

THE INDUSTRIAL TRIBUNALS AND FAIR EMPLOYMENT TRIBUNAL

CASE REF: 14920/19

CLAIMANT: Derek James Shiels

RESPONDENT: Aluline Limited

JUDGMENT IN A PRELIMINARY HEARING

The judgment of the tribunal is that this tribunal does have territorial jurisdiction to consider the claimant's claim.

CONSTITUTION OF TRIBUNAL

Employment Judge (sitting alone): Employment Judge Hamill

APPEARANCES:

The claimant was represented by Mr Cormac Rice, of Paul Doran Law.

The respondent was represented by Mr William Clark, Director of the Respondent Company.

1. Issues

The issue for this Preliminary Hearing is to determine whether this tribunal has territorial jurisdiction to consider the claimant's claim for unfair dismissal/unfair selection for redundancy.

2. Facts

The tribunal heard evidence from the claimant and Mr William Clark.

The claimant was employed by the respondent in September 2012 until May 2019 as a Sales Person, Manager or Director. His title is of no relevance to the issue at hand. His contract of employment states, under the heading "general" that:-

"This agreement contains the entire understanding between company and employee relating to the subject matter of confidentiality, work product and non-competition. This agreement shall be governed by and construed in accordance with the laws of England and Wales, and may be modified only

by a writing [sic] signed by employee and company. Employee hereby consents to the exclusive jurisdiction of the Courts of England and Wales”.

3. At the time of commencement of the employment relationship the claimant was living in England and carrying work throughout the United Kingdom, and, therefore, jurisdiction in relation to employment matters such as those in this case would have fallen to the England and Wales tribunal system.
4. It is common case that in 2014 the claimant returned to live in Northern Ireland. It is common case since that time the majority of the claimant’s working time has been physically spent in Northern Ireland. It is common case that the majority of the claimant’s work would be done from his home address (over 70%) with occasional trips to the Republic of Ireland and Great Britain to survey sites and/or attend trade shows.
5. The respondent’s evidence is that the majority of tasks carried out by the claimant in Northern Ireland are in service of GB customers and therefore as the “work” is for these customers that fact, together with the terms of the contract of employment, vest jurisdiction to the English tribunal system. The claimant disputes the volume of GB work. Neither party has been able to assist the tribunal with objective evidence on this issue. For the purposes of the Preliminary Hearing, the evidence provided by the claimant and Mr Clark were that the claimant has lived in Northern Ireland for the past five years and carried out the clear majority of his tasks as an employee in Northern Ireland.

Law

6. Turning to the law, the tribunal is assisted by the submissions on behalf of the claimant through his representative and the authorities referred to therein. The tribunal is also assisted by the recent decision of the Vice-President in the case of ***Caren v Irish Hockey Company 17410/18***.
7. The task for the tribunal is to carefully consider the “*factual matrix*” surrounding the employment relationship as it existed at the relevant time, that is to say, up until May 2019. In the circumstances the tribunal notes the following:-
 - The contract of employment clearly identifies England and Wales as the relevant legal jurisdiction for the purposes of that contract.
 - Since that time, by agreement, the claimant’s place of work and domicile changed permanently to Northern Ireland.
 - Most of the claimant’s work or labour was done in and from Northern Ireland.
 - Occasionally the claimant was required to travel for work, either into the Republic of Ireland or Great Britain. As noted in the case of ***Ravat v Halliburton Manufacturing and Services Ltd [2012] UKSC1***, the place of work is the “preeminent” factor in determining jurisdiction and there are not, in the judgment of the tribunal in the present case, factors in operation within the factual matrix, as it affects the parties, which would serve to undermine that conclusion.

8. The relevant portion of Article 21 of EU Regulation 1215/2012 provides:-

“1. An employer domiciled in a Member State may be sued:

...

(b) in another Member State

(i) in the Courts for the place where or from where the employee habitually carries out his work or in the Courts for the last place where he did so ...”

9. The judgment of the tribunal is that this is precisely the situation in relation to the claimant and therefore the claimant is entitled to bring his case before this tribunal which has jurisdiction to hear it. The matter will proceed to hearing as previously listed.

Employment Judge:

Date and place of hearing: 4 February 2020, Belfast.

This judgment was entered in the register and issued to the parties on: