



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr L Johnston

**Respondent:** Telecom Services Centres Ltd (trading and sued as Webhelp UK Trading)

## JUDGMENT

The claimant's claim is in scope of the Equality Act 2010 and the Employment Tribunal therefore has jurisdiction to hear the claim.

## REASONS

1. At the hearing on 7 March 2023, it became apparent to me that the issue of whether or not the Employment Tribunal in England and Wales had jurisdiction to hear the claimant's claim had not been considered but was an issue which ought to be considered, with submissions from the parties. I therefore gave the parties an opportunity to make submissions at the hearing but, the claimant being unrepresented and unprepared, it became necessary to postpone the hearing to enable him to take legal advice and/or prepare to address the Tribunal on the issue of jurisdiction. The parties provided their written submissions on the issue of jurisdiction, in particular, the scope of the Equality Act 2010, by emails dated 19 April 2023. I have considered those representations carefully, but do not rehearse them here in full.

### The facts

2. The claimant presented a complaint which, following a preliminary hearing on 9 September 2022, was properly identified as a complaint of indirect race discrimination. His complaint is that the respondent, which is based in Scotland, refused to employ him following his application for a home-working position, because he lived at that time in Northern Ireland. The exact circumstances of the refusal are disputed.
3. The claimant does not dispute that the respondent is a company registered in Scotland, that it only has physical premises in Great Britain, its employees all work from Great Britain either from an office location or from their home addresses, its employment contracts issued to staff in Great Britain contain a choice of law clause stating that the contract is governed by Scots law, work is

assigned and carried out exclusively in Great Britain, the respondent's payroll and pension system is administered in Great Britain, it carries out recruitment processes from Great Britain, the interview in respect of which the claimant raised his claim was conducted by the respondent in Great Britain. The respondent accepts that it has never employed anyone who lives in Northern Ireland precisely because it does not operate out of, and does to intend to operate out of, Northern Ireland. In effect, to be successful in his application, the claimant would have had to reside in Great Britain.

4. The claimant has also presented a claim in the Northern Ireland Industrial Tribunals in respect of the same matter.

### The law

5. The Equality Act 2010 is silent as to its territorial scope. The Explanatory Notes state:

#### *Territorial extent and application*

##### *GENERAL*

*14. The Act forms part of the law of England and Wales. It also, with the exception of section 190 and Part 15, forms part of the law of Scotland. There are also a few provisions which form part of the law of Northern Ireland.*

*15. As far as territorial application is concerned, in relation to Part 5 (work) and following the precedent of the Employment Rights Act 1996, the Act leaves it to tribunals to determine whether the law applies, depending for example on the connection between the employment relationship and Great Britain.*

...

##### *Northern Ireland*

*19. Equal opportunities and discrimination are "transferred matters" under the Northern Ireland Act 1998. As such, with a few exceptions the Act does not form part of the law of Northern Ireland. As a result, the Disability Discrimination Act 1995 (as amended), which extends throughout the United Kingdom, will remain in force for Northern Ireland as the repeal of that Act only forms part of the law of England and Wales and Scotland.*

6. The respondent referred me, in its submissions, to the cases of **Lawson v Serco** [2006] UKHL 3, **Duncombe v SoS for Children, Schools and Families (no2)** [2011] UKSC 36, **Ravat v Halliburton Manufacturing and Services** [2012] UKSC 1 and **Bates van Winkelhof v Clyde & Co LLP** [2012] EWCA Civ 1207 regarding the territorial scope of legislation.

**Conclusions**

7. On the material before me at the moment, I concur wholly with the respondent's submissions dated 19 April 2023 that the employment relationship/role for which the claimant was applying had a stronger connection with Great Britain, than with Northern Ireland. The claimant was an applicant for the position and there was no employment relationship yet in existence. There was therefore no place of employment and the claimant's place of residence (Northern Ireland) therefore appears to me to be of little weight. In my judgment, the fact that all the respondent's employment relationships were in Great Britain is of greater weight. I find that the accepted facts before me at present point to there being an overwhelmingly closer connection with Great Britain than any other jurisdiction.
8. The claimant refers in his submissions to ancillary considerations, including the proceedings before the Northern Ireland Industrial Tribunal. The proceedings in Northern Ireland are not a relevant consideration in determining whether the Leeds Employment Tribunal has jurisdiction.
9. Taking account of the guidance given by the higher courts in the caselaw set out above, I conclude that, on the facts presently before me, the Employment Tribunal England and Wales has jurisdiction and that the claim is in scope of the Equality Act 2010.

*Employment Judge Bright*

*Date: 24<sup>th</sup> May 2023*

JUDGMENT & REASONS SENT TO THE PARTIES ON

Date: 25<sup>th</sup> May 2023

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FOR THE TRIBUNAL OFFICE