



# EMPLOYMENT TRIBUNALS

*Claimant*

*Respondents*

Mr Eid Soliman

v

Qatar Embassy

Heard at: London Central

On: 28 June 2024

Before: Employment Judge Brown

Representation

For the Claimant: In person

For the Respondent: Did not attend and was not represented

Interpreter in Arabic: Mr Khalid Eter

## JUDGMENT

The Judgment of the Tribunal is that:

1. The Claimant's employment was an act of sovereign authority so that his claim is barred by State Immunity. It is dismissed.

## REASONS

1. This Public Preliminary Hearing was listed to determine all issues relating to state immunity in this case.
2. The Tribunal was assisted by an interpreter in the Arabic language.
3. By a claim for presented on 6 January 2023 the Claimant brought a claim for unfair dismissal against the Respondent, his former employer. In his claim form, he said that he had been employed as a Protocol Officer from 1 February

2014 until 30 September 2022. The Claimant had undertaken ACAS Early Conciliation between 25 November 2022 and 6 January 2023.

4. The Employment Tribunal arranged for the claim and Tribunal documents to be translated into Arabic and, on 7 July 2023, the Tribunal sent the claim to the Foreign, Commonwealth and Development Office to be served through the Diplomatic Channel. The claim was served by the British Embassy in Qatar on the Qatari Ministry of Foreign Affairs on 30 August 2023

5. The Respondent was given 2 months and 28 days to present a response from the date of service.

6. On 20 October 2023 the Respondent wrote to the Tribunal, respectfully declining to participate in the proceedings because it said that they infringe internationally recognised principles of state and diplomatic immunity.

7. The Claimant attended this hearing. The Respondent did not.

8. The Respondent had not attended a previous case management hearing on 26 January 2024. In the Case Management Summary of that hearing, I noted in that the Respondent had respectfully declined to participate in these proceedings. I said that, while the Tribunal was required to give effect to state immunity, this would be more difficult if the Respondent does not explain the basis on which state immunity might apply in this particular case. I therefore asked the Respondent to indicate the basis for its assertion of state immunity, so that the Tribunal could fairly determine the issue and, if appropriate, give effect to state immunity. I made orders, addressed to both parties, for preparation for this hearing.

9. The Respondent had not indicated the basis on which state immunity might apply.

10. I had identified the following issues which might arise for decision on the issue of state immunity:

- a. Whether the Claimant was a diplomatic agent or consular officer, or
- b. Whether the Claimant's employment an exercise of sovereign authority, or
- c. Whether his dismissal was an act of sovereign authority,

so that his claim is barred by state immunity.

11. I heard live evidence from the Claimant relevant to those issues. The Claimant also made submissions.

### **Findings of Fact**

12. I made the following findings of fact on the Claimant's evidence.

13. The Claimant is a UK national.

14. The Claimant was employed by the Respondent from 1 February 2014 until 30 September 2022. He was a member of the Embassy's "local staff" in the UK. He was not originally employed in Qatar and transferred to the UK.

15. The Claimant was initially employed in office-based work.

16. Later, his role changed to that of 'Protocol Officer' and 'Coordinator of Public Relations'.

17. As Protocol Officer, the Claimant would greet guests of the Embassy at airports. As Coordinator, he would arrange cars and send them to airports to greet the guests.

18. The Claimant's duties as Protocol Officer involved receiving a "manifest" for the guest, including passenger name and flight number and whether they were to be welcomed at the VIP lounge, or collected at the normal exit. The Claimant would also be provided with name of the driver, if an Embassy car was being used, or of the private hire company driver. The Claimant would be told if the guest was on an official visit to the Embassy, or if they belonged to the Qatari Royal Family.

19. When the Claimant met the person at the airport, the Claimant's duties involved accompanying the person to the immigration section, so that, if any interpretation was needed between the passenger and immigration officer, he would assist with that. The Claimant would make clear to the immigration officer when they were dealing with a member of the Royal Family. Sometimes immigration officers would allow the Claimant to be present for questions and sometimes not.

20. In the Claimant's experience, the questions were generally standard immigration questions, such as purpose of visit and how long the guest would be staying.

21. The Claimant did not meet high-ranking members of the Royal Family like the Emir or Prince. Such guests would be greeted by the Ambassador and/or specific members of the Diplomatic Corps.

22. However, he did greet members of the wider Royal Family and might have to translate for members of the Royal Family, if they were questioned at immigration.

23. The guests he would meet included any person who had been notified to the Embassy by the Qatari Prince. The Prince expected that members of the Royal Family would be greeted and that they would be in good hands, so that there would be no problems at the airport.

24. As Protocol Officer, the Claimant was aware of diplomatic protocols which needed to be complied with when dealing with members of the Royal Family. He

knew the particular ways of addressing and approaching them, as opposed to ordinary members of the public.

25. When the Protocol Officers were busy with many guests, external private hire companies would be sent to greet lower-ranking guests or lower-ranking members of the Royal Family. However, some guests were higher-ranking members of the Royal Family and official guests, for whom Protocol needed to be complied with. Private hire contractors would not be allocated to them.

26. The Claimant was told that he had been dismissed for “gross misconduct”. He was not told that he had been dismissed pursuant to a governmental policy or government decision.

27. The Claimant told me, and I accepted, that the Qatari Embassy only has a limited number of diplomats, so the Embassy employed him and others, as another category of employees, to do the work required.

### **State Immunity Relevant Legal Provisions**

28. Foreign states enjoy a general immunity from the jurisdiction of the courts in the UK, pursuant to the State Immunity Act 1978. By SIA 1978 s 1(1): 'A state is immune from the jurisdiction of the courts of the UK, except as provided in the following provisions of this Part of this Act'.

29. The Tribunal is required to give effect to state immunity even if the State does not appear in the proceedings, *s1(2) State Immunity Act 1978*.

30. Regarding employment claims, *s4 SIA* provides,

#### **“4 Contracts of employment.**

(1) A State is not immune as respects proceedings relating to a contract of employment between the State and an individual where the contract was made in the United Kingdom or the work is to be wholly or partly performed there. ...”

31. Regarding diplomats and those employed by diplomatic missions, *s16 SIA 1978* further provides,

#### **“16 Excluded matters.**

(1) This Part of this Act does not affect any immunity or privilege conferred by the Diplomatic Privileges Act 1964 or the Consular Relations Act 1968; and—

(a) section 4 above does not apply to proceedings relating to a contract of employment between a State and an individual if the individual is or was employed under the contract as a diplomatic agent or consular officer;

(aa) section 4 above does not apply to proceedings relating to a contract of employment between a State and an individual if the individual is or was employed under the contract as a member of a diplomatic mission (other than a

diplomatic agent) or as a member of a consular post (other than a consular officer) and either—

- (i) the State entered into the contract in the exercise of sovereign authority; or
- (ii) the State engaged in the conduct complained of in the exercise of sovereign authority;]

32. Employees of a Diplomatic/Consular Mission in the UK are therefore not barred by s16 SIA from bringing any type of employment claim against their employing State, so long as:

- a. the employee is not a diplomatic agent or consular officer, or
- b. the employment was not entered into in the exercise of sovereign authority, or
- c. the alleged unlawful conduct complained of was not an act of sovereign authority.

33. These provisions of ss4 and 16 *State Immunity Act 1978* are as amended by the *State Immunity Act 1978 (Remedial) Order 2023*, which came into force 23 February 2023.

34. The amendments were intended to give effect to the Supreme Court judgement in *Benkharbouche v Secretary of State for Foreign and Commonwealth Affairs; Secretary of State for Foreign and Commonwealth Affairs and Libya v Janah*, [2018] IRLR 123, [2017] ICR 1327. In that case, the Supreme Court decided that the doctrine of state immunity in international law applied only sovereign acts, not private acts, of the foreign state concerned.

35. As a result of the amendments to s16 SIA, employees of a foreign Embassy in the UK are generally no longer be barred from bringing any type of employment claim against their employing State, so long as the employee is not a diplomatic agent or consular officer, or the employment was not entered into in the exercise of sovereign authority, or the conduct complained of was not an act of sovereign authority.

### **Employment Entered into in the Exercise of Sovereign Authority**

36. As stated, in *Benkharbouche v Secretary of State for Foreign and Commonwealth Affairs; Secretary of State for Commonwealth Affairs and Libya v Janah*, [2018] IRLR 123, [2017] ICR 1327, the Supreme Court decided that the doctrine of state immunity in international law applied only sovereign acts, not private acts, of the foreign state concerned. “The rule of customary international law is that a state is entitled to immunity only in respect of acts done in the exercise of sovereign authority” [37].

37. Whether there has been such an act will depend on the nature of the relationship between the parties, and this in turn will depend on the functions that the employee was employed to perform [54].

38. At [55] Lord Sumption distinguished between the three categories of embassy staff as follows: “The Vienna Convention on Diplomatic Relations divides the staff of a diplomatic mission into three broad categories: (i) diplomatic agents, ie the head of mission and the diplomatic staff; (ii) administrative and technical staff; and (iii) staff in the domestic service of the mission. Diplomatic agents participate in the functions of a diplomatic mission defined in article 3, principally representing the sending state, protecting the interests of the sending state and its nationals, negotiating with the government of the receiving state, ascertaining and reporting on developments in the receiving state and promoting friendly relations with the receiving state. These functions are inherently governmental. They are exercises of sovereign authority. Every aspect of the employment of a diplomatic agent is therefore likely to be an exercise of sovereign authority. The role of technical and administrative staff is by comparison essentially ancillary and supportive. It may well be that the employment of some of them might also be exercises of sovereign authority if their functions are sufficiently close to the governmental functions of the mission. Cypher clerks might arguably be an example. Certain confidential secretarial staff might be another: see *Governor of Pitcairn and Associated Islands v Sutton* (1994) 104 ILR 508 (New Zealand Court of Appeal). However, I find it difficult to conceive of cases where the employment of purely domestic staff of a diplomatic mission could be anything other than an act *jure gestionis*. The employment of such staff is not inherently governmental. It is an act of a private law character such as anyone with the necessary resources might do.”

### **Acts Engaging Sovereign Interests**

39. However, Lord Sumption also cautioned that the character of the employment would not always be decisive. At [58], he made clear that state immunity may extend to some aspects of its treatment of its employees ‘which engage the state’s sovereign interests’, even if the contract of employment itself was not entered into in the exercise of sovereign authority.’ Examples include claims arising out of an employee’s dismissal for reasons of state security and the introduction of a no-strike clause for civilian staff at a US military base in Canada, which had been deemed to be essential to the military efficiency of the base.

40. Lord Sumption commented, of the latter, “In these cases, it can be difficult to distinguish between the purpose and the legal character of the relevant acts of the foreign state. But as *La Forest J* pointed out, at p 70, in this context the state’s purpose in doing the act may be relevant, not in itself, but as an indication of the act’s juridical character.” [58].

### **Vienna Convention on Diplomatic Relations**

41. Article 3 VCDR sets out the essential functions of a diplomatic mission. The performance of any of the Article 3 functions constitutes acts done in the exercise of sovereign authority.

“Article 3

1. The functions of a diplomatic mission consist, inter alia, in:

- (a) Representing the sending State in the receiving State;
- (b) Protecting in the receiving State the interests of the sending State and of its nationals, within the limits permitted by international law;
- (c) Negotiating with the Government of the receiving State;
- (d) Ascertaining by all lawful means conditions and developments in the receiving State, and reporting thereon to the Government of the sending State;
- (e) Promoting friendly relations between the sending State and the receiving State, and developing their economic, cultural and scientific relations.”

UK Appeal Decision Following Benkharbouche

42. *Royal Embassy of Saudi Arabia v Al Hayali* [2023] EAT 149 Bourne J, overturning the ET’s judgment decided that the Claimant’s claims were barred by state immunity. He held, amongst other things:

- a. A Tribunal must first establish whether the employer was performing sovereign functions: [90]. On the facts in that case, the work of the Academic and Cultural Affairs department aligned with the functions at Articles 3(1)(b) and (e) VCDR and so involved the exercise of sovereign authority: [91].
- b. Applying Benkharbouche SC [55], the test for section 16(1)(aa)(i) was whether the employee’s work was “sufficiently close” to the exercise of sovereign authority. That could be contrasted with work which was “purely collateral to the exercise of sovereign authority”: [92]-[93].
- c. Comparisons with previous cases (such as *Cudak v Lithuania* (2010) 51 EHRR 15) may be of limited assistance depending on what is known about the facts of those cases: [94]-[95].
- d. Not all of an employee’s tasks have to meet the section 16(1)(aa)(i) test. It is sufficient if “some of the claimant’s activities throughout the period of her employment passed the test”: [96] – [97].

43. On the facts, although it was a “borderline and difficult case” (§98), the “sufficiently close” test was met.

44. At [97] he said,

“...in the context of what was an exercise of sovereign authority by the Embassy of a kind contemplated by the Vienna Convention, some of the Claimant’s activities throughout the period of her employment passed the [‘sufficiently close’] test. By sifting compliant and non-compliant guarantee requests, writing reports on funding requests and discussing art exhibits with visitors and British students and teachers, she played a part, even if only a small one, in protecting the interests of the Saudi state and its nationals in the UK and in promoting Saudi

culture in the UK. To put it another way (reflecting French case law to which Lord Sumption referred in *Benkharbouche* at [56]), she was participating in the public service of the Embassy and not merely in the private administration of the Embassy.”

45. *Alyahali* EAT directly addresses the new wording of *section 16(1)(aa)* as inserted by the Remedial Order.

### **Discussion and Decision**

46. The Claimant is a UK national.

47. On my findings of fact, his dismissal for gross misconduct was in the nature of a private act. It was not said to be in pursuance of a government policy on employment. It did not engage any sovereign interest.

48. I must also consider whether the Claimant’s employment itself was an act of sovereign authority.

49. Applying *Royal Embassy of Saudi Arabia v Al Hayali* [2023] EAT 149, I must establish whether the employer was performing sovereign functions. As the Claimant was employed by the Qatar Embassy, the employer clearly was performing all the Article 3 VCDR essential functions of a diplomatic mission – that is what embassies do.

50. The Claimant’s role as a Protocol Officer was primarily engaged with greeting dignitaries at airports and facilitating their arrival in the UK and their onward transport.

51. Such functions most closely aligned with the Mission’s functions of Art3 VCDR “(b) Protecting in the receiving State the interests of the sending State and of its nationals, within the limits permitted by international law” – particularly protecting the interests of the State’s nationals.

52. Often his role could be performed by a private individual, such as a private hire concierge vehicle driver. This was when non-Royal family members or low-ranking members of the Royal family were being greeted. Greeting people at airports and arranging onward travel appear to be in the nature of private functions.

53. However, the Claimant’s duties, on occasion, also involved accompanying the new arrival to the airport immigration section, so that, if any interpretation was needed between the passenger and immigration officer, he would assist with that. The Claimant would make clear to the immigration officer when they were dealing with a member of the Royal Family. The Qatari prince expected that the Claimant would greet the Royal Family members and ensure that there would be no problems for them at the airport. The Claimant was also expected to apply protocol regarding addressing and approaching members of the Qatari royal family.



54. Private hire drivers would not undertake this role.

55. I considered that this particular role, in greeting Royal Family members at the airport, accompanying them to the immigration section, interpreting for them and making clear to immigration officials that they were dealing with members of the Royal Family, corresponded to both VCDR Article 3 Mission functions: (a) Representing the sending State in the receiving State; and (b) Protecting in the receiving State the interests of the sending State and of its nationals.

56. I also considered that, in this capacity, the Claimant was undertaking an official role, engaging with public immigration officials at the point of entry to the UK, on behalf of members of the Qatari Royal family. He was the public interface between the Qatari Embassy and British immigration officials, representing the Qatari ruling family. His duties were public duties which a private person could not undertake.

57. I therefore considered that, in this role, while the Claimant was not a diplomat himself, he was undertaking inherently governmental work which either did constitute (a) Representing the sending State in the receiving State; and (b) Protecting in the receiving State the interests of the sending State and of its nationals under Art 3 VCDR, or was sufficiently close to those sovereign functions of the Qatari Embassy as to be an act of sovereign authority.

58. As a result, his employment was an act of sovereign authority and his claim is barred by State Immunity. It is dismissed.

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Employment Judge Brown

Dated: ...16 July 2024.....

SENT TO THE PARTIES ON

19 July 2024

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For the Tribunal Office