



EMPLOYMENT TRIBUNALS

Claimant: Shudi Ali

Respondent: James Thorp (1)
Nasser Al-Thani (2)

Heard at: Leeds (virtual hearing) **On:** 01 November 2023

Before: Employment Judge Housego

Representation

Claimant: In person

Respondents: Did not attend and were not represented

JUDGMENT

1. The Claimant was employed by the Respondents in the UK.
2. The territorial scope of the Employment Rights Act 1996 extends to the Claimant's work for the Respondents.

REASONS

1. Subsequent to a judgment delivered orally on 03 August 2021 I was asked for written reasons and on 20 September 2021 promulgated a full judgment.
2. The Respondents appealed that judgment. In a judgment subsequent to a hearing on 01 February 2023 the Employment Appeal Tribunal allowed the appeal to the extent that the case was remitted to me to decide whether the territorial reach of the Employment Rights Act 1996 extended to the work done by the Claimant for the Respondents.
3. All other aspects of my judgment were upheld.
4. At that hearing Mr Al-Thani was not permitted to participate as he was not in the UK. It appears that he said he had a "travel ban" and was not permitted to leave Qatar. Why that was the case was unexplained.

5. This hearing was listed some months ago. Yesterday Mr Thorp applied by email for an adjournment of this hearing saying that he was unable to attend by reason of “*unforeseen personal circumstances*”. It was not made clear what those circumstances were. The application was refused by another judge.
6. Neither of the Respondents attended the hearing. They were not represented. They sent no written representations. Plainly Mr Thorp knew of the hearing, for he had asked that it be adjourned. Mr Thorp and Mr Al-Thani have worked together closely for years and it is highly unlikely that Mr Al-Thani was unaware of it.
7. It is now over two years since my first judgment. I decided to proceed with the hearing in the absence of the Respondents, no good reason having been advanced to explain their absence.
8. Mr Ali provided in advance of the hearing a detailed submission and an analysis of case law. The Respondents had provided no written submissions.
9. Mr Ali gave me some further evidence to augment the evidence he gave at the first hearing. While two years have passed and I have heard many cases since, the facts of this case were so unusual that it is fresh in my memory.
10. I make further findings of fact based on all the evidence given to me at both hearings.
11. My further findings are these:
 - 11.1. Mr Ali had no bank account in Qatar.
 - 11.2. Mr Ali had no permanent accommodation in Qatar. He only ever stayed in hotels.
 - 11.3. Mr Ali had only a visitor visa. He never had an employment visa. There is no “freelance” visa in Qatar as there are in other Gulf states.
 - 11.4. To have a work visa in Qatar you need to have a bank account in Qatar, a permanent residence and be sponsored by an employer.
 - 11.5. Mr Ali was given individual tasks relating to different businesses of Mr Al-Thani. These might be to assess a project and deliver a progress report, to be part of setting up a new business activity, or to attend meetings given that he speaks English. He was not employed by any particular business in Qatar.
 - 11.6. When he went to Qatar for the first time it was intended to be for three weeks, after which he would return.
 - 11.7. However, then Covid-19 struck and Mr Al-Thani and Mr Thorp were concerned that if Mr Ali returned to the UK he might not be able to return to Qatar.
 - 11.8. This proved to be the case, and that was the reason why he was in Qatar so long.
 - 11.9. It had always been intended, before Covid-19, that Mr Ali would fly in to Qatar for a particular task, and then return to the UK to brief Mr Thorp and possibly also Mr Al-Thani about it.
 - 11.10. Mr Ali was always going to be paid in pounds sterling, and he was unhappy about being paid in Qatari rials. He brought the cash back with him to the UK and paid it in at the Post Office, converting it to sterling.

- 11.11. While Mr Ali worked much of the time he was stranded in Qatar, that was simply because he could not leave, either because travel restrictions prevented him leaving or because he could not fund the purchase of a ticket having not been paid for months.
- 11.12. Mr Ali has British citizenship as well as being a citizen of the Netherlands.
- 11.13. Mr Ali has extensive family connections in the UK and had no wish to live and work abroad other than to make short visits to Qatar. In particular he assisted his parents greatly and it was difficult for him and for them when Mr Ali was stuck in Qatar.
12. In all these circumstances I find that Mr Ali was only ever intended to be temporarily in Qatar. He was a “commuting expatriate”. That he ended up being there for 8 months was unfortunate, and not job related. While he was stranded in Qatar he worked, but this was not a contract for him to work full time in Qatar. It was intended that he fly in for a project on one of Mr Al-Thani’s many companies and then fly home again to report to Mr Thorp or to Mr Al Thani. Had Mr Ali been based in Qatar he would have needed a work visa, and a named company sponsor, and have to demonstrate connection with Qatar such as having a bank account and accomodation. He had none of those things.
13. The reality of this arrangement was that Mr Ali was to be Mr Thorp’s assistant to help him and Mr Al-Thani keep tabs on the various businesses Mr Al-Thani ran in Qatar. Mr Thorp was based in the UK. Mr Al-Thani was very hands off in the management of his businesses – that was Mr Thorp’s role. Mr Ali was intended to report mainly to Mr Thorp, who was clearly based in the UK.
14. I note that HHJ Eady refers to paragraph 15 of my first judgment as indicating that it was Mr Ali who decided to remain in Qatar, as possibly indicative that he was based in Qatar. What that paragraph does not properly explain is that while Mr Ali could have returned to the UK he decided not to do so because Mr Thorp and Mr Al Thani asked him to stay in case he could not return because of Covid-19 travel restrictions. The decision was only to ensure that Mr Ali’s work could continue if (as happened) Covid-19 travel bans severely restricted the ability of people to travel. It was intended to be a short-term expedient before Mr Ali returned to the expected pattern of regular trips from the UK to Qatar to assist with particular projects or to evaluate for Mr Al Thani how particular projects were progressing.
15. For all these reasons I decide that Mr Ali was entitled to avail himself of rights under the Employment Rights Act 1996. The contract was that he was UK based with assignments to Qatar, and it was only the unusual circumstances of Covid-19 that resulted in him staying in Qatar. The length of his stay was solely because he had no way of leaving, as he wished to do, either because no travel was permitted, or because he could not afford the ticket and had to stay until eventually Mr Thorp bought one for him.
16. The original judgment remains.

Employment Judge Housego

Date 01 November 2023