EMPLOYMENT TRIBUNALS

Claimant: Aaron McNally

Respondent: Acumen International Media Limited

Heard at: **London Central (CVP)** **On: 23-24 January 2025**

Before: **Tribunal Judge Peer acting as an Employment Judge**

Representation:

Claimant: Miss Alice Defriend of Counsel
Respondent: Mr. Jason Searle of Counsel

JUDGMENT

(1) The respondent was the claimant's employer at the relevant time. The claim was therefore presented within the applicable time limits.

(2) The claimant worked wholly abroad and has not established sufficiently strong connection to Great Britain or British employment law so as to afford him protection under either the Employment Rights Act 1996. The claimant's claim is therefore dismissed in its entirety because the Tribunal does not have jurisdiction to hear it.

JUDGMENT and reasons having been given orally on 24 January 2025 and written reasons having been requested in accordance with Rule 60(4) of the Employment Tribunal Procedure Rules 2024, the following reasons are provided:

REASONS

INTRODUCTION AND CLAIM

1. The claimant worked in the United Arab Emirates (UAE) when he was notified on 30 May 2024 of his dismissal on notice with his employment ending on 30 June 2024. The respondent is a UK registered company engaged in the production and distribution of film. After a period of early conciliation between 20 August 2024 and 22 August 2024, the claimant presented his claim form on 2 September 2024. By way of his claim form,

the claimant claims unfair dismissal and unauthorised deductions from wages. The claimant claims he started employment with TBD Media Group Limited (TBD Media) on 1 June 2021 and remained employed by TBD Media until he was transferred to the respondent's employment in January 2024.

2. The respondent's defence to the claims is that it is not the claimant's employer. The respondent contends the claimant's employer when he was dismissed was TBD Film TV & Radio Production Services, a company registered in the UAE (TBD UAE) and a separate legal entity from the respondent, and in amended grounds of resistance pleads that employment of the claimant with TBD UAE commenced on 1 March 2023. The amended grounds set out that the claimant was employed by TBD Media between 1 June 2021 and 28 February 2023.

3. The respondent contends that the tribunal has no jurisdiction to consider the claimant's claims on the basis that the respondent is not the claimant's employer, the claimant has insufficient qualifying service to bring any claim of unfair dismissal against his employer and any claims against the respondent are out of time and the tribunal has no jurisdiction to hear the claimant's claims as he was employed and worked in UAE and is not entitled to the protection of the Employment Rights Act 1996.

4. On 6 December 2024, the parties were notified that Employment Judge Klimov had granted the respondent's application to convert the final hearing to a preliminary hearing in public to consider the following issues:

    - Employment status of the claimant;
    - Whether the claim was presented within the applicable time limit;
    - Whether the tribunal has territorial jurisdiction to consider the claim;
    - Case management, as appropriate.

HEARING

5. The hearing was a fully remote hearing by cloud video platform. Neither party objected to the hearing proceeding in this format. There were no material connection difficulties experienced during the hearing and the hearing proceeded effectively as a remote hearing.

6. I had available to me an indexed and paginated hearing bundle of 212 pages (HB) containing the claim form, response form, amended grounds of response and documents related to the claimant's employment. I had a written statement from the claimant dated 17 January 2025 together with a 7 page exhibits bundle. I had a written statement from Paolo Emilio Zanini (director and owner of respondent) dated 15 January 2025.

7. The claimant also provided a list of issues for the hearing and a 130 page authorities bundle (AB).

8. I heard evidence from the claimant and Paolo Zanini.

9. I heard submissions from Miss Defriend on behalf of the claimant and Mr Searle on behalf of the respondent.

ISSUES FOR DETERMINATION

10. The issues for determination were discussed and agreed as follows:

    - What was the identity of the claimant's employer at the relevant time?
    - Was the claim presented within applicable time limits?
    - Does the tribunal have territorial jurisdiction?

11. The parties agreed that the in relation to the claimant's status, the issue was not as to whether or not the claimant had the necessary employee status to bring claims of unfair dismissal and/or unauthorised deductions from wages under the Employment Rights Act 1996 but as to the identity of the claimant's employer at the relevant time. The respondent concedes that if the claimant remained employed by TBD Media, he was transferred to the respondent in January 2024.

12. Permission was granted for the respondent's amended grounds of resistance; the claimant raised no objection to the application and it was consistent with the overriding objective at this stage of the proceedings to permit the respondent to rely on the amended grounds stated to accurately represent the respondent's position in these proceedings.

FINDINGS

13. I considered all of the evidence before me and I found the following facts on a balance of probabilities. I have recorded the findings of fact that are relevant to the legal issues and so not everything that was referred to by the parties before me is recorded.

14. On 1 June 2021, the claimant commenced employment with TBD Media, a registered UK company (HB 54-75). The employment relationship was governed by a contract of employment entered into by TBD Media and the claimant. The contract included as relevant the following terms:

    - 2.1 - for its continuation until termination by either party on one month's notice in writing
    - 4 – the employee to serve as 'Business Development Manager' with duties as set out at 4.4 including 'duties normally or reasonably to be expected of a person in the Employee's position'
    - 5.1 – that the normal place of work was the registered office of TBD Media 'or such other place that the Company may reasonably require'
    - 5.2 – the employee agrees to travel on the Company's business (both within the UK and abroad)
    - 5.3 – that during the employment 'the Employee shall not be required to work outside the United Kingdom for any continuous period of more than one month'
    - 7.1 – salary of £40,000 gross per annum plus a commission structure as detailed

- 15.1 – notwithstanding clause 2, termination without notice at any time on payment in lieu of notice
- 16.1 – termination without notice for gross misconduct
- 27 – disputes to be governed by and construed in accordance with the law of England and Wales
- 28 – courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the agreement

15. Paolo Zanini gave evidence that he owned multiple businesses. He told the tribunal that he was the Chief Executive Officer (CEO) of TBD Media at the relevant time and that TBD Media is within a group structure controlled by a holding company. TBD Media is a UK registered company which has company number 08836953. Paolo Zanini is also the director and owner of the respondent which is a UK registered company with company number 15381524. Paolo Zanini's evidence was that TBD UAE is entirely outside the group structure and is different from other foreign offices in Germany and the US controlled by the holding company. Paolo Zanini referred to TBD UAE as an authorised reseller of TBD Media's products and services. Paolo Zanini gave evidence that he is the sole director and owner of TBD UAE.

16. On 29 April 2022, the UAE authorities issued a 'Professional License' for TBD UAE (HB 79-81) which records Paolo Zanini as owner.

17. Paolo Zanini owned and controlled the respondent, TBD UAE and TBD Media.

18. During oral evidence, it was put to Paolo Zanini that the contract of employment between the claimant and TBD Media had no fixed end date and would thus continue until termination in accordance with the contract. Paolo Zanini conceded that there was no written notice of termination. He said this was an error and that the person he had instructed to do this had not done so. Paolo Zanini gave evidence that the reason his instruction to terminate the contract and the failure to follow that instruction by another had not been set out in his written statement was because there was no written evidence such as email to validate this and so he didn't feel it would have held up. When it was put to him that the reason this was not in his written statement was because it was not what happened, Paolo Zanini said that it was what had happened and referred to exchanges about the claimant going off payroll and the claimant's concern for this to happen as quickly as possible and that he was sure the claimant was no longer an employee as he didn't pay UK tax. The non-payment of UK tax is not determinative as to whether or not the claimant was an employee of TBD Media or TBD UAE. That the claimant went off payroll for tax purposes is not determinative as to whether or not he was an employee of TBD Media.

19. I find that there is no written or documentary evidence of notice of termination of the contract of employment between the claimant and TBD Media. Even on Paolo Zanini's oral evidence introduced at the hearing and not set out in his written statement which causes me to treat it with circumspection, there was no notice of termination of contract communicated to the claimant. By contrast, the contract was varied in writing. I find that there was no termination of the contract of employment

which was in accordance with the provisions of the contract. I therefore find that the contract of employment was not terminated at this time. The contract was sufficiently flexible to enable the claimant to be required to travel to Dubai and also to work abroad albeit not for any period of more than one month.

20. From 1 January 2023, the claimant moved to Dubai. Paolo Zanini's written statement sets out that this was to 'assist with the key aspects of setting up' TBD UAE and remained an employee of TBD Media at this time. Paragraph 7 of the written statement refers to this as a new role and that this change of role was communicated in a letter dated 10 January 2023 (Variation letter).

21. The claimant gave evidence that he was requested to move to UAE to set up operations there at the behest of Paolo Zanini. The claimant did not agree that he had requested to move to UAE. There is no indication on the evidence available to me that the claimant was not content with the move to UAE and as referred further below he enjoyed tax benefits from working in UAE and did not pay UK tax whilst working there. The claimant said that his understanding was that he was to establish a physical presence there but that if the office was not viable, he expected he would be recalled to London. The claimant remained working in UAE until his employment ended 18 months later.

22. A document headed as an agreement between TBD Media and TBD UAE records entry into the agreement on 1 February 2023. TBD UAE is referred to as a company incorporated under the laws of the UAE. The agreement sets out that TBD UAE is responsible for operations in the UAE including employment of personnel such as the claimant and that given issues with the Wage Protection System (WPS) in UAE, TBD UAE is temporarily unable to fulfil its financial obligations concerning the claimant's salary and commission payments so TBD Media will cover the claimant's salary and commission on TBD UAE's behalf until this is resolved. Clause 3.2 sets out that the claimant 'shall remain an employee' of TBD UAE during the term of the Agreement and the payment does not create an employment relationship between the claimant and TBD Media. The respondent accepts that the claimant did not have sight of this agreement.

23. On 3 February 2023, the claimant signed the Variation letter. There is no dispute that the contract of employment was varied by way of the Variation letter. The variations were that the claimant's role was Managing Director, MENA with an increased salary and changes to the commission structure. The letter was on TBD Media letterhead. The Variation letter itself makes no reference to duties of the role as confined to setting up business in the UAE or as time limited or project limited in any way. The Variation letter makes no reference to any potential change of employer or indication of any forthcoming termination of the contract.

24. On 17 February 2023, the claimant signed and placed his thumbprint on a work permit document issued by UAE authorities (HB 88-90). The work permit refers to an offer and contract concluded under the offer. The details include that the claimant is to work for TBD UAE in a role as an 'Electronic Sales Assistant'. This is clearly not an accurate description of the claimant's

job role in relation to his work in Dubai. The notice period was one month. The monthly wages are set out in Emirati Dirhams or AED as a basic salary of 50000 AED, total salary of 56500 AED with housing allowance of 5000 AED and transport allowance of 1500 AED. Using an exchange rate of 4.54 AED to 1 GBP – which was discussed at the hearing and is as per Xe.com, this equates to a monthly total salary of £12,444.93. This is not consistent with the pay the claimant received.

25. During cross-examination, it was put to the claimant that the work permit document superseded the contract of employment with TBD Media. The claimant gave evidence that it was his understanding that this was an administrative requirement of working and operating in UAE and he did not accept the work permit superseded his contract with TBD Media.

26. Paolo Zanini said that the contact of employment was as per the work permit but also accepted in evidence that the work permit document did not accurately reflect the terms of employment. The work permit document did not correctly reflect the pay term.

27. The amended grounds of resistance set out that employment with TBD Media ended on 28 February 2023 and the claimant commenced employment with TBD UAE on 1 March 2023.

28. The claimant received a payslip from TBD Media dated 28 February 2023.

29. Thereafter the pay arrangements were different and the claimant raised 'invoices' for payment of basic salary and commission addressed to TBD Media and sent to the TBD Media finance manager, Dev Barman. The claimant accepted he was paid in the local currency but said that he was paid by providing invoices to TBD Media. Emails between Dev Barman and Carol Gordon, TBD Media HR Manager include an email of 29 March 2023 from Carol Gordon stating, 'I'll just take him off payroll and he will have to look after his own tax affairs.' The respondent's evidence is that for the period March to June 2023, these invoices were raised in order to address issues with payment in UAE through the WPS. Paolo Zanini gave evidence that thereafter the documents the claimant calls 'invoices' addressed to TBD Media were not true invoices but merely a breakdown of payments due and that TBD UAE were responsible for the claimant's salary. Paolo Zanini said the invoices did reflect the monies owed but the claimant was paid from TBD UAE's bank account via the WPS system.

30. There are three salary certificates in the bundle. Paolo Zanini gave evidence that two were draft. A salary certificate dated 18 January 2024 setting out that the claimant 'is an employee of our Group since 1st June 2021 and our Dubai Company since the 1st Jan 2023' signed by Bethany Jackson, HR Manager was reviewed by him but he had noticed the errors and 'is' should have read 'was'. Paolo Zanini also gave evidence that this was drafted by the claimant and 'done deliberately to be used against me'. An email from the claimant dated 22 November 2023 to the TBD Media finance manager refers to getting a salary certificate signed and stamped 'so that I can (finally!) secure finance.' I think it more likely the salary certificate was to facilitate finance for the claimant and at this point his presence in UAE was

more than initial or temporary. It is not clear how the salary certificate was supposedly intended to be used against Paolo Zanini.

31. Paolo Zanini said that the work done for TBD UAE after the initial period that the claimant was in UAE was completely different and that he was running the operation and the office with staff. The claimant's evidence was that his work was for the benefit of the group not TBD UAE and was essentially the same as that done in the UK. He gave an example of a client he continued to work with. Paolo Zanini was asked a number of questions about this during cross-examination and gave evidence that the work in Dubai was for the benefit of TBD UAE as it earnt commission on sales as an authorised reseller of TBD Media products. Paolo Zanini also referred to other sources of income for TBD UAE but there was no documentary evidence of that. I find that work done in UAE was for the benefit of TBD Media given it was to secure sales of TBD Media's products. I accept that there was a benefit to the legal entity of TBD UAE given it earnt commission on sales generated. I also find that the claimant was operating and working in Dubai in a changed role where he was responsible for running an office and managing staff not merely generating sales.

32. During this period, the claimant had a TBD Media group email address and reported to Paolo Zanini who used a TBD Media group email address.

33. The claimant gave evidence that throughout he reported to Paolo Zanini. There were a number of emails sent around the end of 2023 and early 2024 about the 'rebrand' to Acumen. The claimant was included on some of these emails including an email requiring staff to update LinkedIn and email signatures to 'reflect that you are an employee of Acumen Media'. Paolo Zanini gave evidence that the claimant would have understood that he was not included in this instruction and did not accept that the only reasonable reading of the email was either that he was and instructed as an employee to reflect that he was now an employee of Acumen or that people were being asked to falsely represent that they were employees of Acumen.

34. An email of 20 February 2024 from Paolo Zanini to three recipients including the claimant and a person at the office in Germany was shown to Paolo Zanini. All email addresses are Acumen. The email refers to 'the company' and 'we employ almost 100 people' asking them to engage with the content and marketing push about Acumen. The email includes a list to 'check who hasn't done it' which includes the claimant's name and two others indicated as Dubai. Paolo Zanini did not accept that the email was on the basis that the claimant was included as an employee of the company and said that it was important that TBD UAE as an authorised reseller was engaging with the marketing push also but accepted the email did not set this differentiation out.

35. On 30 May 2024, the claimant was notified by email that his employment was to be terminated on a month's notice. An email of 30 June 2024 confirms the contract as terminated. The emails were sent by Paolo Zanini from an Acumen email address to the claimant at an Acumen email address and signed off by Paolo Zanini as CEO of Acumen. Paolo Zanini said that given he owned multiple businesses and acted in several different capacities but it made practical sense to use one email account and that the

claimant would understand that the email was sent to him as an employee of TBD UAE based on the content of the email and generally as the claimant knew Paolo Zanini was also director of the UAE company.

36. The email of 30 June 2024 refers to 'the company standard payment terms for any commission'. Paolo Zanini accepted that the work permit document made no reference to commission. The email refers to a debt paid as an advance which the claimant owed to the company.

37. I find that the claimant worked in the UAE from January 2023 until termination of employment on 30 June 2024. I find that his work was similar to that undertaken in the UK in terms of generating sales but that he also had other responsibilities over the office in the UAE and managing staff there and more broadly generating and establishing business and presence in the MENA region. This role was accepted to be one done under the original contract of employment for a period whilst in UAE. There was no clear evidence of a point in time where this distinctly changed and it remains commensurate with the broad duties set out in the original contract of employment. I therefore find that at the relevant time the claimant's place of work was UAE. The claimant was paid in local currency into a bank account in the UAE. The monies were requested from TBD Media and then paid to him via TBD UAE via the WPS as was required to comply with local law. I find that the claimant did not pay UK tax. I find that the work was done directly under the auspices of TBD UAE with some benefit to that entity but was clearly work done that was of benefit to TBD UK and the group overall.

38. The claimant had a work permit which was necessary for him to work in the UAE. Whilst I have no evidence as to the law in UAE and am therefore cautious as to making any findings, the parties do not dispute that this work permit was required for the claimant to work in the UAE and that work had to be done through a UAE company. Taking the evidence overall, I find that the presentation of employment by TBD UAE was done to comply with local law and the work permit document relied upon by the respondent as reflecting the contract of employment did not reflect the reality of the relationship. Paolo Zanini acknowledged in evidence that the work permit document did not reflect the reality of the relationship.

39. I place limited weight on the 1 February 2023 agreement as reflecting the employment relationship given this was not a document seen or known about by the claimant. In circumstances where the claimant was signing up to a variation of contract, there seems to me no good reason why it would not also be communicated to him that in fact he had a new employer and I find it of significance that there was no such communication. There is no written evidence otherwise to confirm the change in employer or indeed the termination or novation of the original contract of employment. I find that the reality of the relationship is that the claimant was employed by TBD Media under the contract of employment entered into when employment commenced in June 2021. In so far as the place of work had altered, I find this to be a variation of that contract by conduct in that the claimant was required to establish and develop the presence in UAE and continued to work there.

40. I also find that at all times the claimant reported to Paolo Zanini and at no point was this on the basis of Paolo Zanini presenting as director of TBD UAE as at all times TBD Media group or Acumen sign offs were used. I do not accept the evidence that emails expressly directed at employees of the company from Acumen were obviously or even somehow to be read or interpreted on receipt by the claimant as directed at him as an employee of TBD UAE. I find that the parties acted seamlessly and consistently throughout the relationship as if the employment relationship was with TBD Media and thereafter Acumen or the respondent. The work permit document and payment via WPS was a necessary component of working and operating in UAE to comply with local law and there is no other real evidence apart from the position asserted in these proceedings to indicate intention to alter the identity of the employer.

41. On 20 August 2024, the claimant approached ACAS and early conciliation ended on 22 August 2024. On 2 September 2024, the claimant presented his claim to the tribunal.

42. The claimant has filed a complaint in the UAE. The claimant said that these proceedings were as he was paid in the UAE via TBD UAE via the WPS system and this was his option to recoup those monies.

LAW

43. Section 13 of the Employment Rights Act 1996 ("the Act") gives workers the right not to suffer unauthorised deductions from their wages. Section 23 provides that the right is enforceable by way of complaint to the Tribunal. The claim must be presented before the end of a period of three months of the date of payment of the wages from which deduction was made, or within such further period as the tribunal considers reasonable where the tribunal is satisfied that it was not reasonably practicable to present the complaint before the end of the three month period.

44. Section 94 of the Employment Rights Act 1996 ("the Act") gives employees a right not to be unfairly dismissed. The right is enforceable by way of complaint to the tribunal. Section 111 provides that the claim must be presented before the end of a period of three months beginning with the effective date of termination, or within such further period as the tribunal considers reasonable where the tribunal is satisfied that it was not reasonably practicable to present the complaint before the end of the three month period.

45. Section 95 makes provision for the circumstances in which an employee is dismissed including the contract under which he is employed being terminated by his employer with or without notice; or the employee terminates the contract in circumstances in which they are entitled to terminate it without notice by reason of the employer's conduct. The right is enforceable by way of complaint to the Tribunal.

46. Section 97 sets out that the 'effective date of termination' is the date on which notice expires where the contract is terminated by notice or the date on which the termination takes effect where the contract is terminated without notice.

47. Section 230 of the Employment Rights Act 1996 ("the Act") provides that for the purposes of the Act '"employee" means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment' and '"contract of employment" means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.'

48. A contract exists if certain requirements are met which are: intention to create legal relations; offer; acceptance; consideration and sufficient certainty as to the terms. Contracts can be formed, varied and terminated through express agreement, whether in writing or orally. Contracts can also form and be varied by conduct such as, for example, where an employee is issued with a new contract and works under it so acceptance is implied even though the employee has not signed the contract. The test as to whether there is a contract in existence is objective. The overall factual matrix can be considered to determine the terms of a contract of employment including the subjective states of mind of the parties.

49. In determining the terms and conditions of a contract of employment, the starting point where there is a written contract is that the written contract is definitive. The exception is where the written document does not reflect the reality of the relationship or is a sham, Autoclenz Ltd v Belcher [2011] UKSC 41.

50. In Dynasystems for Trade and General Consulting Ltd and ors v Moseley [2018] UKEAT/0091/17/BA the Employment Appeal Tribunal held that the principles in Autoclenz had been correctly applied so as to find that a person's employer was in reality a UK company rather than a Jordanian company and the express terms of the contract did not reflect the actual agreement between the parties. The employee had commenced work under a contract signed with the Jordanian company but at the same time had a letter of authority signed by the UK company, dealt exclusively with the UK company, took instructions from the UK company and was held out as working for them even though paid by the Jordanian company. There was good evidence that at no stage had the companies behaved as if the employee were employed by the Jordanian company.

51. In Clark v Harney Westwood and Riegels and ors , 2021, IRLR 528 the EAT held that an employee's legal employer was the partnership named in her contract and not a Cayman Islands partnership that applied for and was named on work permits to comply with local law that she had not seen. The EAT held such unseen documents should be viewed with caution. The EAT reviewed relevant authorities concerning identifying the employer and gave guidance as to the correct approach to identifying the employer when this is in dispute as follows: where the only relevant material is documentary the question as to whether A is employed by B or C is a question of law; where (as is likely in most disputes) there is a mixture of documents and facts to consider, the question is a mixed question of law and fact and all the relevant evidence is to be considered; any written agreement drawn up at the inception of the relationship is the starting point and that must be considered as to whether that truly reflects the parties' intentions; if the written agreement points to B, the assertion that C was the employer

requires consideration of whether there was a change and if so how and it may be relevant to consider whether the parties seamlessly and consistently acted throughout the relationship as if the employer was B not C as this could be evidence of what was agreed.

52. In Patel v Specsavers Optical Group Ltd EAT/0286/18, the EAT held that a well-established principle of employment law is that in general terms an employee cannot simultaneously have two employers.

53. The Employment Rights Act 1996 is silent as to its territorial limitation. The extent of the Employment Rights Act 1996 is Great Britain i.e. England, Wales and Scotland. The extent is the reason reference is made to connection with British employment law.

54. In Lawson v Serco Ltd [2006] UKHL 3, the House of Lords considered the territorial scope of section 94(1) of the Employment Rights Act 1996 from the starting point that some territorial limitations had to be implied on the basis that it was *'inconceivable that Parliament was intending to confer rights upon employees working in foreign countries and having no connection with Great Britain'*. The HL refers to the paradigm case for the application of section 94(1) intended by Parliament as the employee working in Great Britain and at paragraph 36 that: *"The circumstances would have to be unusual for an employee who works and is based abroad to come within the scope of British labour legislation"* and at paragraph 37 that it would be unlikely someone working abroad would be within scope unless working for an employer based in Great Britain but that even so *"The fact that the employee happens to be British or even that he was recruited in Britain, so that the relationship was "rooted and forged" in this country, should not in itself be sufficient to take the case out of the general rule that the place of employment is decisive. Something more is necessary."*

55. In Duncombe v Secretary of State for Children, Schools and Families (No.2) [2011] IRLR 840, SC, Lady Hale summarised the principles derived from Lawson as follows: "*It is therefore clear that the right will only exceptionally cover employees who are working or based abroad. The principle appears to be that the employment must have much stronger connections both with Great Britain and with British employment law than with any other system of law. There is no hard and fast rule and it is a mistake to try and torture the circumstances of one employment to make it fit one of the examples given, for they are merely examples of the application of the general principle."* The case concerned staff working in European schools for children of officials and employees of the EU and it was held that there was an overwhelmingly closer connection to UK law given the factors of a UK employer, a contract with provision for UK law to apply and that the staff were working in enclaves with no local connection.

56. In Ravat v Halliburton Manufacturing Services Ltd [2012] UKSC 1 at paragraph 27 , Lord Hoffman stated that, "*the starting point…is that the employment relationship must have a stronger connection with Great Britain than with the foreign country where the employee works. The general rule is that the place of employment is decisive. But it is not an absolute rule. The open-ended language of section 94(1) leaves room for some exceptions where the connection with Great Britain is sufficiently strong to*

show that this can be justified. The case of the peripatetic employee who was based in Great Britain is one example. The expatriate employee, all of whose services were performed abroad but who had nevertheless very close connections with Great Britain because of the nature and circumstances of employment, is another." The reason for the exception is explained at paragraph 28 as *"the connection between Great Britain and the employment relationship is sufficiently strong to enable it to be presumed that, although they were working abroad, Parliament must have intended that section 94(1) should apply to them."*

57. In Jeffery v British Council; Green v SIG Trading Ltd [2018] EWCA Civ 2253, the Court of Appeal referred to factors connecting the employment with Great Britain being especially strong to displace the territorial pull of the place of work where a person is a 'true expatriate' in the sense that they both live and work abroad as compared with a 'commuting expatriate' being the category addressed in Ravat where the person was based in the UK but worked abroad. This calls for a comparative exercise.

58. In Bamieh v Foreign and Commonwealth Office and others [2019] EWCA Civ 803, the Court of Appeal referred to the need for *"assessment of the strength of connection with Great Britain and British employment law is one of fact and degree calling for an intense consideration of the factual reality of the employment in question. There is no hard and fast rule; the application of the principle/s hinges on the individual circumstances."*

59. In Vaughan v Modality Partnership 2021 ICR 535, EAT, the EAT confirmed that the core test in considering applications to amend is the balance of injustice or hardship in allowing or refusing the application taking account of all the circumstances. In the leading case of Selkent Bus Co Ltd v Moore 1996 ICR 836, EAT, the Employment Appeal Tribunal explained that in conducting the balancing exercise relevant factors included the nature of the amendment, the applicability of time limits, and the timing and manner of the application.

ANALYSIS AND CONCLUSIONS

Was the respondent the claimant's employer?

60. I turn first to consider the issue of whether the respondent was the claimant's employer. I address this issue first as a claim for unfair dismissal can only lie against an employer and must be brought within the relevant time period. I refer to my findings above and thereby conclude that the claimant was employed under a contract of employment where by the employer remained TBD Media until employment transferred to the respondent and accordingly, the employer was the respondent at the time of dismissal and when employment terminated.

Does the tribunal have jurisdiction to hear the claimant's claims given he worked in UAE?

61. I turn to consider the issue of territorial jurisdiction. The assessment as to whether the Tribunal has territorial jurisdiction is applicable to both the claimant's unfair dismissal and unauthorised deductions complaints under the Employment Rights Act 1996. Although the legislation is silent on

territorial jurisdiction, the leading case of Lawson v Serco sets out principles which have been developed and applied by the courts in other cases.

62. Lawson v Serco provides that where a person works wholly abroad it is an exception to find that the Tribunal has jurisdiction to hear claims. The case law further provides that the assessment requires demonstration of a 'sufficiently strong' connection to Great Britain and British employment law such that the case is one Parliament must have intended was to be afforded the protection of the Acts. There was no real dispute as to the place of work and I refer to my finding that the claimant worked wholly abroad and in UAE at the relevant time. The assessment requires a consideration and comparison of circumstances so as to decide whether the pull is stronger to Great Britain and British employment law so as to displace the connection to UAE being the claimant's place of work.

63. I refer to all my findings above. The claimant's employer was a UK company. The claimant was recruited and the employment relationship begun- "rooted and forged" - in the UK. The arrangements initially were to set up business in the UAE but thereafter a sense of permanency developed as the claimant remained living in the UAE and performing his work wholly there. The work done was primarily to benefit the UK entity in terms of increased sales in the region although there were clearly UAE based clients and the claimant's responsibilities related to generating business across the Middle East and operating the office in UAE which carried different responsibility from the work he was doing initially when based in the UK.

64. The claimant is a UK national only able to work in UAE with permission of the UAE authorities. The claimant was also engaged by a UAE company for the purposes of compliance with local law. The key features of his employment were local in the sense that he was paid in local currency. The contract of employment provides for non-exclusive jurisdiction. The claimant has the option to enforce key provision being his pay arrangements in UAE. The claimant has brought proceedings in UAE to recoup monies.

65. The factors relied upon as pulling the connection away from the place of work in UAE to Great Britain is that the employer was a UK company and the employee a UK national with the relationship forged in the UK and a contract subject to UK law.

66. Whilst the need is to consider the factual reality of the employment in question rather than try and make it fit other examples, the case law is instructive. In Jeffery, the Court of Appeal upheld the conclusion of the EAT that there were factors which outweighed the pull of the territorial place of work including a civil service pension and removal of any tax benefits of being an expatriate worker. A key factor was also the nature of the work done by the employer which was the British Council. The claimant works for a purely commercial operation and private entity which is not any form of entity or public body or with any equivalent remit to a body such as the British Council. The claimant enjoyed tax benefits of being an expatriate worker in UAE and did not pay UK tax whilst working in the UAE.

67. The claimant relied on Lodge v Dignity & Choice in Dying and anor [2015] IRLR 184. In this case an employer enabled an employee to work in

Australia as her mother was unwell. The employee who was an Australian citizen worked remotely for her UK employer and all her work was directly for the benefit of that UK employer, the nature of her work did not change, she attended meetings in London from time to time; she paid tax in Australia. The tribunal was held to have territorial jurisdiction in circumstances where the employee switched from being a physical employee in a London office to a virtual employee in Australia. I refer to my findings above and consider that the claimant experienced more changes than that type of switch in relocating to UAE. The nature of the claimant's role evolved, he had responsibility for generating business and he was in a different factual position from the claimant in Lodge with regard to the features of the work done.

68. Considering the features of the claimant's employment and his circumstances and the factors put forwards said to indicate pull to Great Britain and British employment law and weighing these up with all the features of the factual reality of the employment relationship, I have concluded that the place of work/UAE is not outweighed or displaced by any especially strong factors connecting the employment to Great Britain. The claimant has not demonstrated that he has a sufficiently stronger connection to Great Britain and British law than to UAE, his place of work.

69. I have concluded that the claimant's circumstances having considered relevant factors individually and cumulatively do not amount to circumstances where an exception should be made when the claimant worked wholly in UAE and that 'something more' has not been identified. I am satisfied that it is not consistent with Parliamentary intent to enable the claimant to bring his claims before this tribunal and I have therefore concluded that the tribunal does not have jurisdiction to hear his claims.

Accordingly, my judgment is that:

70. The respondent was the claimant's employer at the relevant time. The claim was therefore presented within the applicable time limits.

71. The claimant worked wholly abroad and has not established sufficiently strong connection to Great Britain or British employment law so as to afford him protection under the Employment Rights Act 1996. The claimant's claim is therefore dismissed in its entirety because the Tribunal does not have jurisdiction to hear it.

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Tribunal Judge Peer acting as an Employment Judge

Date **25 February 2025**

JUDGMENT SENT TO THE PARTIES ON

.....28 February 2025.....

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FOR THE TRIBUNAL OFFICE