Neutral Citation Number: [2024] EAT 33

Case No: EA-2022-SCO-000117-JP

EMPLOYMENT APPEAL TRIBUNAL

52 Melville Street
Edinburgh EH3 7HF

Date: 6 March 2024

Before :

THE HONOURABLE LORD FAIRLEY

- -

Between :

YACHT MANAGEMENT COMPANY LIMITED **Appellant**
- and -
MS LINDSAY GORDON

Respondent

- -
- -

Mr Maurice O'Carroll, of Counsel (instructed by Simons Muirhead Burton LLP) for the **Appellant**
Mr James Arnold, of Counsel (instructed by Slater and Gordon Lawyers UK) for the **Respondent**

Hearing date: 22 February 2024

- -

JUDGMENT

SUMMARY

JURISDICTION; territorial jurisdiction; Employment Rights Act, 1996; Equality Act, 2010

The claimant was engaged by the appellant to work on a super-yacht. The yacht did not enter a UK port or UK waters at any time during her employment. Following her dismissal by reason of redundancy, the claimant brought claims under the **Employment Rights Act, 1996** ("**ERA**") and the **Equality Act, 2010** ("**EqA**"). The appellant disputed the application of those statutes to the claimant's employment. A preliminary hearing was fixed on that issue. No witness evidence was led, but parties invited the Employment Tribunal to determine the issue of territorial jusrisdiction on the basis of an agreed statement of facts. The Tribunal was also provided with a copy of the claimant's contract of employment. The agreed statement contained an agreed fact that the claimant's "tours of duty" on the yacht all began and ended outside Great Britain. The Employment Judge nevertheless concluded that the claimant's duties under the contract began and ended at her home in Aberdeen, which was her "base" and that she was entitled to rely upon both the **ERA** and the **EqA**. The appellant contended that it was not open to the Tribunal to find that the claimants duties began in Aberdeen having regard to the agreed fact that her "tours of duty" on the yacht all began and ended outside Great Britian. It further contended that there was no evidence to entitle the Tribunal to conclude that her "base" was in Aberdeen, and that the Tribunal had erred in regarding itself as being bound by **Windstar Management Services Limited v. Harris** [2016] ICR 847 and in not applying **R. (on the application of Fleet Martime Services (Bermuda) Ltd v Pensions Regulator** [2016] IRLR 199.

Held:

(1) On a proper construction of the agreed statement of facts, the expression "tours of duty" was not synonymous with "duties under the contract" and the Tribunal had been entitled to find that the claimant's duties began and ended at her home;

(2) The Tribunal had correctly applied **Lawson v. Serco** [2006] ICR 250 **Ravat v. Halliburton Manufacturing and Services Limited** [2012] ICR 389, and **Windstar** and was entitled, on the agreed facts, to find that the claimant's "base" was her home; and

(3) the Tribunal had not erred in applying the *ratio* of **Windstar**. A "base" did not require to be a port. Nothing in the decision in **Fleet Martime Services** was inconsistent with that principle, or with the conclusion reached by the Tribunal on the facts of this case.

THE HONOURABLE LORD FAIRLEY:

Introduction

1. The claimant, Ms Gordon, was employed by the appellant between 25 March 2019 and her dismissal in October 2021. The appellant's stated reason for dismissal was redundancy.

2. Following her dismissal, Ms Gordon brought various claims against the appellant under the **Employment Rights Act, 1996** and the **Equality Act 2010**. The appellant challenged the jurisdiction of the Tribunal to hear those claims. An open preliminary hearing on the issue of jurisdiction took place before Employment Judge JM Hendry on 4 October 2022 in the Employment Tribunal at Aberdeen.

3. No witness evidence was led. Instead, parties lodged a numbered statement of agreed facts ("AF"). The Judge was also provided with a copy of the claimant's contract of employment.

4. In a reserved judgment with reasons dated 11 November 2022, the Employment Judge found that the Tribunal had jurisdiction to deal with all of Ms Gordon's claims. In this appeal, the appellant submits that the Employment Judge's conclusions on jurisdiction were wrong in law.

Agreed facts

5. The appellant is a company registered in Guernsey (AF4). It manages a fleet of six super-yachts (AF3). One of these is M/Y Alamshar ("the vessel") (AF3). The appellant does not carry out any business in the UK. It does not have any place of business or any berths within the United Kingdom (AF5)

6. The appellant instructs a third party to run management and payroll functions from offices in Guernsey (AF6). The appellant's human resources function is based in France. The majority of the appellant's management, human resources, and administrative tasks are carried out by managers based in either Spain or France (AF7).

7. The claimant was interviewed by Skype call for a position with the appellant. During that call, the claimant was at her home address in Aberdeen and those interviewing her were in Germany (AF9). The claimant was thereafter offered a position of employment with the appellant.

8. The claimant's employment contract, dated 25 March 2019, stated that her normal place of work and accommodation would be on the vessel on voyages worldwide, or wherever required by the appellant for the proper performance of her duties. The contract was in standard terms (AF17). It was stated to be governed by and construed in accordance with the law of England and Wales (AF15), and the parties agreed that the courts of England and Wales should have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with it (AF16).

9. On 26 March 2019, the claimant travelled from her home address in Aberdeen to join the vessel in Germany. Her contract of employment stated that the place of commencement of her employment was in Lemwerder in Germany where the vessel was then situated (AF8 and AF9), but it was also an agreed fact that the claimant "commenced her employment on the vessel on 25 March 2019" with the job title of "Second Stewardess" (AF8).

10. Throughout the claimant's employment, she was paid a salary by the appellant at the rate of 50,400 Euros per year (contract, para 7.1). Her salary accrued from day to day (contract, para. 7.2) and was paid monthly in Euros into her bank account in Aberdeen (contract, para 7.2 and AF11). The claimant completed tax returns to HMRC as a resident of Scotland (AF11).

11. The claimant was entitled to 3 days of paid holiday for each month of her employment (contract, para 9). Her hours of work were stated to be "such hours as may from time to time reasonably be necessary for [her] to carry out [her] duties" (contract, para. 6.1) subject only to receiving a minimum of 10 hours rest in any 24 hour period and a minimum of 77 hours rest in any 7 day period (contract, para. 6.2).

12. At no time during the claimant's employment by the appellant did the vessel ever enter a UK port or UK waters (AF40). AF41 states: "It therefore follows that [the claimant] commenced and ended all of [her] tours of duty in a location furth of Great Britain".

13. Leave records held by the appellant show that between 1 January 2020 and 3 April 2021 the claimant's periods of annual leave commenced and ended predominantly on days when the vessel was in Mallorca, Spain apart from on one occasion when her period of leave commenced on a day when the vessel was in Portimao in Portugal (AF39 and AF42).

14. All of the claimant's travel expenses between her home in Aberdeen and the vessel, including air fares and taxi fares, were paid by the appellant. This was in accordance with paragraph 8 of her contract and the Maritime Labour Convention (AF9, AF41; contract at para. 8).

15. On 11 October 2021 a decision was taken by the appellant to make the role of Second Stewardess redundant (AF12). That decision was made in Spain (AF12). An e-mail advising the claimant of her redundancy was sent to her and was followed by a letter sent from Spain to her home address in Aberdeen (AF12). At the time when she received the letter terminating her contract, the claimant was signed off as unfit to work and was at her home in Aberdeen (AF13).

16. The claimant's redundancy payment was calculated by reference to her full weekly salary and her completed years of service (AF18).

The Tribunal's reasons

17. The Employment Judge was referred by parties to a number of key authorities in which the issue of the territorial reach of the **Employment Rights Act, 1996** – and thus of the right to make a claim for unfair dismissal – had been considered. These included the decisions of the House of Lords in **Lawson v. Serco** [2006] ICR 250, the Supreme Court in **Ravat v. Halliburton Manufacturing and Services Limited** [2012] ICR 389, and the EAT in **Windstar Management Services Limited v. Harris** [2016] ICR 847. He was also referred to **Ravisy v. Simmons & Simmons** UKEAT/0085/18/00 and to a case concerning the Pensions Act, 2008, **R. (on the application of Fleet Martime Services (Bermuda) Ltd v Pensions Regulator** [2016] IRLR 199.

18. Parties were agreed that in terms of Lord Hoffmann's taxonomy in **Lawson**, the claimant was a "peripatetic" employee (para 77). The Employment Judge noted that in the case of peripatetic employees, and in contrast to expatriate employees, the concept of the "base" of the employee was significant (**Lawson**; **Todd v. Midland Airways Limited** [1978] ICR 959), being "the place where he should be regarded as ordinarily working, even though he may spend days, weeks or months working overseas" (**Todd**, per Lord Denning MR at page 964).

19. The key sections of the Employment Judge's reasons for concluding that the tribunal had jurisdiction to hear Ms Gordon's claim of unfair dismissal are found at paras 80 to 82:

> "80. There are a number of elements in the…claimant's relationship with the

> respondent that were canvassed. [The employer's counsel] pointed out that although the claimant was paid here in the UK she was paid in Euros. Some deduction was made to HMRC for tax but not for National Insurance contributions. I accept that this to an extent weakens that particular connection but it remains a factor. Similarly although [the employer's counsel] suggested that the choice of law should effectively be disregarded I do not agree. This is not a situation where the choice of law clearly disadvantages a party as in the situation where a jurisdiction is chosen that would present difficulties for parties effectively litigating there. The choice of law which governs where the claimant actually lives must have been some comfort for her in entering the contract and some recognition by the respondent that any dispute would be litigated here. For this discussion I disregard the existence of Scots Law as, if her claim proceeds, the law of unfair dismissal is common to both jurisdictions. The choice of law was also held to be a relevant factor in **Windstar**.
>
> 81. The claimant has other connections with the UK such as having her bank account here. The claimant's Counsel also points to the claimant's redundancy payment being calculated on the basis of UK law. I note that the statutory cap was not used but nevertheless the redundancy formula we are familiar with from the ERA seems to have been used with the calculation based on weekly salary and service rather than some other means of calculation.
>
> 82. There was argument around whether the claimant's address in the UK could properly be her base for the purposes of this test. [The claimant's counsel] relied on both **Windstar** and the reasoning in **Serco**. He pointed to the judgment in **R. v. Pensions Regulator** and in this case he submitted that the "*other fixed place*" was the claimant's home address. I am bound to accept that the authorities suggest that the claimant's home address can be her base. While I have some sympathy with [the employer's counsel's] position that a home address can or should be regarded (*sic*) as an employee's base I am bound by the decisions in **Windstar** and **Serco**. In the particular circumstances of this case I find that the…claimant's base is within the UK and that her duty began and ended in the UK and that she is entitled to bring proceedings for unfair dismissal here."

20. There is clearly a typographical error within paragraph 82 in that the word "regarded" should read "disregarded". Before me, Mr O'Carroll confirmed that the word "disregarded" more closely reflected the submission that he made to the Employment Judge as that submission was noted within para. 55, *viz*: "Common sense dictated that a base was an office or headquarters or the like" rather than a home address.

21. The Employment Judge also concluded that the same test for jurisdiction should apply to the unfair dismissal claim as to the other claims made under the **Employment Rights Act, 1996**, and the claim under the **Equality Act, 2010**. Parties were agreed that was now clearly recognised as the correct approach (per **Green v SIG Trading Ltd** [2019] ICR 929; **Smania**

v Standard Chartered Bank [2015] ICR 436; and **R. (Hottack and another v. Secretary of State for Foreign and Commonwealth Affairs and another** [2016] ICR 975).

Submissions

22. For the appellant, Mr O'Carroll advanced two grounds of appeal.

23. First, he submitted that it was not open to the Employment Judge to find, as he had done at para 82, that the claimant's duty began and ended in the UK where it was an agreed fact at AF41 that her tours of duty all commenced outside Great Britain. Even if a distinction could be drawn between "duties" and "tours of duty", there was no evidential basis on which the Judge could have concluded that the claimant's duties commenced in Great Britain, nor was there a sufficient factual basis for him to conclude that the claimant's "base" was in Great Britain.

24. Secondly, the Judge had erred in law in concluding that he was bound by **Windstar Management Services Limited v. Harris**. In **Windstar** there had been a clear finding in fact that the employee began and ended his tours of duty at either Heathrow or Gatwick airports and thus within Great Britain. There was no such finding in this case. On the contrary, the agreed fact at AF41 was that the claimant's tours of duty had all started and finished outside Great Britain. Further, the Judge had erred in concluding that **R. (on the application of Fleet Martime Services (Bermuda) Ltd v Pensions Regulator** supported the conclusion that there was jurisdiction in this case. In fact, paragraph 77 (iii) of **Fleet Martime Services** pointed in the opposite direction.

25. For the claimant, Mr Arnold submitted that the Judge had correctly applied a multi-factor approach (per **Lawson**, **Ravat** and **Windstar**) to determine the claimant's "base". It was open to the Tribunal to find that the claimant's "base" was within Great Britain even where it was agreed that all of her tours of duty on the vessel commenced outside Great Britain. Her duties under the contract were not confined to time spent by her on the vessel. It was appropriate to consider, amongst other matters, the periods for which she was paid, her full contractual duties and the periods of time away from the vessel when she was doing what the contract required her to do. Having regard to the factors referred to by the Judge at paragraphs 80-82, it was appropriate to regard her "base" as being within Great Britain.

26. In relation to the second ground, Mr Arnold submitted that the true *ratio* of **Windstar** was that it was open to a Tribunal to find, on appropriate facts, that a seafarer's "base" was somewhere other than the port at which they joined the vessel. The Tribunal had correctly applied that principle, and had correctly rejected the respondent's submission that a base required to be something akin to an office or a headquarters.

Analysis and decision

International jurisdiction

27. In considering an issue of jurisdiction, it is important to recognise the distinction between (a) determination of the appropriate forum ("international jurisdiction"); and (b) the territorial reach of the particular statute(s) founded upon ("territorial jurisdiction"). As was recognised in **Simpson v. Interlinks Ltd** [2012] ICR 1343, these are separate concepts and must be considered separately (see also. **Bleuse v. MBT Transport** [2008] ICR 488 per Elias J at para 46). In the submissions made the Employment Judge and also in the Judge's reasons, this important point seems to have been overlooked. In particular, and apparently as an alternative to her reliance upon **Lawson**, **Ravat** and **Windstar**, the claimant seems to have founded upon (i) a combination of section 15C(5)(c) and rule 8 of the Employment Tribunal Rules, 2013; or (ii) section 15D(2) of the **Civil Jurisdiction and Judgments Act, 1982** ("**CJJA**") to found jurisdiction without recognising that these sub-sections relate only to international but not territorial jurisdiction.

28. In principle, both subsections 15C(5)(c) and 15D(2) of the **CJJA** are capable of being relied upon to confer international jurisdiction, but neither seems to have been accepted by the Employment Judge as having done so in this case.

29. It is not, therefore, clear from the reasons of the Employment Judge on what basis he considered that international jurisdiction over the appellant had been established, having regard, in particular, to the agreed facts at AF5 to AF7 about the absence of any form of business connection between the appellant and the United Kingdom.

30. The issue of international jurisdiction was never mentioned in this appeal. I infer that may be because the appellant now accepts that international jurisdiction arises from a combination of the prorogation of the jurisdiction of the courts of England and Wales in the claimant's

contract (AF16), and section 15C(6)(b) of the **CJJA**. That was not, however, an argument that was ever discussed either before the Employment Judge or before me. For the purposes of this appeal, the only issue discussed was the Judge's decision on territorial reach. I have therefore proceeded on the basis that international jurisdiction is not a disputed issue, and that the only issue arising in this appeal is territorial jurisdiction.

Territorial jurisdiction

31. In **Lawson**, Lord Hoffmann noted that the right to pursue a claim for unfair dismissal under the **Employment Rights Act, 1996** is necessarily subject to implied territorial limitations. Four different scenarios were envisaged. First, if the work is conducted in Great Britain, the primary factor is the location of work of the claimant and jurisdiction will usually be established. Secondly, in the case of those such as airline pilots who perform work in multiple jurisdictions ("peripatetic employees"), a material question is whether the employee can be said to be "based" in Great Britain. Thirdly, for those employees who commute from Great Britain to perform work in a fixed place abroad ("partial expatriates"), it is necessary to show a sufficient connection with Great Britain and British employment law to displace the expectation that any claim against their employer would have to be pursued in the jurisdiction where the work is performed. Finally, for those working and living outside Great Britain ("expatriates") it will only be in exceptional cases that a tribunal has jurisdiction over a claim in Great Britain. The employee in such a case would have to show an overwhelmingly closer connection with Great Britain and British employment law than with the jurisdiction in which they live and work.

32. Whilst the general rule, therefore, is that the place of employment is decisive, exceptions can be made where the connection between Great Britain and the employment relationship is sufficiently strong to enable it to be presumed that Parliament must have intended the right to claim unfair dismissal under the **ERA** should apply to the employee in question (**Ravat** at para 28 per Lord Hope).

33. Determination of the implied limits on territorial jurisdiction requires an analysis of the entire factual matrix. This includes looking at how the contract was being operated in practice and as a whole, rather than simply looking at the place of work specified in the contract of employment. The four **Lawson** scenarios are useful but they are not exhaustive. As the

Supreme Court stressed in **Ravat**, resolution of the issue of territorial jurisdiction depends upon a careful analysis of the facts of each case, rather than simply deciding whether a given employee fits within categories created by previous case law.

34. The issue of where a peripatetic employee is "based" similarly requires a full analysis of the whole factual matrix. A choice of law clause in the contract of employment can be a relevant factor (**Ravat**; **Windstar**; **Green v SIG Trading Ltd**). How the contract is operated in practice is important (**Todd**). Since the relevant issue is the base of the employee rather than of the employer, the place where the employer has its headquarters or its registered office or other aspects of its corporate structure may often be of little relevance in considering the issue of where the employee is "based" (see, for example, **Diggins v Condor Marine Crewing Services Ltd** [2010] IRLR 119) even if those factors are of relevance to the separate issue of international jurisdiction.

35. In relation specifically to peripatetic seafarers, in **R. (on the application of Fleet Martime Services (Bermuda) Ltd v Pensions Regulator** [2016] IRLR 199, Leggatt J stated:

> "I cannot accept that the ship on which a seafarer works (for whatever length of time) can be regarded as that worker's base. As applied to a peripatetic worker, the concept of a base is that of a place from which the worker sets off at the start and to which the worker returns at the end of a period when the worker is travelling in the course of their work. A ship is not such a place; rather it is a means of transport from one place to another." (para 60)

36. That same reasoning formed the basis of the decision in **Diggins** where the Court of Appeal rejected a suggestion that an employee was based on the ship on which he worked. As Elias LJ noted (at para. 30): "[i] f one asks where this employee's base is, there can only be one sensible answer: it is where his duty begins and where it ends." These observations are each consistent with the decisions in **Wilson v. Maynard Shipping Consultants Ltd** [1978] ICR 376 and **Todd v British Midland Airways Ltd**. Both **Wilson** and **Todd** were referred to without criticism in **Lawson** and **Ravat**. As was pointed out by the EAT in **Windstar**, however, the case of **Wood v. Cunard Line** [1990] ICR 13, which was decided under a previous and materially different version of the statute, played no part in the formulation of the "base" principle in **Lawson** and **Diggins** and is thus of limited assistance on that point (see **Windstar** at paras 33 and 51).

37. **Windstar** illustrates the use of the **Lawson** approach to determine the "base" of a peripatetic employee. The claimant lived in England and was employed by a company incorporated in the Channel Islands as the master of a US-owned cruise ship which cruised around mainland Europe and the Caribbean. The claimant would fly from either Heathrow or Gatwick airport to the port where the ship was berthed to begin his tours of duty. His working time started at the UK airport rather than from his arrival on board the ship, and ended when he landed back at the UK airport. His contract of employment was governed by English law; the code of conduct and disciplinary procedure applicable to him were from a British collective agreement, and his salary was paid in the UK. Considering all of these factors, the Tribunal concluded that the employee's working time began and ended in Great Britain rather than when he boarded or left the ship in Europe or the Caribbean. The EAT, applying **Diggins**, **Lawson** and **Ravat**, and distinguishing **Wood** and **Fleet Maritime Services**, held that the Tribunal was entitled to conclude that the employee's duties began elsewhere than at a port and that the employee was, on the whole facts of the case "based" in Great Britain.

38. Turning to the facts of the present case, Mr O'Carroll's first argument was that since AF41 agrees that the claimant's "tours of duty" all commenced outside Great Britain (AF41), there was no scope at all for the Judge to conclude, as he did at para 82, that "her duty began in the UK." This argument depends upon treating the expression "tours of duty" as being synonymous with "duties under the contract".

39. The expression "tours of duty" is not a term of art. It may mean different things according to the context in which it is used. In **Windstar** for example, the claimant was paid an annual salary for "three months on and three months off", and his contract expressly provided that the calculation of his days of service began from a UK airport. The Employment Judge explained that he used the expression "tours of duty" as a shorthand for identifying the claimant's working time (**Windstar** para 4). As the EAT noted, the precise issue in the **Windstar** appeal was whether the "base" principle:

> "requires the ET to ask at which port the claimant's voyages began and ended, and to hold that the employee's base is that port (or ports), but not some other place from which he might have travelled to that port, even if he travelled there and back on the employer's time and at the employer's expense." (para 8)

40. It does not follow, therefore, that the term "tours of duty" in AF41 necessarily bears the same meaning as it did in **Windstar** or, for that matter, in any other previous case (*cf* **Diggins** and

Fleet Maritime Services). The question raised by this ground of appeal is therefore: what, construed objectively, does the expression "tours of duty" mean in AF41?

41. The starting point is that the expression "tours of duty" appears in a part of AF41 which is expressed as a conclusion flowing from the preceding paragraph, AF40. AF40 agrees *inter alia* that the vessel did not enter a UK port or UK waters after 5 August 2016. AF41 then begins with the words: "It therefore follows that…" as a preamble to the agreement that all of the claimant's tours of duty began and ended outside Great Britain. Objectively, and in context, the expression "tours of duty" simply means "the claimant's work on the vessel during voyages". It does not appear, however, that "tours of duty" was necessarily intended to be synonymous with the broader concept of "all duties under the contract" or "working time".

42. There are several contra-indicators in the AF and in the claimant's contract to the broad interpretation of "tours of duty" contended for by the appellant. Under her contract, the claimant was paid an annual salary which accrued from day to day and which permitted periods of paid leave. In contrast to the facts in **Windstar**, it was not necessary for there to be any mechanism in her contract to determine when she was deemed to have started work. There was no express qualification of the claimant's contractual holiday entitlement requiring time spent travelling to and from the vessel to be treated as part of her annual leave. On the contrary, the contractual term as to her hours of work tends to suggest that if travelling to the vessel was "necessary" for the performance of her duties, it was working time. In terms of clause 8 of her contract, the whole costs of journeys to and from the vessel, including taxi fares and air fares, were entirely met by the employer. It is, therefore, tolerably clear that time spent by the claimant travelling to and from Aberdeen was working time under the contract and thus part of her duties. All ofthese factors support the view that the expression "tours of duty" in AF41 is a narrower concept than "duties under the contract".

43. It is also noteworthy that at AF8, it is an agreed fact that the claimant "commenced employment with the Respondent on the vessel on 25 March 2019". Later in that same paragraph, however, it is agreed that she did not travel from her home address to the vessel until 26 March 2019. Those agreed facts are consistent only with her duties under the contract being wider than the expression "tours of duty" in AF41.

44. Finally, and as Mr Arnold correctly noted, one of the terms of the claimant's contract (at para 5.1.2) was that she would "obey all reasonable and lawful instructions of the Company". That would inevitably include following instructions as to the place to which she was required to travel from her home address to join the vessel.

45. For all of these reasons, I reject Mr O'Carroll's first submission that the expression "tours of duty" in AF41 should be interpreted as being synonymous with "duties under the contract". It was open to the Employment Judge to conclude that the concept of the claimant's duties under the contract was broader than the expression "tours of duty" in AF41.

46. Turning to the second part of Mr O'Carroll's argument on ground 1, and for essentially the same reasons, it was clearly open to the Judge to conclude that the claimant's duties began and ended in Great Britain – that being the place where she commenced her various journeys to join the vessel and to which she returned after her tours of duty on the vessel.

47. It is also clear from paras 80 to 82 of the Employment Judge's reasons that he correctly employed the multi-factor approach of **Lawson** to determine the claimant's "base" and that there were ample factors in this case to enable him to conclude that her base was in Great Britain. In addition to the issue of where the claimant commenced and ended her duties, relevant and material factors included those recorded by the Judge at 80 and 81, *viz*: the location of the bank account into which her salary was paid each month; her accounting to HMRC for tax; the governing law of the contract; the choice of forum for disputes arising from the contract; the basis on which redundancy pay was calculated; and the employer's contractual responsibility for all travel expenses incurred between her home and the vessel. No error of law is apparent in the Judge's approach.

48. Mr O'Carroll's second ground of appeal was that the Employment Judge had erred in law in regarding **Windstar** as binding upon him. Once the typographical error in para 82 is corrected, it is clear that the context in which that comment was made was the Judge's rejection of a submission made to him by Mr O'Carroll that a home address could never be an employee's base and that "common sense dictated that a base was an office or headquarters or the like" (EJ, para 55). I agree with Mr Arnold's submission that part of the *ratio* of **Windstar** is that a seafarer's "base" need not be a port. It can be a place remote from the port at which the seafarer ultimately joins the vessel. It need not be an office or a headquarters or equivalent place. Thus, on the particular facts of **Windstar** the seafarer's "base" was either Gatwick or Heathrow airport. A rule that an employee's base must be an office or a headquarters or

equivalent place would risk falling into the error of assessing the location of a "base" not from the perspective of the employee but from the perspective of the employer. **Windstar** was therefore binding on the Judge to the extent that it held that there was no bar to a seafarer's "base" being at a place remote from the vessel. Such an approach is entirely consistent with the statements of general principle in **Todd**, **Lawson**, **Ravat**, **Diggins** and **Windstar**. There is also no reason in principle why the employee's home address cannot, as a matter of law, be her base if that is, on the facts, the place from which her duties begin and end.

49. Mr O'Carroll placed considerable reliance on sub paragraph (iii) of paragraph 77 of the **Fleet Maritime Services** case in which Leggatt J, in determining an issue under the Pensions Act, 2008 stated:

> "My conclusions can be summarised as follows:
>
> (i) A seafarer may be regarded as ordinarily working in Great Britain during any period when the seafarer is working from a base situated in Great Britain even if the ship on which the seafarer works spends most of its time outside Great Britain so that the majority of the seafarer's work is performed outside Great Britain.
>
> (ii) A seafarer who lives in Great Britain and whose tours of duty habitually begin and end at a port in Great Britain may be regarded as based in Great Britain…
>
> (iii) A seafarer who lives in Great Britain but who works on a ship which spends all or most of its time outside Great Britain and whose tours of duty do not habitually begin and end in Great Britain cannot be regarded as based in Great Britain…"

50. As was noted by the EAT at para. 37 of **Windstar**, however, it is clear from what is said by Leggatt J at paras 65 and 66 of **Fleet Maritime Services** that he used the expression "tour of duty" as being synonymous with "duties". Once that is recognised, there is no tension at all between **Fleet Maritime Services** and the decision of the Employment Judge in this case. This case falls within paragraph 77(ii) of **Fleet Maritime Services** subject to the **Windstar** qualification that "port" can be read as "place". Paragraph 77 (iii) of **Fleet Maritime Services** would assist the appellant only if the expression "tour of duty" in AF41 was treated as being synonymous with "duties under the contract". For the reasons I have already given, I do not consider that is the correct construction of AF41 in the circumstances of this case, nor do I

consider that there was any error of law in the Judge's conclusions (a) that the claimant started and finished her duties within Great Britain; and (b) that she was "based" within Great Britain.

51. For all of these reasons, I reject the appellant's arguments and refuse the appeal.