EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8001675/2024

Held in Glasgow via Cloud Video Platform (CVP) on 5 February 2025

Employment Judge M Robison

Mr W Stasiak	**Claimant** **In Person**
Austen Maritime PTE Limited	**Respondent** **Represented by** **Mr S Jones** **Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is that this claim is dismissed because the Employment Tribunal does not have jurisdiction to consider it.

REASONS

1. This preliminary hearing was listed to consider whether the Employment Tribunal has jurisdiction to hear this claim for unfair dismissal.

2. The claimant lodged the claim on 10 October 2024. The respondent was stated to be Stena Drilling Ltd with an address in Aberdeen. The claimant stated that his place of work was worldwide "on board drillships managed by my employer."

3. A copy of the claim form was sent in accordance with standard practice to the named respondent at the address stated. A response was received on 12 November 2024, stating that Stena Drilling Ltd was not the legal entity which

employed the claimant, rather that the claimant was employed by Austen Maritime Services Ptd Ltd (AMS), a company which is incorporated and established in Singapore, which "should be the respondent for the purposes of these proceedings."

4. By letters dated 13 November 2024 from the Tribunal to the respondent and the claimant it was stated that "where the name given by the respondent on the response differs from that given on the claim, we shall assume unless we hear from the claimant to the contrary, in writing within seven days of the date of this letter, that the name given by the respondent is correct."

5. At initial consideration on 14 November 2024, Employment Judge Kearns listed a preliminary hearing to consider whether the Employment Tribunal has jurisdiction and on 18 November 2024 parties were informed that it would take place by video on 5 February 2025.

6. Although the claimant did not advise prior to this hearing that the name of the respondent was incorrect, at the outset of the hearing, the claimant maintained that the correct employer was Stena Drilling Ltd.

7. Following discussions, Mr Jones for the respondent pointed out that it was clear from the papers that the employer was the respondent named, that Stena Drilling Ltd was part of the same group of companies, and that he would in any event be leading evidence about the relationship between the group companies. Accordingly, in the interests of efficient case management, and on the basis of the papers I was referred to, I decided that it was not appropriate to adjourn this hearing to add an additional respondent. I decided that I would hear evidence on the relationships between the companies in the group and if necessary, give further consideration to that question once I had heard that evidence.

8. At this hearing, the issues for determination then were whether or not Austen Maritime Services Pte Ltd was the correct respondent; and if so whether this Tribunal has international jurisdiction to hear the claimant's claim for unfair dismissal; and if so, whether this Tribunal then has territorial jurisdiction to hear this claim.

9. I heard evidence from the claimant and for the respondent from Ms Kirsty Burr, HR advisor for Stena Drilling HR Ltd (SDHR) and Mrs Christina Gordon, HR project supervisor for Stena Drilling HR Ltd.

10. Following evidence, I invited Mr Jones for the respondent to lodge written submissions, which he did by e-mail dated 17 February 2025, and for the claimant to respond to those submissions, which he did by e-mail dated 3 March 2025. The respondent provided comments on the claimant's submissions dated 11 March 2025. Although not invited by the Tribunal, and despite objections from the claimant, I have taken those comments into account in my deliberations, as well as the claimant's response to those comments in an e-mail dated 16 March 2025.

11. In written submissions, the claimant listed five entities as the respondent, namely Stena Drilling Ltd, Stena Drilling HR Ltd, Austen Maritime Pte Ltd, as well as Northern Marine Group Ltd and Northern Marine Management Limited. There was however no suggestion during the hearing that the claimant's employer was Northern Marine Group Ltd or Northern Marine Management Limited. The fact that these entities may have been mentioned during evidence does not thereby permit the claimant to now suggest that they may or should be the correct respondent. I accepted the respondent's submission that any argument advanced by the claimant to that effect should be disregarded, it not having been raised during the hearing.

12. Further, I noted that the claimant in his written submissions made reference to documents and other written material which was not before the Employment Tribunal during the hearing, and made a number of factual assertions that were not made in evidence. The claimant suggests that these are to "clarify or contextualise" what the Tribunal has already heard.

13. While I take account of the fact that the claimant is an unrepresented party and may not have appreciated that all evidence to be relied on required to be advanced during the hearing itself, the claimant should be aware that the Tribunal cannot take into account any documents or evidence not referenced

during the hearing, and accordingly any such submissions have been disregarded.

14. I agreed too that events which pre-date and post-date the claimant's employment are irrelevant to the legal issues to be determined, except to the extent that the background facts explain the relevant context.

Findings in fact

15. Based on the evidence heard and the documents referenced, the Tribunal makes the following relevant findings in fact.

Relationships between relevant Stena Group companies

16. Stena Drilling Ltd is a company incorporated in the UK where it has a place of business, with offices in Aberdeen. It is the owner of five deepwater drillships and one semi-submersible. Its current directors are Stuart Wyness, Peter Claesson, Graeme Coutts, Marvin Odum III, Dan Olsson and Erik Ronsberg.

17. Stena Drilling HR Ltd (SDHR) is also a company incorporated in the UK with headquarters in Aberdeen. Its current directors are Stuart Wyness, Peter Claesson, Dora Hult and Erik Ronsberg.

18. Austen Maritime Services Pte Ltd (AMS) is a company incorporated in Singapore and having a place of business there. It is domiciled and situated in Singapore. In April 2022, Philip Eriksson was a director and in March 2023 Christopher Cher was a director.

19. Stena Drilling Pte Ltd is a company incorporated in Singapore with a place of business there.

20. All four companies are subsidiaries of Stena AB, a company incorporated in Sweden, which owns a wider group of international companies called the Stena Group, which is involved in oil and gas exploration throughout the world.

21. Stena Drilling Limited does not employ any crew to work offshore on the drillships and semi-submersible which it owns. Rather, Stena Drilling Pte

Limited employs the crew on the ships owned by Stena Drilling Ltd who have a base in the UK. AMS employs crew for the ships owned by Stena Drilling Ltd who do not have a base in the UK.

22. SDHR entered into an agreement on 1 January 2008 with AMS "to provide offshore drilling personnel administration services and act as payroll service provider for employees of AMS who are contracted to work on drilling rigs and/or shore bases operated, owned or managed by the Stena Group."

23. That agreement includes the following numbered paragraphs:

    2. The services shall be performed at sites in the UK, as may be agreed between the parties; such sites will be staffed and maintained by HR.

    3. HR shall submit to AMS any matters which do not pertain exclusively to the services to be provided by HR to AMS pursuant to this Agreement.

    5.1 Employees and/or crew will refer to individuals who have a contract of employment with AMS. At no time will these individuals be employed by HR.

24. Section 6, under the heading "duties and services", sets out details of the payroll services which SDHR provides to AMS, and includes an agreement to arrange training courses, with SDHR responsible for all arrangements and logistics thereof.

25. At 6.2(a) it is stated that SDHR shall assist AMS with recruitment, discipline and termination of employment of employees. However, AMS shall retain full authority in respect of these matters.

26. At 6.2(c) it is stated that SDHR shall attend to local matters relating to labour and union relations, welfare and amenities of the crew, safety, training and other statutory requirements, always ensuring that AMS have final approval of any action taken or required, which might significantly affect the employment of the crew.

27. An annual fee (invoiced monthly) is paid by AMS to SDHR.

The claimant's work history

28. The claimant is a Polish national. He resides in Gdynia in Poland, now with his wife and two children, and did so during the whole of his period of employment.

29. He is a qualified electronic technician, having completed a BSC and Masters in Engineering, and having commenced (but not completed) study for a PHD in that discipline.

30. He commenced employment as an electronic technician immediately after completing his studies in 2010. He worked with a number of different of companies subsequently on a variety of tankers and container vessels around the world.

31. The claimant signed up with various agencies seeking employment in his discipline. In late 2021, he was contacted by an agency in the UK called Drillmar and entered into an agreement dated 26 October 2021 to work on temporary assignments as an electronic technician for "Stena Drilling". He undertook three temporary assignments (so-called hitches) on drilling vessels owned by Stena Drilling Ltd from November 2021 to March 2022.

Appointment as electronic technician with the respondent

32. In or around March 2022, the claimant applied for a permanent job as an electronic technician in response to an advert. He understood that the company he was applying to work for was Stena Drilling Limited, which is the company name stated on the advert, which bore the Stena Drilling group branding.

33. Sam McDonald, recruitment officer employed by SDHR, e-mailed applications to review received from the claimant and others for the post of electronic technician on Stena Icemax to Sean Gray, electronics specialist employed by SDHR.

34. In an e-mail dated 18 March 2022, the claimant was invited by Maureen Tan, personnel officer with SDHR to an interview. The e-mail included an offshore declaration form for completion which bore the Stena Drilling group logo and

the address of SDHR. Also attached was a job description, which was a completed template document included in the Ships Management System (SMS) database of documents for the Stena Group, bearing the Stena Drilling logo. The claimant was asked to furnish SDHR with certain documents, which were on Stena Drilling branded notepaper with reference to SDHR

35. The claimant was interviewed remotely on 25 March 2022 by Sam McDonald and Sean Gray. Following interview, Sam MacDonald made a recommendation to progress with the claimant's application. He sought a technical interview summary and recommendation from Sean Gray, who recommended that they should proceed with the claimant's application.

36. The claimant was offered employment by Tang Foong, a personnel officer with AMS in an e-mail dated 24 April 2022 from an address singaporehr@stena.com. That e-mail was copied to Angie Duda and Sam McDonald, both employees of SDHR.

37. The e-mail dated 25 April 2022 enclosed a letter with an offer of employment on AMS branded paper, including the AMS address in Singapore and signed for and on behalf of AMS by Philip Eriksson, director. The claimant was advised that the effective date of commencement was 8 June 2022. The claimant was asked to review, sign and return one copy of his contract of employment to SDHR in Aberdeen, SingaporeHR@stena.com and Angie.Duda@stena.com and to retain one copy for his own records. The claimant signed the contract of employment on 25 April 2025.

38. That contract of employment was on AMS branded notepaper with the AMS address in Singapore and signed by Philip Eriksson, director. It stated the claimant's employer to be Austen Maritime Services Pte Ltd, 30 Pandan Road Singapore, and the ship owner to be Stena Drilling Ltd, Greenbank Cresent Aberdeen, with an employment start date of 8 February 2022. In regard to place of work it stated "Pool Crew" and that "You may be required to work at any location in the world and on any Shipowner Vessel or Base office nominated by the Company. Your employment with the Company may be

transferred to any other company or business within the relevant group of companies, including any associated, holding or affiliated companies."

39. Under governing law, it stated, "your terms and conditions of employment shall be governed by and construed in accordance with the Laws of Singapore." After the signature of Philip Eriksson and the claimant's signature accepting the terms and conditions, the place where the employment contract was entered into was stated to be Singapore.

40. The contract included an Appendix A with terms and conditions relating to the vessels where the claimant would work, which the claimant also signed for Stena Drillmax and for Stena Forth.

41. On 1 June 2022 the claimant also completed and signed an offshore employee details form, a template form from the SMS database on Stena Drilling branded notepaper, in which he confirmed that his nationality was Polish and nominated Gdansk as his commuting airport.

42. A memo dated 14 October 2022 was sent from the Chief HR Officer (Trish Craig, SDHR) to "All Stena Employees (Stena Drilling Pte Ltd and Austen Maritime Services Pte Ltd)" relating to adjustments to offshore benefits. A similar memo dated 6 December 2022 was sent by Trish Craig to "all offshore employees" which it stated included Stena Drilling Pte Ltd and Austen Maritime Service Pte Ltd.

43. On 31 March 2023, the claimant signed a new contract of employment, with Appendix A, dated 20 March 2023 on AMS branded notepaper with the AMS address in Singapore. This stated that the claimant's place of work would be Stena Icemax, commencing 1 January 2023, with continuous employment from 8 June 2022, with the employer named as AMS and shipowner named as Stena Drilling Ltd. This document was signed on each page by the claimant and also by Christopher Cher, director of AMS, with Singapore stated to be the place where the employment contract was entered into.

44. The claimant received a letter dated 15 August 2023 regarding visa requirements for entering the USA. This bore the Stena Drilling group logo

and included the address for SDHR, and was signed by a Adrienne Robertson personnel visa supervisor, an employee of SDHR. It stated that she was writing "on behalf of Austen Maritime Services Pte Ltd".

45. On 29 February 2024, the claimant's line manager, Ross Paterson, chief electrician/electrical supervisor for Stena Drilling, employed by AMS, informed Heather McMahon, employed by SDHR, that the claimant had completed a performance improvement plan.

Termination of employment

46. On 17 June 2024, the claimant was advised by Barry Reville, OIM for Stena Icemax (an employee of AMS) that he was to be suspended following an incident which took place on 10 June 2024 on board.

47. A witness statement template (a standard SMS document) which bore the Stena Drilling logo regarding the incident on 10 June 2024 was signed by the claimant and by the interviewer Jackie Young, an employee of Stena Drilling Pte Ltd, on 14 June 2024.

48. By letter dated 18 June 2024, on AMS headed notepaper, bearing the AMS Singapore address, and signed by Christopher Cher, director for AMS, the claimant was informed that "as you have already been advised by Barry Reville (Master/OIM) on 17th June 2024, it has been decided by AMS Pte Ltd that you should be suspended from work with immediate effect". The claimant was advised that, if he had any queries, he should contact Kirsty Burr, HR advisor, SDHR.

49. A disciplinary hearing took place on 1 July 2024 by video call. It was chaired by Scott Pederson (Rig Manager, employed by AMS) with AMS "agent" Kirsty Burr (HR Advisor, SDHR) in attendance as HR representative.

50. That disciplinary hearing was conducted in line with a disciplinary procedure, an SMS document, which bore the Stena Drilling logo, and had been prepared and reviewed by individuals who were employees of SDHR.

51. By letter dated 12 July 2024, on AMS headed notepaper bearing the Singapore address and signed by C Cher, for AMS Pte Ltd, the claimant was advised that following the disciplinary hearing he was dismissed.

52. The claimant appealed. Correspondence regarding the appeal (page C49) was with individuals employed by SDHR namely Stephanie Mair, Kirsty Burr, Ellis Deans, Amy Boston as well as AMS HR in Singapore.

53. By letter dated 30 August 2024, on AMS headed notepaper bearing the Singapore address, the claimant was advised of the outcome of the appeal conducted by Innes Cormack (and employee of Stena Drilling Ltd) with Stephanie Mair (HR Generalist (SDHR)) acting as agent for and on behalf of AMS. That letter stated that, "As your former employer, I confirm we had provided Innes Cormack with permission to chair your disciplinary appeal hearing on our behalf and recommend an outcome to us following the meeting…he has now communicated his recommended decision to us, Austen Maritime Services Pte Ltd, for our consideration. Upon review of Innes's recommendations I can confirm the decision is that your appeal is not upheld and is therefore unsuccessful. …Austen Maritime PTE Ltd are in full agreement with this".

Location of work

54. While the claimant was engaged in the pool crew between 8 June 2022 and 15 November 2022, he was assigned to Stena Forth, where he worked in Canada, and Stena Drillmax, where he worked in Guyana. He was engaged in a permanent role on Stena Icemax as an electronic technician from 16 November 2022 to 12 July 2024, working in Isreal, Gabon, Canada and USA (R111-R114). From 21 September 2023 until his dismissal, the claimant was engaged on Stena Icemax which was from that time until the date of this hearing, involved in development work in the Gulf of Mexico, USA.

55. During his employment, he was engaged for 134 days in Guyana, 28 days in Isreal, 56 days in Gabon, 100 days in Canada and 160 days in USA. At no time were the rigs/vessels upon which the claimant worked in UK territorial waters.

56. From September 2023, the claimant worked exclusively in USA waters. Prior to suspension in June 2024, he had worked continuously in USA waters for nine months. At the time of his dismissal, he was assigned to work in the USA.

57. In regard to training, the claimant corresponded with a Lisa Webster who signed off e-mails as TMS training co-ordinator (on behalf of Stena Drilling) (page 52). He also corresponded with the Stena Drilling Training team who were employees of SDHR. Training was also provided by Clyde Marine Services which is an outsourced provider of training across the Stena group.

58. The claimant was paid by AMS in sterling into a London bank account. His pay was not subject to deductions for UK income tax and national insurance. He did not pay tax in the UK but was told he was responsible for his own tax. The pay slips which he received were headed Austen Maritime Services but any queries were to be directed to SDHR named employees. He was advised that he may be liable to pay tax in the USA.

Tribunal analysis and decision

The correct respondent

59. During the hearing, the claimant insisted that his employer was Stena Drilling Limited, whereas THE respondent asserted that his employer was Austen Maritime Services Ltd, which is the respondent in these proceedings.

60. As noted above, in written submissions, the claimant suggested there were five employers who were respondents. This was despite the fact that, at the outset of the hearing, I explained that the claimant cannot simultaneously have more than one employer in respect of the same work. I have dealt above with suggestions post-hearing that there were other alternative respondents. Any considerations relating to the correct identity of the employer were limited to the question whether AMS was the correct respondent or not.

61. The claimant asserted throughout his written submissions that his employer was not AMS but was one of the UK based Stena companies. He argued that that the “real employer” was “the UK-based Stena Drilling entities”. He argued that because his engagement and employment were administered,

supervised and effectively controlled from the UK by Stena Drilling Ltd and SDHR, that meant one of those companies was his employer. Despite what he calls "the nominal mention of AMS", he asserts that the day to day reality points to the UK as the seat of his employment. He submitted that Stena Drilling Ltd, SDHR and AMS "collectively hold responsibility and should therefore be considered respondents in these proceedings". Crucially, he argued, it was the UK-based Stena Drilling offices that managed recruitment, logistics, payroll, HR functions and ultimately the claimant's dismissal. He argued that AMS was a "nominal shell structure" company and "a paper construct" company with "no real authority" used for administrative convenience.

62. The claimant urged the Tribunal to disregard the formal corporate structure and instead apply the substance over form principle and recognise that the true employer was a UK-based entity.

63. I did not accept the claimant's submissions regarding an alternative employer. Based on the evidence heard and the documents referred to, I accepted the respondent's submissions that the claimant's employer was Austen Maritime Services Ptd Ltd, and the correct respondent in these proceedings. I did not accept that the claimant was employed by Stena Drilling Limited (or SDHR) for the following reasons.

64. While references were made to "Stena Drilling" throughout the proceedings, I noted that this was distinguishable from the legal entity "Stena Drilling Limited", and accepted that it is the corporate brand name used to market the services of the Stena group of companies to clients, and has no independent legal personality.

65. Evidence confirmed that Stena Drilling Limited does not employ crew but rather is the company which owns the drilling vessels. The crew were employed either by Austen Maritime Services Ptd Ltd or Stena Drilling Pte Ltd, both companies incorporated and domiciled in Singapore.

66. Of particular significance was the services contract between AMS and SDHR to which I was referred during evidence. I accept from the evidence heard that

payroll and HR administration services provided by SDHR in relation to the claimant's employment were carried out on behalf of the respondent in terms of that services contract. In undertaking payroll and HR administration services, SDHR was performing its contractual obligations to the respondent under that services contract between SDHR and AMS. I accepted that neither SDHR nor Stena Drilling Limited had any powers of decision-making in regard to the claimant's employment. The evidence supports the position that neither SDHR nor Stena Drilling Limited have power to bind the respondent in any way. That evidence was consistent with the terms of the services contract between SDHR and the respondent. In particular, the services agreement at 5.1 states that any reference to crew relates to those employed by AMS and "at no time will these individuals be employed by SDHR". At section 6, it is stated that AMS shall retain full authority in relation to recruitment, discipline and termination; and that AMS will have final approval of any action taken. Reliance by the claimant on the fact that the governing law of that services agreement is England is nothing to the point.

67. With regard to how the agreement operated in practice, for while SDHR undertook the recruitment process, it was clear that the final decision rested with AMS. Although no document was lodged relaying the recommendation of SDHR to AMS, I did note that SDHR relied on "great feedback" from Drillmax during temporary assignments, and accordingly that AMS members of staff apparently had input into the decision-making process prior to any recommendation being made. Evidence indicated that the respondent was not under any obligation to accept the recommendations of SDHR and there was no evidence to suggest to the contrary. With regard to the operation of the disciplinary process and the decision to dismiss, all the paperwork lodged indicated that the decisions were made by AMS employees and the final decision was taken by AMS.

68. The claimant argues that in reality SDHR handle all core employment functions from the UK. The claimant relied, for example, on the fact that he had responded to an advert which he asserted was the same as one which

he lodged which bore the Stena Drilling logo and stated, under the heading "apply for job", the company name Stena Drilling Limited.

69. The respondent explained that any reference to Stena Drilling Limited in the documentation before the Tribunal related to its contractual responsibility for the management of all of the vessels in the Stena Drilling fleet by the respective owners of those vessels. As the vessel owner/manager Stena Drilling Limited it is subject to certain legal obligations, which explains the reference to that company in the written documentation lodged. None of that documentation described Stena Drilling Limited as the claimant's employer.

70. Crucially the written offer of employment, which came from the respondent's HR team in Singapore, specified that the claimant was being offered employment with Austen Maritime Services Pte Ltd, that is the respondent in this case. The contract of employment which the claimant signed was on the respondent's headed notepaper, which included a footnote specifying the corporate registration details of the respondent. It clearly identified Austen Maritime Services Pte Ltd as the employer. Both the offer of employment letter and the contract of employment were signed on behalf of the employer by Philip Eriksson, a director of the respondent, who was not an employee or officer of either Stena Drilling Limited or SDHR. The claimant returned the signed contract of employment by e-mail to the respondent (as well as SDHR staff) as requested.

71. Although the claimant at one stage during the hearing said that he was "forced" or "tricked" into signing papers presented by AMS, he revised that language and said that he was given no choice and that there was no opportunity for him to make a decision about that. In submissions, the claimant argued that he was not truly aware of any 'Singapore-based arrangement' and that he was effectively misled regarding his legal position and did not have the opportunity to consider any alternative legal forum.

72. I accepted the respondent's submission that the claimant's evidence that he did not feel able to propose that he should be employed by a different group company is immaterial to the analysis of the correct employer. I appreciate

that the claimant may well not have been aware of the services agreement prior to these proceedings. However, the claimant is clearly a highly intelligent man and although English is not his first language he was able to represent himself in these proceedings with considerable ability. I conclude that the claimant signed the contract of employment with the respondent in the full knowledge that the respondent was to be his employer.

73. That conclusion is fortified by that fact that the claimant then signed a second contract of employment with the respondent when he was permanently assigned to work on the Stena IceMax. This again made it clear that the claimant's employer was AMS. At no time during his employment with the respondent did the claimant challenge or question the express reference to AMS as his employer in the various documents with which he was issued.

74. Although the evidence about the interplay between AMS and SDHR was limited, and I did not hear evidence from any AMS employee, there was no evidence, beyond this services agreement, to suggest that the role of AMS in the recruitment, engagement and dismissal of the claimant was anything other than appropriate.

75. Indeed, other factual details support the conclusion that the respondent was the claimant's employer. In particular, the claimant received his pay from AMS. The claimant's supervisor, Ross Paterson, was an employee of the respondent. The decision to suspend the claimant was taken by the Offshore Installation Manager for the IceMax, Barry Reville, who was an employee of the respondent. The formal letter of suspension was issued on the respondent's headed paper and signed by one of the respondent's directors. The decision to dismiss the claimant was made Scott Pederson, an employee of the respondent. The decision to reject the claimant's appeal was also endorsed by a director of the respondent.

76. Although the claimant describes the respondent as a "shell company", the evidence confirms that it is one company in a group of companies, which is incorporated in Singapore and which has entered into a valid services contract with SDHR. Further, although the claimant refers to the *Autoclenz v Belcher*

[2011] UKSC 41 case in support of his submission that I should accept "substance over form", that was a case about the interpretation of a contract and employment status, and not a case about the correct respondent, which is purely a matter of fact, rather than of contractual or statutory interpretation. Even if the principle from *Autoclenz* is relevant to the question whether an agreement ostensibly reached by two contracting parties should in fact be deemed to have been reached by a different party, there is no evidence to suggest that the written contractual documentation did not reflect the true intention of the parties at the time.

77. Given that there is no evidence to support any contention that those contractual arrangements were a sham, I had to accept that the written contractual documentation was conclusive evidence of the identity of the claimant's employer. Given the evidence heard, and including the documents considered, I accept that the claimant's employer and the correct respondent is Austen Maritime Services Pte Ltd.

78. That conclusion is important but not the end of the matter when it comes to the question whether this Tribunal has jurisdiction. In order to entertain the claimant's claim, the Tribunal must have both international jurisdiction and territorial jurisdiction. The burden of proof to establish both lies with the claimant.

79. As confirmed by *Simpson v Interlinks Ltd 2012 ICR 1343* these are separate questions, with different legal tests, and must be considered separately. Accordingly I considered first whether this Tribunal has international jurisdiction.

International jurisdiction

80. International jurisdiction is established through the Civil Jurisdiction and Judgments Act 1982 (CJJA). As the EAT confirmed in *Stena Drilling PTE Limited v Mr Tristan Smith* 2024 EAT 57, for cases involving individual contracts of employment commenced after 31 December 2020, following amendment by the Civil Jurisdiction and Judgments (Amendment) EU Exit

Regulations 2019, the only route through which international jurisdiction may be established is set out in new sections 15C and 15D.

81. Only section 15C, headed up jurisdiction in relation to individual contracts of employment, is relevant here, and specifically the following sections:

> "(1) this section applies in relation to proceedings whose subject-matter is a matter relating to an individual contract of employment.
>
> (2) The employer may be sued by the employee –
>
> (a) where the employer is domiciled in the UK, in the courts for the part of the UK in which the employer is domiciled;
>
> (b) in the courts for the place in the UK where or from where the employee habitually carried out the employee's work or last did so (regardless of the domicile of the employer) or
>
> (c) if the employee does not or did not habitually carry out the employee's work in any one part of the UK or any one overseas country, in the courts for the place in the UK where the business which engaged the employee is or was situated……
>
> (7) for the purposes of this section, where an employee enters into an individual contract of employment with an employer who is not domiciled in the UK, the employer is domiciled in the relevant part of the UK if the employer has a branch, agency or other establishment in that part of the UK and the dispute across from the operation of that branch, agency or establishment".

82. Section 15E(2) CJJA states that when determining any question regarding the meaning of these sections, the Tribunal should have regard to any relevant legal principles or any relevant decision made before 31 December 2020 by the European Court as to the meaning and effect of Title II of the 1968 Brussels Convention or Chapter 2 of the Brussels Recast on jurisdiction, including any relevant legal principles laid down in expert reports relating to the 1968 Brussels Convention. This effectively means that the decisions of the CJEU interpreting the Brussels Convention remain relevant when considering questions of jurisdiction under those provisions.

83. I deal with each of the relevant provisions in section15C in turn.

Is the employer domiciled in the UK?

84. This Tribunal will have jurisdiction if it can be established that the employer is domiciled in the UK in terms of section 15C(2)(a).

85. Section 42A CJJA sets out the circumstances when a corporation or association is domiciled in the UK under section 15C, namely if:

(a) its registered office is at a place in the United Kingdom;

(b) in a case where it has no registered office, its place of incorporation is in the United Kingdom;

(c) in a case where it has no registered office or place of incorporation, the place under the law of which its formation took place is a place in the United Kingdom;

(d) its central administration is in the United Kingdom; or

(e) its principal place of business is in the United Kingdom.

86. Bearing in mind AMS is the correct respondent in this case, that is a company which is incorporated under the laws of Singapore. Its registered office is in Singapore, where it has its principal place of business. It does not have a place of business outside of Singapore.

87. Accordingly, its registered office is not in the UK; its place of incorporation was not the UK; it was not formed in the UK; and it does not have a place of business in the UK, principal or otherwise.

88. On the question of its central administration (section 42A(2)(d)), the respondent relied on the decision of the Court of Appeal in the case of *Young v Anglo American South Africa Ltd [2014] Bus.L.R*. It is stated there that an organisation's central administration "is the place where the company concerned, through its relevant organs according to its own constitutional provisions, takes the decisions that are essential for that company's operations [which is] the same thing as saying it is the place where the company, through its relevant organs, conducts its entrepreneurial management; for that management must involve making decisions that are

essential for that company's operations". Further, the focus is solely on the decisions of the relevant company itself, and not on other companies in the corporate group or the group as a whole.

89. Taking account of those principles, I accept that the respondent's central administration is in Singapore. The respondent is a separate legal entity with separate legal personality from other UK-based Stena group companies, and its own independent management structure, with its central management based in Singapore.

90. I accept then that none of the requirements, including in regard to the respondent's central administration, are met by the respondent and accordingly I find that that the claimant's employer is not domiciled in the UK, so that the route under section 15C(2)(a) does not establish international jurisdiction.

Deemed domicile

91. It may however be that the respondent employer, not having satisfied any of the above requirements to be domiciled in the UK, as in this case, may be deemed to be domiciled in the UK if certain factual matters, set out in section 15C(7) are established. Specifically, the employer will be deemed to be domiciled in the relevant part of the UK if the employer has a branch, agency or other establishment in the UK and the dispute arose from the operation of that branch agency or establishment.

Does the employer have a branch, agency or establishment in the UK?

92. Turning to this first query, the question is whether the administration which is provided by SDHR could be said to amount to the respondent having a "branch, agency or establishment" in the UK for the purposes of this provision.

93. Relying in particular on the decision of the EAT in *Olsen v Gearbulk Services Ltd [2015] IRLR 818*, the respondent submitted that the HR administration which was provided by employees of SDHR in Aberdeen does not amount to the respondent having a branch, agency or establishment in the UK.

94. In that case, the claimant Mr Olsen was employed by a Bermudian company, Gearbulk Services Ltd (the first respondent) and spent around half of his time working in the UK from an office owned by Gearbulk (UK) Ltd (the second respondent), a member of the same corporate group as the first. The employment tribunal found that the second respondent carried out administration and business support services for the wider corporate group, and accordingly that it was an "agency" for the purpose of equivalent provisions. The tribunal also found that the second respondent provided HR services for the first, and that a member of staff of the second respondent had conducted the original interview with the claimant.

95. The decision of the employment tribunal was overturned by the EAT, relying decisions of the ECJ relating to equivalent provisions, and in particular *Etablissements Somafer SA v Saar-Ferngas AC 1979 1 CMLR 490*, which had established that in order for there to be an agency arrangement, the purported agent had to negotiate business for the employer with third parties, such that those third parties did not need to deal directly with the employer. Athough the second respondent provided services to the first, there was no evidence to suggest that it effected contractual relations between the first respondent and third parties. The evidence it found was not that the second respondent could bind the first but rather that the first respondent would not be bound unless it separately decided so to be. The EAT concluded that the second respondent was neither the alter-ego nor an independent commercial agent of the first.

96. Although the focus in that case was on the question of agency, Langstaff J at [53] relied on decisions of the ECJ which had considered the phrase "branch, agency or other establishment". In particular, "In *Somafer SA v Saar-Ferngas AG (case 33/78) [1978] ECR 2183*, the court had stated this involved: '… the concept of branch, agency or other establishment which has the appearance of permanency, such as the extension of a parent body, has a management and is materially equipped to negotiate business with third parties so that the latter, although knowing that there will if necessary be a legal link with the parent body, the head office of which is abroad, do not have to deal directly

with such a parent body but may transact business at the place of business constituting the extension' In *Blanckaert v Willems PVBA v Trost, C-139/80 [1981] ECR 819* at paragraph 12, and *SAR Schotte GmbH v Parfums Rothschild Sarl, C-218/86 [1987] ECR 4905* paragraph 16 a branch agency or establishment 'must appear to third parties as an easily discernable extension of the parent body'. In *Etablissements A de Bloos SPRL v Société en Comandite par Actions Bouyer, C-14/76 [1976] ECR 1497*: 'One of the essential characteristics of the concepts of branch or agency is the fact of being subject to the direction and control of the parent body".

97. The respondent submitted that here the respondent is not the "parent body" of SDHR nor is SDHR "an easily discernible extension" of the respondent. The respondent does not have any presence in the UK with the "appearance of permanency". SDHR is not subject to the direction and control of the respondent. Accordingly it cannot be said that SDHR is a "branch, agency or establishment" of the respondent.

98. The respondent set out other factors which, they submitted, would make any other conclusion unsustainable, including:

(a) SDHR is not a subsidiary of the respondent.

(b) The respondent's management is exercised exclusively from Singapore, with no place of business outside of Singapore

(c) SDHR and the respondent are entirely separate legal entities with autonomous decision-making powers, exercised via each company's separate board of directors.

(d) SDHR provides HR administration services to number of companies in the Stena Drilling group, and not just to the respondent. That vitiates a conclusion that SDHR is an "extension" of the respondent.

(e) The business activities carried out from Aberdeen by employees of SDHR are those of SDHR and not the respondent.

(f) The services contract between the respondent and SDHR is a genuine arms length commercial arrangement, for which AMS pays a substantial fee. That is the basis upon which SDHR carries out HR

functions for the respondent. That is a service provider and client relationship, rather than one of parent company and subsidiary.

(g) SDHR has no authority to enter into binding contractual commitments on behalf of the respondent.

(h) Under the terms of that services contract, SDHR does not have any authority to negotiate business on behalf of the respondent with third parties. It cannot make offers of employment or take any decisions which affect the respondent's employees without the express approval of the respondent. The respondent retains final approval in respect of the hiring of any employees, which must be sought in every individual case before any offer of employment is made.

(i) The services contract between the parties is inconsistent with an suggestion that SDHR was a branch, agency or establishment of the respondent. A company would not need to enter into contractual arrangements in order for a branch, agency or establishment to support its operations.

99. The respondent also submits that the same should be said of Stena Drilling Limited, which is an entirely separate legal entity with separate legal personality and autonomous management structure. The respondent is not the "parent body" and Stena Drilling Limited is not "an easily discernible extension" of the respondent and did not have authority to enter into binding contractual commitments on behalf of the respondent.

100. The claimant argued that the reliance by the respondent on the *Olsen* case was misplaced. This was based on his contention that SDHR was a "core unit of the Stena Drilling brand exercising managerial control. Unlike *Olson*, the UK-based HR team clearly had and exercised binding authority over the claimant's employment".

101. As discussed above, there was however no evidence to support such a conclusion. There are clearly factual parallels between the facts of this case and that of the *Olsen* case. That case established that where there was a similar corporate structure involving a group of companies, a company

essentially in the position of SDHR could not be said to be an agent of a company such as AMS, primarily because SDHR has evidently no authority to enter into binding contractual commitments with third parties on behalf of the respondent.

102. I accept on the basis of the evidence heard that that these companies are separate legal entities with separate legal personality and autonomous management structures. In particular, given the corporate structure, the respondent is not the "parent body" of SDHR (or Stena Drilling Limited); SDHR (or Stena Drilling Limited) is not "an easily discernible extension" of the respondent; and SDHR (or Stena Drilling Limited) has no authority to enter into binding contractual commitments with third parties on behalf of the respondent. Nor was either company subject to the direction or control of the respondent. The relationship between the two organisations is that which is set out in the services agreement. I accept that such an agreement would not be necessary if SDHR was a branch office or establishment of the respondent.

103. Accordingly, I conclude, given the meaning of the phrase "branch, agency or establishment" set out above, it cannot be said that the operations of SDHR (or Stena Drilling Ltd) equate with the respondent having a "branch, agency or establishment" in the UK.

Did the dispute arise from the operation of that branch, agency or establishment?

104. If it were the case that SDHR (or indeed Stena Drilling Limited) was to be classified as a "branch, agency or establishment", that would not in any event be sufficient to establish deemed domicile. It must also be the case that the dispute arose from the operation of that branch, agency or establishment.

105. The respondent argues that, following *Olsen* at [54], the claimant requires to show that the dispute concerns acts relating to the management of the branch, agency or establishment or commitments entered into by them on behalf of the parent body. The respondent submits that the dispute in the present case does not arise out of the operations of or relate to the management of any alleged branch, agency or establishment of the respondent. Nor does it relate to an alleged breach of any contractual

commitments which were entered into on behalf of the respondent by SDHR (or any other third party).

106. This is a claim relating solely to a statutory complaint of unfair dismissal. As noted above given the terms of the services agreement, SDHR has no authority to dismiss any employees of the respondent. That is also the case with Stena Drilling Limited. The claimant's dismissal was ultimately effected by the respondent, acting through its senior management on board the Icemax and its directors in Singapore.

107. Accordingly, I accept that the dispute which is under consideration here cannot be said to be one which arises out of the operation of any purported "branch, agency or establishment" of the respondent operating in the UK. The claimant cannot therefore rely on the "deemed domicile" provisions to found the jurisdiction of this Tribunal.

Did the employee habitually carry out work in the UK?

108. International jurisdiction can nevertheless be conferred on this Tribunal where the employee habitually carries out their work in the UK in terms of section 15C(2)(b).

109. It is not in dispute in this case that the claimant did not ever work in UK waters at any time during his employment with the respondent. The only engagements he had in the UK during his employment was to attend training. The claimant clearly did not "habitually work" in the UK.

110. Regardless of the domicile of the employer, the 2(b) route is closed to the claimant because he did not habitually carry out work in the UK.

Did the employee habitually carry out work in any one overseas country?

111. With regard to route 2(c), I have found above that the claimant did not habitually carry out work in the UK, but this route will also be closed to the claimant if he habitually carried out work in any one overseas country.

112. The claimant relies primarily on this provision to establish international jurisdiction. That is he argues that he did not habitually carry out work in any one overseas country. The claimant contended that he was an international

worker who could be required to work in any global location. The respondent argued that this is not relevant to the analysis of where the claimant habitually worked during his employment with the respondent. That was particularly because the Tribunal should take account of where the claimant did in fact undertake work for the respondent and not whether hypothetically the claimant could have been required to work anywhere in the world.

113. The respondent argues that the claimant habitually carry out work in one overseas country, namely USA. The claimant submits that the respondent's focus on the USA overlooks the claimant's global assignments and contradicts the practical realities of his roaming offshore role. He relies on the fact that he worked in multiple locations in addition to the USA and argues that no single location dominates. He relies on the respondent's "days worked per location" which shows that he worked approximately 33% of his time in the USA. He argues that his employment was global in nature, not exclusively or even primarily in the USA. The claimant also makes reference to the fact that he had no permanent residence in the US, no bank account, no ongoing US health coverage or other local benefits, and did not stay in the US while off duty (although the Tribunal did not hear evidence about that and in any event the claimant's lack of other connection with the US would not appear to be relevant).

114. In contrast, the respondent relies on the decision of the ECJ in *Weber v Universal Ogden Services 2002 ICR 979* to support their argument that the USA was the claimant's habitual place of work. The respondent relies on the fact that, taking account of the claimant's whole period of employment with the respondent, the USA was the place where the claimant had worked for the longest. Specifically, he worked in the Gulf of Mexico in the territorial waters of the USA for 160 days, which was longer than he worked in any other country. All of this work in USA waters was carried out in the latter part of the claimant's employment after his permanent assignment to Icemax and the respondent submits that should therefore be afforded additional weight. Further, the respondent also relies on the facts that: from September 2023, the claimant worked exclusively in USA waters; that prior to suspension in

June 2024, he had worked continuously in USA waters for an interrupted period of nine months; and that the claimant was assigned to work in the USA at the time of his dismissal. The respondent submitted that if the claimant had not been dismissed, then he would have continued to work on the Icemax in the Gulf of Mexico, which remained there after his dismissal. This was as demonstrated by the Icemax work history document, which shows that Icemax's operations in the Gulf of Mexico are ongoing.

115. I gave consideration to the meaning of "habitually carries out work". Decisions interpreting the Rome Convention which uses language almost identical to the Brussels Convention and now the CJJA are relevant when it comes to interpreting the word "habitually" (*Powell v OMV Exploration and Production Ltd 2014 ICR 63 EAT*).

116. On the definition of "habitually carries out work", in *Weber* the ECJ held that an employee's habitual place of work was defined as the place where the employee performed the essential part of their duties vis-à-vis the employer, which is in principle the place where the employee worked longest on the employer's business. For the purposes of undertaking that assessment, account is to be taken of the whole duration of the employment relationship.

117. In particular, at [58] the ECJ held that, "Article 5(1) of the Brussels Convention must be interpreted as meaning that where an employee performs the obligations arising under his contract of employment in several Contracting States the place where he habitually works, within the meaning of that provision, is the place where, or from which, taking account of all the circumstances of the case, he in fact performs the essential part of his duties vis-à-vis his employer. In the case of a contract of employment under which an employee performs for his employer the same activities in more than one Contracting State, it is necessary, in principle, to take account of the whole of the duration of the employment relationship in order to identify the place where the employee habitually works, within the meaning of Article 5(1). Failing other criteria, that will be the place where the employee has worked the longest. It will only be otherwise if, in light of the facts of the case, the subject-matter of the dispute is more closely connected with a different place

of work, which would, in that case, be the relevant place for the purposes of applying Article 5(1) of the Brussels Convention."

118. In *Koelzsch v Grand Ducky of Luxembourg 2012 ICR 112*, the ECJ, applying the Rome Convention, held that the phrase "habitually carried out his work" should be given a broad interpretation, and that if an employee carries out activities in more than one country, their habitual place of work is where that in which or from which in light of all the factors which characterise that activity the employees performs the greater part of their obligations towards their employer. In the case of work in the international transport sector, that was determined by considering where the employee carried out his transport tasks, received instructions and organised his work and the place where his tools were situated. These principles were repeated in *Nogueira and ors v Crewlink Ltd [2018] ICR 344*, where the CJEU considered the position of internationally mobile employees, specifically airline crew. In addition to the above factors, the place where the aircraft aboard which the work is habitually performed are stationed was stated to be relevant.

119. The claimant relied on *Koelzsch* to support his contention that "habitual place of work" extends beyond mere geographic location. Courts he submitted should identify the place from which the employee primarily receives instructions and organises his activities, thereby focusing on the factual centre of gravity of the employment.

120. Here, during the whole of his employment with the respondent, the claimant worked on board a drilling vessel in various international locations. However latterly, indeed for the last nine months of his employment, he worked in the US, which is where the drilling vessel was stationed, and which was the place where he carried out his work. The fact that he might have required to work any where in the world is nothing to the point. While he may well only have spent 33% of his time overall in the US relative to other countries, he spent most days in the US when compared with the number of days he spent in other individual countries.

121. In any event it cannot be said that the subject matter of the dispute is more closely connection with a different place of work. While the claimant spent his leave in Poland, he received instructions regarding his work from his superiors on the Icemax, who were also employees of the respondent. I did not accept that he received instructions relating to his work from other UK-based employees, for the reasons discussed above.

122. Given the evidence, applying the test to determine where the claimant "habitually" carried out work, I accept that indicates that the claimant did habitually carry out work in one overseas country, namely the USA. That would then close off the 2(c) route as well.

Was the business which engaged the employee situated in the UK?

123. If however the claimant is right about his assertion that as an international worker he did not habitually carry out work in any one overseas country, section 15C(2)(c) CJJA is capable of conferring jurisdiction in the UK "where the business which engaged the employee is or was situated".

124. If the respondent is wrong to assert that the claimant habitually worked in one overseas country, then they argue that the claimant cannot in any event rely on this provision because he was not engaged by a business situated in the UK. The business which engaged the claimant was the respondent, which is situated in Singapore, with no place of business in the UK.

125. The claimant's position is that he can rely on this provision because the business which engaged him was SDHR, which is a business which is located in Aberdeen.

126. The case of *Stena Drilling Pte Limited v Smith*, although relating to a different respondent, involved the same group of companies. SDHR was also involved in the recruitment process of the claimant in that case. The EAT indicated that the precise role played by SDHR in recruitment in that case may lead to a conclusion that Aberdeen was the place where the business that engaged the claimant was situated. The EAT indicated that consideration should be given to the precise role in the process of employment of the claimant played by SDHR.

127. The relevant facts found in this case are that after seeing an on-line advert bearing the Stena Drilling brand, the claimant e-mailed his application to SDHR. This was considered by SDHR employees, including a technical specialist, after which he was invited to interview by an SDHR employee, and then interviewed (remotely) by SDHR employees, who recommended that they should proceed with his application. No evidence was presented which showed how the claimant was referred to the respondent, or the respondent's precise role in the decision making process. However, the offer of employment was issued to the claimant by the respondent. This process was in line with the services agreement which states that SDHR will assist AMS with recruitment, but individuals are employed by AMS and AMS retains full authority over such matters.

128. The respondent set out in some detail submissions to support their argument that only a place of business of the actual employer, that is AMS, can be the engaging place of business, relying in particular on *Voogsgeerd v Navimer* SA (C-384/10) and *Jenkinson v Council of the European Union* (C-46/22), which they argue make clear that the place of business can only be office locations which form part of the undertaking of the employer.

129. The respondent argues that the purpose of Section 15C CJJA, intended to replicate the essentially equivalent provision of the Brussels Recast, is to cater for situations where the employer has operations in more than one country and engages an employee through a branch office in one country to work at another of its branches in a different country. Otherwise, a foreign employer with no connection to the UK could nevertheless be sued in the UK because of the use of a third-party global recruitment business which decided to resource the work through a UK office, including where the relevant "place of business" (including that of a third party recruitment business) subsequently relocates to the UK after the inception of the employment relationship, outside the control and/or knowledge of the employer.

130. Further, it is the respondent's position that the use of the word "engaged" presupposes engagement under a contract; and that the involvement of SDHR in the recruitment process did not amount to the "engagement" of the

claimant. The fact that he was interviewed by them, and recommended for appointment, cannot equate with him having been "engaged" by them. The decision to employ the claimant was taken solely by the respondent, which was the business which "engaged" the claimant, and the contract between them was concluded in Singapore.

131. Notwithstanding the reference above to case of *Powell*, where the EAT found that the wording of the Rome Convention and Brussels Recast was "almost indistinguishable", the respondent argues that there is a subtle, but potentially important, difference in the language used the Rome Convention, which refers to the place of business "through" which the employee was engaged and Recast Brussels, which in common with section 15C(2)(c) CJJA refers to the business "which engaged" the employee. The respondent argues that an employee cannot be engaged by a business unless and until a contract of employment has been concluded with the employing entity.

132. Relying on *Voogsgeerd* the respondent argued that any ongoing involvement of SDHR in Aberdeen in the administration of the claimant's working relationship with the respondent is not relevant in deciding if Aberdeen is the employer's "place of business" at which the claimant was engaged. This is because the ECJ concluded that the engaging place of business can be determined only by taking into account facts that relate purely to the conclusion of the employment contract or the creation of the employment relationship, and not the subsequent performance of the employment relationship.

133. The respondent argued that it would infringe the fundamental company law principle of corporate separateness if the Tribunal were to find that a place of business of SDHR, a separate company, could found jurisdiction.

134. I did not consider that the decision of the ECJ *Voogsgeerd v. Navimer* [2011] EUECJ C-384/10 was quite as clear cut as suggested by the respondent.

135. The ECJ concluded at [52] that the engaging place of business is a reference "exclusively to the place of business which engaged the employee and not to that with which the employee is connected by his actual employment".

136. The court or tribunal should, therefore, in determining the engaging place of business consider only those factors "relating to the procedure for concluding the contract, such as the place of business which published the recruitment notice and that which carried out the recruitment interview, and it must endeavour to determine the real location of that place of business" (see [50]).

137. At [46] the ECJ held that "the use of the term engaged in….the Rome Convention clearly refers purely to the conclusion of the contract, or in the case of a de facto employment relationship to the creation of the employment relationship and not to the way in which the employees actual employment is carried out".

138. Given the reference at [50] to "conclusion of the contract", this is not necessarily limited to the place where the contract is signed but may include for example consideration of the place where the claimant was interviewed.

139. While I have concluded in this case that AMS is the employer, in *Voogsgeerd,* the ECJ was specifically asked whether the "place of business" could be a place of business of an entity other than the employer. In particular, question 4 in that case was, "Can the place of business of another company, with which the corporate employer is connected, serve as the place of business even though the authority of the employer has not been transferred to that other company?"

140. The Court's answer is apparently a conditional "yes", that the "place of business of an undertaking other than that which is formally referred to as the employer, with which that undertaking has connections, may be classified as a "place of business" if there are objective factors enabling an actual situation to be established which differs from that which appears from the terms of the contract even though the authority of the employer has not formally transferred to that other undertaking".

141. In *Voogsgeerd*, the claimant's employment contract was with Navimer, but he had signed it at the headquarters of Naviglobe, and he relied on the fact that he received instructions from Naviglobe and the director of Naviglobe was

also the director of Navimer to suggest that the country in which Naviglobe was situated had jurisdiction over his complaint.

142. Applying the principle to the facts of that case, the ECJ concluded at [62] – [64] that, "As regards the applicant concerning the fact that the same person was director of Naviglobe and of Navimer, it is a matter for the referring court to assess what is the real relationship between the two companies in order to establish whether Naviglobe is indeed the employer of the personnel engaged by Navimer. The court seised must in particular take into consideration all the objective factors enabling it to establish the actual situation which differs from that which appears from the terms of the contract….In making this assessment, the circumstance pleaded by Navimer, namely, that there was no transfer of authority to Naviglobe, constitutes one of the matters to be taken into consideration, but it is not, in itself, decisive in the determination of whether the employee was, in reality, engaged by a company other than that referred to as the employer. It is only if one of the two companies acted for the other that the place of business of the first could be regarded as belonging to the second, for the purposes of applying the linking factor in Article 6(2)(b) of the Rome Convention".

143. The respondent argued in this case that while in *Voogsgeerd* the Court indicated that the only qualification to that principle that the place of business had to be that of the employer, would be where the undertaking which concluded the contract, in reality, acted in the name of and on behalf of another undertaking, there is no basis here for any suggestion that when the respondent concluded the contract of employment with the claimant it was acting in the name of and on behalf of SDHR. There are no objective factors which might suggest that the "reality" of the situation is that the claimant was ever engaged by any undertaking other than AMS. Any involvement of SDHR in the recruitment of the claimant demonstrates nothing more than SDHR performing its contractual duties under its services contract with the respondent. The involvement of SDHR is not sufficient to amount to an "engagement" for the reasons already noted. There is no basis for challenging the situation that appears from the terms of the claimant's contract of

employment. The claimant's employer was AMS and its place of business is Singapore, not Aberdeen.

144. The claimant argued that "in reality" the actual on-the-ground engagement was conducted by SDHR and that the objective evidence showed that the UK based Stena Drilling group was the business which truly engaged the claimant.

145. I did not accept the respondent's submission that in order to found jurisdiction on a "place of business" which "engaged" the claimant, that would mean that I would have to have found that SDHR was the claimant's employer. I took the view that what is being considered here is an exception to the general position that the place of business requires to be that of the employer, and that it could be the place of business of an undertaking other than that which is formally referred to as the employer with which that undertaking has connections.

146. The claimant did not address this point in terms. Rather he relied on his argument that his employer and the correct respondent was Stena Drilling Limited or SDHR because AMS was a "shell" company.

147. On the question then whether the business that engaged the claimant can be an entity other than the employer, I considered whether there were any objective factors allowing for the conclusion that the true situation was different from the terms of the contract entered into. I would need to find that despite what appears on paper, the claimant was in effect engaged by SDHR.

148. However, I came to the view that there was no evidence in this case to suggest that the recruitment process disguised the true position about the claimant's employment, bearing in mind the company structures in place, and in particular the services agreement between AMS and SDHR.

149. Given I have found above that the contract of employment was concluded with AMS, on the face of it AMS engaged the claimant. But in terms of whether the reality was different, largely for the reasons set out above which led me to conclude that AMS is the employer, I must take the view that notwithstanding

the role which SDHR played in the recruitment process, the "reality" is that the claimant was engaged by AMS and not by SDHR.

150. I accept that there is no evidence to support any suggestion that the respondent was acting in the name of or and/or on behalf of SDHR when it concluded the contract of employment with the claimant. AMS had not transferred authority to SDHR to engage the claimant.

151. In terms of the corporate structure of the group of companies, AMS and SDHR are two separate companies and two separate legal entities, and there is no overlap of their directors. The SDHR has no power to make decisions in regard to the claimant in respect of recruitment (or other aspects of his employment relationship), and no power to enter contracts for or on behalf of AMS. The contract of employment was signed by the claimant and by an AMS director who had no role in SDHR. The role which SDHR played in the recruitment process was set out in the services agreement. That sets out the limits of SDHR's authority.

152. Although the ongoing relationship is not a relevant factor in terms of conferring jurisdiction relating to the place of business, I did consider that this might reveal objective factors to be relied on to determine the "actual situation" which might differ from what is stated in the contract. In this case, as discussed above, SDHR were involved in an ongoing basis with the claimant in HR administration but only to the extent set out in the services agreement. Further, in contrast to the factual position in *Voogsgeerd* as I understood it, I have further found above that the claimant's day to day work was directed not by staff at SDHR but rather by employees on Icemax, who were also employed by the respondent, and indeed disciplinary decisions were made by employees of the respondent.

153. Notwithstanding the role of SDHR in the recruitment of the claimant, I accept that the reality of the situation is that the claimant was not engaged by SDHR Given the employer is AMS, which is a company domiciled in Singapore and which does not have a place of business in the UK, and that the role which SDHR played in the recruitment process was in line with a services agreement

concluded with AMS, I accept that the entity which engaged the claimant was AMS which does not have a place of business situated in the UK.

154. I accordingly conclude that the Tribunal does not have international jurisdiction to hear this claim.

Territorial Jurisdiction

155. In any event, even if this Tribunal did have international jurisdiction over these proceedings, that is not sufficient because the Tribunal must also have territorial jurisdiction.

156. The respondent submits that in any event the claimant does not fall within the express or implied territorial scope of the Employment Rights Act 1996 (ERA) and that he cannot therefore bring an unfair dismissal claim.

157. I accept, and it would appear that the claimant also accepts, that while s199 ERA contains provisions which specifically apply to seafarers, the claimant cannot pursue his claim under those provisions. This is because the claimant does not meet the terms of s.199(7) namely: that the seafarer must be working on a UK registered vessel; he must not work wholly outside GB under the terms of his contract of employment and he must be ordinarily resident in GB. Given the claimant is Polish and was resident in Poland throughout his employment with the respondent and although he worked on a UK registered vessel, he worked exclusively outside UK waters, so he clearly does not meet the relevant statutory criteria.

158. Beyond that, the ERA no longer states its territorial reach, and territorial jurisdiction must be derived from principles established in case law and in particular through the so-called Lawson/Ravat route.

159. In *Lawson v Serco Limited [2006] ICR 250*, the HL confirmed that there can be exceptions to the general rule that place of employment is decisive in founding territorial jurisdiction. Lord Hoffmann however stated that truly expatriate employees, who are both living and working abroad, will only be able to claim unfair dismissal in exceptional circumstances.

160. In *Ravat v Halliburton Manufacturing Service Ltd [2012] ICR 389*, the SC confirmed that the exception will apply where the connection between GB and the employment relationship is "sufficiently strong" enough to presume that Parliament must have intended the employee to have the right to claim unfair dismissal. A truly expatriate employee who both works and lives outside GB will require an "especially strong connection".

161. Lady Hale in *Duncombe v Secretary of State for Children, Schools and Families (No.2) 2011 ICR 1312 SC* confirmed that the exceptional case would need to have "an overwhelmingly closer connection" with Britain and British employment law. Thus where an employee works and is based wholly abroad the appropriate question is to ask is whether the claimant's employment relationship has "much stronger connections" with Great Britain and with British employment law than with any other system of law.

162. This does not however mean that an employment tribunal should make a comparison between the merits of any two jurisdictions and decide which is the more favourable for the claimant. Rather, the employment tribunal must decide whether the employee falls within an exception to the general rule by demonstrating they have sufficiently strong connections with GB and British employment law (see *Creditsights Ltd v Dhunna 2014 IRLR 448*).

163. Further the claimant relied on that case to argue that that a tribunal must not adopt a rigid or overly formulaic test when determining whether an overseas employee enjoys UK employment rights, but should instead undertake a 'broad evaluative exercise' to assess whether there is a sufficiently strong connection with British employment law.

164. In this case as the claimant is an employee who both lives and works abroad, accordingly as an overseas employee, he will have to show that he has an especially strong connection with both GB and with British employment law.

165. So the broad question here is: was there an especially strong connection between the employment relationship and Great Britain. All relevant factors should be considered, and no one factor is decisive. However certain particular factors are commonly taken into account, such as contractual

choice of law, and the outcome depends on a careful analysis of the facts of each case (rather than simply deciding whether a given employee fits within categories created by previous case law (see *Ravat*)).

166. The respondent argued that the claimant does not meet the Lawson/Ravat tests. He cannot show that an "overwhelmingly" or "especially strong" connection with both Great Britain and British employment law. This is because: he is not a British citizen; during his employment with the respondent, he resided in Poland; he worked exclusively outside of UK waters; he did not ever embark or disembark vessels in the UK; he had no base in the UK; he commuted to and from Gdansk airport; he spent his leave periods in Poland; he did not pay UK tax or national insurance; and he was not a member of a UK pension scheme.

167. The respondent added that the claimant was employed by a Singaporean company, which does not have any place of business in the UK and the claimant's contract of employment was entered into in Singapore. The day-to-day management of the claimant was carried out on board the Stena IceMax by employees of the respondent or another Singaporean legal entity, Stena Drilling Pte Ltd.

168. The claimant argued that he falls within the Lawson exceptional category, because his employment relationship has sufficiently strong connections with Great Britain. His rationale for that was based on the following propositions.

169. Stena Drilling Ltd and SDHR are companies incorporated in the UK. Along with UK-registered subsidiaries of Stena UK Ltd (Clyde Travel Ltd and Clyde Training Solutions Ltd), they carried out the recruitment, engagement and dismissal of employees, as well as HR administration, payroll services, training courses and other key functions.

170. All Stena Drilling vessels on which the claimant worked were UK-registered. He had no single overseas base, but worked in multiple jurisdictions. Operational control was with Stena Drilling Limited and he received work instructions from UK-based personnel.

171. The majority of employment-related documentation was issued by UK entities. He was recruited through a UK-based hiring process. Other HR and disciplinary matters were managed by UK personnel based in Aberdeen. The claimant was paid in sterling from a bank in London, with payroll managed from Aberdeen. These interactions and the functioning of his contract, he argued, demonstrate closer links to the United Kingdom than to Singapore. Singapore had no meaningful connection to the claimant's employment.

172. Relying on *Bleuse v MBT Transport Ltd [2008] IRLR 264* and *British Airways plc v Mak & Others [2011] IRLR 541*, the claimant argued that the courts recognised that physical performance of duties outside the UK need not be conclusive if significant control and administration emanate from within the UK. As in *Mak*, even though the claimant worked internationally, his 'base of operations' was still firmly in the United Kingdom, given the above factors. He argued that he travelled to and from his worksites via the UK on multiple occasions and also completed several training courses in the UK.

173. The claimant also argued that allowing a UK-headquartered employer to evade British statutory protections by labelling the claimant's contract with a foreign subsidiary would undermine the very policy behind the ERA. He relied on *Ravat* to argue that the Supreme Court had recognised that Parliament intended to protect workers who, in substance, form part of the British workforce, even if they perform tasks abroad; and on *Duncombe* to argue that nominal arrangements with offshore entities should not defeat this core legislative intent.

174. I accordingly gave consideration to the various factors to take into account here. In particular, the claimant is a Polish national, who lives in Poland, and did not work at all in the UK or UK waters. These are all factors which point away from sufficient connection with GB. Indeed, the claimant recognises that as an overseas employee that he must show an exceptionally strong connection to GB and British employment law.

175. Factors pointing in support of the claimant's position include the fact that he worked on UK registered vessels and that he was paid in sterling into a London bank account.

176. He relies on the fact that he took instructions from UK based personnel. The evidence does not however support that conclusion. I heard evidence that the crew with whom he worked on board vessels located outwith the UK, including his line manager, were all employed either by AMS or by Stena Drilling Pte Limited, both companies which are registered in Singapore.

177. While the claimant sought also to rely on the involvement of UK personnel in recruitment decisions and all other HR matters, again the evidence does not support that conclusion. Rather the evidence points to SDHR facilitating recruitment and undertaking an HR liaison role more generally, in fulfilment of the services agreement between them and AMS. For all the claimant relies on recruitment decisions being made by UK personnel, as discussed above, the claimant was employed by a Singapore based company and he freely signed the contract with them.

178. The claimant referenced attending training in the UK and attending his place of work via the UK when he was undertaking training. There was a dispute about how many courses the claimant attended in the UK. I did not view that as material however, because the fact that the claimant spent a few days, or even a week, in the UK during his employment to undertake training, which was delivered by staff engaged with UK based companies, is not a factor to which I give much weight in the overall assessment.

179. More weight must be given to the fact that he did none of his work in the UK and that he did not pay tax or national insurance in the UK. Indeed, the claimant suggested in evidence that he had some liability to pay tax in the USA but in regard to his employment with this employer no tax liability arose in the UK.

180. On the matter of the choice of law, the claimant relies on Article 8(4) of the Rome I Regulation which states that, 'Where it appears from the circumstances as a whole that the contract is more closely connected with a

country other than that indicated in paragraphs 2 or 3, the law of that other country shall apply'. He argues that in this case the other country is plainly the United Kingdom, to support his claim that UK employment law should govern this dispute instead of Singaporean law. The respondent points out that Article 3(1) of the Rome I Regulation (which is retained EU law and continues to apply in the UK) provides that the contract shall be governed by the law chosen by the parties. Article 8(4) only applies in the absence of an express choice of law.

181. Although the governing law of the contract is a relevant factor, and not decisive, here the fact is that the governing law of the contract entered into between the parties is the law of Singapore. As above, I have concluded that the claimant entered into that contract in the full knowledge that his employer was based in Singapore and that the governing law of the contract is the law of Singapore.

182. The claimant argued argument that to find against him would undermine the very policy behind the ERA to provide British statutory protections. While I appreciated the claimant's concerns about the set up here, I have found that he did freely enter into a contract of employment with the respondent and that there is nothing illegitimate about the way this group of companies has been structured. Even if he been able to establish that he was employed by a UK based company and even if he had been able to establish that this Tribunal had international jurisdiction, his own links to GB are very limited.

183. Taking account of all relevant factors, I conclude that the claimant had an insufficiently strong connection with GB law to confer territorial jurisdiction

Conclusion

184. The respondent in this case was the claimant's employer. His claim that he was unfairly dismissed by them cannot be considered for want of jurisdiction. Accordingly, this claim is dismissed.

Employment Judge: M Robison
Date of Judgment: 1 May 2025
Date Sent to Parties: 4 May 2025