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# EMPLOYMENT TRIBUNALS

## *Claimant*

Ms A Sanderson

**AND**

## *Respondents*

European Parliament

**Heard at:** London Central

**On:** 14 November 2018

**Before:** Employment Judge Wade (sitting alone)

## **Representation**

**For the Claimant:** In person

**For the Respondent:** Mr J Steele, In-house lawyer

## **RESERVED JUDGMENT**

The Judgment of the Tribunal is that it does not have the jurisdiction to hear the Claimant's claim which is accordingly struck out.

## **REASONS**

1. The Claimant worked for the European Parliament as an Accredited Parliamentary Assistant from 1 December 2015 until 2 February 2017 when she resigned after a period of absence due to ill health. She brings claims of unfair dismissal, disability discrimination, religion or belief discrimination and for arrears of pay and other payments. Her claim form was submitted on 23 October 2017 and there has been some delay in listing this Preliminary Hearing.

2. The Preliminary Hearing was listed to decide whether the Tribunal had jurisdiction.

3. The parties provided written and oral argument and I explained to the Claimant that although she was a litigant in person, she should not be disadvantaged in that it was my job, and indeed the duty of Mr Steele, to ensure that arguments both for and against the Respondent's position were aired.

4. I regret to say that the Claimant has not been successful in establishing that this Tribunal has jurisdiction. The first and main reason for this is that the Treaty on the Functioning of the European Union, given effect by the European Communities Act Section 2(1) at Article 270 states “the Court of Justice of the European Union shall have jurisdiction in any dispute between the union and its servants within the limits and under the conditions laid down in the staff regulations of officials and the conditions of employment of other servants of the union”.

5. There is no doubt that by reason of her contract the Claimant was a servant of the union. She cites European regulations to say that this Tribunal does have jurisdiction over her case but, as Mr Steele explained during the Hearing, and I hope the Claimant understood, a Treaty has pre-eminence over regulations or directives and the Treaty could not be more clear.

6. There were discussions about whether the European Court of Justice was an appropriate forum to provide a remedy because it is the case that an individual should have recourse to a forum which will give them a fair hearing.

7. It is the case that the European Court of Justice is a body independent and separate from the European Parliament and is not an “in house” organization and so there is no built-in danger of bias against an employee who has brought a claim. Mr Steele provided information that the European Union has indeed heard claims from the European Parliament; he was able to identify eight of which four were successful, so this demonstrates that a fair Hearing is in practice available to the Claimant. The Claimant says that she only has confidence in an English Tribunal but I regret to say that there appears to be no reason why she should not trust the European Court of Justice.

8. The Claimant also says that she will have difficulty attending a Hearing at the European Court of Justice because of her ill health, she has had serious mental health difficulties in recent months. She can be reassured that in fact she is not required to attend a Hearing at the European Court of Justice and can send a representative instead. Indeed, Mr Steele confirmed that it is possible to apply for some form of legal aid to enable representation at the European Court. This is markedly better than the situation before the Employment Tribunal where no legal aid is available.

9. I refer finally to the comments of Lady Hale of the Supreme Court in a case called *Duncombe* in which she emphasised that it was very relevant to decide whether an individual had somewhere else to go when looking at whether it was right that a UK Court should have jurisdiction; as I have said the claimant did have somewhere else to go. Lady Hale made the further point that it would be contrary to the comity of nations to assume that UK protection was better than any others.

10. For the above reasons I regret to say that this Tribunal has not got jurisdiction. The position is not that the Claimant has fewer rights than another UK citizens who are able to come to this Tribunal because she has equivalent

rights before a parallel and alternative forum, the European Court of Justice, a Court populated by Judges of the highest caliber.

11. I know that the Claimant feels that she has been badly treated in the way the European Parliament has approached this case, but I explained to her during the Hearing that my job is to apply the law and that is what I have done. Regrettably, I cannot enter into a discussion on the morality of the situation.

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Employment Judge Wade

Dated:.. 14 November 2018

Judgment and Reasons sent to the parties on:

15 November 2018

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For the Tribunal Office