiction to hear the claimant's complaints.
   9.2. If the Tribunal has jurisdiction to decide the respondent's application to strike out or whether a deposit order should be made.
   9.3. If the Tribunal has jurisdiction to consider the claimant's application to amend and substitute complaints.

10. At the outset of the hearing, it was agreed with the parties that I would decide the issues in the order set out above. I considered that no separate argument on jurisdiction would arise if the application for amendment was granted and that the same facts and law would arise. Submissions were made relating to the applications to strike out and amend but, having decided that the Tribunal does not have jurisdiction for any of the complaints, I did not need to decide those applications.

Finding of facts

11. I made the following findings of fact from the evidence I heard and read.

<u>The claimant's contracts</u>

12. The claimant is a British citizen.

13. The claimant's written contract of employment to which I was taken in the bundle was with the respondent, Xerox Limited (91 to 96) and it was dated from 1 July 2013. I refer to this in these reasons as the 2013 contract.

14. Xerox Limited is registered in the UK as a limited liability company. The company was previously named Rank Xerox Limited (until 31 October 1997).

15. The claimant commenced employment with Rank Xerox Limited (now Xerox Limited) on 10 March 1997. He was recruited in the UK and initially worked in the UK. He undertook 3 assignments in the United Arab Emirates (UAE) from 2006 to 30 June 2013.

16. There are further contracts in the bundle relating to his employment before 30 June 2013. The first is dated 10 March 1997 when he was appointed as a Technical Specialist (269-271). The second relates to the assignment he undertook from 2009 (57-66) and the third relates to the final assignment he undertook in January 2013 (68-70). As set out below I find that the 2013 contract was a new and separate contract and therefore these contracts are of limited relevance. But it is important to consider these contracts in the context of the claimant's submission that he had continuity of service from 2006.

17. In 2013 the third assignment in UAE came to an end. The claimant was given the option of returning to the UK or staying in UAE. He agreed to take the role of Production and CF Analyst in the Dubai branch office and the 2013 contract (91 to 96) relates to that role.

18. Mr. Teti, who gave evidence to the Tribunal, was the claimant's manager between June 2008 and 2015. Mr. Teti's role was manager of the Production Technical Division of Xerox MEA. He was involved in negotiating the claimant's move to the 2013 contract.

19. The claimant accepted in evidence that there was a change to his contract in 2013 and that he was 'localised'. Mr. Dyas refers to transitioning to a local contract (DD4). The 2013 contract contained a clause providing for a transition payment from 'Full Global Mobility Assignment' to a 'local' contract. The meaning of 'local' or 'localised' is not defined in the documentation but it is reasonable to infer that it means a change to terms and conditions that relate to the country in which the employee is based. The claimant appears to accept this in his email dated 22 June 2013 (139) when he refers both to his resignation from the "Xerox MEA UK company' and the fact that he 'would be a local employee after signing the contract'.

20. For all these reasons I find that this was a new contract. The terms and conditions in the previous contracts do not apply. I make this finding despite the continuity of service clause (92). The claimant wanted to keep his 16 years of service from 10 March 1997 (JT5) (136) but this did not mean that the terms and conditions were carried forward from the previous contracts.

21. The claimant's employment terminated on 31 August 2021 following discussions about a reduction to his bonus which the claimant did not accept. The respondent says that the termination was due to redundancy. The claimant says that it was due to the reasons set out in the application to amend set out in paragraph 3 above.

The 2013 contract terms, conditions and benefits

22. The location is stated in the 2013 contract as 'Dubai, UAE Middle East Operations Office' (91). Although the claimant had lived in Dubai since 2006 his previous assignment contract stated the country of the contract as the UK and the host country as Dubai (64). The jurisdiction was specified as the home country (65). There is no such provision in the 2013 contract.

23. From 2013 the claimant carried out work in UAE providing services to the Middle East and Africa operation. His territory is specified as Middle East Operations (91).

24. The 2013 contract stated that salary was to be paid in sterling and allowances/ benefits were to be paid in Dirhams (AED). This was requested by the claimant in an email dated 30 May 2013(136). His salary for the period to an unspecified date in 2014 was paid into a UK bank account (AS11) but it was later paid into a Dubai account. At some point between 2013 and 2016 all salary and allowances started to be paid in AED (265,272). However, there is a pay slip dated 25 February 2016 showing commission being paid in sterling (254).

25. The claimant paid no income tax in the UK from 2013 but he maintained a home in the UK and received rent on which he paid UK taxes. He ceased to benefit from a share incentive plan which was open to UK employees when he transferred to the 2013 contract (139). He left the UK pension scheme (76).

26. The 2013 contract provided absence payment for sickness according to UAE law (93) and for UAE public holidays (93). On the termination of the Claimant's employment, he received an end of service gratuity in accordance with UAE law (92).

<u>Operational management and human resources</u>

27. I make findings of fact on the operational structure of the respondent to the extent that it affected the claimant. How the company and divisions were structured per se is not the issue. I am considering the claimant's individual employment contract and the extent to which it was connected to the UK. The claimant submitted that he was 'managed' from the UK, which he later clarified in evidence to mean that decisions affecting him were made in the UK.

28. The claimant worked for Xerox Middle East, a division of Xerox Limited (DD7). Xerox Limited was the employing company for local operations across the world (DD8). The staff in those companies worked across corporate entities (DD13). In evidence Mr. Dyer described Xerox as a US 'company' and stated that many of the policies are based on US policies.

29. All sales by Xerox Middle East were recorded in the UK (JT10). Mr. Dyer accepted in evidence that sales were invoiced from the UK. Xerox Middle East had its own general ledger so that it could be accounted for separately from other divisions in Xerox Limited (DD9).

30. The claimant's line manager, Mohammed Amer, was based in the UK (DD2 and DD11). The claimant's contract states that his salary was paid from 'MEA head office' which is in Uxbridge (132). The claimant (AS C1) and Mr. Teti (JT9) said that the 2013 contract was negotiated by UK staff and all the people who signed his contract were UK based.

31. The HR team was based all over the world (DD19). The HR Business Partner Mai Shaker, who corresponded with the claimant (98-101, 148, 152-173), was based in Cairo, Egypt (DD17). Pooja Gupta, with whom there is also correspondence (197-198) was based in India. Alina Zarnescu (218-224) was based in Romania, The claimant submitted that decisions were made in the UK but Mr Dyer said in evidence that initially Mai Shaker would have made decisions together with the HR operations department. I find that the claimant was managed by a worldwide team.

The law

32. The claimant has brought complaints against the respondent of unfair dismissal under the Employment Rights Act 1996. His application to amend includes complaints of protected disclosure detriments and automatic unfair dismissal (for being dismissed for making a protected disclosure and being made redundant for having made a protected disclosure), and a claim for a redundancy payment.

33. I have to decide whether the tribunal has territorial jurisdiction to hear these complaints which requires me to consider the territorial reach of the applicable law.

34. The Employment Rights Act 1996 does not expressly refer to the extent of the territorial boundaries within which it applies. This is to be determined on a case by case basis by reference to case law.

35. The starting point is the decision of the House of Lords in Lawson v Serco [2006] ICR 250. That case concerned the territorial reach of complaints of 'ordinary' unfair dismissal.

36. In Lawson v Serco, Lord Hoffman held that the application of the right not to be unfairly dismissed depends upon the construction of section 94(1) of the Employment Rights Act, and the application of principles to give effect to what parliament may reasonably be supposed to have intended, including implied territorial limitations. He said that parliament must have intended as the 'standard case' someone who, at the time of the dismissal, was working in Great Britain. This is distinguished from someone who is 'merely on a casual visit (for example in the course of peripatetic duties based elsewhere)'.

37. In relation to work outside Great Britain, Lord Hoffman said that in general, parliament can be understood as having intended that someone who lives and works outside Great Britain will be subject to the employment law of the country in which they live and work, rather than the law of Great Britain. But there may be cases which are exceptions to this general rule. Lord Hoffman considered the position of peripatetic and expatriate employees. In relation to expatriate employees (those who live and work entirely or almost entirely abroad) Lord Hoffman said: -

> *"The circumstances would have to be unusual for an employee who works and is based abroad to come within the scope of British labour legislation."*

38. He gave two examples of those who might come within the scope. The first is an employee who is posted abroad by a British employer for the purposes of a business carried on in Great Britain, who *'is not working for a business conducted in a foreign country which belongs to British owners or is a branch of a British business, but as representative of a business conducted at home…"* The second is an employee operating within an extra-territorial British enclave such as a military base.

39. Lord Hoffman further explained the kind of connection with Great Britain that might be required in the case of an employee who is posted abroad:

> "*37. First, I think that it would be very unlikely that someone working abroad would be within the scope of section 94(1) unless he was working for an employer based in Great Britain. But that would not*

be enough. Many companies based in Great Britain also carry on business in other countries and employment in those businesses will not attract British law merely on account of British ownership. The fact that the employee also happens to be British or even that he was recruited in Britain, 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. Something more is necessary."

40. The Supreme Court in Duncombe v SoS for Children Schools and Families ([2011] ICR 1312) stated that the employment must have much stronger connections both with Great Britain and with British employment law than with any other system of law. It confirmed that the types of expatriate employees who might come within the scope of British employment law which were referred to in Lawson v Serco are not closed categories, but examples of exceptions to the general rule. Duncombe concerned British employees of British government/EU-funded international schools abroad, and it was held that, although they did not fall within the examples given in Lawson v Serco, the 'very special combination of factors' in their case was such that it was right to conclude that parliament must have intended the employees to enjoy protection from unfair dismissal. In reaching this conclusion, Lady Hale placed particular emphasis on the fact that the employees were employed under contracts which were governed by English law and in international enclaves which had no particular connection with the country in which they were situated.

41. Territorial reach was considered again by the Supreme Court in Ravat v Halliburton Manufacturing Services Ltd [2012] ICR 389. In that case, Lord Hope identified guiding principles from Lawson v Serco as follows: -

"Firstly, the question in each case is whether section 94 applies to each particular case notwithstanding its foreign elements. Parliament cannot be taken to have intended to confer rights on employees having no connection with Great Britain at all.

Secondly, the employment relationship must have a stronger connection with Great Britain than with the foreign country where the employee works. The general rule is that the place of employment is decisive. But it is not an absolute rule. The open-ended language of section 94(1) leaves room for some exceptions where the connection of Great Britain is sufficiently strong to show that this can be justified. …

It will always be a question of fact and degree as to whether the connection is sufficiently strong to overcome the general rule that the place of employment is decisive. The case of those who are truly expatriate because they not only work but also live outside Great Britain require an especially strong connection with Great Britain and British employment law before an exception can be made for them."

42. The Court of Appeal has considered the jurisdiction of the employment tribunal to hear claims by employees working outside Great Britain more recently in British Council v Jeffery and Green v SIG Trading Ltd [2019] ICR 929, two appeals heard together. Lord Justice Underhill reviewed the position as now established by the case law and set out a summary of the position for the purpose of the two appeals, emphasising that 'in the case of a worker who is "truly expatriate", in the sense that he or she both lives and works abroad, the factors connecting the employment with Great Britain and British employment law will have to be specially strong to overcome the territorial pull of the place of work'.

43. In correspondence to the Tribunal dated 18th May 2022, the Claimant claimed that by making its strike-out application dated 11th May 2022, the Respondent had 'voluntarily submitted' to the jurisdiction of the Tribunal. The claimant did not repeat this argument in his submissions but I would agree with the analysis of the law in the respondent's skeleton argument that the issue of jurisdiction is one for the tribunal.

Conclusions

Territorial jurisdiction

44. The claimant worked in UAE from 2006. I have found that there was a change of contract from 2013. Therefore, I only need to consider the terms of that contract (the 2013 contract).

45. The general rule is that, because of the 'territorial pull' of his place of work, the claimant would be subject to the employment law of his place of work.

46. The fact that the claimant was located in UAE requires me to consider "the sufficient connection question", that is whether there are factors connecting the claimant's employment to Great Britain, and British employment law, which pull sufficiently strongly to overcome the territorial pull of the place of work and justify the conclusion that Parliament must have intended the employment to be governed by British employment legislation.

47. The claimant was working in UAE for a company registered in the UK. The starting point in Lawson in respect of employees working abroad was that *'it would be very unlikely that someone working abroad would be within the scope … unless he was working for an employer based in Great Britain'* but even that would not in itself be enough. Lord Hoffman goes on to state; '*those businesses will not attract British law merely on account of British ownership.'* I have therefore gone on to compare and evaluate the strength of the claimant's employment connections with Great Britain on the one hand and with UAE on the other.

48. The factors suggesting some connection between the claimant's employment and Great Britain are limited:

48.1. The claimant was initially recruited in the UK in 2006. His contract was re-negotiated in 2013 by UK staff and signed by UK staff.
48.2. The claimant was line managed by a manager in the UK.
48.3. The claimant maintained a home in the UK and paid UK tax on the rental income.
48.4. Some of the claimant's salary payments were paid in sterling into his UK bank account, after the commencement of the 2013 contract.
48.5. Th UK office was 'a hub' for invoicing.

49. The factors suggesting a connection between the claimant's employment and UAE are as follows:

49.1. The claimant lived and worked in UAE. Although this had been the case since 2006, I have found that the 2013 contract did not contain terms similar to those in the assignment contract referring to the UK as the home country.
49.2. The location is stated in the 2013 contract as Dubai.
49.3. The claimant's benefits in terms of sick pay and public holidays were in accordance with UAE law.
49.4. The claimant received end of service benefits provided for in UAE law.
49.5. The claimant's salary was paid in the currency of the UAE from sometime between 2014 or 2016 and the payments were paid into a UAE bank account from 2014.
49.6. The claimant paid no income tax in Great Britain except rent on his own property.
49.7. The claimant corresponded with and was supported by an internationally based HR team.

50. Many of the claimant's dealings with the UK are consequences of his being employed by a company which is part of a larger international structure. The respondent, although a UK registered company, was the employing organisation for international entities. There was some crossover in terms of management of staff and functions between companies and countries. To an extent the claimant was managed by people based in the UK. However that alone was not sufficient to over-ride the weight of the factors in paragraph 49 above.

51. The other connections the claimant had with UK were not connected with his work or were a matter of personal choice. It was his choice to maintain a home in Great Britain, and to have his salary initially paid to his bank there.

52. The claimant's connections with UAE were much more substantial. They were more clearly linked with his employment: his contract, sickness, holiday, and end of service benefits were all in accordance with and governed by UAE labour law.

53. Having carried out this comparison and evaluation, I conclude that the claimant's employment connections with Great Britain and British employment law are not sufficiently strong to overcome the territorial pull of his place of work. The factors clearly demonstrate a stronger connection with UAE and do not justify the conclusion that parliament must have intended the claimant's employment to be governed by British employment legislation.

54. The claimant's complaints under the Employment Rights Act 1996 cannot therefore proceed. The tribunal does not have jurisdiction to consider the claimant's complaints. They are dismissed.

55. Accordingly, I do not need to consider the applications to strike out and to amend.

Employment Judge S. Matthews

Date: 18 August 2022

Sent to the parties on:

13 September 2022

For the Tribunals Office

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