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Update

Supreme Court provides further guidance on the territorial scope for unfair dismissal

Overview

The Supreme Court has handed down its opinion in the case of *Ravat v Halliburton Manufacturing and Services Ltd*, and has held that the Employment Tribunal has jurisdiction to hear an unfair dismissal claim of an employee who worked in Libya but resided in Great Britain. This has confirmed that the three categories under which an individual can receive unfair dismissal protection ((i) the standard case of an employee ordinarily working in Great Britain; (ii) peripatetic employees based in Great Britain; and (iii) expatriate employees with a 'connection' to Britain) which the House of Lords in *Lawson v Serco Ltd* set out are non exhaustive. Mr Ravat did not squarely fit within any of these categories but nevertheless had a sufficiently strong connection with Great Britain so as to afford him the right to bring an unfair dismissal claim.

Facts

Mr Ravat (R) was first employed by Halliburton Manufacturing and Services Ltd (H) in 1990 in London until 1995. Since then R worked overseas and had been working in Libya from 2003 until he was dismissed in 2006 on the grounds of redundancy. R was employed by H on a rotational basis, under which he continued to live in Great Britain and traveled to and from his home to work for short periods overseas. R worked for 28 consecutive days in Libya, followed by 28 consecutive days at home in Preston on what H described as a UK commuter contract. During the period that he was at home, another employee carried out his role in Libya and this was effectively a job share. R's travel arrangements and costs of commuting between his home in Preston and his workplace in Libya were paid for by H. R reported on a daily basis to an operations manager based in Libya, but on policy and compliance issues he reported to a manager based in Cairo. Human resources issues (such as payroll and grievance procedures) were handled at H's Aberdeen office.

R had little day to day contact with the Aberdeen office when he was in Libya, and he had no formal obligation to work whilst he was at home. His contract preserved the benefits for which he would have been eligible for if he had been working in the UK. R was paid on the normal UK pay and pension structure that applied to H's UK based employees, in addition he was paid in Sterling into a UK bank account and paid UK income tax and national insurance on the PAYE basis. R's contract was stated to be governed by UK law and when R took the position in Libya he was assured by his manager that he would continue to have the full protection of UK law while abroad as this was of concern to him.

The decision to dismiss R was taken in Cairo under the guidance of the Aberdeen HR department. R invoked the UK grievance procedure which took place at the H's Aberdeen office.

Decision

The Supreme Court held on appeal that R was able to claim for unfair dismissal as an employee does not need to show that he fits into one of the categories set out in *Lawson*. Lord Hope (who gave the only opinion) approved Lady Hale's statement in *Duncombe v Secretary of State for Children, Schools and Families* (No 2) (2011) which had previously confirmed that in relation to jurisdiction "there is no hard and fast rule and it is a mistake to try and torture the circumstances of one employment to make it fit one of the examples given [in, the case of *Lawson*]".

Whilst the general rule is that the place of employment is decisive, it is not an absolute rule and there is scope for a wider interpretation of the legislation which does not confine its application to employment in Great Britain. Lord Hope stated that the starting point to ascertain whether an employee had protection against unfair dismissal would be that the employment relationship must have a stronger connection with Great Britain than with the foreign country where the employee works. An employee will need to show as a question of fact and degree as to whether the connection is sufficiently strong to overcome the general rule that the place of employment is decisive. The fact that the commuter has his home in Great Britain, with all the consequences that flowed from that made the burden in his case of showing that there was a sufficient connect less onerous.

The facts of this case clearly indicated that the connection with British employment law was closer than that of Libya's. R's home was in Great Britain and this could not be dismissed as irrelevant, as the EAT had suggested, but was a factor to be considered. H had clearly given indication that the relationship should be governed by British employment law both in assurances made to R and in the proper law clause of the contract of employment. This was borne out in practice, as matters relating to the termination of his employment were handled by H's HR department in Aberdeen. This all fitted into a pattern which more closely related to British employment law.

Comment

This case provides some clarification as to what happens if an employee does not fall within the test set out in Lawson. The question to be asked is whether the right not to be unfairly dismissed applies to a particular case notwithstanding its foreign elements. A tribunal should consider whether there is sufficient evidence of a connection to Great Britain which can overcome the general rule that a person's place of work is where they are based. Given the increased mobility of the labour force in multinational companies this case reinforces the fact that the international scope of employment law cannot be overlooked and that employers need to consider carefully the full surrounding factual matrix of employees working abroad before deciding whether or not British employment protection rights apply. It is also a salutary lesson that dealing with a grievance or other similar matters form the UK will increase the likelihood of the close connection being made out to the UK.

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