Case No: 3304162 / 2023

EMPLOYMENT TRIBUNALS

Claimant: S Keeble

Respondent: Austin May Medical Limited

Heard at: Watford Employment Tribunal

On: 13 and 14 June 2024

Before: Employment Judge Din (sitting alone)

Representation

Claimant: A Bam

Respondent: M Akram, counsel, instructed by Croner

RESERVED JUDGMENT

The judgment of the Tribunal is that the Claimant's claims for unfair dismissal and unauthorised deduction of wages are struck out

The Claimant's claim for breach of contract may continue.

REASONS

Introduction

1. The Claimant is Simone Keeble. The Claimant is represented by Ms A Bam, the Claimant's sister.

2. The Respondent is Austin May Medical Limited, trading as Xander Hendrix Healthcare. The Respondent is a recruitment agency that deals with medical hire. The Respondent is represented by Mr Akram, counsel.

Claims and issues

Claim Form

3. The Claim Form was received by Watford Tribunal office on 18 April 2023. The Claim Form gives the name of the employer or the person or organisation that the Claimant is claiming against as "Davinder Dhami/Xander Hendrix Healthcare". It goes on to state that the Claimant was employed from 23 March 2020 to 27 February 2023 as a Recruitment Manager.

4. In her Claim Form, the Claimant claims that she was unfairly dismissed and that she is owed: (1) holiday pay; (2) arrears of pay; and (3) other payments. She further states that she is making a claim for outstanding commission.

Response Form

5. The Response Form is dated 19 May 2023. The name of the Respondent is stated to be "Xander Hendrix Healthcare Ltd".

6. The Respondent states that the Claimant's employment started on 23 March 2023, but that her employment ended on 28 February 2023 (rather than 27 February 2023) as "Her relationship with the Respondent was terminated on 28 February 2023".

7. The Respondent disputes all claims made by the Claimant. It states that the Claimant is "…a South African National contractor who has always worked from, and is based in her home country, she has never had a UK contract so is not represented under UK employment law". It goes on to say that the Claimant is responsible for making her own "tax and NI contributions in her native South Africa". Therefore, according to the Respondent, "the early conciliation or the tribunal does not apply in this case".

Procedure, documents and evidence heard

Preliminary hearing

8. A preliminary hearing took place on 13 September 2023 before Employment Judge Hunt.

9. Employment Judge Hunt noted that the Respondent objected to the Claimant's claim on the basis that the Tribunal lacked jurisdiction to hear the claim as the Claimant was an overseas contractor, not an employee. The Claimant disagreed with this, and provided the Tribunal with a letter addressed to her referring to the "…key terms of employment" she was offered and that she accepted. At the time of the preliminary hearing, the Respondent's representative at the hearing was unaware of the correspondence and was invited to consider it, with her client, after the hearing.

10. Employment Judge Hunt stated that the substance of the claim concerns two issues:

    a. Unauthorised deduction of wages (salary and commission); and
    b. Unfair dismissal.

11. Employment Judge Hunt added that the claims were not, at that time, particularised in detail and that case management orders would address this.

12. The Claimant clarified that she is not seeking to pursue a claim for holiday pay.

13. Employment Judge Hunt made a number of case management orders, with a final hearing scheduled for 6 and 7 December 2023.

14. The Respondent's name was amended to Austin May Medical Ltd.

15. At paragraph 31, Employment Judge Hunt stated the following:

    "*It is each party's responsibility to establish whether any witness they wish to call to give oral evidence is able to attend the hearing. It may be possible for witnesses to attend remotely if requested in advance. If any witness wishes to give evidence from abroad, the party calling that witness must establish whether they are permitted to do so*".

16. The Employment Judge then provided a link to guidance issued by the President of the Employment Tribunals regarding evidence from abroad.

17. Employment Judge Hunt stated "*If the Claimant wishes to provide oral evidence by video from her home country of South Africa, she must urgently check with the Tribunal whether she is permitted to do so. My present understanding is that she would not be permitted to do so*".

Respondent's amended response

18. In its amended response, the Respondent reiterates that the Tribunal does not have jurisdiction to hear the claim as the Claimant does not work in the UK and her employment is not subject to UK law.

19. If the Tribunal decides that it has jurisdiction, then the Respondent states the Claimant was not employed by the Respondent and so is not entitled to the protection of sections 94 and 98 of the Employment Rights Act 1996 (**ERA 1996**). The Respondent adds that the Claimant was a contractor "who would be on a monthly retainer".

20. The Respondent adds that the Claimant's performance fell short of the required standard. In light of this, the Respondent decided to end the Claimant's contract and wrote to the Claimant to this effect on 27 February 2023. The Respondent asserts that the Claimant was not entitled to any notice pay or sick leave, but a payment was made to the Claimant as a gesture of goodwill. The effective date of termination was 28 February 2023.

21. The Respondent denies the Claimant's claim of unfair dismissal. Further, the Respondent states that no monies are owed to the Claimant.

Final hearing

22. On 20 November 2023, the final hearing was postponed to 22 and 23 January 2024. This was later moved to 13 and 14 June 2024.

23. Ms Bam confirmed that the Claimant is not present for the final hearing. The Respondent stated that it has two witnesses: Davinder Dhami and Helen Richardson. Craig Davids, in respect of whom a witness statement had been provided, would not be attending.

24. There was some uncertainty as to whether the bundle for the final hearing was agreed. The Claimant had provided further material to the Tribunal and the Respondent, which the Tribunal agreed to consider looking at if and when it became relevant.

Further information

25. As part of the case management orders made by Employment Judge Hunt (see paragraph 10 of the Record of a Preliminary Hearing on 13 September 2023 (**CMOs**), the Claimant was required to provide further information about her claim (including relevant documents relied upon in support) by 20 September 2023, notably:

    a. The Claimant was to explain why she believed her dismissal was unfair;
    b. The Claimant was to explain the basis to her claim for unpaid salary and commission.

26. In addition, the Claimant was required to provide a schedule of loss (paragraphs 11 and 12 of the CMOs) and witness statements (paragraphs 21 to 27 of the CMOs) by 22 November 2023, as well as any other documents relevant to the issues by 18 October 2023 (paragraphs 13 to 15 of the CMOs).

27. The Respondent stated that the Claimant was in breach of these Orders. In light of this, the Respondent stated that it would make a strike out application under Rule 37(1)(d) of the Employment Tribunals Rules of Procedure 2013 (**ET Rules**) on the grounds that the claim is not being actively pursued. Later in the hearing, the Respondent stated that it would also be seeking strike out on the basis of non-compliance with the Orders of Employment Judge Hunt (Rule 37(1)(c) of the ET Rules).

28. Ms Bam stated that most of the documents had been provided in October 2023 by email.

29. Mr Akram for the Respondent stated that he had not seen these emails and would take instructions. He mentioned that he had been instructed relatively late in the matter and there had been changes in the personnel dealing with the case at his instructing solicitors.

Claimant's witness evidence

30. Ms Bam confirmed that there would be no witnesses present for the Claimant. The Tribunal made clear to the Claimant that, to the extent any evidence from the Claimant was admitted, the Tribunal would need to take into account that the Claimant was not present to be cross-examined.

31. Ms Bam stated that she could ask the Claimant to attend the hearing.

Other hearing preparation

32. The Respondent acknowledged that it had not complied with aspects of the Hearing Preparation section of the CMOs (see paragraphs 29 to 31 of the CMOs). In particular, a neutral chronology had not been provided. Further a list of issues should have been provided.

33. The Claimant stated that a list of issues had now been received, but this had not been reviewed or agreed by the Claimant. The Respondent stated that it would provide this list of issues to the Tribunal.

Applications

34. The Respondent said that, as well as the strike out applications referred to above, the Respondent would also be making an application to strike out the Claimant's claims on the basis that the Tribunal does not have jurisdiction to hear them.

Applications to strike out under Rule 37(1)(c) and (d) of the ET Rules

35. The Respondent stated that the Claimant's claims should be struck out under Rule 37(1)(c) and (d) of the ET Rules on the grounds of non-compliance with orders and the claim not being actively pursued.

Application

36. The Respondent reiterated that there had been a number of things that the Claimant had been ordered to do by Employment Judge Hunt. Although Ms Bam and the Claimant had made efforts to do them and there had not been a total failure to comply, key Orders had not been complied with, or had been complied with late.

37. In particular, there was an absence of evidence that the Claimant had complied with Employment Judge Hunt's Orders regarding the provision of further information (paragraph 10 of the CMOs referred to above). The Respondent had been shown an email by the Claimant in this regard, but it was unclear who the email was from and who it was sent to. The Respondent made a similar point regarding the schedule of loss and an email regarding claimed commissions. The Respondent added that material that stood for the Claimant's evidence also only arrived yesterday – sometime after the November 2023 deadline set by Employment Judge Hunt.

38. The Respondent referred to paragraph 14 of the CMOs. The documents were meant to have been sent by 18 October 2023. However, there were a number of documents that had been passed on by Ms Bam today (the first day of the final hearing).

39. The Respondent stated that there was no evidence that these documents were sent by 18 October 2023. Further, the Respondent questioned the relevance of certain of the materials that had now been provided by the Claimant – for example, WhatsApp messages from Craig Davids. The Respondent did acknowledge that emails from 9 February 2023 regarding

marketing materials (and which had now been provided by the Claimant) were relevant, as they had been referred to by Helen Richardson in her witness statement.

40. As well as the Respondent's points about non-compliance with the Orders, it also referred to the absence of the Claimant. The Respondent stated that there had been no reasonable explanation for the non-attendance of the Claimant. Further to paragraph 31 of the CMOs, there was no evidence that any enquiry had been made of the Tribunal as to whether the Claimant could give evidence from South Africa, or that the Claimant had asked for a video link.

41. There had been a suggestion from the Claimant's representative that the Claimant was not required to attend. The Respondent stated that it had not seen anything of that nature.

Claimant's position

42. The Claimant stated that it had provided a number of emails. The Claimant was conscious that she was not to provide irrelevant information. The Claimant added that, although she had received the witness statements prior to yesterday, she had only received the passwords for them yesterday.

43. The Claimant stated that she could demonstrate that she had sent information required in the CMOs on 30 October 2023. A spreadsheet regarding commissions was also sent in October 2023. Ms Bam showed what she stated to be the relevant emails from her phone to Mr Akram and the Tribunal.

44. Ms Bam stated that she would have called the Tribunal or ACAS about the Claimant giving evidence from South Africa. Ms Bam said that she could not recall the details though. It had been a difficult year for her and she could not remember what had happened. Ms Bam stated that she was under the impression that the Claimant could not give evidence due to her location.

45. Ms Bam stated that the Claimant had sent her witness statement to the Respondent's solicitors some time ago. What had been sent yesterday was an update.

Decision

46. I decided not to strike out the Claimant's claims under Rule 37(1)(c) and (d).

47. There is clearly confusion as to what the Claimant had sent and what the Respondent's solicitors had received over the course of these proceedings.

48. In any event, there is insufficient evidence of prejudice to the Respondent as a result of delay or non-disclosure to justify the draconian step of a strike out on the basis of non-compliance with an order or orders. In my view, a fair hearing is still possible. Further, as a number of the substantive issues remain to be decided at a later date (should the matter get that far), there will be less drastic means of dealing with non-compliance than strike out. In light of this it would be disproportionate to strike out on this ground.

49. In terms of the non-attendance of the Claimant, she remains represented by Ms Bam. There are questions that the Claimant cannot answer and she cannot be cross-examined. However, these matters will be taken into account as part of any assessment of the Claimant's evidence. Ms Bam states that attempts were made to discover whether the Claimant could give evidence from South Africa, although Ms Bam cannot recall these. Even if no attempts were made, Ms Bam's attendance and the other engagement that the Claimant has otherwise shown in the proceedings means that it would be disproportionate to strike out the entirety of the Claimant's claims as a result of the Claimant not attending today.

50. In light of the above, I refused the Respondent's applications in this regard.

Remaining matters to be decided

51. Ms Bam stated that the Claimant was willing to attend and could be put on standby for that purpose. However, it was unclear whether the Claimant could give evidence from South Africa. The understanding, as stated by Employment Judge Hunt, and which I understood as well, is that it is not possible for the Claimant to provide evidence from South Africa.

52. In light of the time available for the hearing and the applications that were to be dealt with, there was, in any event, insufficient time for all of the substantive issues to be considered in full. As such, it was decided that the hearing should be repurposed to decide whether the Tribunal had jurisdiction to hear the Claimant's claim. If that was the case, then, the matter would need to be relisted for a further, full hearing.

53. The Respondent referred to its skeleton argument, dated 12 June 2024. In that skeleton argument, the Respondent sets out its contention that the Tribunal does not have jurisdiction to hear the Claimant's claim because "the Claimant did not provide services or work, at any point during her engagement, in the United Kingdom…". The Respondent asserts that the Claimant's engagement is not subject to UK employment law.

54. It is noted that, with respect to jurisdiction, the skeleton argument only deals with the unfair dismissal claim. There are other claims with respect to the unauthorised deduction of wages. It is unclear whether this claim is solely under ERA 1996 or whether it is also a breach of contract claim. Breach of contract is referenced in certain of the documents provided by the Claimant. Given the same fact pattern and arguments, and the nexus between unauthorised deduction of wages and contract claims, I have interpreted the Claimant's claims as including both an unauthorised deduction of wages claim under ERA 1996 and a separate (but of course connected) contract claim.

55. The witnesses who were present, Davinder Dhami and Helen Richardson, provided evidence. Only their evidence regarding jurisdiction was relevant today's issue and they were instructed to keep any answers to this topic.

56. On the second day of the hearing, Ms Bam asked that the hearing be postponed to allow for the Claimant to attend. Given that the hearing was part way through and the hearing was to focus on he jurisdiction point, I

decided that the hearing should proceed. In any event, it remined my understanding that the Claimant could not give evidence from South Africa.

Relevant facts - jurisdiction

57. The Claimant is based in South Africa and worked from South Africa for the entirety of her engagement with the Respondent.

58. Mr Dhami is the Managing Director of Xander Hendrix Healthcare (the trading name of the Respondent).

59. An agreement was entered into between the Respondent and the Claimant on 14 February 2020 (**Agreement**). This states that the Claimant was offered the position of "Business Manager – RSA/UK" within the Respondent. It goes onto say that the Claimant would be working under the company trading names Xander Hendrix Healthcare and Hearts Nursing Agency.

60. The arrangement was that the Claimant would recruit personnel who would then be placed in UK and Ireland healthcare settings. The personnel concerned would be predominantly based in the UK.

61. The Agreement refers to "The key terms of employment…". The Respondent denies that the arrangement with the Claimant was an employment arrangement. It says that the reference to "employment" was an error.

62. There are no governing law or dispute forum provisions in the Agreement.

63. The Agreement sets out a number of key points relating to the relationship between the Claimant and the Respondent, including the job title, key terms of employment, commission structure, the main purpose of the job, a non-exclusive list of the Claimant's main duties, the Claimant's office, sickness and holidays, and reporting.

64. In reality, this meant that the Claimant managed the administrative side of the arrangement, conducted research on relevant websites, used social media and pre-interviewed candidates. The last task would be done remotely.

65. Markets outside of the UK and Ireland were not, initially, explored by the Claimant, and she did not engage in any business travel throughout the arrangement.

66. The nature of the Claimant's work with the Respondent changed in March / April 2021. The Claimant's role became more in relation to the supply of international healthcare workers, particularly nurses, to countries such as the UK, the US and Saudi Arabia. However, the Claimant remained in South Africa throughout.

67. Neither Mr Dhami and Ms Richardson met the Claimant in person and all of their interactions were online or on the telephone.

68. In terms of payment, the Respondent paid the Claimant. The money went from the Respondent in £ Sterling but was paid to South Africa, where it was

paid in local currency (South African Rand) into the Claimant's South African bank account.

69. The Claimant did not pay tax (or make other relevant contributions, such as National Insurance) in the UK. A P60 End of Year Certificate was issued for the Tax year to 5 April 2022. This showed that no UK tax had been deducted. It is agreed that the Claimant paid tax (and other relevant contributions) in South Africa. It was the Claimant's responsibility to pay her own tax in South Africa. Mr Dhami stated in evidence that he was unsure why a P60 had been issued. Ms Richardson stated that it had been issued in error.

70. The Respondent did issue payslips to the Claimant. Again, these did not show any deductions for tax or other relevant contributions.

71. The Claimant had no entitlement to UK pension contributions from the Respondent. There had been an error at the beginning of the engagement where pension contributions had been taken from payments to the Claimant. However, this was corrected and the money returned to the Claimant. No further pension contributions were deducted from payments to the Claimant.

72. There was no provision that required the Claimant to relocate if required to do so.

73. The Claimant took South African public holidays. However, this was in the context of the ability of the Claimant to be flexible in relation to when she could take time off.

Law

74. Under Rule 37 of the ET Rules, the Tribunal may strike out all or part of a claim. It is in this context that the Tribunal considers the claims of unfair dismissal, unauthorised deduction of wages and breach of contract in the context of jurisdiction.

75. If the Tribunal does not have jurisdiction to hear one or more of those claims, it can strike them out as not having any reasonable prospect of success (Rule 37(1)(a) of the ET Rules).

<u>Unfair dismissal</u>

76. There is a right under the ERA 1996 not to be unfairly dismissed (section 94(1) ERA 1996). This right applies to employees as defined under section 230 ERA 1996, which means someone who works under a contract of employment.

77. ERA 1996 contains no express limitation on territorial jurisdiction. However, there are implied territorial limitations (see Lord Hoffmann's speech in *Lawson v Serco Ltd and two other cases* [2006] UKHL 3). The primary factor that the courts have looked at is the location of work of the Claimant.

78. Lord Hoffmann in *Lawson* divided employees into three categories for the purpose of establishing whether an employment tribunal has territorial jurisdiction to hear a claim of unfair dismissal under section 94(1) ERA 1996.

79. The first category is where the work is conducted in Great Britain. Here jurisdiction will usually be established. The second is where the employee performs work in multiple jurisdictions (described as peripatetic employees). The question here is whether the employee can be said to be based in (and therefore operating from) Great Britain. The third is those working and living outside Great Britain (so-called true expatriates). In this third category, it will only be in exceptional cases that an employment tribunal has jurisdiction over a claim in Great Britain.

80. In relation to each of the categories, the decision as to the limits on territorial jurisdiction will be based on an analysis of the entire factual matrix. Further, given the case law that has followed *Lawson*, although the three categories set out by Lord Hoffmann are a useful guide, it will be a question of fact and degree as to whether the connection with Great Britain will be sufficiently strong to overcome the general rule that the place of employment is decisive (see the comments of Lord Hope in *Ravat v Halliburton Manufacturing & Services Ltd* [2012] UKSC 1).

81. If an employee that both lives and works abroad, and wishes to bring a claim in an employment tribunal, there must be "an especially strong connection with Great Britain and British employment law before an exception can be made for them" (Lord Hope in *Ravat*). The employee will need to show that their employment relationship has a stronger connection with Great Britain than with the foreign country in which they work.

82. As set out in *Duncomb v Secretary of State for Children, Schools and Families (No 2)* [2011] UKSC 36, the test is whether the employee "has such an overwhelmingly closer connection with Britain and with British employment law than with any other system of law that it is right to conclude that Parliament must have intended that the employees should enjoy protection" (my emphasis). It is therefore a very high bar.

83. Mr Akram brought the Tribunal's attention to a judgment of Tribunal Judge Jack, acting as an Employment Judge in the case of *Holden v World Sailing (UK) Limited* (unreported, 22 August 2023), which applied a number of the principles outlined above.

Unauthorised deduction of wages

84. The right not to suffer an unauthorised deduction is contained in section 13(1) of the ERA. A claim can be brought by a "worker" (as defined) of an employer.

85. As stated, ERA 1996 contains no express limitation on territorial jurisdiction. As such, the same factors as set out above in relation to unfair dismissal under section 94(1) of the ERA will apply.

Breach of contract

86. The jurisdiction to deal with breach of contract claims was given to employment tribunals by the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 (**1994 Order**). It applies only to employees bringing claims against their employers (and not to "workers").

87. The 1994 Order contains no express provision regarding territorial scope. However, under Articles 3(a) and 4(a) of the 1994 Order, such a claim can only be brought if the contract claim is one "which a court in England and Wales would under the law for the time being in force have jurisdiction to hear and determine".

88. Part 6 of the Civil Procedure Rules (**CPR**) is relevant here. Although it concerns service, Part 6 of the CPR governs whether a court in England and Wales would have jurisdiction to hear and determine a contract claim.

89. An employment tribunal will have jurisdiction over a breach of contract claim just as a civil court in England and Wales has jurisdiction to hear a contract claim against a company if it is registered or incorporated in the England and Wales.

90. In certain circumstances, the courts have the discretion to refuse to hear a claim if that claim can be more conveniently brought in the courts of another country. This principle is sometimes called the doctrine of *forum no conveniens*.

91. In *Lawson*, Lord Hoffmann gave the view (albeit not necessarily binding) that the principle described above would not apply to disputes concerning the appropriate forum of a potential employment tribunal claim. Nonetheless, the operation of Articles 3(a) and 4(a) of the 1994 Order are, in my view, exceptions to Lord Hoffmann's view in this regard. This is because if a contract claim is not one that a court in England and Wales would have jurisdiction to hear as a result of the principle above, then it falls outside the 1994 Order and cannot be heard by the Tribunal.

Conclusions

92. As noted above, Mr Akram provided a helpful skeleton argument on the law relating to, amongst other matters, jurisdiction in this case. The jurisdiction elements focus on the Claimant's unfair dismissal claim under section 94(1) of ERA 1996.

93. However, there are other aspects to the claim that also need to be considered. As a consequence, I have analysed each head of claim separately.

<u>Unfair dismissal</u>

94. The Respondent states that the Tribunal has no jurisdiction to hear the Claimant's claim for unfair dismissal under section 94(1) of the Employment Rights Act 1996.

95. The conclusions that I reach are on the assumption that the Claimant falls within section 230 ERA 1996. However, I must make clear that I make no finding in this regard. What I am deciding is that, if the Claimant falls within section 230 ERA 1996, whether the Tribunal has the jurisdiction to hear the Claimant's claim under section 94(1) ERA 1996. If the Claimant does not fall within section 230 ERA 1996, then she cannot bring an unfair dismissal claim.

96. It is agreed that there is no provision regarding territory in the Employment Rights Act 1996.

97. It is also clear that the Claimant did not conduct her work in Great Britain and did not work in multiple jurisdictions. Nor did she commute from or be seconded from Great Britain to perform work abroad. She was, for the entirety of the relevant period, based in and worked from South Africa.

98. In light of this, the Claimant needs to overcome a high hurdle to establish that she is able to bring a claim in the employment tribunal. As set out in the case of *Ravat* and *Duncombe*, it is necessary for the Tribunal to conduct a comparative exercise to see if that high hurdle is overcome.

99. The Claimant was recruited in South Africa. Although the recruitment exercise was run from the UK, it was only ever envisaged that the Claimant would work from South Africa.

100. For the relevant period, the Claimant was based in South Africa and had her home there. She worked from her home in South Africa, conducting her duties remotely and not from the UK.

101. The Claimant was paid into her South African bank account and in South African Rand. She did not pay tax (or make other contributions such as National Insurance) in the UK. She paid tax in South Africa.

102. The Claimant took South African public holidays (although this is in the context of flexible holiday arrangements that the Claimant enjoyed as part of her arrangement with the Respondent).

103. On the other side of the ledger, the Respondent was in the UK. Further, her reporting line was stated in the Agreement to be to Mr Dhami, who was also based in the UK. As such, she was managed from the UK. Further, the people that she placed were often placed in the UK.

104. In my view, the facts that the Respondent and Mr Dhami are based in the UK, and that many of the recruitment placements were in the UK, are insufficient to meet the tests set out in *Ravat*, *Duncombe* and the other case law. She worked in South Africa and the other connections with South Africa as set out above meant that she did not have meet the high hurdle of having a much closer connection with Great Britain or its employment law.

105. In light of this, I find that the Tribunal lacks territorial jurisdiction and the Claimant's claim for unfair dismissal is struck out.

<u>Unauthorised deduction of wages</u>

106. Given that the same factors apply to the claim for unauthorised deduction of wages as they do for unfair dismissal, I find that the Claimant cannot bring a claim for the unauthorised deduction of wages.

107. Accordingly, her claim for the unauthorised deduction of wages is struck out.

Breach of contract

108. The Respondent suggested that the analysis with respect to the breach of contract should be the same as that for unfair dismissal and the unauthorised deduction of wages.

109. As with the previous section, the conclusions that I reach are on the basis that the Claimant is an employee in accordance with the 1994 Order. I make no finding as to whether the Claimant is an employee or not. If the Claimant is not an employee under the 1994 Order, then she cannot bring a breach of contract claim.

110. If she is an employee, then the analysis is as follows. The Respondent is based (and incorporated) in England and Wales. As such, and in accordance with Part 6 of the CPR, the Respondent can be validly served here. This means that, following Articles 3(a) and 4(a) of the 1994 Order, the Tribunal has territorial jurisdiction to hear the claim.

111. No point has been raised by the parties regarding *forum non conveniens* (see the description of this above). Accordingly, I leave this point open for further argument should the parties wish to raise it in the proceedings.

Remaining matters and next steps

112. In light of the above, the only remaining claim that the Claimant has concerns breach of contract.

113. I make further case management orders, including with respect to a final hearing, in a separate document.

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Employment Judge Din
18 July 2024

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RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON
6 August 2024

FOR EMPLOYMENT TRIBUNALS

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