



# EMPLOYMENT TRIBUNALS

**Claimant:** Andrew Kieswetter

**Respondent:** Debrett's Education Limited

**Heard at:** London South  
Employment Tribunal by video  
**Before:** Employment Judge Burge

On: 25 September 2025

## REPRESENTATION:

**Claimant:** In person

**Respondent:** Siobhan O'Connor, Founding Partner of Respondent

## PRELIMINARY HEARING JUDGMENT

It is the Judgment of the Tribunal that the claim is dismissed.

## REASONS

### Background

1. On 2 May 2025 Employment Judge Leith asked the parties to comment on whether the Employment Tribunal in England had jurisdiction to consider the claim. He asked what was said in the contract about choice of law, if it was silent about where the Claimant habitually worked and if he habitually worked outside England and Wales why he said the law of England applied to the contract. The Claimant replied saying that he raised jurisdiction but it was brushed aside. He said he worked in the UK "for a spell" and that the Respondent operated under

UK Regulations. The Respondent also replied saying that the Claimant had been recruited to tutor children from the Beebee family in Kinshasa in the Democratic Republic of the Congo, that it was in Kinshasa that the Claimant lived and habitually worked, spending all his time there apart from a visit to the UK at the end of August/beginning of September 2024. The Respondent said that all arrangements for the Claimant's visa, living and medical requirements were arranged by the Beebee family and their business in Kinshasa, as documented in the Letter of Agreement. Employment Judge Leith then converted the final hearing to a Preliminary Hearing to decide whether the Tribunal has jurisdiction to hear the claim. Employment Judge Leith made case management orders including disclosure and witness statements relating to jurisdiction.

2. In his claim form the Claimant ticked the box for unfair dismissal and then wrote "Because I am employed less than 2 years, I was told to claim for wrongful dismissal.". The Claimant agrees his claim is for breach of contract/wrongful dismissal. The Claimant's claim is that he is owed notice pay for the full contract duration which he says is to 31 July 2025, in his claim form he said that:

*"According to the agreement, I was supposed to work until 31 July 2025. I received a month's notice pay for 7 October 2024 to 07 Nov 2024. This means they still owe me for the remainder of November 2024 PLUS a further 7 months up to and including 31 July 2025."*

### **The Hearing**

3. The Claimant had failed to comply with Employment Judge Leith's case management Orders. The Respondent applied for strike out but I decided that a fair trial was still possible, although the Claimant would be restricted to his particulars of claim as his witness statement and he was not allowed to elaborate on it. Both sides asked questions of each other, I also asked questions.
4. Stephen Beebee, the father of the family for whom the Claimant tutored, provided a witness statement on behalf of the Respondent. However, as he was situated in the Democratic Republic of Congo, and the Democratic Republic of Congo had not agreed that individuals were allowed to give evidence by video link, he did not give evidence and I placed little weight on his witness statement.
5. The Claimant gave evidence on his own behalf. Ms O'Connor, the Founding Partner of Debrett's Education Ltd, gave evidence on behalf of the Respondent.

### **Findings of Fact**

1. The Claimant worked as tutor for the Beebee family from 1 December 2023 until 7 October 2024.
2. The evidence of Ms O'Connor is accepted that the Respondent, Debrett's Education Limited, is a limited company based in Surrey, England which supports families who are looking for places for their children at UK Independent schools, colleges and universities.
3. The evidence of Ms O'Connor is accepted that Mr Beebee approached the Respondent for some advice about home schooling for his children. They lived in the Democratic Republic of Congo. Mr Beebee engaged the Respondent to help them find a private tutor. The family hoped to move to England at some point and so it was important that the home schooling would be of a high enough standard so they could transition to the UK system. They put together a brochure, which stipulated that the role was to be in the Democratic Republic of Congo.
4. The Claimant is a South African national. A virtual meeting took place and a formal interview took place in South Africa, where the Claimant met with the family and taught a class. The Claimant was formally offered the role in November 2023. An agreement provided that the role was "private tutor to the Beebee family children". The agreement stated that the Claimant would be paid as a contractor through the Respondent. The Claimant was to report to the Beebee family in the first instance and Ms O'Connor. The Respondent was said to be part of the reporting process to support both parties as a "critical friend". The agreement was to be signed by the two parents of the Beebee family, Ms O'Connor and the Claimant.
5. Both the Claimant and the family could give one months' notice in writing to terminate the agreement. The place of work was said to be "in a school setting, in Kinshasa in the Democratic Republic of the Congo, however this is not exclusive and there may be times when teaching happens abroad". The Claimant was provided with private accommodation in Kinshasa, transport, medical insurance and health care costs were paid for by the family. The Claimant was also provided with 2 return flights to South Africa per annum and his relocation costs were also covered by the family both to and from Kinshasa.
6. Ms O'Connor's evidence is accepted that the Claimant was offered to be paid in South African Rand as the family had other South African employees that they paid in Rand. However, the Claimant asked to be paid in Pounds Sterling. The Claimant agrees he was paid gross without any deductions and that he paid tax in South Africa. On 6 September 2024 the Claimant wrote to Ms

O'Connor saying that his tax liability in South Africa was large and the tax official had suggested to him that the liability would be reduced if the Respondent employed him rather than having a service provider relationship.

7. In the Claimant's particulars of claim, which was accepted as his witness statement, he stated:

*"When we concluded the contract, the agent brushed off the query about jurisdiction when she stated that it is not relevant in my situation. She said she was not sure about this and that we can discuss it during our next online discussion. All she stated in that meeting was that it will not get that far, anyway. I was rather disturbed but naively proceeded."*

8. There were many points raised backwards and forwards during the finalisation of the agreement. Ms O'Connor accepts on behalf of the Respondent that some clauses were based on UK employment law. One question from the Claimant on 31 October 2023 was "Which country's Labour Laws would apply and regulate the relationship?" to which Ms O'Connor replied "Good question – bear with me on that one...". I find that the agreement was silent on Jurisdiction.
9. The role was carried out in Kinshasa. In his claim form the Claimant provided his place of work as Avenue De Gombe, Kinshasa, Drc. The Claimant, did however accompany the family on a three week trip to England.
10. When the family decided to give the Claimant notice to terminate, they did so in person in Kinshasa. The Claimant was given one month's salary in lieu of notice, together with payment of his Subsistence allowance and all costs incurred in arranging his return to South Africa. The notice of termination was then confirmed by email with Ms O'Connor from the Respondent copied in.
11. On 8 September 2025 the Claimant wrote an email to the Employment Tribunal Jurisdictional Support Team saying that he was "making moves to report the matter of unfair dismissal to the DRC authorities". When I asked him about this in the hearing the Claimant said that he had not yet commenced proceedings in the DRC.

## **Law and conclusions**

### **Statutory basis for Jurisdiction**

12. The Claimant brings a claim of breach of contract in relation to his notice pay. Section 3 of the Employment Tribunals Act 1996 gives power to confer further jurisdiction on employment tribunals. The Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 (the "Order"), Article 3 provides:

*“3. Proceedings may be brought before an employment tribunal in respect of a claim of an employee for the recovery of damages or any other sum (other than a claim for damages, or for a sum due, in respect of personal injuries) if— (a) the claim is one to which section 131(2) of the 1978 Act applies and which a court in England and Wales would under the law for the time being in force have jurisdiction to hear and determine; (b) the claim is not one to which article 5 applies; and (c) the claim arises or is outstanding on the termination of the employee’s employment.”*

13. Sections 131(2) of the 1978 Act refers to claims based on a breach of an employment contract, or any other contract connected with employment, sum is due under such a contract and a claim for a sum is pursued through any enactment which relates to the terms or performance of such a contract.
14. As the Order provides that a Tribunal can hear a claim if *“(a) the claim is one to which section 131(2) of the 1978 Act applies and which a court in England and Wales would under the law for the time being in force have jurisdiction to hear and determine”*, the Tribunal's jurisdiction to hear breach of contract claims therefore “precisely shadows” the jurisdiction of the ordinary courts to hear such claims (*Dickie v Cathay Pacific Airways Ltd* [2004] ICR 1733 and *Crofts & Ors v Cathay Pacific Airways Ltd & Ors* [2005] EWCA Civ 599). So, the question of whether an employment tribunal has territorial jurisdiction over a contract claim depends on whether the courts of England and Wales or Scotland would have jurisdiction over the claim if pursued in their respective civil courts.

### **The Tribunal Rules of Procedure and Civil Procedure Rules**

15. Rule 10 of the Employment Tribunal Rules of Procedure 2024 provides:

**10.—(1)** *A claimant must start proceedings by presenting a claim on a claim form completed in accordance with any practice direction.*

**(2)** *A claim may be presented in England and Wales if—*

**(a)***the respondent, or one of the respondents, resides or carries on business in England and Wales,*

**(b)***one or more of the acts or omissions complained of took place in England and Wales,*

**(c)***the claim relates to a contract under which the work is or has been performed partly in England and Wales, or*

*(d)the Tribunal has jurisdiction to determine the claim by virtue of a connection with Great Britain and the connection in question is at least partly a connection with England and Wales.*

***(Tribunal's emphasis)***

16. In the civil courts, the Civil Procedure Rules, Part 6 concerns the Service of documents. In this case the Respondent resides and carries on business in England and Wales and the Respondent was validly served.

### **The Civil Jurisdiction and Judgments Act 1982**

17. Section 15C of the Civil Jurisdiction and Judgments Act 1982 deals with proceedings whose subject matter is a matter relating to an individual contract of employment. s.15C(2)(a) provides that the employer may be sued by the employee where the employer is domiciled in the UK, in the courts for the part of the UK in which the employer is domiciled. In this case the Respondent is domiciled in the UK. While it could be argued that the agreement was not a contract of employment, the EAT in *Prahl and ors v Lapinski* 2025 EAT 77 stated that a 'contract of employment' should be construed in EU law in the context of the Recast Brussels Regulation - the purpose of the relevant provisions of the Regulation being to protect the rights of employees (in the broad European sense), in particular with a view to avoiding them being driven to bring a multiplicity of claims and to litigate in a foreign jurisdiction.
18. The Tribunal concludes that the Employment Tribunal has international jurisdiction.

### **Which law applies to the contract?**

19. The European Union (Withdrawal) Act 2018 provides for the retention of the Rome I Regulation in domestic law.
20. Article 8 of Rome I provides:

#### ***Individual employment contracts***

1. *An individual employment contract shall be governed by the law chosen by the parties in accordance with Article 3. Such a choice of law may not, however, have the result of depriving the employee of the protection afforded to him by provisions that cannot be derogated from by agreement under the law that, in the absence of choice, would have been applicable pursuant to paragraphs 2, 3 and 4 of this Article.*

2. *To the extent that the law applicable to the individual employment contract has not been chosen by the parties, the contract shall be governed by the law of the country in which or, failing that, from which the employee habitually carries out his work in performance of the contract. The country where the work is habitually carried out shall not be deemed to have changed if he is temporarily employed in another country.*
  3. *Where the law applicable cannot be determined pursuant to paragraph 2, the contract shall be governed by the law of the country where the place of business through which the employee was engaged is situated.*
  4. *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.*
21. Ms O'Connor accepts on behalf of the Respondent that some clauses were based on UK employment law. However, when the Claimant asked Ms O'Connor about the choice of forum she was unsure and replied "Good question – bear with me on that one...". It was not resolved. The agreement is silent as to applicable law.
22. As the contract was silent on which law applies, *"the contract shall be governed by the law of the country in which or, failing that, from which the employee habitually carries out his work in performance of the contract."* In this case the Claimant, a South African national, worked in Kinshasa, DRC and he had an apartment there and apart from a three week holiday in the UK he worked exclusively from Kinshasa. I conclude the Claimant habitually carried out his work in performance of the contract in Kinshasa, DRC.
23. Further, considering the position in relation to *"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"*. The agreement was between an English company, a family residing in the DRC and a South African national. The work was to be carried out in Kinshasa, DRC. Payment was gross in Pounds Sterling but without any deductions. The Claimant paid taxes on his earnings in South Africa. The Claimant tutored the children in Kinshasa, DRC, he lived in an apartment in Kinshasa. The family paid for his relocation costs to Kinshasa. He did go to England for a three week holiday. He was given notice to terminate by the Beebee family in Kinshasa, his usual place of work. That was then confirmed by email with Ms O'Connor from the Respondent copied in. The Tribunal

concludes that from the circumstances as a whole that the contract is more closely connected with the DRC.

24. I conclude that the law of the DRC governs the agreement.

### **Forum Non Conveniens**

25. Even if the contract is governed by the law of the DRC, the civil courts can still grant or decline jurisdiction. In *Spiliada Maritime Corp v Cansulex Ltd* [1987] AC 460; [1986] 3 WLR 972; [1986] 3 All ER 843, HL(E) the House of Lords said that a stay will be granted where the court considers that “in the interests of all the parties and the ends of justice” it would be more appropriate for the claim to be heard in a foreign jurisdiction. In *Crofts and Others v Cathay Pacific Airways Ltd and Others* [2005] I.C.R 1436, the Court of Appeal said

*“50. The principles governing the stay of proceedings on the ground of “forum non conveniens” were laid down by the House of Lords in Spiliada Maritime Corps v Consulex Ltd [1987] AC 460. In essence the task of the court is to consider whether England or the foreign jurisdiction is clearly the more appropriate forum...”*

26. In *Crofts* the Court of Appeal heard appeals from pilots. The Employment Tribunal had held that it had (i) jurisdiction to hear all the claims of the pilots based in London; (ii) no jurisdiction to hear the unfair dismissal claims of the other pilots; (iii) jurisdiction to determine the contractual claims of the pilots based in Hong Kong, but that those claims should be stayed on the ground of forum non conveniens; and (iv) no jurisdiction to entertain the contractual claim of the pilot based in North America. In respect of the (iii) and (iv) decisions, the EAT dismissed the appeals. The Court of Appeal held that the Employment Tribunal had the power to stay the contractual claims if it concluded that England was not the appropriate forum to bring the claims. Although this was a dissenting judgment and the majority position was affirmed by the House of Lords in *Lawson v Serco* [2006] UKHL 3, nothing in the majority judgment or the House of Lords' decision in *Lawson v Serco* undermined Lord Phillips MR's obiter dicta concerning the applicability of forum non conveniens to contract claims in the tribunals.

27. The explanatory note 15 to the EqA states: “As far as territorial application is concerned, in relation to Part 5 (work) and following the precedent of the Employment Rights Act 1996, the Act leaves it to tribunals to determine whether the law applies, depending for example on the connection between the employment relationship and Great Britain”. The House of Lords laid down the test in *Lawson v Serco Ltd and two other cases* [2006] ICR 250, HL whereby the statutory rules should apply to “the employee who was working in Great



Britain” and whether there is a “close connection” with Great Britain. If the test is not met then the Employment Tribunal does not have jurisdiction to hear the claim. The statute does not have territorial reach.

28. However, breach of contract claims are different. Even if the Tribunal or civil court has international jurisdiction, the question remains whether England is the proper forum. This requires a holistic assessment. In this case the Respondent is based in England, the Claimant is a South African national who ordinarily worked in Kinshasa, Democratic Republic of Congo. Notice to terminate the contract was given in Kinshasa, Democratic Republic of Congo. The contract was silent as to the choice of law. I have concluded above that the law of the Democratic Republic of Congo governs the agreement. The Claimant worked on a day to day basis for the Beebee family, who were based in Kinshasa. The Claimant was paid gross in Pounds Sterling and paid taxes in South Africa. One of the parties to the agreement Mr Beebee, although not a Respondent in these proceedings, was the person who terminated the agreement to tutor his children and both the Claimant and Mr Beebee were in Kinshasa at the time of the termination. My conclusion is that England is not the proper forum for the claim to be brought.

29. In *Jhuti v Royal Mail Group Ltd and ors* 2018 ICR 1077, EAT, Simler P made it clear that a general power to stay claims clearly falls within a tribunal’s case management power under what was then rule 29 of the Tribunal Rules 2013 (now rule 30). Rule 30 of the Employment Tribunal Rules of Procedure 2024 provides:

**“30. Case management orders**

- (1) *Subject to rule 32(2) and (3) (postponements), the Tribunal may, on its own initiative or on the application of a party, make a case management order.*
- (2) *The particular powers identified in these Rules do not restrict that general power.*
- (3) *A case management order may vary, suspend or set aside an earlier case management order where that is necessary in the interests of justice, and in particular where a party affected by the earlier order did not have a reasonable opportunity to make representations before it was made.”*

30. In *Prahl and ors v Lapinski* 2025 EAT 77 HHJ Auerbach said

*“17. Secondly, the putative defendant may contest whether the courts of England & Wales, or of some other state, are better placed to decide the matter. That is the issue still referred to by lawyers by its Latin tag of*

*“forum non conveniens”. If the England & Wales court is persuaded that the court of another state would be the more appropriate forum in which to litigate, it may decline jurisdiction, and/or permission to serve on the defendant out of the jurisdiction, or stay or dismiss the claim.”*

31. Where a party has brought claims in different jurisdictions I can see the force of an argument that a claim might be stayed in this jurisdiction pending the litigation in the other jurisdiction. However, in this case the Claimant has said that he has not issued proceedings elsewhere. I have decided that the Employment Tribunal of England and Wales is not the appropriate forum for this claim to be heard. Neither party has suggested that this claim be stayed. I conclude that it is in accordance with the overriding objective (Rule 3), dealing with the case fairly and justly, that as the Tribunal does not have jurisdiction on the ground of Forum Non Conveniens, the claim be dismissed.

Approved by:

**Employment Judge Burge**

**30 October 2025**

## **Notes**

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