EMPLOYMENT TRIBUNALS

Claimant: **Mr G Soar**

Respondent: **1) Hidden Hearing Limited**
2) Demant A/S

Heard at: **London South (remotely by CVP)**
On: 28 and 29 May 2026

Before: Employment Judge Heath

Representation
Claimant: Mr I Wheaton (Counsel)
Respondent: Mr D Matovu

RESERVED JUDGMENT

1. The tribunal does not have jurisdiction to consider the claim against the Second Respondent because there is no ACAS Early Conciliation certificate in respect of it, and this claim is dismissed.

2. The claimant's claims of unfair dismissal and wrongful dismissal are not well-founded and are dismissed.

REASONS

Introduction

1. This is a decision on the claimant's claims for unfair dismissal and wrongful dismissal. His primary claim is against the first respondent, but he claims in the alternative against the second respondent, the parent company of the first respondent.

Issues

2. The parties agreed that in determining the claimant's unfair dismissal claim the key determination was the claimant's employment status after 15 March 2024. The claimant's primary claim is that he was employed by the first respondent throughout, until his dismissal (which he says was unfair and

wrongful) on 10 September 2025. His secondary case is that if he is not found at all times to be an employee of the first respondent, he was unfairly and wrongfully dismissed by the second respondent.

3. The respondent contends that the claimant resigned/retired from employment with the first respondent on 15 March 2024. He thereafter undertook work as an independent contractor with the second respondent until 24 April 2025 when he was told there was no further work. The respondent says there was no dismissal, and in the alternative, if there was one, it was on 15 March 2024 and the claim is out of time.

4. It is common ground that there was no ACAS Early Conciliation Certificate in respect of the second respondent. It was therefore in issue whether the tribunal has jurisdiction to consider the claim against them.

Procedure

5. Regrettably this case was listed as a floating 2 day case and I was unable to pick it up until late morning on its first day. I saw the parties just after noon and explained that I had only just picked up the papers.

6. There was some discussion about the way ahead. Mr Matovu favoured dealing first with the second respondent's application to strike out the claims against it as he said there was no jurisdiction based on no EC Certificate. I considered that it would be best to hear all evidence together with the jurisdiction argument. Sometimes shortcuts take longer.

7. I was told that Mr Beck had flown in from Germany to give evidence, and it was hoped he could give evidence that day. I told the parties I would read into the case, and that we would hear from Mr Beck at 2.30.

8. I was provided with a 281 page bundle.

9. The following provided witness statements and gave evidence for the respondents:

   9.1. Mr C Beck – General Manager KIND GmBH & CO KG (a subsidiary of the second respondent).

   9.2. Mr E Langley – Finance Director first respondent.

10. The claimant provided a witness statement and gave evidence.

11. After the evidence both counsel provided written submissions which they supplemented with oral submissions.

12. There was insufficient time to give an oral decision, so I reserved my decision.

Facts

13. The first respondent is a hearing care retailer based in the UK. It is a subsidiary of the second respondent, which is a Danish international company

providing hearing healthcare and audio technology services. I will refer to the first respondent as HH, and the second respondent as Demant.

14. The claimant joined HH on 6 February 2006, initially as a Regional Manager. On 27 May 2010, the claimant was issued with a directors service agreement in relation to his role as Regional Operations Director – North. He was promoted to Sales Operations Director later that year, but there was no amendment to his service agreement.

15. The service agreement included provisions concerning the following:

    15.1. His location of work, within the UK.

    15.2. His benefits, including company car, fuel for business and private use (fuel for private use was later amended), medical expenses

    15.3. Six months' notice provision to be given by employer or employee.

16. On 12 May 2023 the claimant emailed Mr Boyd, the Managing Director of HH, setting out a summary of a discussion between the two men the day before. The claimant gave evidence that he was 68 years old at the time of writing this email. This email included the claimant saying:

    16.1. HH would announce, probably in August 2023, that he would be stepping down as Sales Operations Director at the end of 2023.

    16.2. The claimant "*will continue to work for the company into early 2024, with the majority of my time being largely devoted to supporting the planning and delivery of conference*".

    16.3. The claimant said "*I will remain in full-time employment until the end of February*". He said that a retail summit was due to be held at the end of that month and he wished to attend to "*say farewell*" to colleagues who he counted as friends.

    16.4. He said "*Following that my role will become that of a part-time project manager… This will entail a reduction of my working hours of c 80% - so my input will be limited to something equivalent to 1 day per week, or 3-4 per month*".

    16.5. He said "*After this, I would be pleased to continue to provide project management support, the specification and duration of which probably needs to be discussed further. When my employment ends, I would welcome the opportunity to continue to offer value to the company on a consultancy basis, to be agreed*".

17. There is no evidence of any response from Mr Boyd to this email.

18. On 16 August 2023 the claimant emailed Mr Beck, Vice President, International Sales for Demant. He mentioned seeing Mr Beck the previous week and being delighted that Beck had proposed an opportunity of helping Demant with a new acquisition in China. He said he reflected on the proposal

and he and his wife were excited by the proposal. He said he envisaged making an initial 2 to 3 week visit to China, and following that could commit to a further 2 to 3 months there either in one trip or split into two. He said he could make the first visit in March. He said this would be conditional on his wife (who worked for HH) accompanying and working with him. Mr Beck and the claimant had known each other for a number of years, and Mr Beck held the claimant in very high regard. On 31 August 2023 Mr Beck responded proposing a quick call.

19. On 30 August 2023 Mr Boyd sent an email to all HH staff subject "Geoff Soar". In this email he explained that the claimant "*will be stepping down from his role as Sales Operations Director at the end of December*". He explained that this had been planned for some time. He paid tribute to the claimant's significant contribution in his role and observed that the claimant *"will disembark leaving us in a stronger position than ever before*". He said that the claimant continues to work closely with the board and that he "*will remain with us into the early part of next year, directing his focus on supporting and mentoring colleagues, as well as being involved in conference planning and delivery (he will be at Celtic Manor on Feb 10)*".

20. On 6 September 2023 Mr Beck emailed the claimant and Mr Boyd to say that he had spoken with HR about the claimant's "*short term expatriation/consulting in China*" but they had been only able to help on expatriation to and from Denmark. In order to move things forward he proposed advice be sought in the UK to "*ensure we can pay Geoff in a way that's legally okay and doesn't screw Geoff over financially in terms of tax and pension… From Demant perspective I assume the most simple way would be to pay Geoff out of UK and you can then re-invoice DK for the services, let's follow up on that*". He asked if Mr Boyd was able to take the lead, otherwise he could seek further advice in Denmark.

21. Shortly after this Mr Boyd discussed the situation with Mr Langley, the HH Finance Director. Mr Langley sought the assistance of a firm called Crowe to liaise with a contact in China and provide advice on the best way to deal with payments.

22. On 21 September 2023 Mr Beck emailed Mr Boyd about "CCG Notes" Demant wrote about each country on a monthly basis. The notes relating to the UK business (i.e HH) mentioned that the claimant was set to retire at the end of the year after many years of great service. It said "*We are also quite far in discussions with Geoff and sending him three months to China to help them get started on the ATRT and Sales Management journey*".

23. On 9 October 2023 Mr Law from Crowe emailed Mr Langley subject "Hidden Hearing – Secondment of Employee to China". The email advised that the claimant should be kept on the HH payroll and not to recharge any costs to Demant, to avoid any charge for social security costs that might be brought by the Chinese tax bureau.

24. On 23 November 2023 there were emails among the board of HH concerning "*Geoff's retirement do with board*".

25. On 18 December 2023 the claimant emailed Mr Beck about a number of matters to do with the China project. This included a proposed title of Senior Global Adviser, and having business cards printed. He suggested having a Demant email address. On 5 January 2024 Mr Beck responded agreeing to the claimant's proposal.

26. On 31 December 2023 the claimant stepped down as Sales Operations Director for HH.

27. On 9 January 2024 Mr Boyd emailed a colleague Mr Gilliard subject "*Confidential (you probably know Geoff better than most of us*)". He spoke about presenting the claimant with an award at an upcoming conference. He wondered if the claimant would like a gold disc perhaps saying something like "*For outstanding service*" perhaps with a "corny" quote like a "*Retirement is not the end of the road. It is a new beginning paved with gold … presented to Geoff Soar from everyone at Hidden Hearing*". Mr Boyd asked for Mr Gilliard's thoughts, including "*do you think no reference to retirement?*"

28. On 8 February 2024 there was a conference at a hotel where the claimant was awarded a gold disc.

29. On 12 February 2024 claimant emailed all staff HH, subject "*The road ahead*" saying how great it was to see everyone that the conference and thanked numerous people for the good wishes expressed to him for the future. He went on to say "*In case you weren't aware, while my previous role is in the more than capable hands of Ivan and Bill, I'm not quite finished yet and want to clear up any misunderstanding. I am pleased and honoured to have been asked by Demant do (sic) some consultancy work to support other of global retail markets (namely ShengWang, in China) so will still have involvement in helping more people to hear better. As the saying goes, "rumours of my demise have been much exaggerated"! Also if I don't see you again, let me thank you for helping to make my 18 plus years with Hidden Hearing so rewarding and enjoyable – it's been fun. With very best wishes for the future*." He said that going forward he would also be contactable at a Demant email address and a personal gmail address.

30. On 16 February 2024 the claimant's email address was changed from an HH one to a Demant one.

31. On 2 March 2024 a retirement event for the claimant was held at an overnight event in London with the board and their respective partners.

32. On 14 March 2024 the claimant emailed Mr Langley about pension arrangements for his bonus payments.

33. Both respondents say that the claimant's last day of service with HH was 15 March 2024.

34. On 16 March 2024 Mr Beck emailed the claimant, Mr Boyd, Mr Langley and the claimant. He said "*Geoff and I have agreed on his remuneration while in China*" on set out amounts for three and four week visits which were said to

be 75% and 100% of a month's salary. A daily allowance of £100 would be paid and accommodation would be paid by the Chinese company. He asked the claimant to let him know if he had a different opinion of "*what you and I have agreed*". Mr Boyd replied on 18 March 2024 to say that he had agreed with the claimant that "*we would pay him as normal up to the end of last week and that we would let him keep the car whilst he was still doing significant consulting work in China*".

35. On 16 March 2024 the claimant went on his first trip to China. This trip was between 16 March and 5 April 2024. The second one was between 8 May and 5 June 2024. The third one was between 7 to 27 September 2024. The final trip was 27 February to 17 March 2025.

36. As can be seen, there were substantial gaps between the trips. The trips were arranged at the claimant and his wife's convenience and availability. He appeared to be doing some travelling with his wife at other times. The claimant was remunerated for the periods he was in China and not for periods where there were breaks between assignments. The exceptions to this were when the claimant worked some days in preparation for trips and was remunerated by way of a day or so being added to the number of days payment he received for the China trips. The claimant accepted in evidence that he was paid for when he worked in China, and that he did not expect to be paid for when he was not working.

37. The claimant was paid through HH's payroll. Mr Langley accepted on behalf of HH that HH was not a payroll agent. He said that the reason why the claimant was paid through HH's payroll and that the money was not recharged to Demant was because of the advice received from Crowe. Both he and Mr Beck said this arrangement was reached to ensure that the claimant was not disadvantaged by having to meet liabilities to the Chinese tax authorities.

38. On 2 October 2024 Mr Langley emailed the claimant "Re China expenses" hoping the claimant was having a good trip and that this was "*easing him into retirement*". He said HH was doing a car fleet review and it was flagged that the claimant still had a company car. He asked the claimant to confirm what arrangement he had with Mr Beck. The claimant responded indicating what the arrangement was with the company car.

39. On 17 March 2025 the claimant returned from China, his fourth trip. On 26 March 2025 the claimant emailed Mr Beck a lengthy "China report" which outlines some positives, but set out a number of frustrations with how the project was going. Mr Beck thanked him for his report.

40. On 1 April 2025 Ms Land, an HH HR Administrator, wrote to the claimant headed "Amendment to Contract – Change of Job Title". She said that further to recent conversations she could confirm that the following terms and conditions changed effective from 1 January 2025 "*Job Role: Your job title has changed from Operations Director to Senior Global Advisor China. People Central, Learn Upon & AX will be updated accordingly. All other terms and conditions will stay the same*."

41. On 24 April 2025 Mr Beck emailed the claimant. He referred to having spoken to people in China, and there being limited commitment from them to the project. He explained "*It means that I don't see any China trips in the short term for [the claimant's wife] and you and probably this is the end of the project. Potentially down the road I would like to get Deonda involved, but it's probably not going to happen this year, but when that comes around I would like you to accompany her if you if you willing to do so*."

42. The claimant responded to the email on 29 April 2025 saying that he and his wife were not surprised, but were very disappointed. He said it was a change of direction from a couple of months previously when Mr Beck appeared to be seeking a commitment for the next couple of years.

43. On 8 May 2025 Mr Beck emailed Mr Boyd subject "Geoff". He said he had just come off a call with the claimant to conclude the China engagement and all went well. The claimant had said he might be interested in buying his company car. It was discussed with the claimant that he would need to hand in his computer (he had held on to the laptop HH had provided him with, together with a mobile phone).

44. On 23 May 2025 Mr Boyd emailed the claimant to say it was good to catch up with the claimant earlier. He said it was hoped they could sort out the car by the end of June and that the claimant would return his laptop.

45. On 28 May 2025 the claimant emailed Mr Boyd attaching the 12 May 2023 email referred to above. He said it appeared Mr Boyd had completely forgotten the May 2023 email which was an accurate summary of an earlier conversation. He said that Mr Boyd did not reply orally or in writing and there were other conversations about the future, so he assumed Mr Boyd had agreed to the scenario discussed. He said this arrangement was fundamental to his decision to step down as sales director. He said that now the China project had concluded he was disappointed that Mr Boyd did not see future opportunities and he had made a complete about-turn. He concluded that he hoped to settle the matter amicably.

46. On 9 June 2025 Mr Boyd responded to the claimant to say that he understood the claimant was away until the end of June, and perhaps they could discuss matters on his return. He also mentioned that there had been a payroll error which meant that the claimant had been paid twice for what I assume is the final trip to China. This was repaid by the claimant and is not an issue in the case.

47. On 10 June 2025 Mr Boyd sent another email to the claimant saying that he had been talking to Mr Beck that morning, and that Mr Beck had mentioned another possible China trip and possibly another country. He said "*that was before we talked about your email – are you sure your last email is a route you wish to go down*".

48. On 4 July 2025 Ms Randall an HH HR Advisor wrote to Mr Boyd saying "*Before I offboard Geoff and [his wife] I wanted to triple check that this was ok*

to do? I know you said they wanted access to their emails for June". Mr Boyd responded "*Please do not do this yet – I may have to do something creative*".

49. On 11 July 2025 the claimant emailed Mr Boyd referring to a conversation the previous week where Mr Boyd made it clear it was unlikely there was any further work in China or elsewhere. He pressed for a response on the issue.

50. On 29 July 2025 the claimant put in a data subject access request.

51. On 7 August 2025 the claimant emailed Mr Boyd. He referred to a phone call on 4 July 2025 (presumably the conversation he mentioned in his 11 July 2025 email) where Mr Boyd had asked him several times whether he intended to retire or resign and how robust he would be in declining to resign. He said he had been seeking information for some time and requested a clear statement about his employment status.

52. On 8 August 2025 Mr Boyd emailed the claimant. He said that he had no recollection of receiving the email (presumably 12 May 2023) but recalled that he had discussions with the claimant around his retirement and his desire to do some work in the future, which Mr Boyd was happy with. He said there was no question of conditionality around the claimant's retirement on a commitment to future work, nor any discussion of any arrangement about time, pay or anything. The claimant had been clear that he was retiring and there were public announcements and celebrations of such. Mr Boyd said he had not focused on the formal arrangements of the claimant's work with China until the claimant had recently raised the issue. He said that the tax advice received by Mr Langley was that to get a visa that would allow him to work in China he would need to be under an "employment contract". He understood that there had been no update to the "*written contract between us but clearly the terms of how you have been working with us have morphed significantly with you agreeing various trips to China for both you and [the claimant's wife] – trips which you arranged the length, time and payment for directly with Claus [Beck] – at no earlier time (except for the email to which I did not respond and we did not discuss) has anyone suggested we had an obligation to provide or pay you any given amount of work/amount. In effect it seems to me that the terms of the agreement you have been working to for the last 16 months are that where if a project or trip came up you discussed and negotiated with the relevant person whether it was something you wanted to do and that was convenient with your other plans*". He said that he could envisage that there may be further opportunities that HH may want to use the claimant in the future, and if so they could discuss this on a project by project basis.

53. On 7 August 2025 the claimant also emailed Mr Beck thanking him for a recent call. He attached the 12 May 2023 email he had sent to Mr Boyd outlining the agreement to step down as sales director. He said he clearly understood he would be involved with the company until further notice earning around £40k pa. He said Mr Boyd had failed to provide clarification despite multiple requests. He hoped Mr Beck could address the matter without delay.

54. Mr Beck responded on 12 August 2025 to say he was surprised to read the email and the claimant's belief of what had been agreed. He observed this would be a very unusual agreement that he had never seen before and would need agreement from a market manager such as himself or Mr Wagner, neither of whom had approved such a request. The claimant responded to say his email was an accurate summary of what was discussed.

55. On 21 August 2025 the claimant sent a formal grievance to Mr Beck using HH's grievance procedure. Very much in summary, he set out what he considered had been agreed by Mr Boyd in May 2023. He mentioned his understanding from Mr Beck that there would be a commitment to work in China into 2025 or 2026. He said he made Mr Boyd aware that he was ready and willing to work, but had been told there was no role for him. He said he had been isolated by HH and felt pressured to resign. Since April 2025 he has had no work and no pay. He required written clarification of his employment status, clarification of whether there was a role in the company going forward and a formal response to his concerns.

56. Mr Beck set about investigating. Between 2 and 5 September 2025 he interviewed Ms Harris, HH's Head of HR; Mr Wagner, Demant's Vice President – International Sales; Mr Langley and Mr Boyd.

57. Mr Wheaton, in cross-examination and submissions made the point, with some justification, that Mr Beck asked some leading questions in his interviews. The interviews included:

57.1. Ms Harris said that the normal expectation when an employee retires or resigns is for them to give formal notice. The claimant had not provided this.

57.2. There has always been a background of "Geoff is retiring" for a while. It was "generally accepted and acknowledged" that the claimant was retiring and there were event to mark this.

57.3. No standard letters were sent out to mark a retirement as there was no retirement letter from the claimant and there was a lack of clarity about next steps.

57.4. When the claimant stopped working for HH he was allowed to keep the company car, but he did not continue to receive salary, paid holiday, death in service benefits or healthcare benefits.

57.5. Ms Harris said the claimant's wife had formally resigned and been issued a "casual contract". Potentially this could have been used for the claimant, but "*it was more of a project thing with fixed parameters*".

57.6. Ms Harris said "*we failed to terminate his employment upon his retirement according to the normal procedures*". She has asked Mr Boyd on at least 5 occasions what the plan was for the claimant going forward. There was definitely a point in time when his pay and benefits ceased.

57.7. Mr Langley was asked what advice he gave Mr Boyd on the claimant staying on the UK payroll. Mr Langley said the advice from Crowe was that the tax situation would be complicated if the claimant were not on the UK payroll. He referred to other examples of people on the UK payroll working on Demant assignments. The easiest solution was to keep the claimant on the UK payroll. This was a benefit for the claimant who would not have to self report. He said the claimant was delaying his retirement by doing work in China. The claimant was not paid for many months as there had been no instruction from Mr Beck to make payments to the claimant. He had not undertaken any work for HH.

57.8. Mr Boyd said it was his understanding that the claimant retired as an Operations Director in February 2024. There was an event that marked this at which he was presented with a cake, and gifts. At a conference in February 2024 he was presented with a gold disc on stage, and in February/March 2024 there was an overnight event in London with directors. It was generally known that he was retiring and going on to do some consultancy work. Mr Boyd had no recollection of seeing or reading the claimant's email of 12 May 2023. He did recall there had been discussions about a variety of things the claimant might get involved in, but there was no commitment to 20% working. Apart from the middle paragraph of the email, the claimant's email was a fair assessment, including the final paragraph about after his employment ended. There was no discussion of the quantum of any future work, if there had been it would have been in the budget. There was no agreement to provide work for several years. Mr Boyd was asked about the claimant's email of 7 August 2025, and he denied saying anything that could possibly be interpreted as saying the claimant should retire or resign – he had nothing to retire or resign from. He asked the claimant a number of times what he was looking to achieve, but the claimant did not answer and turned it round to ask Mr Boyd for an offer. Employment status was not discussed and raised for the first time in the email. Mr Boyd agreed with Mr Beck's suggestion that in Mr Boyd's email of 8 August the reference to the claimant needing to be on an employment contract would be more accurately reflected by his being on the payroll. He accepted he could have used the wrong words. Mr Boyd said that he and Mr Beck had agreed that the claimant's pay and expenses for the China trips would come through the UK books, and he himself was "not fussed" if Mr Bec wanted it "to sit on UK costs" despite the work not being a "UK thing".

58. On 10 September 2025 Mr Beck sent the claimant a written grievance outcome. He attached the meeting notes of the interviews he conducted. He said counsel's advice had been sought on the issue of employment status, having supplied them with all relevant information and documents. Following the advice it was confirmed to the claimant that he currently was not an HH employed and had not been since 15 March 2024. Accordingly, there has not been a failure to manage the claimant's employment since that time. There was no obligation on HH to comply with the grievance policy as it only applies to employees.

59. On 11 September 2025 the claimant initiated ACAS Early Conciliation against HH and received a certificate on 23 October 2025. No Early Conciliation was initiated against Demant. On 21 November 2025 the claimant presented an ET1 naming both HH and Demant as respondents.

The Law

Employment status

60. Section 230 of the 1996 Act sets out the meaning of the term “employee” in that Act:

> *(1) In this Act “employee” means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.*

61. Subsection (2) makes it clear that a contract of employment can be express or implied, and oral or in writing.

62. Subsection (3) defines the term “worker” for 1996 Act purposes, and that definition makes it plain that the term includes subsection (1) “employees”, but also another category of persons, each of whom has:

> *entered into or works under (or, where the employment has ceased, worked under)-*
>
> *(b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual*

63. There is a substantial body of case law on the differences between: employees and independent contractors; non-employee workers and independent contractors; and employees and non-employee workers.

64. Significantly, that case law tells us that much turns on the factual reality of how the relationship between the individual and the putative employer operates/operated in practice.

65. The House of Lords in *Carmichael v National power plc* [1999] 4 All ER 879 identified mutuality of obligation – the obligation on the putative employer to provide work and the obligation on the putative employee to accept work – to be the “irreducible minimum” of an employment relationship.

ACAS Early conciliation

66. Section 18A of the Employment Tribunals Act 1996 provides:

"(1) Before a person ('the prospective claimant') presents an application to institute relevant proceedings relating to any matter, the prospective claimant must provide to ACAS prescribed information, in the prescribed manner, about that matter. This is subject to subsection (7).

67. The exemptions in subsection (7) do not apply here.

68. Rule 12 ET Rules provides:

(1) The Tribunal must reject a claim if—

…

(c) it does not contain one of the following—

i. an early conciliation number;

ii. confirmation that the claim does not institute any relevant proceedings;

iii. confirmation that an early conciliation exemption applies.

69. Rule 13 ET Rules provides that tribunal staff must refer a claim to the tribunal in certain circumstances, including one which institutes relevant proceedings and is on a claim form that does not contain either an early conciliation number of confirmation that an early conciliation exemption applies. In these circumstances "The Tribunal must reject the claim".

70. 26. The Court of Appeal in the case of *Reynolds v Abel Estates Ltd and others* [2025] EWCA Civ 1357 confirmed that a substantive failure to comply with the ACAS Early Conciliation requirements in section 18A of the Employment Tribunals Act 1996 deprives the Tribunal of jurisdiction (or competence) to consider a claim.

71. *Reynolds* went on to consider how a failure to comply with section 18A should be responded to where that has not been identified at the vetting stage and the claim has been accepted by the Tribunal. Two options were thought to be available:

71.1. Either the Tribunal could use Rule 27 (initial consideration) to dismiss the claim; or

71.2. The Tribunal could, or Rule 38(1)(a) to strike it out as having no reasonable prospect of success (for want of jurisdiction).

72. Either way, the Court of Appeal was clear that the Tribunal cannot allow the claim to proceed once the non-compliance has been identified.

Conclusions

Claim against Demant

73. The claimant did not commence the Early Conciliation process as against Demant, and no exemption has been identified. As far I understood it, the claimant's case is little more than saying that Demant would have been made aware that Early Conciliation had been initiated against HH, and that therefore this was somehow sufficient.

74. That is not how section 18A Employment Tribunals Act 1996 and the ET Rules operate. The tribunal clearly has no jurisdiction to consider a claim against Demant. It appears that the claim against Demant has not been rejected as it should have been. I dismiss the claim now for want of jurisdiction.

Employment Status

75. I have not found it easy to make clear findings or conclusions in this case. The evidence in many respects is fairly messy, pointing in different directions and not entirely clear cut. I have tried my best in the circumstances to try to work out what the reality of the situation was.

76. The claimant's primary case is that he was employed throughout by HH until his dismissal by them when it sent the grievance outcome letter of 10 September 2025 which indicated that the respondent considered that the claimant ceased to be an employee on 15 March 2025. The respondent's case is that the claimant's employment ceased on 15 March 2025 when he retired/resigned.

77. As I have said, there is evidence that points either way and some of it is neutral. I make my determination not by totting up the evidence on a points basis, but by considering the overall picture by assessing the totality of the evidence. Some factors will have more weight than others and no single factor is determinative.

78. I have considered it appropriate to examine with care the reality of the relationship between the parties from after 15 March 2025. As part of relevant background to this assessment I have born in mind a couple of matters.

79. The first is that probably until April 2024, when Mr Beck indicated that the China project was likely to come to an end, the relationship between all parties was a very good one. The claimant had worked for HH for around 18 years, and was clearly held in very high regard by Mr Beck and others. For his part, the claimant appears to have enjoyed working with HH, and formed close friendships with his colleagues.

80. The other matter that I have regard to as background information, is that the claimant operated at a high level within HH. He was a director and board member. While there is no evidence that he had a sophisticated knowledge of employment law, I find that he was a senior employee who was able to advocate for himself effectively.

81. The claimant says that the 12 May 2023 is contemporaneous evidence, not contemporaneously challenged by the respondent, of what was agreed. If one examines the email, it does not seem to represent a hard-and-fast agreement between the parties, but a slightly loose roadmap ahead:

81.1. The claimant would continue to work for HH into early 2024.

81.2. He would work full time until the end of February 2024, and would work part time, around 20% of his hours, maybe one day a week or 3 or 4 days a month.

81.3. After that he would be pleased to continue to provide project management support for a specification and duration to be agreed.

81.4. When his employment ends he would welcome the opportunity to offer value on a consultancy basis as agreed.

82. There is a fair amount of vagueness and to-be-confirmed about all of this.

83. Evidence that may provide some support the a conclusion that there was a continuing employment relationship between the claimant and HH beyond 15 March 2025 is the following:

83.1. Mr Langley's request for advice from Crowe referred to the "Secondment of an employee to China".

83.2. The claimant's work in China was paid through the HH payroll.

83.3. HH allowed the claimant to continue to use his company car, laptop and mobile phone.

83.4. The letter from an HR Administrator on 1 April 2025 refers to an amendment of contract and change of job title effective from 1 January 2025.

83.5. Mr Boyd making a cryptic remark on 4 July 2025 that he may need to do something creative.

83.6. Mr Boyd in his email of 8 August 2025 that the claimant needed to be "*under an employment contract*" to work in China.

83.7. Ms Harris saying during the grievance investigation that there was no formal notice of retirement from the claimant, a lack of clarity about the future and a failure to terminate employment following the normal procedures.

84. Evidence that may provide some support for the termination of an employment relationship between HH and the claimant is the following:

84.1. The all-staff email of 30 August 2023 refers to the claimant stepping down from his Sales Operations director role at the end of December 2023, remaining with HH until the early part of the next year and will "disembark".

84.2. Mr Beck's email of 6 September 2023 suggests that he has been exploring in Denmark how to pay the claimant, but HR has been unhelpful. He seeks advice from the UK how to move forward and initially suggests UK paying the claimant and them re-invoicing Denmark. In short, this is suggestive of, at least in the beginning, Demant were to pay the claimant for his work.

84.3. Mr Beck's email of 21 September 2023 suggests Demant's understanding that the claimant was retiring.

84.4. On 23 November 2023 the claimant's "retirement do" was discussed.

84.5. On 31 December 2023 the claimant stepped down from his director role.

84.6. On 9 January 2024 an email was sent about a retirement presentation for the claimant.

84.7. On 8 February 2024 there was an award for the claimant.

84.8. The claimant's email of 12 February 2024 thanks his colleagues for making the past 18 years so enjoyable, saying "It's been fun". He refers to consultancy work he will be doing with Demant.

84.9. He has a retirement event with board members.

84.10. He organises work in China with Mr Beck at his own convenience and availability. He is paid for the work he does.

84.11. The work in China is with a Chinese acquisition of Demant's that HH have no involvement with.

85. I remind myself of section 230 ERA:

> *(1) In this Act "employee" means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.*

86. On balance I do not conclude that the claimant worked under a contract of employment with HH after 15 March 2024.

87. It is possible, for example, for someone to be employed by company A, and for their work for company A being to provide services embedded within company B. It may appear to a casual observer that they are working for company B, but in reality they are working for company A servicing company B.

88. That is not the case here. Despite elements of vagueness, there is an overall sense of the claimant's work with HH winding down. He is stepping down from his director role, he is having retirement dos and being presented awards, he is saying his farewells.

89. The approach from Mr Beck presented an opportunity to do some "consultancy" work that he had (back in May 2023) envisaged doing after his employment ended.

90. The way Mr Beck began approaching things was to explore with Demant HR how Demant should pay the claimant for the work he did in China. When this did not work out, he began to explore the possibility of HH paying the claimant through its payroll and recharging Demant (i.e. with Demant paying). The eventual payment arrangements, HH paying the claimant through its payroll and <u>not</u> recharging Demant, came about after advice on the best way of structuring things so that the claimant did not incur liabilities to the Chinese tax authorities.

91. The work the claimant carried out was on a Demant venture, which HH did not have any involvement in. He arranged his work with Mr Beck of Demant at his own convenience and availability with no recourse to anyone at HH. He no longer had an HH email address.

92. Could it be said that a contract of employment still subsisted, perhaps by virtue of HH not having terminated it in the normal way, not having received a formal notice of resignation/retirement from the claimant? This is theoretically possible, but section 230 ERA requires the claimant to "work" under a contract of employment. There is no evidence of him doing any work for HH from 15 March 2024 onwards. He had said his goodbyes, had his leaving dos, his email account had been shut down and there were no tasks that he was performing. He was working for Demant. There is no evidence of any sort of plan or arrangement for him to take up any sort of work for HH if, for any reason, the arrangements with Demant came to an end or did not work out.

93. There is also the reference to a contract of employment in Mr Boyd's email of 8 August 2025. I do not consider this to take matters further. In response to Mr Beck's leading question in the grievance investigation Mr Boyd agrees he probably meant payroll. But more to the point, if one looks at the rest of the email Mr Boyd is saying "*at no earlier time (except for the email to which I did not respond and we did not discuss) has anyone suggested we had an obligation to provide or pay you any given amount of work/amount*". So while he may have used the term "employment contract", when his is setting out the nature of the actual relationship rather than simply labelling it he is describing one with no mutuality of obligations.

94. I confess I find the 1 April 2025 letter from HR puzzling. On the face of it, it confirms an amendment to contact. However, it confirms that from 1 January 2025 the following terms and conditions have changed – the job role; and that all other terms and conditions will remail the same.

95. This seems divorced from the reality of the situation. I can see no significance in the date 1 January 2025. On any view the changes to the relationship happened from 15 March 2024. On any view, the changes to the relationship were not simply confined to the nature of the role with all other terms and conditions remaining the same. There were changes in reporting, pay, benefits, location of work, holiday pay, etc etc. In short, with so many

apparent inaccuracies, it is difficult to see how this document reflected the reality of the situation in any sense.

96. I consider that the claimant being allowed to keep the company car, laptop and mobile phone can be explained by the good relationship he enjoyed with a company he had worked for many years.

97. All in all, and despite some odd features in this case, I conclude that the claimant did not work under a contract of employment for HH after 15 March 2024. I conclude, on the balance of probabilities, that the contract of employment with HH terminated on that date by mutual agreement. Thereafter, while it is not strictly necessary for the determination of the issues in the case, the likelihood is that the claimant was engaged by Demant as a worker for the periods of his engagements in China.

98. As the claimant was not dismissed, his claim for unfair dismissal against HH is unsustainable.

99. If I am wrong, and the claimant was dismissed on 15 March 2024, any claim for unfair dismissal is out of time, and no compelling case has been presented that it was not reasonably practicable not to bring a claim in time.

100. For similar reasons any claim for wrongful dismissal is unsustainable or out of time.

Approved by:

Employment Judge Heath

9 June 2026

Notes

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at *https://www.gov.uk/employment-tribunal-decisions* shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here:

www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/