Neutral Citation Number: [2023] EAT 21

Case No: EA-2021-001376-JOJ

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 22 February 2023

Before :

THE HONOURABLE MRS JUSTICE EADY DBE, PRESIDENT

- -

Between :

JAMES THORP (1)
KHALID NASSER AL-THANI (2)

Appellants

- v –

SHUHDI ALI

Respondent

- -
- -

The **Appellant James Thorp in person, representing the interests of both Appellants**
The **Respondent in person**

Hearing date: 1 February 2023
- -

JUDGMENT

This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives.
The date and time for hand-down is deemed to be 10:30 on 22 February 2023

SUMMARY

Contract of employment – Jurisdictional points – territorial reach of Employment Rights Act 1996

Pursuant to an oral arrangement entered into with the respondents, the claimant carried out work for the second respondent's Qatari companies, living in the UK but frequently travelling to and from Qatar to work there. At the start of the covid restrictions, the claimant chose to stay in Qatar and remained working in that country for some eight months. During those months, however, the respondents ceased to pay any remuneration to the claimant, although they paid his hotel expenses and his travel home.

On the claimant's complaint of unauthorised deductions and failure to provide a statement of employment particulars, the ET concluded that the claimant had been based in the UK and that the territorial reach of the **Employment Rights Act 1996** extended to his employment. It also found that the claimant had been employed pursuant to a contract agreed with both respondents, such that he was a "worker" for these purposes. The respondents appealed.

Held: allowing the appeal in part

The ET had permissibly found that the parties had entered into an oral contract. Its reasoning had to be seen in the light of the way the respondents' case had been presented below, but was adequate to its task and was sufficient in its findings of fact to establish that a binding contract had been agreed between the claimant and the two respondents.

On the question of territorial reach, however, it was unclear whether the ET had asked itself whether there was a sufficient connection between the circumstances of the claimant's employment and Great Britain (**Ravat v Halliburton Manufacturing and Services Ltd** [2012] ICR 389 SC applied). The reasoning provided did not explain what, if any, findings the ET had made relevant to that question and the conclusion reached was thus rendered unsafe. The ET's judgment would therefore be set aside and the question of the territorial reach of the **Employment Rights Act 1996** in these circumstances would be remitted, to the same ET if practicable, for re-hearing.

The Honourable Mrs Justice Eady DBE, President:

Introduction

1. This appeal raises questions arising from the approach taken in this case: (1) to the territorial reach of the protections afforded under the **Employment Rights Act 1996** ("ERA"), and (2) to the test for formation of a contract.

2. In giving this judgment I refer to the parties as the claimant and respondents, as below. This is the full hearing of the respondents' appeal against the reserved judgment of the Leeds ET (Employment Judge Housego sitting alone, on 3 August 2021). Representation below was as it has been before me.

3. By its reserved judgment, sent to the parties on 11 August 2021, the ET upheld the claimant's claims of unauthorised deductions from wages and failure to provide a statutory statement of principal terms and conditions of employment. Written reasons were sent to the parties on 20 September 2021.

4. In reaching its decision, the ET concluded that the respondents had employed the claimant and were jointly and severally liable for the failure to make payments contractually due to him, over a period of eight months. The respondents argue that the ET erred in finding that the protections afforded under the **ERA** applied to the claimant, (i) as he was carrying out work in Qatar, which had no connection with the United Kingdom ("UK") and (ii) given the absence of any finding of fact that the respondents had made a contractual offer of employment to him. The claimant resists the appeal, relying on the reasoning of the ET, which, he says, made findings of fact on both points of challenge.

The Background and the ET's Findings of Fact, Decision and Reasoning

5. My recitation of the background facts is either taken from that which is uncontroversial between the parties or (as indicated) from the ET's findings. The record of the ET's findings is provided in the written reasons, which incorporates (at paragraph 11) the

summary explanation provided by the ET when giving its oral judgment at the hearing on 3 August 2021.

6. The second respondent is a Qatari national who owns a series of companies in Qatar. The first respondent was involved in the management of those companies. Although the first respondent sought to argue before me that, at the relevant time, he had been a self-employed consultant, working for only one client (the second respondent), the ET found that there was "*almost a junior partnership*" arrangement between the respondents, with the first respondent working full time across the second respondent's companies and having business cards that described him as "CEO" of some of those companies, holding himself out as such as the need arose (ET paragraphs 1.3, 1.4, 12.3, 12.4 and 12.6). It expressly rejected the first respondent's description of himself as a self-employed consultant, finding that he was integral to the second respondent's businesses, albeit he was based in the UK (ET paragraph 20).

7. The claimant knew the respondents from a gym that they all went to in the UK. In the summer of 2019, through his discussions with the respondents, the claimant, who was dissatisfied with his then employment at a bank, saw an opportunity to work in the Gulf. The first respondent took this up with the second, and they entered into an arrangement with the claimant – the nature of which is at the heart of this case – whereby he (having given up his job at the bank) started to carry out work relating to the second respondent's businesses. It was the claimant's case that he had entered into an agreement with the respondents to work for the second respondent's Qatari companies on a salary of £30,000 per year; he contended that he had not been paid for eight and a half months while working in Qatar.

8. The respondents resisted the claimant's claim. Although the response to the claim is hard to understand (it appears to be worded as if it sets out the claimant's claim), the ET understood that the following two matters were in issue between the parties: (1) the

claimant's employment or worker status (the respondents were saying that they personally had no contract with the claimant), and (2) whether any employment was within the territorial reach of the protections afforded under the **ERA**.

9. In considering the nature of the relationship between the parties, the ET noted that it was the respondents' contention that they had never employed the claimant; rather he was working as a self-employed contractor, who would be paid on a commission basis. Dismissing that case, the ET found that, in his initial email, the claimant had asked for "*a salary*" of £30,000 a year (ET paragraphs 11, 12.1.4 and 12.6), to which the response had been: "*Yes, we can meet those requirements*" (ET paragraph 11), and the respondents had in fact paid him £2,500 a month for the first three months (ET paragraph 12.7). Although the respondents said this was an advance on commission, the ET rejected that argument:

> "12.7 … no commission arrangement was made. It was the salary that [the claimant] said was agreed.
>
> 12.8. As [the respondents] say that all they were doing was to get a friend to Qatar where he would have the opportunity to agree a commission-based arrangement with the CEO of one or other of [the second respondent's] companies there is no sense in them paying him £2,500 a month before he had arranged anything."

10. The ET further noted that the respondents paid for the claimant to fly to Qatar and for his hotel expenses in that country; it considered that also pointed towards an employment relationship:

> "12.8 … This means they had been so generous to a friend (but one they did not know well beforehand) that they paid for him to fly to Qatar and put him up in hotels, and paid him £2,500 a month for 3 months, to help him have the opportunity to come to an agreement with one of [the second respondent's] companies. It is not credible or plausible."

11. The ET was satisfied that the claimant's arrangement was with *both* respondents. It found that the first respondent was remunerated by "*some sort of results based remuneration*", such that he and the second respondent both stood to benefit "*by putting [the claimant] into business opportunities on a salaried basis*" (ET paragraph 12.6). It further recorded

that the correspondence with the claimant had emanated from both respondents and was worded in the plural ("*working with us*"; "*our companies*"; "*your trust and belief in us*" and so on). Moreover, although most of the claimant's expenses were paid for by the second respondent (who also arranged the claimant's visa), the claimant's ultimate 'plane ticket back to the UK was paid for by the first respondent and he also paid the claimant's hotel bill at one point; otherwise the claimant's expenses were met by the second respondent (ET paragraphs 11, 12.8, 12.11, 12.12, and 15). In addition, when the claimant complained that the first respondent had not paid him, his plea was ignored but not denied (ET paragraph 12.12). The claimant was not employed through any company, but entered into a personal arrangement with the respondents (ET paragraph 20).

12. More generally, the ET found that the communications from the respondents to the claimant were consistent with his having been an employee, for example:

12.1"… the witness statement of [the second respondent] refers to [the claimant] having 'a manager'" (ET paragraph 11);

12.2"The work is described as a 'role', which connotes integration into the businesses." (ET paragraph 12.1.3.1);

12.3"The [claimant's use of the] word 'salary' can mean only that the Claimant was expecting to be employed." (ET paragraph 12.1.4);

12.4"The 2nd Respondent messaged the Claimant … 'I'm glad you came to that decision bro would love to have you onboard.' This is a clear contraindicator to the 2nd Respondent's assertion that all he did was facilitate the Claimant meeting Qatari employees to make his own arrangements with them." (ET paragraph 12.1.6);

12.5"… the 2nd Respondent again messaged the Claimant 'Rly glad ur joining us bro' … the phrase is customarily used for new employees." (ET paragraph 12.1.7).

13. The ET concluded that there was an oral contract between the parties, pursuant to which

the respondents employed the claimant to support the second respondent's companies in Qatar (paragraphs 11 and 20). Although there was "*no documentary evidence of a salary, … there is no evidence of anything else*" and the ET considered that "*all the subsequent facts and messages indicate that [the claimant's] account is more likely than not to be true*." (ET paragraph 20).

14. Relevant to the question of territorial reach, the ET made the following findings:

14.1 In the initial correspondence between the parties, on 8 July 2019, the second respondent had emailed the claimant: "*Wish u would consider working with us in Qatar. …*" and on 12 July 2019, the first respondent had emailed: "*This is just one of our companies there, … But the role would likely blend a cross the other companies in our holding group …*" (ET paragraphs 12.1.1 and 12.1.2). The claimant had seen this as an "*opportunity to work in the Gulf*" (ET paragraph 12.5).

14.2 A contract was made between the claimant and the respondents in England - "*it is a UK contract of employment*" (ET paragraph 11) - pursuant to which the claimant was "*to support [the second respondent's] companies in Qatar*", which would "*include going there, all expenses paid, when necessary*" (ET paragraph 20).

14.3 The claimant was "*based in the UK",* albeit that he frequently went to Qatar "*on Qatari work as and when necessary*", until prevented from doing so by the restrictions in place during the pandemic (ET paragraph 11). The oral contract between the parties was for the claimant "*to work for [the second respondent's companies] and that was for work based in the UK*" (ET paragraph 11); his position in this regard was the same as the first respondent (ET paragraph 20).

14.4 Having entered into an agreement with the claimant, the respondents "*move on getting him to Qatar*" (ET paragraph 12.7). The claimant "went back and forth to Qatar pre-Covid" (ET paragraph 12.11). After the covid lockdown started, in March

2020, the claimant "*stayed in Qatar*", the ET found that this was a choice that the claimant had himself made as a "*senior employee*" (ET paragraph 15).

14.5 By July 2020, the ET found that the claimant "*was undertaking work for [the second respondent] personally, trying to sell one of [his] cars … (the [second respondent] was in Qatar at this time)*" (ET paragraph 16).

14.6 The agreement between the parties was that the claimant would be paid £30,000 per annum; he was paid £2,500 a month, in cash, in Qatari riyals, which he converted into sterling and paid into his UK bank account (ET paragraphs 1.6 and 12).

14.7 Although the claimant was a Dutch national, and travelled into Qatar as such, that was not relevant; he used a Dutch passport because it was more convenient (ET paragraph 11).

15. The ET concluded that the claimant was employed by the respondents, on a UK contract, at a salary of £30,000 a year, but his salary had been unpaid for eight and a half months. It upheld the claimant's claims under the **ERA** against both respondents, finding they were jointly and severally liable for unauthorised deductions from his salary, in the sum of £21,250 (gross), and made a further award of £1,153.84 (two weeks' pay), for failing to provide him with a statutory statement of principal terms and conditions of employment.

The Respondents' Appeal and Submissions in Support

16. By the first ground of appeal, the respondents contend that the ET erred in law by failing to apply the test of sufficiency of connection between the claimant's work and Great Britain/British employment law, in particular, as at the time of the acts complained of (when the deductions were said to have been made). The ET had found that the claimant worked in Qatar for over eight months, for Qatari companies, and had been paid in Qatari riyals. In those circumstances, what was contemplated when the contract was allegedly made and/or what happened at any other point in time did not count: this was insufficient

to displace the territorial pull of the place of work at the material time.

17. By the second ground of appeal, it is said that the ET erred in law by holding that the claimant was jointly and severally employed by the respondents when there was no finding of fact that either respondent had made an offer of employment that was sufficiently certain as to its terms to be capable of becoming binding as soon as it was accepted. Although the ET had recorded that there was an "*oral contract of employment*", there was no factual finding made as to when, and on what basis, an offer of employment was ever made; in consequence, the ET was wrong in law to conclude that there was a legally binding contract between the parties.

The Claimant's Position

18. The claimant opposes the appeal and relies on the ET's reasoning and conclusions. On the question of territorial reach, the claimant says that he would only travel to Qatar for specific tasks and would otherwise work in the UK. Moreover, he was not a Qatari citizen and had no bank account there; when in Qatar, he would stay in hotels because he had no base there and he would travel back to the UK once he had completed the tasks in question. The claimant also contended that the respondents had talked of having locations in New York and the Netherlands, and he had understood that he would also be travelling there. This, however, is denied by the respondents and, as the ET made no findings in this regard, I do not consider it is something I can properly take into account at this stage.

19. As for whether there was a contract between the parties, the claimant points out that the offer made to him was made orally: the parties' communications were not limited to the messages referenced by the respondents (which, in any event, made clear that there had been earlier discussions between the claimant and the respondents). His dealings were with both respondents and they both set him tasks and made payments to him from their personal accounts; it was not before the ET hearing that the first respondent sought to assert that he was not a partner of the second.

The Relevant Legal Principles

20. The first question raised by this appeal concerns the territorial scope of the **ERA**. The statute makes no express provision regarding the territorial reach of the protections it affords, but the approach to be adopted in this regard is well rehearsed in the case-law, including **Lawson v Serco Ltd** [2006] ICR 250, HL; **Duncombe v Secretary of State for Children, Schools and Families (No.2)** [2011] ICR 1312, SC; **Ravat v Halliburton Manufacturing and Services Ltd** [2012] ICR 389, SC; as summarised by Underhill LJ in the combined appeals in **Jeffery v British Council; Green v SIG Trading Ltd** [2019] ICR 929, CA, at paragraph 2:

> "(1) As originally enacted, section 196 of the Employment Rights Act 1996 contained provisions governing the application of the Act to employment outside Great Britain. That section was repealed by the Employment Relations Act 1999. Since then the Act has contained no express provision about the territorial reach of the rights and obligations which it enacts (in the case of unfair dismissal, by section 94 (1) of the Act); ….
> (2) The House of Lords held in *Lawson* that it was in those circumstances necessary to infer what principles Parliament must have intended should be applied to ascertain the applicability of the Act in the cases where an employee works overseas.
> (3) In the generality of cases Parliament can be taken to have intended that an expatriate worker – that is, someone who lives and works in a particular foreign country, even if they are British and working for a British employer – will be subject to the employment law of the country where he or she works rather than the law of Great Britain, so that they will not enjoy the protection of the 1996 … Act…. This is referred to in the subsequent case-law as "the territorial pull of the place of work". (This does not apply to peripatetic workers, to whom it can be inferred that Parliament intended the Act to apply if they are based in Great Britain.)
> (4) However, there will be exceptional cases where there are factors connecting the employment to Great Britain, and British employment law, which pull sufficiently strongly in the opposite direction 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. I will refer to the question whether that is so in any given case as "the sufficient connection question".
> (5) In *Lawson* Lord Hoffmann, with whose opinion the other members of the Appellate Committee agreed, identified two particular kinds of case (apart from that of the peripatetic worker) where the employee worked abroad but where there might be a sufficient connection with Great Britain to overcome the territorial pull of the place of work, namely (a) where he or she has been posted abroad by a British employer for the purposes of a business conducted in Great Britain (sometimes called "the posted worker exception") and (b) where he or she works in a "British enclave" abroad. But the decisions of the

> Supreme Court in *Duncombe* and *Ravat* made it clear that the correct approach was not to treat those as fixed categories of exception, or as the only categories, but simply as examples. In each case what is required is to compare and evaluate the strength of the competing connections with the place of work on the one hand and with Great Britain on the other.
> (6) In the case of a worker who is "truly expatriate", in the sense that he or she both lives and works abroad (as opposed, for example, to a "commuting expatriate", which is what *Ravat* was concerned with), 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. …."

21. In the case of the "commuting expatriate", where the worker lives and/or works at least part of the time in the UK, the comparative exercise referred to by Underhill LJ at paragraph 2(5) **Jeffery** will not be necessary; as Elias LJ explained in **Bates van Winkelhof v Clyde and Co** [2013] ICR 883, CA (in part of the judgment in that case that was not appealed to the Supreme Court):

> "98. … The comparative exercise will be appropriate where the applicant is employed wholly abroad. There is then a strong connection with that other jurisdiction and Parliament can be assumed to have intended that in the usual case that jurisdiction, rather than Great Britain, should provide the appropriate system of law. In those circumstances it is necessary to identify factors which are sufficiently powerful to displace the territorial pull of the place of work, and some comparison and evaluation of the connections between the two systems will typically be required to demonstrate why the displacing factors set up a sufficiently strong counter-force. However, as para 29 of Lord Hope DPSC's judgment [in *Ravat*] makes plain, that is not necessary where the applicant lives and/or works for at least part of the time in Great Britain, as is the case here. The territorial attraction is then far from being all one way and the circumstances need not be truly exceptional before the connection with the system of law in Great Britain can be identified. All that is required is that the tribunal should satisfy itself that the connection is, to use Lord Hope DPSC's words: 'sufficiently strong to enable it to be said that Parliament would have regarded it as appropriate for the tribunal to deal with the claim.'" (emphasis added)

22. To the extent that the claimant's work fell within the territorial scope of the **ERA**, the protections he was seeking (not to suffer unauthorised deductions from his wages, section 13; to be provided with a statement of initial employment particulars, section 1) required that he was a "worker", a term defined at section 230 **ERA**, which provides:

> **230 Employees, workers etc**

> (1) In this Act 'employee' means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.
> (2) In this Act 'contract of employment' means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.
> (3) In this Act 'worker' … means an individual who has entered into or works under (or, where the employment has ceased, worked under)— (*a*) a contract of employment, or (*b*) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual;
> and any reference to a worker's contract shall be construed accordingly.
> …

23. For the claimant to be a "worker", it was therefore a requirement that there was a contract between the parties. It is the respondents' case that, applying the required objective test, the ET's findings are insufficient to establish that a contractual offer was made in this case; as provided at paragraph [4-003] *Chitty on Contracts* (34th ed)

> "An offer is an expression of willingness to contract on specified terms made with the intention that it is to become binding as soon as it is accepted by the person to whom it is addressed."

Discussion and Conclusions

24. For convenience, I start with the contention, made by the second ground of appeal, that the ET misapplied the test for the formation of a contract. It is the respondents' case that the ET's findings fail to establish that they ever made an offer of employment to the claimant that was sufficiently certain as to its terms to be capable of becoming binding as soon as it was accepted.

25. In assessing the ET's reasoning relevant to this question, it is right that I bear in mind how the case below was put. Whilst it was clear that the respondents were denying they had entered into a contract with the claimant, they were not saying that the claimant was not carrying out work pursuant to some kind of agreement. Rather, before the ET, the respondents essentially accepted that the claimant had entered into some kind of agreement to carry out work for the second respondent's companies, but they asserted that that was

on a commission-only basis and the arrangement was with individuals in Qatar, working for one or other of the Qatari companies. The ET was, therefore, inevitably focussed on the structure of the arrangement entered into by the claimant and who the agreement was with. Considering the case thus put by the respondents, the ET rejected it, finding as a fact that the claimant's arrangement was with the respondents personally (effectively acting as partners in their dealings with the claimant), for him to carry out work for the second respondent's companies (the success of which was also of interest to the first respondent) for a salary of £30,000 per annum.

26. Although the focus of the ET's reasoning is therefore explicable, in terms of the case it was required to determine, I am satisfied that the findings it made are also sufficient to meet the shifting sands of the respondents' argument on appeal. It was the claimant's case that he had had various discussions with the respondents (evidenced by references to their conversations in text and/or email messages), which had led to a contract of employment being agreed such that he would carry out work for the two respondents on the basis of a £30,000 per year salary. That case was accepted by the ET:

> "All in all, I find there was an oral contract of employment for [the claimant] to work for [the second respondent's] companies …. I find that [the claimant] was employed by both [respondents] … to work in [the second respondent's] companies as directed by either of them. The salary … was £30,000 a year." (see paragraph 11)

27. That finding is entirely consistent with the claimant having indicated that he would join the respondents for a basic salary of £30,000 per year, a proposal which was then taken up in the discussions between the parties, resulting in an offer of employment from the respondents, which the claimant then accepted (the documented history, evidencing the oral agreement, being set out by the ET at sub-paragraphs 12.1.1-12.1.7). It is also consistent with the ET's findings of fact as to what then transpired (see sub-paragraphs 12.2-12.12, and paragraphs 13-16).

28. In my judgement, the criticism made by the second ground of appeal fails to allow for how

the respondents' case was put below and to then take that context into account when analysing the ET's reasoning. As the ET clearly found, this was a case where the parties entered into an oral contract. Reference to that oral agreement was apparent from the parties' text and email correspondence, and the ET was entitled to find that demonstrated a contract between the claimant and the respondents, and not some other entity. The ET was also entitled to look at the evidence of the parties' dealings after entering into that agreement, and to conclude that there was sufficient certainty as to their arrangement as to demonstrate a binding contract. That the ET did not attach a legal label (the initial invitation to treat, the offer and the acceptance) to each relevant finding does not lead me to infer that it lost sight of the basic requirements of a binding contract. Taken in context, the reasoning provided is sufficient to explain to the respondents why they lost on this question and no error of law is thus disclosed (see **UCATT v Brain** [1981] ICR 542 CA; **Martin v Glynwed Distribution Ltd** [1983] ICR 511, CA; **Meek v City of Birmingham District Council** [1987] IRLR 250, CA).

29. I turn then to the first ground of appeal, and the question whether the territorial scope of the **ERA** extended to the claimant's work in this case.

30. On one view, the ET reached a clear finding that the claimant not only lived in the UK but also that he was based in the UK for work purposes, and undertook work in this jurisdiction, albeit that was to support the second respondent's companies (in which the first respondent also had an interest) in Qatar (see in particular, the ET's findings set out in its *ex tempore* judgment at paragraph 11). The fact that the claimant travelled "*back and forth to Qatar*" and "*went to work in Qatar on Qatari work as and when necessary*" (also paragraph 11) would not necessarily be fatal to that conclusion. Similarly, the ET's conclusion would not necessarily be undermined by its further findings of fact that, once covid restrictions were introduced, the claimant chose to stay in Qatar for an extended period (ET paragraph 15) and then carried out certain specific tasks that appear to be solely

based in Qatar (ET paragraph 16).

31. The difficulty that arises in this regard, however, is in understanding how the ET reached the conclusion that it did.

32. Given that the claimant never moved to live in Qatar (even during the eight months he remained in that country after international travel became more difficult, the claimant stayed in a hotel; he did not become a resident), this was not a case involving someone who was fully expatriate. On the other hand, the fact that the claimant's work related to Qatari businesses, operating in Qatar, at least raised a question as to whether there was still a sufficiently strong connection between the circumstances of his employment and this jurisdiction. That was a question that might seem to have become all the more obvious when (as the ET found) the claimant chose to locate himself in Qatar to carry out his work in March 2020, remaining in that country for the eight-month period to which his unauthorised deductions claim related.

33. The question of fact the ET was required to ask was whether the connection between the circumstances of the claimant's employment and Great Britain (and British employment law) was sufficiently strong to enable it to be said that it would be appropriate for him to claim the employment protections afforded by the **ERA**. It is, however, unclear whether the ET had that question in mind when it considered the circumstances of the claimant's employment in this case. Certainly, the ET neither referred to the relevant case-law nor set out the relevant legal test. More than that, however, the reasoning provided does not explain what, if any, findings the ET made as to where the claimant worked when he was "*based in the UK*", or as to the actual nature of the work he carried out to the extent that was "*work based in the UK*". From the ET's reasons, it is just not possible to discern what the claimant was actually employed to do, or how, given that his work related to companies operating in Qatar, he was able to carry out his employment from the UK.

34. Ultimately, it is unclear to me whether the ET applied any test of sufficiency of connection

in this case, or, if it did, what facts it considered demonstrated such sufficiency. In either event, whether due to an error of approach or to an inadequacy of explanation, I cannot be satisfied as to the basis of the ET's conclusion on territorial reach. I therefore allow the respondents' appeal on the first ground.

Disposal

35. For the reasons provided, I allow the respondents' appeal on the first ground but dismiss the second ground of appeal.

36. Given my conclusion on the first ground of appeal, the ET's judgment must be set aside at this stage. This is, however, not a case where the question of territorial reach permits of only one answer and I am not in a position where I could substitute my own finding for that of the ET on this issue. The question of territorial reach in this case must therefore be remitted to the ET. Applying the guidance laid down in **Sinclair Roche & Temperley v Heard and Fellows** [2004] IRLR 763 EAT, I consider the appropriate course is for this matter to be remitted, if practicable, to the same Employment Judge. This is not a case where it can be said that the ET wholly failed to carry out its task or where there is any concern as to the appearance of a closed mind or of the risk of the ET being given a "second bite at the cherry". On the other issues before it, I am satisfied that no criticism can be made against the ET's approach and there is no reason to doubt the professionalism of the Employment Judge in returning to the question of territorial reach and addressing that afresh. Although it will be for the ET to case manage the remitted hearing, it may well wish to hear further evidence relevant to this issue and/or submissions as to what conclusions should be drawn from the evidence already given, or from the findings of fact that have already been made. Some time has now passed since the first hearing but remission to the same ET would also mean that it would have the benefit of its earlier notes, to the extent that any issue arises as to what evidence was given at the first hearing.