EMPLOYMENT TRIBUNALS

Claimant: Mrs Alexandra Fraser

Respondent: Ministry of Defence

Heard: by CVP in Birmingham On: 30th January 2025

Before: **Employment Judge Codd**

Appearances

For the Claimant: Mr Josua Yetman (Counsel) – Acting Pro Bono
For the Respondent: Mr Dominc Bayne (Counsel)

JUDGMENT

1. The respondent's application for strike out fails and is dismissed.

2. The Tribunal has Jurisdiction to hear the claim under S47B of the Employment Rights Act 1996.

Employment Judge **Codd**

04.03.25

Sent to the parties on

For the Tribunal

Reasons

1. The claimant brings a claim of Whistleblowing Detriment under S47B of the Employment Rights Act 1996. These reasons deal with an application for strike out, regarding the extra-territorial application of those provisions. The respondent argues that the claim vests in another jurisdiction and is therefore outside the jurisdictional reach of the Tribunal. I heard this matter on the 30th of January 2025 and reserved my decision.

Background

2. The claimant is married to a serving British soldier who was posted to Cyprus as part of his deployment, in approximately late 2021 or early 2022. The claimant accompanied him. The claimant is a trained nurse registered with and regulated by the Nursing and Midwifery Council (NMC) in the UK. The claimant applied for the position of a Nurse working out of the Dhekelia Group Practice (within the UK Military base on Cyprus). She was successful and employed between 24th May 2022 and the 26th of February 2024.

3. The claimant was dismissed when her husband was posted elsewhere. This is because eligibility to perform the role was in part dependant upon the applicant being a family member of a serving British personnel (deployed in Cyprus) and a UK national.

4. The role undertaken by the claimant was as a band F nurse (UK Band 6 equivalent) within the base. The clinical profile was to treat the civilians accessing the medical facilities within the two UK military bases on the Island of Cyprus. She was principally based at the Dhekelia base.

5. Dhekelia base is what is known as the "Sovereign Base Area (SBA)." This is a British Overseas Territory established in 1960 by way of international treaty.

6. The SBA has its own civilian governance and legislations. These in part mirror many provisions of UK law. It is an established principle of the 1960 treaty that the SBA has its own Sovereign Jurisdiction.

7. There exist a number of Ordinances (effectively statute) within the SBA, which give rise to employment rights for the civilians working in the SBA. There is an Industrial Tribunal which can resolve employment disputes and is said to have exclusive jurisdiction to do so, for the civilian workforce. It is common ground that there is no equivalent statutory protection within the SBA Ordinances for 'Whistleblowing Detriment'.

8. The claimant has no remedy within the SBA for her claims as they are not protected by the SBA law. There is no mechanism to bring such a claim. However, the claimant argues that in effect her terms of employment and realities of engagement, tied her to the UK to such a degree, that she can assert the extra-territorial reach of the ERA 1996 and consequently seek a remedy in this Tribunal.

9. It is not necessary for me within the scope of this Judgment to consider the specific nature of the Whistleblowing claims in any particular detail, or whether the claim itself has any particular merits. Save in so far as it relates to the UK connection and employment relationship I shall not discuss the specifics of her allegations, or timings. They are not relevant to this determination. However, the claimant asserts that during the course of her employment, she made a number of protected disclosures to her line managers and/or the regulator, for which she alleges she suffered a detriment as a consequence.

Preliminary Matters

10. At the commencement of the hearing, it was apparent that I had not received a substantial quantity of the material for the hearing. This included both Counsel's skeleton Arguments, the Witness statement bundle and a bundle of authorities numbering some 534 pages. This was in addition to the substantial bundle which I had considered prior to the hearing. It was therefore necessary to take some further reading time prior to the hearing commencing.

11. It was apparent that the one day listing for such an application was woefully inadequate. It was the consensus of all parties that the hearing should progress if that was at all possible. Given the complexity of the issues in this matter, I indicated that it would be my intention to reserve my decision (this was supported by all), thus allowing the entire day to be used for the evidence and submissions.

Issues

12. The claimant invites me to determine three essential issues within their application:

a. What is the constitutional status of the SBA in relation to the UK? The claimant has also raised the interaction between this and the ECHR in terms of applicability of UK legislation.
b. Whether the extra-territorial application of the relevant provisions of the ERA is legally permissible in certain circumstances?
c. if so, whether the strength of the connection to the UK, and the ERA itself, in this case outweighs any links to other/local law?

Evidence

13. During the course of the hearing I was able to hear evidence from the Claimant, in support of her comprehensive witness statement.

14. I also heard evidence from Alkiviades Socratous, the Acting Head of Civilian HR & Customer services for BFC and the SBA. Although not directly involved in the recruitment of the claimant, he was able to speak to the administrative functions and distinctions which applied to the SBA and his interpretation of the claimant's status.

15. I also heard brief evidence from Niel Furber who is the Senior Revenue Officer for the SBA. He provided context around wages and taxation. It was only necessary to hear brief evidence from him.

16. All of the witnesses I heard from provided a knowledgeable and straight forward account. I make no adverse findings about any witness as they all endeavoured to assist me based on their knowledge of the situation.

17. Following the conclusion of the evidence, both advocates addressed me for over an hour each on the legal elements of their claim, speaking to their written documents and highlighting the relevant matters within the authorities bundle which they relied upon. Their arguments were helpful and detailed and limited to the salient points.

Legal Principles

18. Rule 37 of the Employment Tribunal Rules of Procedure 2024 enables a Tribunal to strike out a claim, where it has no Jurisdiction to hear the claim.

19. There is no dispute that the functions and performance of the contract were carried out in another Jurisdiction. In those circumstances the starting point is that the ERA would not apply as a general rule.

20. In ***Lawson V Serco [2006] ICR 250*** the principle was considered and an exception to the general rule was advanced. The exception to the general rule is where the

individual employee can establish a sufficiently strong connection between their employment and the UK, and UK employment law, to enable the Tribunal to interpret that parliament would have intended the Tribunal to have jurisdiction to deal with such a claim.

21. I have been referred to the comments of Underhill LJ in ***British Council V Jeffery [2018] EWCA Civ 2253*** as a composite authority on the approach which should be taken in determining the 'territorial pull' of a claim and his comments bear repeating here:

"2. The question of the territorial reach of British employment legislation has notoriously given rise to problems in recent years and has produced a plethora of reported cases, including one decision of the House of Lords and two of the Supreme Court – Lawson v Serco Ltd [2006] UKHL 3, [2006] ICR 250; Duncombe v Secretary of State for Children, Schools and Families (no. 2) [2011] UKSC 36, [2011] ICR 1312; and Ravat v Halliburton Manufacturing & Services Ltd [2012] UKSC 1, [2012] ICR 389. The effect of those decisions has been fairly recently reviewed in this Court in Bates van Winkelhof v Clyde & Co LLP [2012] EWCA Civ 1207, [2013] ICR 883, and Dhunna v CreditSights Ltd [2014] EWCA Civ 1238, [2015] ICR 105. It will not be necessary in these appeals, and would indeed be likely to be positively unhelpful, to attempt a further comprehensive survey of that well-travelled ground. The position as now established by the case-law can be sufficiently summarised for the purpose of the cases before us as follows:

(1) As originally enacted, section 196 of the Employment Rights Act 1996 contained provisions governing the application of the Act to employment outside Great Britain. That section was repealed by the Employment Relations Act 1999. Since then the Act has contained no express provision about the territorial reach of the rights and obligations which it enacts (in the case of unfair dismissal, by section 94 (1) of the Act); nor is there any such provision in the Equality Act 2010.

(2) The House of Lords held in Lawson that it was in those circumstances necessary to infer what principles Parliament must have intended should be applied to ascertain the applicability of the Act in the cases where an employee works overseas.

(3) In the generality of cases Parliament can be taken to have intended that an expatriate worker – that is, someone who lives and works in a particular foreign country, even if they are British and working for a British employer – will be subject to the employment law of the country where he or she works rather than the law of Great Britain, so that they will not enjoy the protection of the 1996 or 2010 Acts.

This is referred to in the subsequent case-law as “the territorial pull of the place of work”. (This does not apply to peripatetic workers, to whom it can be inferred that Parliament intended the Act to apply if they are based in Great Britain.)

(4) However, there will be exceptional cases where there are factors connecting the employment to Great Britain, and British employment law, which pull sufficiently strongly in the opposite direction to overcome the territorial pull of the place of work and justify the conclusion that Parliament must have intended the employment to be governed by British employment legislation. I will refer to the question whether that is so in any given case as “the sufficient connection question”.

(5) In Lawson Lord Hoffmann, with whose opinion the other members of the Appellate Committee agreed, identified two particular kinds of case (apart from that of the peripatetic worker) where the employee worked abroad but where there might be a sufficient connection with Great Britain to overcome the territorial pull of the place of work, namely (a) where he or she has been posted abroad by a British employer for the purposes of a business conducted in Great Britain (sometimes called “the posted worker exception”) and (b) where he or she works in a “British enclave” abroad. But the decisions of the Supreme Court in Duncombe and Ravat made it clear that the correct approach was not to treat those as fixed categories of exception, or as the only categories, but simply as examples. In each case what is required is to compare and evaluate the strength of the competing connections with the place of work on the one hand and with Great Britain on the other.

(6) In the case of a worker who is “truly expatriate”, in the sense that he or she both lives and works abroad (as opposed, for example, to a “commuting expatriate”, which is what Ravat was concerned with), the factors connecting the employment with Great Britain and British employment law will have to be specially strong to overcome the territorial pull of the place of work. There have, however, been such cases, including the case of British employees of government/EU-funded international schools considered in Duncombe.

(7) The same principles have been held by this Court to apply to the territorial reach of the 2010 Act: see R (Hottak) v Secretary of State for Foreign and Commonwealth Affairs [2016] EWCA Civ 438, [2016] ICR 975. I emphasise that this is not intended as a comprehensive summary of the effect of the decided cases. I am simply setting the background for the issues that arise in these appeals.”

22. As far as the status of the SBA and its legislative and jurisdictional responsibilities is concerned, this was considered comprehensively in Holloway V Ministry of Defence UKEAT /0396/14/BA, which I have considered in detail.

23. It would not be proportionate to list all of the authorities and legislative provisions which I have been pointed to by the advocates here. Save to say, that I have had due regard for the matters provided and considered the same, even where these are not expressly mentioned within my decision.

Findings and Analysis

(i) *What is the constitutional status of the SBA in relation to the UK?*

24. Mr Yetman in his submissions argues that there remains a lacuna as to the status of the SBA and consequently the applicability of the ERA to UK nationals working there. He distinguishes this from the many Cypriot civilians who also work within and employed by the SBA.

25. In his submissions he has skilfully drawn together a number of authorities focussing on the distinction between what is an enclave of the UK compared to a sovereign state (in the case of a British Overseas Territory). In effect he is inviting me to find that the SBA is an enclave, and therefore the ERA would have territorial reach (certainly as far as the claimant was concerned).

26. Mr Yetman in effect draws me to a gap between the decision by the EAT in ***Holloway*** *and that of the Court of Appeal in* ***R (Bashir and others) v Secretary of State for the Home Department [2017] EWCA Civ 397.*** In his document, Mr Yetman has highlighted the relevant passages which he says support his contention that there is a gap in the law. It is important to note that the decision in Bashir was subject to a later determination in the Supreme Court under citation ***R (Bashir and others) v Secretary of State for the Home Department*** **[2018] UKSC 45.** I have also considered this Judgment.

27. Whilst there is much discussion within both Judgments in ***Bashir*** as to the sovereign and legislative provisions of the SBA, these relate to proceedings entirely abstract from the present case. They relate to the continuing international obligations of the territory which were enacted by the 1951 Refugee convention and the technical continuance and application after the 1960 Treaty establishing the SBAs.

28. I entirely understand why Mr Yetman has highlighted passages from the 2017 decision in ***Bashir*** as opposed to the Supreme Court determination. These relate to the broader legislative history. Underhill LJ set out the residual strategic legislative powers of the Crown.

"29. Provision for the government of the SBAs was made by means of the Sovereign Base Areas of Akrotiri and Dhekelia Order in Council, 1960. The Order provided for the appointment of an Administrator, who is to be a serving officer, appointed by Commission. The Order grants the Administrator the legislative powers, which have been exercised by successive Administrators as I have said (Order in Council 4(1)). Direct control over such law by the Crown is maintained by paragraph 4(3), which empowers a Secretary of State to disallow and annul any law. Provision was also made for the appointment of a Chief Officer, Resident and Senior Judges, an Advisory Board and a Legal Adviser to the Administration."

29. There seems little doubt that Sovereignty is vested in the Crown for strategic purposes. That is not in question. Sovereignty alone or the residual powers of the Secretary of State to allow or disallow any law, is not the same as the application of such a power. The 1960 Treaty made specific provision for how that day to day power was to be exercised, by way of an Administrator, within whom vests the legislative power. I find this is entirely distinct from the International Treaty obligations of the UK and its territories, as is discussed in relation to the application of such matters as the Refugee Convention.

30. In short there is an Administrator, within whom the power vests to make laws. These may mirror those of UK statute, they may depart from them, or (as is the case of a mirrored provision for S47 of the ERA) be entirely absent. Within the provisions of the 1960 Treaty, it was clearly envisaged that there would be a degree of autonomy, even if that is somewhat artificial and susceptible to curtailment by the Secretary of State.

31. I cannot see that there is anything within the two decisions in ***Bashir*** that would enable me to depart from the principles established in ***Holloway*****.** The position is clearly articulated by *Langstaff J* at paragraph 18:

"…the correct legal position is indeed that each overseas territory has a Government distinct from the United Kingdom Government. That is the plain intention of the Orders in Council establishing a distinct constitution for each territory, most of which refer expressly to the "Government" of that territory and some to the Crown "in right of the Government" of the territory. Each territory has its own legislative and executive authorities separate from those of the United Kingdom. Each territory has its own courts, laws, public services and public funds, again separate from those of the United Kingdom. This situation is not altered by

the fact that some territories are more susceptible to direction from London than others.

The importance of this principle lies in the determination of the rights, powers, obligations and liabilities of the distinct governments of the Crown. This is crucial in settling legally which government – or put it another way, the Crown in right of which government – has particular rights, such as the title to Crown land and other property in a particular territory, which government has power to take particular action, which government owes statutory or contractual obligations to particular persons, and which government is liable to others for acts or omissions. The consequence of a failure to determine correctly the possessor of such rights, powers, obligations and liabilities hardly needs spelling out."

32. The position expressed by Mr Yetman was further compromised by Mr Yetman's contention that the application of the ERA 1996 would only affect British civilians in the SBA and not those local Cypriot civilians working on the base. In my finding this confuses the argument about the applicability of UK Law to the SBA and principle established in ***British Convil V Jeffery*****,** as to the need for an individual factual assessment of the retained links to the UK jurisdiction. Either there is legislative reach applicable to all civilian workers in the SBA or there is not. The concession that there are locally employed Cypriot workers in the SBA, subject to the laws and governance of the SBA, is in my finding a fatal concession to the argument put forward.

33. For all of these reasons, I cannot see that I can depart from the decision in ***Holloway*** as to the Sovereign nature of the SBA and the applicability of the laws of the SBA to the civilian workforce. In this regard the argument that the ERA has territorial reach because the SBA is an enclave must fail. The SBA is an overseas territory with its own distinct legislature.

(ii) Impact of the ECHR

34. Although argued by Mr Yetman as a separate argument, it makes sense to consider whether the position espoused above is altered in any way by the arguments made in respect of the ECHR. This argument is advanced in the event of the finding that the dispute in this case falls under SBA law (i.e the Jurisdiction pull of the ERA 1996, is rejected), and consequently there would be no remedy for the claimant.

35. In essence Mr Yetman argues that the Article 6 rights (right to a fair trial) are compromised without the recourse to this Tribunal. In his oral submissions he made reference to Article 10 (freedom of expression) being compromised in respect of the ability to bring a detriment claim.

36. The submissions on this issue were limited at the end of a long day. I queried with Mr Yetman, even if such rights were infringed (taking his case at its highest) what the remedy would be. His response was not at all clear as to this. I was left of the view that he had included this argument by way of a sweeping up exercise, and it remains embryonic in its formulation. It seems to me that the only remedy available where there is conflict between a legislative process and the rights of an individual (where they are infringed) is declaratory relief. I am not satisfied that this Tribunal has the Jurisdiction to entertain such a freestanding claim, and I was not pointed to specific argument in this regard.

37. Where a declaration is made by a Court or Tribunal that the legislative provisions is incompatible or infringes a right enshrined by the ECHR or the Human Rights Act 1998, it is in effect an invitation to the legislature to correct any deficit in the legislation. That is distinct from a public body which infringes a right, where the remedy may well also be damages as well as a declaration ***(S6 HRA 1998***).

38. The problem with this argument vests in whom the correct respondent would be. This is why I say it is embryonic in its nature. The MOD is the respondent in this case. They are not responsible for the legislative process. They have no vested interest in the jurisdiction of Employment Law in the SBA or the UK.

39. If there has been an omission in the SBA to legislate for whistleblowing protections (such that it infringes the ECHR), the responsibility for that, in the first instance, lies with the Administrator in the SBA. I discussed this point at the hearing with the parties, and canvassed whether in that scenario, the claim in the first instance had to be brought in the SBA, in order to secure a remedy or declaration in the SBA. In the first instance, this seems to me to be the most appropriate application of any such remedy. It must be remembered in this instance that the provisions of the ECHR are qualified rights. There may well have been a deliberate reason for the omission of whistleblowing protections in the SBA. There may well be a justification (beyond mere oversight) for doing so. This is an argument which is beyond the scope of this Judgment.

40. Even if I am wrong about the above, and the broad power of the Secretary of State to retain an effective veto as to what laws are enacted in the SBA, engaged the UK Jurisdiction, I am far from convinced that this Tribunal would have the requisite Jurisdiction to deal with such a claim. Firstly because the Secretary of State is not a party to these proceedings and secondly because the remedy regarding the exercise of such discretion, would appear to be by way of Judicial review.

41. For all of the reasons stated above, I cannot see that the application of the ECHR or the HRA 1996 would enable a remedy in this Tribunal which would overcome

any Jurisdictional issues, if I determined the contractual elements of the employment to be beyond the Jurisdictional pull of the Tribunal.

(iii) Application of the ERA – and whether the claimant was expatriate

42. Mr Yetman invites me to consider whether the extra-territorial application of the ERA is permissible in certain circumstances, namely the circumstances of the claimant.

43. He argues that the discussion of the Court of Appeal in ***Bamieh v Foreign and Commonwealth O–ce and others [2020] ICR,*** opens the possibility that the Tribunal could determine that there were bespoke circumstances to enable the Extra-territorial application of the ERA. He relies upon paragraphs 70 to 73 of that decision:

70 For the reasons given, the correct point of focus must be the relationship between the claimant and the co-workers as seconded EULEX staff members. In Lord Wilberforce's formulation, cited by Lord Hoffmann in Lawson v Serco Ltd [2006] ICR 250, para 6, the question is whether this EULEX relationship was within the legislative grasp, or intendment of section 47B(1A).

71 In my judgment, the answer to this question must be no. Put starkly, EULEX was an international mission, not a UK mission. In Employment Judge Wade's words (employment tribunal judgment, para 54), the base of the claimant and the co-workers was the international world that was EULEX not the territorial bubble of the UK. In so far as EULEX was an enclave at all, it was an international enclave not a UK enclave and, unlike the position in Duncombe v Secretary of State for Children, Schools and Families (No 2) [2011] ICR 1312, there was no or no sufficient reason for the default option here to be found in British employment law (as discussed further below).

72 It is therefore apparent that the claimant's case needed to surmount two hurdles to warrant the application of section 47B(1A) of the ERA to the relationship between the claimant and her co-workers as seconded EULEX staff members. The first was extraterritoriality, itself calling for an exceptional application of the statute. Yet, by itself, extraterritoriality is not necessarily insuperable. Thus, had the mission been a purely UK mission (UKLEX, as referred to in argument), it might well have come within the legislative grasp. The second, and cumulative, hurdle was the need to establish a sufficient connection between the common engagement of the claimant and the co-workers at EULEX, and British employment law. To my mind that British connection is not or, at most, insufficiently, established. Essentially the same factors which led to the conclusion that the correct point of focus was the EULEX co-worker relationship between the

claimant and the co-workers, underline the international not UK setting of EULEX and tell against the establishment of any such connection and the ERA legislative grasp extending to this relationship. In the event, the combination of extraterritoriality and the international setting of EULEX strike me as fatal to the claimant's case."

44. Although the claimant in ***Bamieh*** was unsuccessful, Mr Yetman argues that this guidance enables the application of the ERA. It is a creative argument. However, the claimant was employed as a civilian in the SBA. She was not posted to the SBA from the UK by way of UK based deployment. I have already set out in detail above the territorial laws of the SBA, and my analysis of it. There is significant authority in this regard. The SBA is not an 'Enclave'. It is a sovereign territory. It can be distinguished from the case in ***Bameih***, in this regard. Simply because it is a UK military base, or the claimant was the wife of a service personnel, is clearly an insufficient factor as discussed in ***Holloway***. There can be no blanket application of the ERA on an 'Extra-territorial basis for civilian workers who were employed and administered within the SBA. The only way in which the claimant can demonstrate the application of the Jurisdiction of the ERA to her circumstances, is by way of a factual determination regarding the Territorial pull of her individual contractual circumstances based on the UK connection. I shall focus on this principle below, as per the guidance in ***British Council v Jeffery***.

(iv) UK territorial pull

45. As a starting point I have considered the extensive Guidance in the material provided to. In particular the cases of ***British Council v Jeffery***, ***Holloway*** and ***Ravisy V Simmons & Simmons LLP UKEAT/0085/18.*** There is little factual dispute that in this instance (having rejected the earlier arguments), that the claimant lived and worked outside the UK. There is agreement in that instance that the starting point is that there is a presumption against Jurisdiction, unless there is something which puts the employment in an exceptional category, such as the employment has a much stronger connection with British employment law than any other system. The claimant is an ex-patriate worker.

46. It is therefore necessary for me to consider findings on the evidence of the claimant's circumstances and then weigh and balance those findings in order to consider whether the jurisdictional pull is sufficiently strong to British law.

47. There are a number of agreed facts which are relevant to the claim which I shall set out in terms of the employment history of the claimant:

    a. The claimant is a qualified nurse. She is registered and regulated in the UK by the NMC, and this was a requirement of the role.

b. The role which the claimant was employed as was a Banf F Nurse based at the Dhekelia medical centre in the SBA.
c. To be eligible for the role the claimant had to be both a British national and a family member of serving military personnel deployed within the SBA (this was principally for security reasons).
d. The Claimant was employed by British Forces Cyprus, which is a branch of the MOD based in the SBA.
e. The signed contract of employment provides that the governing law of the contract is SBA law.
f. The claimant was paid in Euro's which were taxed by and paid to the SBA.
g. As part of the claimant's pay she paid national insurance and local payments to the Cypriot authorities, enabling her to use local services (if required).
h. The claimant paid no UK tax and no UK pension contributions were provided during the course of her employment.
i. Training for CPD purposes was provided by the MOD and the claimant was required to travel to the UK for this purpose where face to face training was required.
j. The claimant's employment terminated when her husband was deployed away from the SBA and she ceased to be eligible for the role.
k. The SBA has a number of ordinances which provide for employment protections for civilian workers as well as an Industrial Dispute Tribunal, however, there is no equivalent S47B ERA provision in the SBA statute.
l. Although the claimant was interviewed initially in the UK before moving to the SBA, there is no suggestion that she was 'deployed' from the UK as she had to be resident in the SBA to be eligible for this role.
m. The medical centre on the SBA was authorised and regulated by the Care Quality Commission based in the UK.

48. During the course of the hearing I heard evidence from the claimant and Mr Socratous. Whilst the claimant offered many concessions on her role as detailed above, there were elements of her role which she regarded as creating a link to the UK. Mr Socratous was in effect the head of the civilian operations and he was an essential witness. His understanding of the functioning of the SBA provisions and law was extensive. However, he lacked specific knowledge of the individual circumstances of the claimant, as he was not her line manager. His role was overarching, he was not specifically versed in the aspects of the conditions of which applied to the claimant as a medical professional. As such (and this is also true of a number of documents) a number of the assertions the claimant made, although cross examined about, have no alternative supporting evidence to contradict the assertions made. I shall discuss these below. I have therefore placed a greater reliance upon the written material than the oral evidence.

49. There is no dispute that the role occupied in the medical centre was a civilian role. However, the claimant asserted that her line managers, and interviewers were military personnel. I accept that narrative. I have not been provided with a list of the management structure of the medical centre. There is little evidence to contradict this. That in and of itself is perhaps unsurprising on a military base, but in the case of the SBA this is likely to have brought her managers within the definition of Defence Medical Service Personnel (DMS), a definition which has not been applied to the claimant. The respondent has gone to some lengths to distinguish this definition applying to the claimant. I understand why, if the claimant was a DMS she would be considered to be 'deployed' which was not her role.

50. However, the management structure is an important factor in the terms and conditions which the claimant says she had to fulfil. In this regard there is an obvious deficit in the way the contract of employment is constructed. It is a standard contract. In the case of an unskilled or unregulated worker, it would be uncontroversial. In the case of a regulated and specialised role such as a nurse, it is missing clear conditions. The job description is said not to form a contractual term. The policies and procedures to be applied are those of the Civilian Human Resources Regulations, Policies and Procedures. Many of those policies would be uncontroversial and irrelevant to this claim. But the important factor here is there is nothing which deals with the other conditions and responsibilities of being a qualified UK registered Nurse.

51. The role of a nurse is a specialist role and this role is linked to uk based regulatory system. At paragraph 6 of ***Holloway*** there are three types of posts described as applying to the civilian workforce employed by BFC:

"6. British Forces Cyprus ("BFC") designated three types of posts for civilian staff. Category A posts were those of a professional specialist nature which could only be complemented with UK based civilians or civil servants specially recruited for overseas service. Categories B and C were both locally employed civilians: the distinction between them was that Category B posts were filled by the husband or wife of a serving member of the military or civil service component of the BFC who was in possession of a valid Status Stamp. Examples were posts such as those of staff employed in secure areas, posts which required access to classified IT systems or locally sensitive material, and learning support assistants in schools when it was essential for English to be the first language or a CRB check was required."

52. Mr Bayne argues that the claimant falls squarely into category B. He argues this on the basis that the role did require security clearance of a status stamp (meaning it was only open to family members and British nationals), because that is how the

role was advertised. In respect of those category A workers (who were medical professionals) they would form part of the DMS recruited from the UK, and would have been considered deployed personnel rather than expatriate. In short the joining family member condition was not present for category A. The role the claimant applied for was locally advertised and only available to a family member of the stationed service personnel.

53. As is often common with an attempt to categorise something, it is invariable that an individual circumstance arises which may be viewed as meeting more than one category. The claimant falls into this definition in my finding. Certainly she fulfils the category B criteria. This role was not open to anyone to apply, it was only available to a joining family member. But it is for a joining family member with conditions attached. It had to be a qualified nurse with the requisite experience and clinical skills, and who was regulated in the UK. In this respect she also met the definition in category A.

54. For example, had the claimant committed some act or misconduct of negligence in her work, it would have been the NMC in the UK which assessed her fitness to practice. She was required by the role to maintain her 'jurisdiction' for regulatory purposes within the UK.

55. The role was not open to a UK registered nurse who was not also a family member. Therefore, a strict category A worker, could not fulfil this role's description. However, the same is true if a strict category B worker, they have to have a specialist qualification, which has at its centre regulation and practice within (and reporting to) the UK. What is clear in the case of this very specific and somewhat unique role, is that the claimant had to have a foot in both categories to fulfil the roll, creating a hybrid category for this position. This is a factor which supports a positive link to the UK in the balancing exercise.

56. Although the Job description is not said to be a contractual term, it is illustrative of the role. The description provides two important passages:

"Brief description of Role

To provide Primary Healthcare to the population of Dhekelia Station and entitled personnel on a 24/7 rotation. Consisting of triage, assessment of minor illness and ailments, health screening and Force preparation. To provide telephone advice, supply medications under PGD's and provide nursing care to low dependency soldiers admitted to the bedding down facility. Maintain electronic patient records."

All Employees are expected

To undertake ad-hoc duties, as required, that may be reasonably expected by the line manager but are commensurate with the grade, and within the unit objectives.

To carry out responsibilities with regard to BFC Equal Opportunities and Health & Safety Policies."

57. These are important as a civilian role, there is here the contemplation of the treatment of soldiers. There is also the requirement to meet the required health and safety policies.

58. If it was contemplated that the claimant would treat soldiers and comply with health and safety requirements it seems inevitable that she would have had to comply with the terms of the relevant DMS policies. That policy is the JSP 950.

59. The claimant asserted in her evidence that she had to comply with the document. I was provided with an extract, but I am told it runs to many hundreds of pages and regulates the day to day activities of the DMS, regarding matters to be routinely expected in a medical facility, such as; hygiene protocols and the administration of medication.

60. Mr Bayne put to the claimant in her evidence that she was not DMS staff so the policies did not apply to her, or even if they did that did not override the Jurisdiction of the SBA for employment disputes. The claimant was vociferous in explaining that she was well versed in the JSP 950 as it was the document that regulated her practice there and she had to comply with it. I accept that evidence, and I have not been shown any other framework to regulate the medical practice of the claimant in the SBA. I also accept the claimant's evidence that she had not been provided with the locally employed terms and conditions of employment.

61. The claimant asserts that her line management was made up of military personnel who would fall under the category of DMS. I have not been provided with any evidence to the contrary. The respondent's witness evidence was vague on these issues. There is some force in the claimant's argument as the claimant received correspondence in managing her complaints from Andy Timperley. He is described as Gp Captain - Commander Medical HQ BFC. BFC being the claimant's employer. Having not been provided with evidence to the contrary, I find that the claimant was line managed by DMS military personnel.

62. This is important because of the distinctions and obligations which the DMS had to comply with under the JSP 950, appear to me to have been applicable to the claimant in her role. She operated a role with a fiduciary duty and was expected to

comply with the JSP 950 over and above the conditions of her employment in my finding, based on the written evidence before me.

63. Even if that is not right and the Dhekelia Group Medical Practice is separate to the DMS, the terms of reference document at page 234 of the bundle dated 1st of October 2023 makes it plain that:

"

1. *For the purpose of this TOR, the term nurse encompasses military and civilian nurses employed within the Dhekelia Group medical Practice (DGMP)*
2. *….*
3. *Secondary. You are to take all necessary measures to maintain continuous professional development to ensure:*
    a. *Ensuring that the nursing policy and standards in the Primary Health Care, as laid down by the JSP 950 are maintained. "*

…..

CLINICAL GOVERNANCE

7. You are responsible for ensuring that all necessary nursing assistance is provided to the SMO in meeting the quality and delivery of health services in accordance with Clinical Governance guidelines and JSP 950.

8. You are to raise any Significant Events as per DPHC guidelines."

64. I find it is the clear intention that the obligations of the JSP 950 were intended to be terms and conditions of the employment of all nurses (civilian or DMS) in the SBA.

65. At page 239 of the Bundle is a document titled "General New Terms and Conditions of Employment for SBAA & BFC" This document was effective from 01.07.2016. These are the terms and conditions for locally employed civilians in the SBA. It states on the very first page:

The below are general terms for the New Terms & conditions of Service (TACOS) for those recruited on or after 01.07.2016, with the exception of staff employed into the specialist roles listed below:

1. *Nurses*

……

66. The reason for these local SBA terms and conditions not applying to Nurses on the SBA is clear, it is because the JSP 950 operated primacy, providing terms, conditions and obligations. I find that the claimant was excluded from the local

terms and conditions, and it follows that her employment contract (as I have said above) is missing explicit fundamental elements which applied to the claimant.

67. The JSP 950 sets out clear aims below at page 316 of the bundle:

"Aims
3. This document details the policy and processes to be followed by all staff[2] working within or employed by the DMS in raising and acting on concerns (including by whistleblowing), about safety, malpractice or wrongdoing that affects others."

68. The scope of this document is clear, it applies to all staff working in the DMS. It is clear as I have said above that I find that the line between any civilian facility which the claimant worked in and what constituted DMS is not clearly demarked. I find on balance the claimant must (even as a civilian) have worked within the DMS structure and facility covered by the JSP 950.

69. The footnote for this passage also bears careful attention:

"2 There is Policy, Rules and Guidance (PRG) for civil servants detailed in Whistleblowing and Raising a Concern but this JSP950 policy takes precedence over the PRG to ensure that concerns are raised directly with the healthcare organisation so action can be taken as quickly as possible to preserve patient safety…….. "

70. This links back to the issue of the fiduciary duties of medical professionals and the duty of care that they owe to their patients and the requirements of the health regulators which were rooted in the UK.

71. This is supported by the definitions of scope within the JSP 950:

6. This policy deals specifically with the mechanisms for raising concerns or whistleblowing by DMS personnel[3] and not with patients who have concerns as they should follow the local complaint's procedures of their healthcare provider.[4]

7. DMS personnel who whistle blow whilst working within National Health Service (NHS) Trusts are not within the scope of this policy and should follow the appropriate policies within their own Trust.

72. The footnote again is important:

"3 DMS personnel include all personnel working in the DMS whether military, civilian or locums."

73. Whilst there is an exception for the DMS personnel working in the NHS, there is no such distinction applied for the facilities run buy the DMS in the SBA. The claimant's complaint was determined under JSP 763. This is a document relevant to all MOD and civilian employees working for the MOD. This is an important distinction as her complaint does not appear to have used the contractual HR policies of the SBA, referred to in the contract, because she was exempt from the SBA policies as a Nurse, and the JSP 950 operated the complaint mechanism.

74. The JSP 950 makes specific provision for the issues of making a protected disclosure. It states as follows:

"Regulatory background
12. Protected Disclosures under Employment Rights Act 1996 (ERA 96). ERA 96 does not cover Her Majesty's Armed Forces. However the Service Authorities7 have agreed to honour the spirit of the Act in that they will recognise and adhere to the criteria for protected disclosures for military personnel and follow the prescribed procedures whether dealing with or making a qualifying disclosure. It gives all other DMS staff (including civilian and locum staff) statutory legal protection for raising a genuine concern at the appropriate level within their organisation. It provides protection against victimisation or dismissal for individuals that whistle blow and reveals information to raise genuine concerns and expose malpractice in the workplace.
…..
17. Employment Tribunal. A civilian may bring a claim to an Employment Tribunal under whistleblowing provisions, but this is restricted to where the individual suffers detriment / victimisation for having made a protected disclosure."

75. There is a logic to enabling and protecting workers in medical practice raising concerns related to patient safety etc. It is the clear intention of the JSP 950 to incorporate the terms and spirit of the ERA in relation to detriment cases under S47B ERA. Paragraph 17 clearly provides for a remedy via an Employment Tribunal, for military personnel who would otherwise have been excluded from brining such claims. That Tribunal must be within the UK jurisdiction, as it is specific to the ERA.

76. The terms of the JSP950 clearly incorporate the ERA's jurisdiction for S47B complaints into the terms and conditions of SBA civilian nurses who are subject to the terms and conditions of the JSP 950. I find that this is incorporated as an implied term. The respondent, cannot expect the claimant to have to comply with the professional obligations of the JSP950 without also affording the protections it

provides. In short it cannot pick and choose which provisions apply and which don't.

Balancing Exercise

77. In order to balance the competing pulls of the relevant Jurisdictions it is necessary to weigh and balance the competing facts. I adopt a balance sheet approach to weigh the positive and adverse factors against each other. Where there are factors which I have not specifically referenced, I have confined my analysis to those matters which in my finding ought to attract positive weight.

78. The material facts which I weigh against the Jurisdictional pull of the UK are as follows:

    a. The SBS is a sovereign overseas territory, with its own specific legal system and legislature for civilian employees.
    b. Although the role was only eligible to UK nationals, applicants had to be an accompanying family member of a UK service personnel, stationed and living within the SBS (or Cyprus) and not posted.
    c. The employment contract makes it clear that the employment is for BFC within the SBS.
    d. The employment contract provides that the claimant would be a locally employed worker, within the SBS.
    e. The claimant's role was to treat civilians within the SBS (although she could from time to time be required to assist with service personnel).
    f. The claimant was not recruited from the UK as part of the DMS, and therefore not to be considered as 'deployed' to the SBS.
    g. As a locally employed worker within the SBS the claimant had the benefit and protection of SBS laws and legal system.
    h. The SBS legal system provides for a range of employment rights and an Industrial Tribunal in which those rights could be litigated, evidencing the intended jurisdiction of the SBS workforce.
    i. There was nothing within the contract or the local terms of reference that precluded the claimant from exercising her rights in the local Industrial Tribunal (save the absence of S47B equivalent provisions), in the event that an infringement of her statutory rights in the SBS occurred.
    j. The payment of the claimant's wages was in Euros, and taxes and other deductions were paid to the SBS and the Cypriot authorities.
    k. The claimant had access to Cypriot healthcare and amenities as part of her employment and taxation provisions.

79. The material facts which I weigh in favour of a determination that the Tribunal in England has Territorial Jurisdiction over the claimant's claim are:

a. The claimant was a UK registered Nurse regulated by the NMC / GMC, and this was a requirement of her role, to have and maintain such membership. Her eligibility was conditionally based on a UK based regulatory framework. A fiduciary duty applied to comply with this framework and regulation.
b. The medical centre in which the claimant worked was subject to regulatory framework of the CQC (based in the UK).
c. Training for the claimant was based and deployed (predominantly) from the UK, where face to face training was required.
d. The claimant (in part) meets the category A definition of specialist worker as described in Paragraph 6 of ***Holloway*****.** Such workers retained links to the UK Jurisdiction and were considered to have been deployed rather than locally employed. The claimant was a hybrid of category A and B.
e. The claimant's line management were part of the DMS.
f. The claimant's complaints of Whistleblowing were dealt with under the JSP 950 and not the local terms and conditions.
g. The locally employed SBS employee terms of reference makes a specific reference to Nurses being excluded from the local terms of reference.
h. The only available terms of reference for the claimant's role indicated that she was required to comply with the JPS 950 (as a civilian) and these formed contractual terms and conditions for the claimant.
i. The JPS 950 provides a specific 'opt in' for the DMS staff (including civilians) to have statutory protection and rights under S47B of the ERA and a capacity to litigate these in the UK Employment Tribunal. In my finding these terms were applicable, and implied within the claimant's contract as such this must carry significant weight. This is positive evidence of the Jurisdiction of the English Employment Tribunal has been elected, for those workers who are bound by the JPS950, such as the claimant.

Conclusion

80. There are many positive factors in favour of the Claimant being a locally employed employee within the SBS and being capable of exercising her rights in the SBA. However, the position of the claimant was a hybrid category A and B role (within the definitions of ***Holloway***). Her links to the UK were heightened as a result, but in isolation does not rebut the presumption of Jurisdiction vesting in the SBA.

81. The claimant was paid by the SBS and paid taxes to it. For example; had she had a difficulty with an underpayment of her wages, there seems little doubt that she would have been afforded the protection and redress provided by the SBS Industrial Tribunal. In every sense regarding the normal terms of employment relationships the claimant was grounded in the Jurisdiction of the SBS. Had she been any other type of worker that may well have been the end of the debate.

82. However, the claimant sits in a unique hybrid class of worker for the SBS Jurisdiction. She had a fiduciary responsibility and as such she was required to act in a different way to other workers, she had to comply with a very specific regulatory framework, over and above her locally employed rights and responsibilities. That framework was specifically grounded in the UK. She was directly excluded from terms of reference within the SBA.

83. There is no 'battle of the Jurisdictions' in terms of a whistleblowing detriment claim. The SBS offers no statutory protection or recourse to its own Industrial Tribunal for a whistleblowing detriment claim. In respect of the specific question which I am asked to resolve (which only relates to S47B), I have found that the claimant is bound by the JPS950 and as such the Jurisdiction for such claims has been elected as the UK.

Application of the law to the facts

84. Having considered all of the factors which weigh for and against the pull of the competing Jurisdictions, I am satisfied that in respect solely of a S47B ERA claim that a specific 'opt in' is implied into the claimant's contract regarding the Jurisdiction of the ERA. This overrides any competing pull to the SBA jurisdiction regarding whistleblowing. It follows that I must find that it was the intention of parliament that medical staff, working for, alongside or within the DMS, where they were bound by the JPS 950 terms, were intended to be covered by the provisions of S47B ERA, even where their work was expatriate within another territory. As the claimant fell into this category the Jurisdiction is grounded in the UK.

85. Consequently this Tribunal has Jurisdiction to hear the claim.

86. It follows that I must dismiss the application for Strike out for the reasons detailed above and declare that the Tribunal has Jurisdiction to hear the claim under S47B of the ERA.

87. I shall list a separate case management hearing, to address the claim going forward.

88. That is my Judgment.

Employment Judge Codd

04.03.2025