



## EMPLOYMENT TRIBUNALS

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01 SEP 2011

Your Ref:  
Date 31 August 2011

Case Number: 2200879/2011

Claimant  
Mr I Foxley

V

Respondent  
GPT Special Project  
Management Limited

### EMPLOYMENT TRIBUNAL JUDGMENT

A copy of the Employment Tribunal's judgment is enclosed. There is important information in the booklet 'The Judgment' which you should read. The booklet can be found on our website at [www.employmenttribunals.gov.uk/Publications/publications.htm](http://www.employmenttribunals.gov.uk/Publications/publications.htm). If you do not have access to the internet, paper copies can be obtained by telephoning the tribunal office dealing with the claim.

The Judgment booklet explains that you may request the employment tribunal to review a judgment or a decision. It also explains the appeal process to the Employment Appeal Tribunal including the strict 42 day time limit. These processes are quite different, and you will need to decide whether to follow either or both. **Both are subject to strict time limits.** An application to review must be made within 14 days of the date the decision was sent to you. An application to appeal must generally be made within 42 days of the date the decision was sent to you; but there are exceptions: see the booklet.

The booklet also explains about asking for written reasons for the judgment (if they are not included with the judgment). These will almost always be necessary if you wish to appeal. You must apply for reasons (if not included with the judgment) within 14 days of the date on which the judgment was sent. If you do so, the 42 day time limit for appeal runs from when these reasons were sent to you. Otherwise time runs from the date the judgment was sent to you or your representative.

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RESERVED JUDGMENT

**THE EMPLOYMENT TRIBUNALS**

**BETWEEN**

**Claimant**

Mr I Foxley

**Respondent**

GPT Special Project Management Ltd

**JUDGMENT OF THE EMPLOYMENT TRIBUNAL.  
AT PRE-HEARING REVIEW**

**HELD AT:** London Central

**ON:** 11 and 12 August 2011

**EMPLOYMENT JUDGE:** Mr N Weiniger, sitting alone

***Appearances:***

For the Claimant: Ms C Davis, of counsel

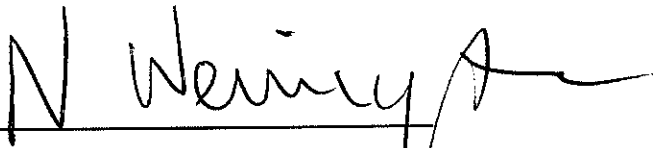
For the Respondent: Mr T Croxford, of counsel

**JUDGMENT**

**The judgment of the Tribunal is that:**

- 1 The Claimant's claim of automatic unfair dismissal for having made protected disclosures is outside the territorial jurisdiction of the Tribunal and is dismissed.
- 2 The Claimant's claim of detriment for having made protected disclosures is outside the territorial jurisdiction of the Tribunal and is dismissed.
- 3 By consent the Claimant's claim of unlawful deduction of wages and breach of contract in relation to non-payment of outstanding expenses is dismissed on withdrawal.

**ACCORDINGLY** all the Claimant's claims are dismissed.

  
\_\_\_\_\_  
EMPLOYMENT JUDGE

JUDGMENT SIGNED BY EMPLOYMENT JUDGE ON

3/1/8/11  
.....

JUDGMENT SENT TO THE PARTIES ON

3/1/8/11  
.....

AND ENTERED IN THE REGISTER

6  
.....

FOR SECRETARY OF THE TRIBUNALS

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## THE EMPLOYMENT TRIBUNALS

### BETWEEN

**Claimant**

Mr I Foxley

**Respondent**

GPT Special Project Management Ltd

### REASONS OF THE TRIBUNAL

**Dates of hearing:** 11 and 12 August 2011

### REASONS

#### Introduction and issues

1 These are the reasons for my reserved Judgment. The Claimant issued his Claim Form on 3 March 2011. Paragraph 2 of his Particulars of Claim sets out his claims for automatic unfair dismissal for having made protected disclosures; for detriment other than dismissal for having made protected disclosures; and for unlawful deduction of wages and/or breach of contract in relation to non-payment of outstanding expenses. In paragraph 2.3 of the Claim Form the Claimant set out his place of work as PO Box 9854, Riyadh, Kingdom of Saudi Arabia, 11423. He provided the date of commencement of employment on 21 June 2010, and termination of employment on 31 December 2010.

2 A Response was filed on 19 April 2011. The Grounds of Resistance contended that the Tribunal does not have jurisdiction to hear the Claimant's claims brought under Employment Rights Act 1996 on the ground that the Claimant did not work in Great Britain. There were additional defences with which I am not concerned at this hearing.

3 A Case Management Discussion was held on 1 June 2011 when orders and directions were made and the following issue set for the Pre-Hearing Review:

**The preliminary issue is whether the Employment Tribunal has territorial jurisdiction to hear the Claimant's claims.**

4 The Pre-Hearing Review for determination of that issue was fixed by Notice dated 8 June 2011 allocating 2 days as had been provided at the Case Management Discussion.

The Notice provided that if the time allocated was not long enough, the Tribunal was to be notified with a fresh time estimate by 22 June 2011 but no such notification was provided.

5 Directions were given for preparation for the preliminary issue including for provision of copies of documents, agreement of a paginated indexed bundle, and exchange of witness statements, with a warning as to the potential consequences of failure to comply.

6 At the start of this hearing on the application of the Respondent I directed that there would be a Case Management Discussion in private, before conversion back to the Pre-Hearing Review.

7 Discussion at the case management stage of the hearing before me related to the scope of the evidence to be addressed. The central point advanced by the Respondent was whether I should hear evidence concerning the contended protected disclosures, as sought by the Claimant. I decided that the material relevant to the issues I had to decide did not include a requirement for me to investigate and make findings on illegal activities alleged to have been carried out by the Respondent and its personnel, nor whether protected disclosures had been made, nor in relation to substantive acts of victimisation alleged. However I declared I will receive evidence including concerning alleged threats made at about the time when the Claimant departed from Saudi Arabia; about the circumstances of departure from Saudi Arabia; about the Claimant's journeying to the United Kingdom; about the Claimant's employment including from the time of his arrival in the United Kingdom; and concerning the circumstances of his dismissal. I informed of the parties that having heard the evidence did not mean that I will decide every point, and I informed the parties that I will make decisions on matters relevant to the questions I have to decide. My reasons were that I judged that the ambit of the evidence proposed by the Claimant at the hearing before me would require consideration of substantive issues, rather than those which related to jurisdiction, they would not assist me with the questions I had to decide, that this was a change of stance on the part of the Claimant as the new approach by the Claimant would take considerably longer than the two days allocated when the Claimant had previously been represented at the Case Management Discussion, and that there had been no notice of an application for an increased length of the trial of the preliminary issue set for this Pre-Hearing Review.

8 In furtherance of my direction, time was spent in the presence of both parties redacting the witness statements of the two witnesses to be called at this Pre-Hearing Review. The theme of the redaction was to limit the evidence to matters relevant to the issue of jurisdiction which I have to determine. I do not recite the details of these redactions as both parties have copies of the redacted witness statements, and copies are in the Tribunal file. I record that on behalf of the Claimant Ms Davis objected to any redaction, and to the exclusion

of evidence relating to the disclosures and victimisation, albeit cooperating fully in a proper and professional manner in accordance with my direction.

9 At the Pre-Hearing Review the Respondent had a bundle which had not been agreed, and I was informed disclosure had taken place on 8 July 2011. The Claimant also produced a separate bundle with which his own counsel was not familiar. I refused the Claimant's application for an adjournment generally because it was not proportionate or rational to grant an adjournment when documents which the Claimant's counsel wished to study had been in the Claimant's possession and control. However, in order to enable the Claimant's counsel to take instructions on the Claimant's documents, and at the same time, to afford the Tribunal reading time, an adjournment was granted until 2 PM on the first day. During the course of the Pre-Hearing Review reference was made to both bundles.

10 The Claimant's counsel informed me that the Claimant's claims for expenses and breach of contract in relation to expenses were no longer an issue and I dismissed these claims by agreement of both parties.

11 At the Pre-Hearing Review. I heard evidence from the Claimant and from Mr Cook managing director of the Respondent. Both had written witness statements which were taken as read.

### **Finding of facts**

12 The Respondent is a limited liability company incorporated in England and Wales with a registered office in London. The Respondent entered into a series of direct contracts with the Ministry of Defence for the United Kingdom. The Respondent's client under these contracts was the Ministry of Defence, and it follows that the supplier of the services to the Ministry of Defence was the Respondent. As a department of government the Ministry of Defence is in the United Kingdom. As a company incorporated in the jurisdiction, the Respondent is in the United Kingdom.

13 The Ministry of Defence performs their function in relation to their contract with the Respondent through a Ministry of Defence department operating in Saudi Arabia known as the SANGCOM project, a Ministry of Defence team in Riyadh, Saudi Arabia. The Ministry of Defence team on the SANGCOM project consist of about 75 people permanently based in Saudi Arabia.

14 The origin of the SANGCOM project was an agreement entered into between the governments of the United Kingdom and Saudi Arabia in 1978. The purpose was to assist the

Saudi Arabian National Guard (SANG) to develop a nationwide communications infrastructure in Saudi Arabia.

15 The two governments signed a series of non-binding agreements each of which was designated as a letter of offer and assistance (LOA), and each was intended to deal with a particular programme of development of the SANG communication infrastructure. Under the LOAs, the Ministry of Defence was to provide both military advice and procurement support to the signals corp of SANG. A particular role of the Ministry of Defence is to provide SANG with assurance of compliance with Ministry of Defence procurement procedures and value for money.

16 The business activity of the Respondent under the contracts between the Ministry of Defence and the Respondent was the provision by the Respondent to the Ministry of Defence of the technical support needed to deliver the programmes of procurement support and assurance to SANG. That business activity required the Respondent to operate in Saudi Arabia, in order to conduct the Respondent's business with the SANGCOM project Ministry of Defence team operating in Saudi Arabia, and with SANG, the local end user or ultimate customer in Saudi Arabia of the services provided by the Respondent. The Respondent ran the tender processes to select the suppliers who actually deliver the work packages.

17 Although a company registered in the jurisdiction, the Respondent had business premises and conducted its business activities substantially in Saudi Arabia. All of the Respondent's employees, about 341 in number, are permanently based in Saudi Arabia. This included Mr Cook the managing director and all the senior management team.

18 The Respondent is a subsidiary of Paradigm Services Ltd, part of a larger group of associated companies known as Astrium Services' Telecom Services Business Division (Astrium). Astrium is a wholly owned subsidiary of EADS, the European aerospace and defence group.

19 The Respondent had offices at a location in Bristol, but had no employees of their own there, although these offices were staffed by personnel, about a handful, supplied by associated companies. The personnel in Bristol supplied support and administrative services to the Respondent, including arranging visas and travel for the Respondent's employees, and providing cover for administrative and technical support during the rest days in Saudi Arabia on Thursday and Friday, as the operations of the Respondent in Saudi Arabia complied with the local rest days, rather than the Western Saturday and Sunday week end.

20 The Respondent also had the use of the services of an 'operational requirement development manager', and a 'capability manager' in Bristol in the United Kingdom. The

operational requirement development manager supported development of outline solutions to the relevant Respondent's team in Saudi Arabia for the purpose of examining the marketplace to procure whatever was required. The role of the capability manager was to act as a technical expert in the field of military communications in relation to technical aspects of the SANGCOM project. Technical support was also provided to the Respondent by external suppliers. Those engaged in the technical support were known as 'subject matter experts', who were managed by the capability manager. The subject matter experts are provided, on a temporary basis, under commercial framework agreements with third parties, to engage at an early stage in the development of potential solutions for requirements identified for SANG.

21 Accordingly the operational requirement development manager, and capability manager in the United Kingdom were 'non-customer facing roles', concerned with providing support for the Respondent's business activities in Saudi Arabia at an early developmental stage of requirements, which are then to be developed further, and in due course procured and implemented in Saudi Arabia for use by SANG as the end customer.

22 The LOA between the two governments current at the material time had been signed in February 2010 and was known as LOA 3, phase 3 (LOA3P3). Prior to the engagement of the Claimant the Respondent sought to employ a programme director for LOA3P3 in Saudi Arabia.

23 To this end the Respondent communicated with a recruitment agency called Michael Page, who describe themselves as specialists in global recruitment. They instructed the agent that the package on offer was at a starting salary of 550 to 600 SR per annum in Saudi Arabian currency at Executive "A" band, with an annual pay review in January of each year and an annual bonus of up to 15% of the basic salary according to performance. In addition the Respondent offered accommodation in a spacious three-bedroom villa in a secure good-quality compound with an executive 4X4 car and a driver/houseboy, and with 'accompanied status' for a spouse and including education cover for up to 2 children, medical insurance for spouse and two children, and vacation flights twice a year for spouse and two children.

24 In accordance with the instructions. Michael Page prepared an advertisement for the Sunday Times, a newspaper published in United Kingdom, albeit available in other countries, which was posted on 9 May 2010. The advertisement offered a career opportunity for an experienced programme director to join the senior management team and take overall responsibility for the schedule of work. It also set out that the salary was very attractive tax-free and with benefits, and identified the location as Riyadh, Kingdom of Saudi Arabia. The prospective employer was described as a multinational defence company with a track record for delivering large-scale complex projects across the Kingdom of Saudi Arabia. The

candidate would report to the chief executive officer, I note that was Mr Cook. The advertisement set out the opportunity of a long-term career with a multinational company in the Kingdom of Saudi Arabia.

25 The Claimant told me and I find that the post was not limited to British citizens but was open to other "allied" nationalities including Australians and Americans.

26 The Claimant approached the agents and in an e-mail confirmed he was looking for a permanent appointment with the Respondent, and that the remuneration package was in line with his expectations. There is a copy of the job description in the Respondent's bundle relating to the post of programme director. Although as it turned out another person was given the function of deputising for the managing director as required at meetings and during periods of absence of the managing director from Saudi Arabia, at the stage when at the Claimant was jotting discussion notes in his own handwriting on the job description document in relation to the prospective employment, one of the primary objectives written out was acting as such deputy in Saudi Arabia. I find it was clear to the Claimant at the period when the employment was negotiated that he would live and work in Saudi Arabia, and would be paid tax-free in local currency. As it turned out, because the Claimant did not have a bank account in Saudi Arabia at the start, until September or October 2010 his salary was paid into his bank account in the United Kingdom, but that was a matter of practicality to ensure timely payment and was not the process contemplated, nor was it continued throughout the employment, as he was paid in Saudi Arabia after he had opened his account there, although when the Claimant had returned to United Kingdom in December 2010 he asked for his December salary to be paid into his UK bank account.

27 The Claimant gained an interview which was conducted following arrangements made on 9 June 2010. He attended on 13 June 2010 in Dubai as he had no visa for Saudi Arabia. On 15 June 2010 the recruitment agent reported to Mr Cook that the Claimant will accept an offer of 575000 SAR and that, apart from a family holiday in July, he had no other obligations, and would like to do as much ground work, reading, and meeting relevant United Kingdom Respondent's people as possible "before hitting the ground" as the Claimant put it. Arrangements were made for the visa process.

28 On 16 June 2010 Mr Cook wrote to the Claimant to set out the formal terms of contract. The Claimant was offered the position of programme director LOA3P3 within the Respondent's business reporting to the managing director. The starting salary was SAR 575,000 per annum. I record that the offer was expressly subject to confirmation that the Claimant would achieve a suitable work permit, and I am satisfied that without the appropriate permission for the Claimant to work in Saudi Arabia, he would not have been able to take up the employment.

29 The Claimant was offered additional benefits such as to be accompanied by a spouse and to return flights each year, which was explained to me as being an allowance equivalent to the cash value of travel to the United Kingdom, which would entitle the Claimant to apply those funds to travel elsewhere in the world, rather than being required to use the money only for travel to the United Kingdom. The benefits included a 4X4 company car and fuel; exceptionally a private driver; furnished accommodation which will be provided by the Respondent with utilities except for international telephone calls paid by the Respondent; a bonus on performance; medical insurance cover; 30 days leave per year; and subject to successful completion of the probation period the Claimant would have an ongoing employment contract. The offer letter specifically expressed that the terms and conditions were in accordance with Saudi labour law. Each party would be required to give a three-month notice period and there would be a 3 month probation period.

30 The offer letter enclosed a written contract of employment and indicated that the start date was to be as soon as possible. The Claimant signed the contract document, which was headed 'contract of employment-Saudi Arabia'. The document bore the Respondent's business address in Riyadh. The document expressly provided that the contract is construed in accordance with the Kingdom of Saudi Arabia Labour and Workmen Law.

31 Among other provisions the Respondent reserved the right to require the Claimant to undertake duties at any other business premises of the Respondent within the Kingdom of Saudi Arabia. The written contract provided for a company car to be provided. A car was provided in Riyadh, as was accommodation there. The contract also provided for travel entitlement. Payment for travel for leave purposes was in economy class. Travel for business purposes to outside the Middle East was to be paid as business class. The point of hire of the Claimant was expressed to be the United Kingdom, and an airfreight allowance was provided for transport on arrival and on departure. The Government Social Insurance in Saudi Arabia (GOSI) would be paid by the Respondent in accordance with prevailing legislation. I record that in fact no United Kingdom tax or United Kingdom National Insurance was paid by the Respondent in relation to the Claimant's employment.

32 The contract also provided for review of the salary and conditions of service, and specifically for the benefit of a service award payable in accordance with Saudi Labour and Workmen Law.

33 The start date was not expressed in the written contract but the period of employment was provided to continue for an unspecified term after successful completion of the probation period. In the written contract the probation period was expressed to be 6 months, rather than the 3 months in the offer letter. However I am satisfied that the probation

period continued throughout the employment to the end of December 2010, because the parties agreed and acted on this basis and I find that at all material times the employment of the Claimant was during his probationary period.

34 The Claimant returned the contractual documentation under cover of an e-mail on 17 June 2010 at page 90 of the Respondent's bundle with a written note dated 16 June 2010 under his signature of acceptance, at page 82 of the Respondent's bundle, setting out the proposed start date "in the United Kingdom on 21 June 2010" with a "read in" of the company programme documentation, and liaison with Bristol office based staff. The Claimant recorded he would take up invitations for office calls in the United Kingdom Ministry of Defence and the Royal Signals Directorate and Training Organisation in Blandford in the week of 28 June 2010. He went on to provide that in order to allow completion of outstanding family commitments and the acquisition of visas and work permits, he would intend to fly out to Riyadh on Sunday 4 July with a view to being in the Respondent's Riyadh office on Monday, 5 July 2010. He said he will be accompanied by his wife who would join him in Saudi Arabia in September to allow her to finalise family arrangements and ensure the children returned safely back to school and university before flying out to Riyadh. His note provided he would telephone to confirm.

35 I find that the reference to 'starting in United Kingdom' has nothing to do with the Claimant's workplace being in United Kingdom, but was governed by the fact that at the start date, the Claimant had not received a work permit for Saudi Arabia, which the parties have agreed in the contract will be his place of work. The Claimant's visa for Saudi Arabia with multiple entry for three months was achieved by 20 June 2010. The Claimant flew out to Saudi Arabia to begin work there, he told me based on his chronology at page 203 of the Claimant's bundle, on 27 June 2010, and he told me he returned back and forth on a number of occasions. In an e-mail on 4 July 2010 he provided "I will come back to the Kingdom of Saudi Arabia a week earlier - or else I would be spending too much time out of the Kingdom of Saudi Arabia when I want to ramp up the programme effort to get the contracts flowing now". He went on to provide "Planning on my residency permit being granted by mid-October, [my spouse] will be coming out to the Kingdom of Saudi Arabia with me and also with [my child] who will be on half term holidays for that fortnight" so that he will need travel arrangements for the dates he provided.

36 The Claimant had also arranged flights in an e-mail on 1 July 2010, noting that "I have to be out of the Kingdom of Saudi Arabia within 30 days under my current visa".

37 I find that at the start of the Claimant's employment his place of work was in Saudi Arabia, even though he had not achieved a permanent work permit or a permanent residency permit and that the reasons for his presence in the United Kingdom and his flights

to and from Saudi Arabia was to comply with Saudi Arabian visa arrangements until his residency and work permits were perfected, the arrangements for which included a requirement for the Claimant to have a medical, which he did in Harley Street. The Claimant finally received his visa 'iqama' which he acknowledged on 24 September 2010 at page 138 of the Respondent's bundle.

38 The Respondent had a practice of requiring suppliers and employees to enter into non-disclosure agreements relating to the Respondent's confidential information. A copy signed by the Claimant on 15 September 2010 was produced by the Respondent during the course of the hearing. The period of operation of the non-disclosure agreement was described as unlimited during and after termination of the Claimant's engagement. The non-disclosure agreement provided that it was 'governed and construed in accordance with the laws of England and any dispute arising under or in connection with it was to be presented and determined by the courts of England exclusively or any alternative legal recourse as was seen fit'.

39 During the course of the probation period in Saudi Arabia the Claimant considered a lot of pressure was being placed upon him by Mr Cook, the managing director of the Respondent in Saudi Arabia, in relation to a financial target of SAR 1 billion.

40 The meeting at which the probation period was extended took place in early October 2010. The Claimant told me he had no issue about the extension of the probation period, notwithstanding the different provisions in the contract and the offer letter. On the Claimant's own account, he was directed at that meeting by his managing director not to talk to other companies and people he knew, but to focus only on the programme and getting things onto contract. I find that the Claimant's managing director did not require the Claimant to network with his former Army colleagues, including in United Kingdom, for any business purposes of the Respondent. The extension of the probation period to the end of 2010 was confirmed to the Claimant by letter dated 4 October 2010.

41 The Claimant attended a meeting of the senior executives of the Respondent in Riyadh on 4 December 2010 when the Claimant told me and I accept, that he was criticised by all those present in relation to the LOA3P3 programme of which he was programme director. The Claimant had a private meeting with Mr Cook following the earlier meeting, when the Claimant told me and I accept, that he was offered the opportunity to resign.

42 On the next day 5 December 2010 the Respondent repeated a request in accordance with their standard practice of holding employee's passports, for the Claimant to provide his passport to the Respondent's human resources in Riyadh. The Claimant told me and I accept and find that he informed senior personnel in the SANGCOM project Ministry of

Defence team in Saudi Arabia that Mr Cook had told him on 4 December that he would not be confirming his appointment as LOA3P3 programme director at the end of December, and that in effect Mr Cook was trying to engineer an earlier departure before the end of December and had requested the Claimant's resignation.

43 The Claimant went to the 20th floor of the Respondent's Riyadh offices on 6 December 2010 and accessed the e-mail account of Mr M Paterson, although he had not asked Mr Paterson beforehand. The Claimant achieved his dealing with Mr Paterson's password by informing the deputy IT manager that he, the Claimant, had authority to access Mr Paterson's account as programme director. In the afternoon Mr Cook asked the Claimant to go to his office where on arrival he found Mr Cook and the Human Resources Director Her Highness Princess Noura Saad. A discussion took place, including about the fact that the Claimant had accessed Mr Paterson's e-mail account. Mr Cook told me and I accept he made immediate arrangements to terminate all the Claimant's company e-mail access. E-mails from the Claimant thereafter, such as that on 14 December 2010 at page 166 of the Respondent's bundle, were from the Claimant's private e-mail account at sky.com. The Claimant told me and I accept and find, that on 6 December 2010 Mr Cook instructed the Claimant to return in order to conclude the meeting.

44 The Claimant chose not to return to the meeting with Mr Cook in his office in Riyadh as he had been instructed and made arrangements to leave Saudi Arabia, flying from Riyadh to London early on 6 December 2010. The Claimant told me it was his judgement that it was not safe for him to remain in work in Saudi Arabia and he resolved to continue working from within the United Kingdom since he was still employed and paid by the Respondent. He also told me and I accept, and the point was emphasised by Mr Croxford in his closing submissions, that any work he did after he left Riyadh apart from a visit to Paris could have been done anywhere in the world and that it was not a requirement for any work, that he had to return to the United Kingdom. I accept Mr Cook's oral evidence that he did not expect the Claimant to do any work for the Respondent after he left Riyadh because the Claimant did not return to the meeting with Mr Cook as Mr Cook had instructed him to, and because Mr Cook had received an e-mail from the Claimant timed at 10:13 on 6 December, which referred to the Claimant's departure " ..... on the aeroplane and it is a clean break".

45 Mr Cook visited the United Kingdom for the Christmas holiday in 2010 and arranged a meeting with the Claimant at the offices in Bristol on 21 December 2010, where the Claimant was instructed not to return to Riyadh as programme director of LOA3P3, and the termination of his employment was confirmed effective on 31 December 2010, and he was told this would be confirmed by letter. Such letter was provided effecting termination of employment on 31 December 2010, and a copy is at page 170 of the Respondent's bundle.

## Submissions

46 Mr Croxford made submissions on behalf of the Respondent, having provided written submissions which he supplemented orally. Ms Davis had provided outline submissions at the start of the hearing, which she explained and expanded on orally at the closing stage. The following authorities were referred to:

*Lawson v Serco Limited* [2006] ICR 250 HL

*Ravat v Halliburton Manufacturing & Services Ltd* [2010] IRLR 1053 CS

*MOD v Wallis* [2011] ICR 617 CA

*MOD v Wallis* [2011] IRLR 1035 EAT

*YKK Europe Ltd v Heneghan* [2010] IRLR 563 EAT

*Hunt v United Airlines Inc* [2008] ICR 934 EAT

*Duncombe v Sec of State* [2010] ICR 815 CA

*Duncombe v Sec of State* [2011] UKSC 36

*BP Plc v Elstone* [2010] IRLR 558 EAT

*Guja v Moldova* [2010] ICR 815; [2008] ECHR Application No. 14277/04

*Bleuse v MBT Transport Ltd* [2008] ICR 488 EAT

*Demir v Turkey* [2009] IRLR 766 ECHR

*Kuzel v Roche Products Ltd* [2008] EWCA Civ 380

## Law

47 The two categories of claim which give rise to the issue I have to decide are both resourced in Employment Rights Act 1996 (ERA). Part X concerns unfair dismissal and includes sections 94, which provides:

**(1) An employee has the right not to be unfairly dismissed by his employer.**

**(2) Subsection (1) has effect subject to the following provisions of this Part (in particular sections 108 to 110).....**

48 Section 98 ERA provides:

**(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show**

**(a) the reason (or if more than one the principal reason) for the dismissal, and**

**(b) that it is either a reason falling within sub-section (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.**

**(2) A reason falls within this sub-section if it...**

....

.....

**(4) ..... where the employer has fulfilled the requirements of sub-section (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)**

**(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as sufficient reason for dismissing the employee, and (b) shall be determined in accordance with equity and the substantial merits of the case.**

.....

49 Section 103A ERA provides:

**An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.**

50 Section 108 ERA provides:

**(1) Section 94 does not apply to the dismissal of an employee unless he has been continuously employed for a period of not less than one year ending with the effective date of termination.**

.....

**(3) Subsection 1 does not apply if:**

**....(ff) section 103 A applies. ....**

51 Part IVA ERA concerns protected disclosures. Part V ERA concerns protection against suffering detriment in employment and includes section 47B which provides:

**(1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.**

**(2) ..... this section does not apply where**

**(a) the worker is an employee, and**

**(b) the detriment in question amounts to dismissal (within the meaning of Part X).**

**(3) For the purposes of this section, and of sections 48 and 49, so far as relating to the section, "worker", "workers contract", "employment" and "employer" have the extended meaning given by section 43K.**

52 Section 43K ERA sets out the meanings of the expressions referred to, for the purposes of part IVA and Part V ERA.

53 Before its repeal, section 196 ERA defined territorial limitations to ERA.

54 Before its repeal, section 12 Public Interest Disclosure Act 1998 provided territorial limitations to part IVA and section 47B ERA. Section 103A was added to ERA by section 5 of the Public Interest Disclosure Act 1998.

55 Section 196 ERA was repealed by Employment Relations Act 1999.

56 The question before me requires enquiry as to who are the persons Parliament is presumed to be protecting. Lawson cited at 254. The position was that when Parliament passed the Public Interest Disclosure Act 1998, there was a territorial limitation affecting both section 103A and section 47B. While there is no longer any express territorial limitation provision in ERA since the abolition of section 196, when it comes to construing the intention of Parliament at the time of its enactment, the content of the Public Interest Disclosure Act does not require that whistleblowing is outside the general principle of construction that legislation is to be taken in the first place as territorial.

57 Lawson cited at pages 256, 257 provides that the repeal of section 196 was intended to allow the courts to give effect to the Posting of Workers Directive and to that extent the repeal was intended to widen the territorial scope. Lawson cited provided that it does not logically follow that the same scope must be given to section 94(1) (except in the very limited circumstances of dismissal for pregnancy or childbirth) and also notes that that there was no reason why all the various rights included in ERA should have the same territorial scope. However Lawson cited went on to provide that it may be said that by including only the mandatory nucleus in the Directive, the European Union has recognised that other rights might legitimately be given a different territorial application, and that uniformity of application would certainly be desirable in the interests of simplicity.

58 Accordingly the territorial limitation continues to affect section 94(1), and there appears to be no reason in principle, having regard to its common origin in the Public Interest Disclosure Act 1998, for the territorial limitation governing section 47B having any different territorial limitation, and I so hold. The further questions raised on behalf of the Claimant are

whether the repeal of section 196 ERA, or the passing of the Human Rights Act 1998 have affected the construction of section 94(1) and section 47B in relation to territorial jurisdiction.

59 The Tribunal has to give effect to territorial limitation. Lawson cited at 254. It is not a matter of discretion. It is a question of law involving judgement on the application of the law to the facts. It involves the application of principles. Lawson cited at 259.

60 The first category of 'standard', or 'normal' case of employee addressed in Lawson in relation to section 94(1), and indeed this must include 47B, is the employee (or worker where appropriate), who was working in Great Britain at the time of dismissal, irrespective of what was contemplated when the contract was made. Lawson at 260, 261. However the terms of the contract and prior history of the contractual relationship may be relevant to whether the employee is really working in Great Britain or whether he is merely on a casual visit, for example in the course of peripatetic duties based elsewhere.

61 Section 94(1) applies to peripatetic employees, the second category of employee addressed in Lawson cited, who are based in Great Britain. Lawson at 263.

62 The third category of employee addressed in Lawson is the 'expatriate' where Lawson provides at 263, 264, that the circumstances would have to be unusual for an employee who works and is based abroad to come within the scope of British labour legislation. Lawson provides that it is not necessary to enquire into the systems of labour laws of other countries, but a Tribunal considering the question of territorial jurisdiction should try to identify the characteristics which exceptionally would entitle an employee to remedy in the Employment Tribunal. Examples are cited in Lawson. The categories are not closed as is indicated in Duncombe SC cited.

63 In YKK cited, a case where the Claimant was dismissed during absence from work, the EAT provided at paragraphs 52, 53, 55 and 57:

**" 52 The starting point for Tribunals, in each case, will therefore be into which of the categories identified the particular Claimant falls. Lawson now establishes the test to be applied in each of the three categories of employee identified, and the focus now should be on what was happening as at the date of dismissal rather than at the outset of the relationship. In a standard case, the application of section 94(1) will depend on whether the employee was working in Great Britain at the date dismissal. For peripatetic employees the most helpful test is to decide where the employee was based at that time. Expatriate employees, who both work and are based abroad, will not normally fall within the scope of section 94(1) but they might do so if they were posted**

abroad by British employer, for the purpose of a business carried on in Great Britain, or worked in what was in effect an extra-territorial British enclave in a foreign country."

53       Where the employee is not working at date of dismissal, for whatever reason, the test to be applied will need to be adapted to meet the different circumstances existing for the particular category of employee, as in the case of Hunt. In these cases a broader factual enquiry will be required in order to decide what the true position was when the employee was dismissed."

55       ..... The nature and breadth of the enquiry to be conducted will always depend on the particular circumstances of each case, and it is unwise to attempt to define its scope.

57       It will always be for Tribunals to decide the weight to be given to the different factors considered in any case, and to determine, ultimately, whether the nature of the events which occurred before and during the employee's absence, up to the date of dismissal, is such that a section 94(1) applies and that they have territorial jurisdiction to determine the claim."

64       The thrusts of paragraphs 27, 29 and 30 of Lawson cited at 260, 261 is that the Tribunal should consider how the contract was in fact being operated at the time of the dismissal rather than focus only on the terms of the original contract, and should consider where the employee should be regarded as ordinarily working, 'even though he may spend days, weeks or months working overseas'.

### **Conclusion**

65       The first matter that I consider is whether the Claimant falls within one of the three categories identified in Lawson, or if he may be within any further example of an exceptional case as indicated may subsist in Duncombe Supreme Court cited.

### **Standard employment**

66       Ms Davies did not rely on the Claimant having the status of a standard employee. I consider she was right in her approach. I do not find that the fact that he worked when necessary with United Kingdom enterprise partners of the Respondent, or was their point of focus, or that he gave a presentation in London in September 2010, provide him with any factors which mean that his place of work was in the jurisdiction. I do not find that when visiting the United Kingdom during the course of his employment he carried out or was required to carry out work in the United Kingdom on any basis other than as a visitor from

Saudi Arabia, and I consider below his presence in the United Kingdom in December 2010. That he had videoconferences with people in the United Kingdom, or line managed them directly or indirectly, albeit that they were not directly employed by the Respondent, does not displace his own place of work as being in Saudi Arabia, or define his place of work as in the jurisdiction. The place of work of other people is not to be treated as his place of work. Rather consideration is to be given to the place of work of the Claimant himself.

67 The fact that he was recruited following an advert in an English newspaper, and negotiated his contract terms from England do not result in his place of work being in the jurisdiction. That he was a British national was not material to his engagement, as British nationality was not a requirement. I have found that he did not pay taxes in United Kingdom or any national insurance, nor was that paid for him by the Respondent.

68 That the Respondent was a company registered in England and Wales and had a registered office in the jurisdiction is a factor to be taken into account in determining the place of work, but it is not enough on its own.

69 That the Claimant entered into a confidentiality agreement which contained a provision setting the proper law as English law is a factor to be taken into account, but it was not the contract of employment, its period of efficacy continued after the engagement, and its limit extended to the matter of confidential information.

70 The fact that there was a direct contract between the Respondent a United Kingdom company, and the Ministry of Defence, a department of government in United Kingdom, is a factor to be taken into account. However, the Claimant's own contract of employment was not with the Ministry of Defence. His contract was with the Respondent.

71 That the contract between the Respondent and the Ministry of Defence was performed by cooperation between the Respondent and the Ministry of Defence SANGCOM team in Saudi Arabia, who were an extension of the Ministry of Defence operations in Saudi Arabia, is a factor to take into account but the Claimant was not personally contracted to the SANGCOM team.

72 The Claimant had no contractual relationship with the end-user, SANG, but the Claimant's activities on behalf of the Respondent as the employee of the Respondent were ultimately for SANG in Saudi Arabia and were carried out for the Respondent in Saudi Arabia where the Claimant resided for the performance of his duties to the Respondent.

73 Turning to the final days of the employment in December 2010, I have to consider whether the fact that the Claimant was in the United Kingdom, or working in the jurisdiction, at

the date of dismissal is a material factor, and so I consider the circumstances in which he was present in the United Kingdom.

74 While Mr Cook was contemplating that the termination of the employment and probation might become effective before the end of December 2010, earlier termination had not been achieved at the meeting between Mr Cook and the Claimant on 4 December. There was neither dismissal nor notice on 4 December 2010 in Riyadh because Mr Cook was seeking a resignation. Although the Claimant's access to the Respondent's e-mail system was terminated, Mr Cook still regarded him as an employee because he gave him a management instruction to return to the meeting on 6 December. There was no reaction by the Respondent to the Claimant's absence from meeting, such that the Respondent accepted any fundamental breach by reason of any failure on the part of the Claimant to comply with that management instruction. Rather as the Claimant pointed out, he was in fact paid to 31 December 2010. Whatever the reason for which the Claimant left Saudi Arabia, he had not been required by Mr Cook to go on a business journey to the United Kingdom. Neither was the Claimant required to go to United Kingdom to carry out his function as programme director as he agreed he could have carried out work in any other country.

75 While the Claimant may have carried out work in United Kingdom on his return in December 2010, and prior to 31 December 2010, his presence in the jurisdiction was not in pursuance of his employment obligations. It may not have been a casual visit, in the sense that he deliberately chose to go to United Kingdom after leaving Saudi Arabia, and it may not have been a temporary visit, in the sense that he contemplated the termination of his probation employment, so that he may have intended to stay permanently in United Kingdom. However in his e-mail of 4 January 2011 at pages 187 and 188 of the Respondent's bundle he acknowledged that if his employment had continued he would have been due to return to the Respondent's Riyadh office and continued his duties as programme director on 4 January 2011, and I find that the circumstances of his presence in the United Kingdom in December 2010 do not have the characteristic of the Claimant having his place of work in the United Kingdom at the date of dismissal.

76 On the facts of this case, the Claimant was not based in the United Kingdom, whether at the start of his employment with the Respondent, or at any time during the employment, nor was his place of work in the United Kingdom at the date of his dismissal at the Respondent's offices in Bristol on 21 December 2010, or when he received the confirmation of dismissal of which a copy is at page 170 of the Respondent's bundle. Indeed the communication of dismissal from Mr Cook was in terms that the Claimant was instructed not to return to Riyadh as programme director of LOA3P3. I find that the Claimant was not a standard employee in the category referred to in Lawson.

### **Peripatetic employment**

77 For the reasons I have set out I find that the Claimant was not required to carry out his tasks at different locations in the sense that he was based within the jurisdiction from where he would travel abroad to carry out his functions. I find the Claimant was not a peripatetic employee such that he came within one of the categories in Lawson who would enjoy the right to the jurisdiction of the Tribunal.

### **Expatriate employment**

78 Ms Davis submitted that the categories were not closed, and that is clear from the Supreme Court decision in Duncombe. I therefore consider the matters she advanced in her submission that the Claimant was entitled to benefit from the rights in Employment Rights Act 1996 because he was an exception to the normal characteristics in the category of expatriates, and her further submissions that the Employment Rights Act is to be construed as affording jurisdiction in his case. She submitted that there were no rules, but principles to be applied with illustrations of factors which amounted to the exceptional case. Ms Davies pointed out that there was a very strong connection with the United Kingdom and British law. The confidentiality agreement was to be determined in accordance with the law under which any litigation would take place in the United Kingdom. She said the Respondent had downplayed the significance of the work carried out by the Claimant in the United Kingdom, his responsibility for others in United Kingdom, and the actual work he had to do in the United Kingdom to effectively carry out his duties as programme director for LOA3P3. She referred to the Management Plan in the Claimant's bundle and to the organisational charts of management structure and proposed that the Claimant's work in the Bristol office was far more significant and vital than the Respondent was prepared to accept in evidence. She said the procedure for the Tribunal was not a tick box exercise, but that regard had to be given to the clear and obvious link between the activities relating to the project in South Saudi Arabia and the involvement of United Kingdom Ministry of Defence. The operation could not proceed without the presence and assistance of the United Kingdom Ministry of Defence, and the contract for the operations was in the United Kingdom only. The principal part of the operation of the contract was based in the United Kingdom where the contract was made, albeit that it was also carried out elsewhere. When looking at the Claimant's function, he had overall responsibility for the management of an overseas project, based in United Kingdom. So all the work he did was inherently connected to activities in United Kingdom. It did not matter if the Claimant was physically present or not in the United Kingdom as he could have carried out his functions by video link from anywhere, but the work was bound up with the work in United Kingdom. The Claimant was engaged in work in the United Kingdom. There was a strong connection with United Kingdom. The confidentiality agreement was subject to English law because of the strong connection with the United Kingdom. There was a conflict of facts

in the evidence given, and the Claimant's version should be preferred. He had to network with people in United Kingdom, and had to work with the Ministry of Defence in United Kingdom. He needed to work with suppliers in United Kingdom. He needed to work with the 'subject matter experts' who are based in the United Kingdom. He needed to work with the principals to the contractual arrangements with the Ministry of Defence in the United Kingdom who worked with the Respondent in the United Kingdom.

79 I have considered these factors as part of the overall circumstances. I have also taken into account that the employment contract was made under Saudi Arabian law; that the Claimant had domestic accommodation in Saudi Arabia; that he worked in offices in Saudi Arabia; that he was paid in Saudi Arabian currency; and that, save where there had been reason to do otherwise, which did not relate to his employment contract the Claimant was paid into his Saudi Arabia bank account. He reported to a managing director in Saudi Arabia; he worked with senior management in Saudi Arabia; the business activities of the Respondent, irrespective of the contractual arrangements providing the structure under which work was carried out, was substantially in Saudi Arabia; and all employees of the Respondent worked in Saudi Arabia. That the end-user, SANG, had no direct contractual connection with the Respondent does not displace the fact that all the Respondent's work was done for SANG, in Saudi Arabia. That the Ministry of Defence in United Kingdom were the contractual parties with the Respondent, does not displace the fact that the actual work and the interface with the Respondent and its employees, including the Claimant, was principally with the SANGCOM team in Saudi Arabia. That there were suppliers from outside Saudi Arabia, to the end-user SANG, does not displace the fact that the goods and services procured with the services of the Respondent, and the Claimant's work on behalf of his employers, were for the use and benefit of SANG in Saudi Arabia.

80 There is no reason in the present case to confuse the work carried out by the Claimant for his employer, the Respondent in Saudi Arabia, with factors which relate to the connection whether contractual or otherwise, between the Respondent and others outside Saudi Arabia. The fact that the Respondent was a United Kingdom company with registered offices in the United Kingdom who had direct contractual obligations to the Ministry of Defence in the United Kingdom does not elevate the relationship between the Claimant himself in relation to the duties he personally performed for the Respondent in Saudi Arabia into any different employment contract other than that not only entered into under Saudi Arabian law, but actually performed by the Claimant throughout its subsistence, in Saudi Arabia, including when the Claimant travelled abroad from Saudi Arabia for the performance of his duties.

81 Taking into account all the circumstances, I find that the Claimant worked and was based in Saudi Arabia throughout his employment until 31 December 2010, albeit that he was

in United Kingdom on various occasions in that period. I do not find that there are factors, or any combinations of factors which are sufficiently powerful so as to bring the Claimant's case within any of the exceptions in Lawson or any further exception contemplated in the Supreme Court case of Duncombe. There were no factors in the work he personally performed for the Respondent in Saudi Arabia under his employment contract such that the employment relationship and the work he carried out had a closer connection with Great Britain than with the foreign country where the Claimant works or worked until the termination of his employment.

82 The employment relationship between the Claimant and the Respondent was not for an employer based in Britain because the business activity of the Respondent was substantially carried out in Saudi Arabia. British ownership of the Respondent does not overcome the fact that the activities were substantially carried out in Saudi Arabia. Activities outside Saudi Arabia were ancillary to the business activities carried out in Saudi Arabia for the benefit in use of the ultimate customer, namely, SANG. The recruitment process is not material and while the fact that the contract of employment is based on Saudi Arabian law, and in that sense there is a closer connection between Saudi Arabia and the employment situation, I have regard to the conduct of the parties in relation to the way they have been operating the contract up to the termination, which is that the Claimant was based in and worked in Saudi Arabia. The process of termination and the fact that notice was given ultimately in United Kingdom does not affect the fact that the performance of the employment contract was carried out in Saudi Arabia where the Claimant lived and worked. The engagement of the Claimant and the conduct of his work was in Saudi Arabia for the purposes of the business activities of the Respondent carried out in Saudi Arabia and he was not posted abroad by a British employer to the purpose of a business carried on in Great Britain. This case has no feature of a foreign enclave, to be treated as British soil. The Claimant was not an actual employee of the Ministry of Defence in the United Kingdom, or indeed in Saudi Arabia.

83 I find that the employment relationship between the Claimant and the Respondent had a close connection with Saudi Arabia and Saudi Arabian law, which was very significantly stronger than any connection with Britain and British employment law. This was not such an exceptional case where the employment has a closer connection with Britain and British employment law than when with any other system of law, such as it is right to conclude that Parliament must have intended that the Claimant should enjoy protection from unfair dismissal or protection from detriment, on the grounds of any protected acts under the Employment Rights Act. I hold that the Claimant was an expatriate employee within the third category in Lawson.

**Territorial limitation**

84 Ms Davis pointed out that Lawson cited only deals with section 94(1) ERA but that section 103A was an insert which did not stand with the other grounds for dismissal in ERA, each to be treated separately. She submitted further that a fresh approach should be taken in relation to section 47B. She justified her submissions because it was of fundamental public importance that those who make protected disclosures should be protected. In the circumstances neither section 103A nor section 47B was subject to the limitation of jurisdiction by reason of the principle of the territorial construction of legislation.

85 Ms Davis also relied on Article 10 in Schedule 1 Part I of the Human Rights Act 1998 which gave everyone the human right of freedom of expression. The Claimant had no protection she submitted, so long as he had no remedy where the exercise of his right to freedom of expression was not capable of remedy under ERA. Accordingly at this date section 103A and section 47B should be construed to afford jurisdiction where protection is the issue, irrespective of territorial jurisdiction limitations. Further in any event section 47B had nothing to do with Part X Employment Rights Act which concerned unfair dismissal which was the section addressed in Lawson. She took me through paragraphs 10 to 15 of BP plc cited and said it was the victimisation by detriment/dismissal which was to be protected, irrespective of whoever was the employer at the time of the protected disclosure. It was appropriate to construe sections 47B, and also section 103A so as to afford protection, and accordingly to interpret them or either of them in the way that Parliament intended, namely to provide protection. Other provisions of the Employment Rights Act do not provide assistance or constraint in interpretation. The key to this case it was submitted on behalf of the Claimant is that the conclusion of the relationship, the dismissal, took place in the United Kingdom. There was no earlier resignation despite Mr Cook's assertions. She submitted there was a close connection between what happened in the United Kingdom which afforded protection to the Claimant in the United Kingdom.

86 While it is correct that Lawson cited only deals with section 94(1), the core issue was the question of territorial limitation of jurisdiction. The Public Interest Disclosure Act 1998 is drawn so as to be inserted within the Employment Rights Act 1996. Section 94(2) provides that subsection (1) has effect subject to the following provisions of Part X, itself concerned with all the strands of unfair dismissal and automatic unfair dismissal. Section 103A is inserted as part of these unfair dismissal provisions. Section 108(3), which removes the requirement of employment of not less than one year to qualify, is part of the unfair dismissal provisions. Lawson cited, decided in 2006 after the enactment of Public Interest Disclosure Act 1998 focuses on the construction of section 94(1) which is itself introductory to the whole of the remainder of Part X Employment Rights Act. At page 259, paragraph 23, Lawson

provides that the only question is the construction of section 94(1). Section 103A operates by virtue of its inclusion in Part X and the express provision in section 94(2) that subsection (1) has effect subject to the following provisions of Part X.

87 In so far as there is a policy implication that it was of fundamental public importance for those who make protected disclosures to be protected, I hold that does not extend the territorial jurisdiction to section 103A. The reason is that it is section 94(1) which is to be construed. I have referred above to the history of the Public Interest Disclosure Act 1998 and I do not find that the repeal of section 196 Employment Rights Act is any basis for extension of the territorial jurisdiction to cover the Human Rights Act Art 10. I accept the submission by Mr Croxford that Art 10 is a freestanding right and not linked to an employment right or the protection of an employment right as for instance in the case referred to in paragraphs 13 and 14 of Lawson cited, or for example the case of Bleuse cited.

88 In addition the extension of the territorial jurisdiction in such cases, including Bleuse cited, relate to matters concerning the countries in the European Union, where there is reason for redress for wrong in another member state under United Kingdom legislation or so as to enable enforcement of a Directive, or where the employer is itself the Government of the United Kingdom. I do not read these cases as extending jurisdiction in matters related to Saudi Arabia. I find that the fact that the dismissal occurred in United Kingdom is not a matter which brings the act complained of within the territorial jurisdiction as the question is of unfair dismissal under an employment relationship which had a strong connection with Saudi Arabia and Saudi Arabian employment law and had no strong connection with the United Kingdom and English law.

89 In relation to the claim under section 47B, the complaint is of detriment which occurred in Saudi Arabia, prior to the visit to the United Kingdom and the dismissal. By necessity of statutory definition, the detriment cannot be the dismissal and any detriment prior to dismissal did not occur in the United Kingdom.

90 Be that as it may, and although different provisions in the Employment Rights Act may have different territorial scope, in relation to section 47B I find that its origins and the history of repeal are the same as those applicable to section 103A. I do not construe section 47B differently to section 94(1) in relation to the starting point of construction that legislation is intended to have territorial jurisdiction.

91 I conclude from the history of the enactment of sections 103A and 47B that it is not the case that Parliament intended originally in 1998 to extend the territorial jurisdiction. In accordance with Lawson from which the present case cannot be distinguished, and having regard to my finding that the category of the Claimant is an expatriate, there is no basis after

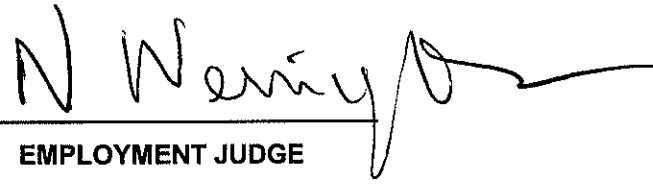
the repeal of section 196 for concluding that section 103A is not subject to the territorial limitation effective by the true construction of section 94(1). Art 10 has no impact on the construction of section 103A as Art 10 is free standing and does not engage an employment right or a matter connected with enforcement of a European directive relating to an act in the EU in relation to employment which has a connection with the EU.

92 Section 47B albeit outside Part X ERA, travels on the same lines as section 103A, derived from the same statute. I apply the same principles of construction derived from Lawson, to the construction of section 47B. Although as stated different provisions in the Employment Rights Act may have different territorial scope, in my judgment there is no basis or reason, from and after the repeal of section 196, for concluding that section 47B is not subject to the territorial limitation derived from the principle that the starting point is that legislation is prima facie territorial. As with section 103A, Art 10 has no impact on the construction of section 47B as Art 10 is free standing and does not engage an employment right or a matter connected with enforcement of a European directive relating to an act in the EU in relation to employment which has a connection with the EU.

93 I find there is no basis or exceptional circumstances to distinguish the Claimant's case from the ordinary case of an expatriate as explained in Lawson, and that the Tribunal have no jurisdiction to entertain the Claimant's claim of automatic unfair dismissal under section 103A ERA or his claim for detriment under section 47B ERA.

94 I accordingly dismiss the Claimant's claim of automatic unfair dismissal for having made protected disclosures as it is outside the jurisdiction of the Tribunal. Further the Claimant's claim of detriment for having made protected disclosures is outside the jurisdiction of the Tribunal and is dismissed.

95 Having regard to my decision. I am not required to address the case management discussion which followed submissions at the hearing on the second day on 12 August 2011, although I am obliged to counsel for their written preparatory work.

  
EMPLOYMENT JUDGE

REASONS SIGNED BY EMPLOYMENT JUDGE ON

31/8/11

REASONS SENT TO THE PARTIES ON

31/8/11

AND ENTERED IN THE REGISTER

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FOR SECRETARY OF THE TRIBUNALS