



EMPLOYMENT TRIBUNALS

Claimant: Mr Anis Bazza

Respondents: Wired Media Limited

RECORD OF AN PUBLIC PRELIMINARY HEARING

Heard at: Birmingham Employment Tribunal **On:** 05 May 2023

Before: Employment Judge Hena

Appearances

For the claimant: In Person

For the respondent: Mr Tom Beasley (Directors)

JUDGMENT

The Tribunal makes the following decision in relation to the preliminary issues heard at the Public Preliminary Hearing:

1. The respondent's application regarding the jurisdiction of the Employment Tribunal to hear the claimant's claim succeeds. Having carefully considered the case of *The British Council v Jeffery* 2018 EWCA, the Tribunal finds, like the case of *Mr Green*, the claimant has failed to establish a strong connection to the UK. For the duration of his employment with the respondent he willfully remained abroad despite his employment contract express term that the role was UK based. If, it had been agreed he could work abroad the contract would have reflected this and whether it was governed by English law.

2. **Given the Employment Tribunal has no jurisdiction to hear the claimant's claim the applications for Strike Out and Deposit Order do not need to be determined.**

REASONS

1. The issues in this matter are as follows:
 - 1.1. Does the Tribunal have jurisdiction to hear the claims? The respondent say the claimant did not return to the United Kingdom at any stage he was employed by them and believed he was living and working abroad, but except they say the claimant was required to work in the United Kingdom, where they are located. The claimant says it was agreed that England and Wales would be the law applicable and says he was only temporarily outside the United Kingdom.
 - 1.2. Whether the claims have no reasonable prospect of success as per the respondents strike out application?
 - 1.3. Whether the claims have little prospect of success, and the claimant should be required to pay a deposit order?
 - 1.4. The consideration of Case Management Orders, and the listing of the Final Hearing if relevant.

Background

2. The claimant was employed by the respondent, as a Digital Accounts Manager, from the 10 or 11 January 2022 (to be decided by the tribunal) until the 13 April 2022. Early conciliation started on the 11 May 2022 and ended on the 22 June 2022. The claim form was presented on the 27 July 2022.
3. The claim is about Wrongful Dismissal and Breach of Contract. The respondent's defence is either; the claimant frustrated the employment by failing to return to the United Kingdom to undertake his duties, or, by failing to do the same fundamentally breached the contract entitling the respondent to terminate the contract. The respondent states at the date of interview they were aware the claimant was abroad but that his intention was that he would soon return from Libya as he was only visiting family, but he instead relocated to Dubai. The respondent also says they did offer to pay the claimant notice pay, but he refused to engage or work his notice period and did not return to the UK. The respondent says the claimant did not perform his full duties and this also entitled them to fail his probation.

4. The respondent counterclaims for financial loss they say they incurred as a result of the claimant's failure to perform his full duties and/ all failure to serve his notice period.
5. The matter came before Employment Judge Mensah on the 15 March 2023, as the claimant appeared from Namibia and sufficient time was not afforded to the Tribunal to seek permission from that Namibian State to hear his evidence, the hearing was converted from a final hearing to a closed preliminary hearing.
6. It was agreed that the respondent had made an application for strike out and added a deposit order application in the alternative at the preliminary hearing. Employment Judge Mensah order that that applications are to be determined at an open preliminary hearing to consider these issues.

Employment
Judge Hena
05 May 2023