EMPLOYMENT TRIBUNALS

Claimant: Mr Eliezer Hoffman

Respondent : (1) Xexec Ltd

(2) Reward Gateway UK Ltd

Heard at: **Watford ET (via CVP** **On:** **30 and 31 January 2023**

Before: **Employment Judge Boyle**

Representation
Claimant: in person
Respondent: Ms J Shepherd (Counsel)

RESERVED JUDGMENT

1. The tribunal does not have territorial jurisdiction to decide the claimant's claims for:

    a. Unfair dismissal pursuant to Section 111 Employment Rights Act (ERA) 1996;
    b. Automatically unfair dismissal (Reg 7 Transfer of Undertakings (Protection of Employment) (TUPE) Regulations and Part X ERA 1996);
    c. Unauthorised deductions from wages pursuant to Section 13 (1) ERA

2. The claimant's claims for breach of contract and for failure to inform and consult pursuant to Reg 15 TUPE Regulations 2006 will proceed. A separate notice of hearing and case management directions will be sent out by the Tribunal.

3. Both Respondents will remain parties in these proceedings.

REASONS

Claims and Issues

1. By a claim form presented on 10 May 2022 the claimant brought complaints of:
    a. Unfair dismissal pursuant to Section 111 Employment Rights Act (ERA) 1996;
    b. Automatically unfair dismissal (Reg 7 Transfer of Undertakings (Protection of Employment) (TUPE) Regulations and Part X ERA 1996);
    c. Unauthorised deductions from wages pursuant to Section 13 (1) ERA;
    d. A claim for a protective award for a failure to inform and consult under regulation 15 TUPE (1996);
    e. Breach of contract.

2. As part of his claim relates to TUPE 1996, the claimant has brought claims against his employer Xexec Ltd and also the transferee Reward Gateway Ltd.

3. The respondents defend the claim and says that the tribunal does not have territorial jurisdiction to consider the claimant's claims arising under the Employment Rights Act 1996 nor does it jurisdiction under TUPE 1996 because employee representatives were elected and the claimant was not one of the elected representatives.

4. ET3's were submitted for both respondents on 29 June 2022 and amended on 19 October 2022 following a disclosure exercise. The respondents
5. The public preliminary hearing took place before me on 30 and 31 January 2023. The hearing was conducted by video using CVP. The parties and the respondent's representative attended by video.

Hearing and Evidence

6. The parties had prepared an agreed bundle with 1042 pages. Numbers in brackets below are references to page numbers in the bundle. A large portion of the bundle was taken up with transcripts of calls which the claimant recorded covertly with colleagues.

7. At the hearing I heard evidence from the claimant and from Mr. Hicks on behalf of the respondents. Both witnesses had prepared witness statements for the hearing.

8. At the start of the hearing, Counsel for the respondents conceded that that Tribunal does have jurisdiction to hear the claimant's claim for breach of

contract although they deny there are any outstanding payments due to the claimant under his contract.

9. The respondents further confirmed that there is no territorial jurisdictional reason why the claimant cannot pursue a claim pursuant to reg 15 of TUPE but they dispute he has standing to do so as an individual where employee representatives were elected

10. The respondent's representative had prepared written skeleton arguments and produced a bundle of authorities. Both the respondent's representative and the claimant made closing submissions and referred me to authorities. These are addressed below.

11. I reserved judgment.

The preliminary Issues to be decided

12. The preliminary issues for me to decide are whether the Tribunal has territorial jurisdiction to hear the claimant's complaints under the Employment Rights Act 1996, namely:
    a. Automatically unfair dismissal (Reg 7 TUPE Regs 2006 and Part X ERA 1996);
    b. Unfair dismissal pursuant to Section 111 ERA 1996;
    c. Claim for unauthorised deductions from wages (alleged failure to pay accrued annual leave, bonuses, overtime pay, national insurance and pension contributions) pursuant to Reg 13(1) ERA.

13. The respondents asked the Tribunal to also consider whether it had jurisdiction to hear the claimant's claim pursuant to Reg 15 TUPE Regulations 1996 for failure to inform and consult.

14. The claimant said that he had not come prepared to address the Tribunal on this point as the Notice of Preliminary Hearing only referred to 'territorial jurisdiction'. On that basis, I have decided to make no findings or decision on this point and it will be determined by the Tribunal at the full hearing. As the claimant asserted that the transfer date was before his dismissal, I have determined that both Respondents should remain party to these proceedings in respect of this claim.

Fact finding

15. I make the following finds of fact from the evidence I have heard and read.

16. The claimant is a British Citizen.

17. The claimant commenced employment with the first respondent on 1 June 2016. The first respondent was a provider of reward and recognition, employee benefits and customer loyalty solutions. The co-founders and owners of the business were Saul Meyer and Jackie Benjamin.

18. Between that date and the end of June 2019 the claimant was employed to work as an Accounts Executive based at the first respondent's offices in London. The first respondent had a US subsidiary, Xexec Inc.

Move to US in July 2019

19. In 2019, the claimant and first respondent agreed he would move to the United States (US). The claimant confirmed in evidence that he was happy to go the US and that the arrangement 'worked for both parties'.

20. In order to work in the US, the claimant would need some form of visa and the first respondent applied for an E-2 visa.

21. Mr Meyer's made an application for an E-2 visa on behalf of the claimant on 15 January 2019. (p77-79) He stated:

[they] require Mr Hoffman, currently the Finance Manager at Xexec Limited in the UK, to take on the hybrid essential role of Finance Manager/Sales Executive at Xexec Inc in New York, to build the finance function and department on the ground in the US, help grow US sales through cross-sell to US companies related to current UK clients and transfer knowledge from the UK parent to the US subsidiary.

As a result of Xexec Inc's rapidly growing operations in the US, the company can no longer be adequately supported remotely by the finance department in the UK, and requires a highly specialized Finance Manager with extensive experience at the parent company, to set up a finance function on the ground in the US.

Additionally, the company would like to build further on the momentum and start cross-selling services to US companies related to the group's current clients in the UK. Mr Hoffman has been identified as the ideal candidate for this combined role due to his two and a half years of experience with Xexec Limited in the UK, where he has already been managing the company's finance department globally, overseeing the US finances as well remotely from the UK.

In the essential role of Finance Manager/ Sales Executive in the US, Mr Hoffman will use his unique knowledge of Xexec's financial processes and procedures to create and manage the in house finance function for the US office.

Additionally, having been in charge of the client onboarding procedures in the UK, Mr Hoffman will use his extensive knowledge of the group's UK based clients to grow US sales by cross-selling to US companies related to UK clients.

Lastly, Mr Hoffman will transfer this critical knowledge of the parent company's unique offering from the UK parent to the US subsidiary. Such transfer of knowledge is critical to ensure that Xexec is able to provide the same cutting edge service to both its UK clients with US presence and its future US clients. London is the centre of Xexec's excellence, with UK sales of over £33 million for

the last fiscal year and clients including J.P Morgan, PwC, O2, Bupa, EE, and A.S Watson, to name a few. It is essential for Xexec to relocate employees with highly specialized knowledge of the company's offering, clients and processes to the US to ensure that the company is able to build on its success and grow its US presence further.

In the hybrid role of Finance Manager/ Sales Executive, Mr Hoffman's duties will include:

- Setting up the in house finance function for the US subsidiary with the intention of building a finance department on the ground in the US and ensuring that the company is fully self-reliant rather than dependant on the logistic support of the finance function in the UK;

- Using his specialised knowledge of the company's financial management to control the US operation's income cash flow and expenditure, sales/purchase ledger and data analysis; - Using his knowledge of Xexec's client base and unique offering to oversee the shift in customer service department in the US; - Using his knowledge of compliance in relation to UK accounts to oversee fraud prevention in relation to US accounts, ensuring clients are protected in a space where 3d secure protection from card schemes is less widespread;

- Using his unique experience with sourcing and integrating new payment systems in the UK to evaluate whether the success of these systems can be replicated in the US to ensure overall fraud prevention for US accounts;

- Further growing US sales by cross-selling to US companies related to the group's UK clients, ensuring the same excellent service is provided in the US; - Using his extensive experience with on-boarding UK vendors and Xexec's relationships with multinational companies to source US vendors for our fast growing clientele in the US;

and as the US subsidiary further increases its clientele and sales, recruiting and hiring staff members for the sales team and ultimately for the finance department as Xexec Inc becomes a self-sufficient office and no longer relies on the UK office for financial management.'

22. I find these passages highly relevant. In cross-examination the claimant confirmed that he had no reason to believe that Mr Meyer was lying in this visa application and therefore was presenting the truth of the intended reason for the claimant's transfer to the UK. Further the claimant conceded that he was not being sent to the US simply to do the same job as he had been doing in the UK. He accepted, on a number of occasions during evidence, that he was moving to the US to 'grow the US side of the business and build up the US client base.' I find that Mr Meyer's visa application sets out the intention of the parties as regards the claimant's role in the US.

23. The claimant believed it was relevant that this is described as a 'temporary, multiple-entry visa'. However, I find that this is the only way

this visa is described. The claimant was not given a fixed-term contract in respect of his work in the US and there is no evidence that either side thought this arrangement would be temporary. The claimant conceded in evidence that he was happy in the US, wanted to remain there, obtain a green card and eventually obtain US citizenship.

24. The claimant said in evidence that this role was a 'commuting role'. He accepted that his base for the purposes of commuting was the US (and, crucially, not the UK). He said it was the clear understanding between him and the first respondent that this was a commuting role. He pointed to a trip to the UK made by him November 2019. (p111). This shows a flight from JFK airport to the UK on 14 November 2019 and then a flight from Tel Aviv to JFK to 16 December, plus a further flight to JFK from the UK on 18 December 2019. The claimant confirmed he had visited Israel for ' a day, maybe the weekend'. He could not recall if he had then flow directly back to New York or had returned to the UK and then returned. This presented a confusing picture. Either way, I find that this one trip to the UK (the only one taken by the claimant between July 2019 and March 2020) did not show evidence that he was a 'commuter'. This was a business trip combined with a visit to see his family in the UK and in Israel. I find that the claimant was not a 'commuter' but that he was an expatriate worker.

25. In March 2020, the Covid pandemic began. The US office was closed. I find that this means the US office was physically closed and the lease expired However, US operations continued during this time. The claimant said that 'but for' the pandemic, he would have continued commuting during this time but was prevented from do so due to travel restrictions. I find no evidence that this was the intention of either party.

Working arrangements

26. The claimant moved to the US in July 2019. From that point onwards he was based entirely in New York. He accepted that this was his location, he lived there, he was paid in US dollars into a US bank account by the first respondent's US subsidiary Xexec Inc. He paid US taxes based on his residency there and had a US social security number. No tax or national insurance was paid in the UK by the claimant from this time. He observed US federal holidays. The claimant confirmed in evidence that he was no longer part of the UK pension scheme from July 2019

27. The claimant was working for a multi-national company with a base in the UK. The claimant asked the Tribunal to do a careful analysis of the actual work he did whilst in the US to show that he was still essentially working for the UK doing the same job he did when he was in the UK. This is contrary to the picture that was given in the visa application from Mr Meyer.

28. I do not find that the law requires the Tribunal to do a line by line analysis of the claimant's work activities whilst he was in the US. Rather, I am

adopting a broad brush approach to this question. The claimant confirmed in evidence that he did not simply do the same job he was doing in the UK and that he was engaged working 'across both companies' namely Xexec Ltd and Xexec Inc.

29. He clearly did work for both companies during this time. He signed contracts on behalf of Xexec Inc, he was involved in cross-selling to UK companies based in the US, went to US networking events, and he undertook a large amount of finance work (as would have been expected for his role). Whilst it was not possible or reasonable for the Tribunal to assess each and every transaction conducted, I was persuaded by the first respondent's evidence that the weight of documentation showed that the claimant did a substantial amount of work for Xexec Inc, as was expected of him in his move to the US.

30. The claimant did have a UK line manager Mr Rajen Cunnoosamy, but he did not 'line-manage' other UK employees. In evidence he confirmed that he did not conduct appraisals, or make pay review decisions or approve holidays . These colleagues reported to Mr Cunnoosamy.

31. On 26 April 2020 the first respondent entered into a new employment contract with claimant stipulating that his place of work was New York (pg 114 - 131). It provided for a work location of New York and payment of salary in dollars. The claimant pointed to several parts of this contract that engaged with UK employment law.
    a. It referred to the ERA 1996 and other UK laws;
    b. It referred to UK employment policies such as sick leave;
    c. It was governed by English law

32. The first respondent asserted that there was several issues with this contract which suggested the person who produced it (Mr B Francis, HR and Operations Director) and not given sufficient thought to this and had simply added in the relevant US sections to the UK boilerplate. They point to the fact that one clause states that ' There are no terms in this Agreement requiring you to work outside the United Kingdom for more than one month.' This clause makes no sense in the context of the claimant already being based in the US. There is no evidence that the Claimant negotiated for this contract to be governed by English Law.

33. I agree with the first respondent here. There does not seem to have been much thought given to the format of this contract and it was simply a method for the first respondent to show that that claimant's base of employment had changed, together with his salary and job title. Whilst the choice of law in relevant for contractual matters, I do not find that it was the first respondent's intention for the claimant to be covered by UK employment simply by the terms of this contract. I find it relevant that there was no reference to this being either a fixed term contract or that the claimant was a 'commuter' between the US and the UK.

34. The claimant stated that he regularly worked UK hours. He pointed to a court document (p153) as his only example of a day when he worked UK hours. The claimant was taken to several WhatsApp messages (examples at p348, 349, 352) where it shows he joined the conversations around 8am US time (1pm UK time). There is no evidence the respondent required the claimant to work UK hours whilst based in the UK, but as with any company operating across time zones, the claimant made accommodations so that he could work meaningfully with his UK colleagues. I find that this meant he would start work at 8am US time. (but not at 4am US time which would have been 9am UK time).

35. in August 2021 Abry Partners and Castik Capital purchased the share capital of both respondents. Due to this change of ownership, this had a potential impact of the claimant's E-2 visa. The claimant became concerned that the issue was not being taken seriously by the first, and then, the second respondent. He began recording conversations with colleagues without telling them.

36. In October 2021 he claims he was told not to return to the UK as he would have difficulty returning to the US. He says that the respondents acted badly towards him as regards the visa.

37. I find here that the claimant was advised that there was an issue with his visa and that it would be better for him to stay in the US at this time whilst it was being resolved. The claimant says this was designed to prevent him from returning to the UK and 'claiming' UK employment rights. I find that this was not the case. If the claimant had wanted to return to the UK for this reason, he could have done so. He might have then had an issue with returning to the US, however that is a separate matter. I find that the claimant's main focus around this time was to secure a valid working visa for the US. He didn't wish to return to the UK and wanted to continue working in the US.

38. During this time, the claimant completed questionnaires with the first respondent's solicitors in order to ensure his visa status was secure in the US. He gave his address as New York.

39. On or around December 2021 a review was conducted of the first respondent's entire business, including its US operations. It was determined that there was no longer a requirement for the roles performed by some of the first respondent's US employees, including that which was performed by claimant.,

40. In his evidence, Mr Hicks (who was employed by the second resondent at the time) confirmed that he had been told by Mr Meyer that the claimant was a US employee, based in the US. Mr Hicks stated he had no reason to doubt this. The claimant appeared on an organisation chart as being in the US office. He determined that the claimant's employment should be terminated in accordance with US law. By a letter dated 10 January

2022, the claimant was informed by his employer, the first respondent, that his employment had been terminated on that date (pg 306).

41. As the claimant's US visa was no longer valid, he returned to the UK.

Law

Territorial Jurisdiction

42. The claimant has brought complaints against the respondent of unfair dismissal under the Employment Rights Act 1996.

43. I have to decide whether the tribunal has territorial jurisdiction to hear these complaints which requires me to consider the territorial reach of the applicable law.
44. The Employment Rights Act 1996 does not expressly refer to the extent of the territorial boundaries within which it applies. This s to be determined on a case by case basis by reference to case law.

45. The starting point is the decision of the House of Lords in Lawson v Serco [2006] ICR 250. That case concerned the territorial reach of complaints of 'ordinary' unfair dismissal.

46. In Lawson v Serco, Lord Hoffman held that the application of the right not to be unfairly dismissed depends upon the construction of section 94(1) of the Employment Rights Act, and the application of principles to give effect to what parliament may reasonably be supposed to have intended, including implied territorial limitations. He said that parliament must have intended as the 'standard case' someone who, at the time of the dismissal, was working in Great Britain. This is distinguished from someone who is 'merely on a casual visit (for example in the course of peripatetic duties based elsewhere)'.

47. In relation to work outside Great Britain, Lord Hoffman said that in general, parliament can be understood as having intended that someone who lives and works outside Great Britain will be subject to the employment law of the country in which they live and work, rather than the law of Great Britain. But there may be cases which are exceptions to this general rule. Lord Hoffman considered the position of peripatetic and expatriate employees. In relation to expatriate employees (those who live and work entirely or almost entirely abroad) Lord Hoffman said: -

"*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*."

48. He gave two examples of those who might come within the scope. The first is an employee who is posted abroad by a British employer for the purposes of a business carried on in Great Britain, who 'is not working for a business conducted in a foreign country which belongs to British owners or is a branch of a British business, but as representative of a business

conducted at home…" The second is an employee operating within an extra-territorial British enclave such as a military base.

49. Lord Hoffman further explained the kind of connection with Great Britain that might be required in the case of an employee who is posted abroad:

First, I think that it would be very unlikely that someone working abroad would be within the scope of section 94(1) unless he was working for an employer based in Great Britain. But that would not be enough. Many companies based in Great Britain also carry on business in other countries and employment in those businesses will not attract British law merely on account of British ownership. The fact that the employee also happens to be British or even that he was recruited in Britain, so that the relationship was 'rooted and forged' in this country, should not in itself be sufficient to take the case out of the general rule that the place of employment is decisive. Something more is necessary."

50. The Supreme Court in Duncombe v SoS for Children Schools and Families ([2011] ICR 1312) stated that the employment must have much stronger connections both with Great Britain and with British employment law than with any other system of law. It confirmed that the types of expatriate employees who might come within the scope of British employment law which were referred to in Lawson v Serco are not closed categories, but examples of exceptions to the general rule. Duncombe concerned British employees of British government/EU funded international schools abroad, and it was held that, although they did not fall within the examples given in Lawson v Serco, the 'very special combination of factors' in their case was such that it was right to conclude that parliament must have intended the employees to enjoy protection from unfair dismissal. In reaching this conclusion, Lady Hale placed particular emphasis on the fact that the employees were employed under contracts which were governed by English law and in international enclaves which had no particular connection with the country in which they were situated.

51. Territorial reach was considered again by the Supreme Court in Ravat v Halliburton Manufacturing Services Ltd [2012] ICR 389. In that case, Lord Hope identified guiding principles from Lawson v Serco as follows: -

"*Firstly, the question in each case is whether section 94 applies to each particular case notwithstanding its foreign elements. Parliament cannot be taken to have intended to confer rights on employees having no connection with Great Britain at all.*

Secondly, the employment relationship must have a stronger connection with Great Britain than with the foreign country where the employee works. The general rule is that the place of employment is decisive. But it is not an absolute rule. The open ended language of section 94(1) leaves room for some exceptions where the connection of Great Britain is sufficiently strong to show that this can be justified. … It will always be 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 case of those who are truly expatriate because they not only work but also live outside Great Britain require an especially strong connection with Great Britain and British employment law before an exception can be made for them."

52. The Court of Appeal has considered the jurisdiction of the employment tribunal to hear claims by employees working outside Great Britain more recently in British Council v Jeffery and Green v SIG Trading Ltd [2019] ICR 929, two appeals heard together. Lord Justice Underhill reviewed the position as now established by the case law and set out a summary of the position for the purpose of the two appeals, emphasising that '*in the case of a worker who is "truly expatriate", in the sense that he or she both lives and works abroad, the factors connecting the employment with Great Britain and British employment law will have to be specially strong to overcome the territorial pull of the place of work'.*

53. In the judgment of Underhill LJ also held that a jurisdiction clause in an employee's contract is a relevant, but not decisive, factor when determining whether employment has a sufficiently close connection to Great Britain. It is likely to be a weightier consideration if it has been specifically negotiated and less weighty if it merely formed part of the employer's standard form of contract.

54. I was also referred to the following cases by the respondent.

55. Bleuse v MBT Transport Ltd and anor 2008 ICR 488 EAT – here the unfair dismissal claim failed because, as the EAT held, although B worked for a company based in the UK, he did not operate out of the UK and had virtually no connection with it. It made no difference that his contract provided that it was to be governed by, and construed in accordance with, English law as s.204 ERA makes it plain that the law of the contract of employment is 'immaterial'. The only issue was whether, as a matter of fact, the employee was based in the UK and neither the terms of the contract nor its applicable law determined that question.

56. Partners Group UK v Mulumba UKEAT/0237/20/RN. This was a case concerning an employee who had a contract governed by the law of New York who had ended up working in the UK office of PG UK. There didn't seem to be direct relevance of this case to the case before me.

57. I was referred the following cases by the claimant.

58. Bates van Winkelhoff V Clyde and Co This case was predominately about 'worker' status for the purposes of a whistleblowing claim. However at Employment Tribunal level the respondent had taken the point that the claimant worked outside of the UK territorial jurisdiction. This was resolved in the claimant's favour based on the fact that she 'commuted' between

the UK and Tanzania. As I have found that the claimant in this case was not a 'commuter', this case was not of direct relevance.

59. Creditsights Ltd v Dhunna 2014 EWCA Civ 1238 - here the EAT confirmed that the Tribunal had carried out the duty with which it was charged, and it did so carefully and conscientiously, it found the facts that it was required to find and the Tribunal gave full and cogent reasons for their conclusion. The Tribunal's reasons reflected a full, careful and sufficient assessment of the facts so far as they related to the competing pulls of the different jurisdictions in play such as to enable them to carry out the required evaluation of whether or not the claimant had established a sufficiently strong connection with Great Britain and British employment law to except himself from the general rule. The Tribunal was entitled to conclude that D had not established such a connection.

60. Both parties referred me to the case of Lodge and Dignity & Choice in Dying EAT AT/0252/14/LA. Here L succeeded in establishing territorial jurisdiction in the UK because the findings made were that she was doing exactly the same job as she had done in the UK from her new base in Melbourne.

Conclusions

Territorial Jurisdiction

61. The claimant worked in the US from July 2019.

62. The general rule is that, because of the 'territorial pull' of his place of work, the claimant would be subject to the employment law of his place of work.

63. The fact that the claimant was located in the US requires me to consider "the sufficient connection question", that is whether there are factors connecting the claimant's employment to Great Britain, and British employment law, which pull sufficiently strongly to overcome the territorial pull of the place of work and justify the conclusion that Parliament must have intended the employment to be governed by British employment legislation.

64. The claimant was working in US for a company registered in the UK. The starting point in Lawson in respect of employees working abroad was that '*it would be very unlikely that someone working abroad would be within the scope … unless he was working for an employer based in Great Britain'* but even that would not in itself be enough. Lord Hoffman goes on to state; '*those businesses will not attract British law merely on account of British ownership*.

65. I have therefore gone on to compare and evaluate the strength of the claimant's employment connections with Great Britain on the one hand and with US on the other.

66. The factors suggesting some connection between the claimant's employment and Great Britain are:

    a. The claimant is British and was initially recruited in the UK in 2016.
    b. After moving to the US in July 2019, his contract was re-negotiated in 2020 by UK staff and signed by UK staff.
    c. His contract was governed by the English law.
    d. The claimant was line managed by a manager in the UK.
    e. Some of the claimant's final salary payments (where they related to commission) were paid in sterling.
    f. The claimant undertook some work for the UK company.

67. The factors suggesting a connection between the claimant's employment and US are as follows:
    a. The claimant lived and worked in US from July 2019 until the end of his employment. He considered his base to be 'New York' from this time.
    b. When he thought his visa was in doubt, the claimant took steps to ensure that his visa was sorted so that he could remain living and work in the US.
    c. In his 2020 contract, the claimant's base of work is stated as 'New York'
    d. He was listed on the first respondent's organisation chart as working solely in the US office (he did not appear under the UK office).
    e. The owners of the first respondent considered him to be a 'US employee' and his termination was handled under US employment law.
    f. The claimant specifically moved to US to grow the US side of the business and build a US client base.
    g. The claimant was paid in US dollars into a US bank account from July 2019.
    h. He paid US taxes based on his residency, and had a US social security number.
    i. The claimant observed US federal holidays and worked predominately US working hours.
    j. The claimant undertook a significant amount of work for the first respondent's US company.
    k. The claimant paid no income tax in Great Britain from July 2019 and was no longer member of a UK pension scheme because he was not resident in the UK.

68. It is not unusual in a global business for work to be done for the benefit of US and UK sides of the business . Many of the claimant's dealings with the UK are a consequence of his being employed by a company which had its main office in the UK. There was some crossover in terms of management of staff and functions between companies and countries. The claimant was managed by people based in the UK. However , in my judgment, that alone was not sufficient to over-ride the weight of the factors in paragraph 67 above.

69. The other connections the claimant had with UK were not connected with his work or were a matter of personal choice.

70. Whilst the contract did state it was governed by English law, I found that this was not specifically negotiated by the claimant and was simply a boilerplate clause rather than a conscious decision by either party.

71. The claimant's connections with US were much more substantial. They were more clearly linked with his employment: his location base ,his salary payments and taxes, working hours, holiday, and end of service termination were all in accordance with and governed by US employment law.

72. Having carried out this comparison and evaluation, I conclude that the claimant's employment connections with Great Britain and British employment law are not sufficiently strong to overcome the territorial pull of his place of work. The factors clearly demonstrate a stronger connection with US and do not justify the conclusion that parliament must have intended the claimant's employment to be governed by British employment legislation.

73. The claimant's complaints under the Employment Rights Act 1996 cannot therefore proceed.

74. The claimant's claims for breach of contract and for failure to consult under reg 15 of TUPE will proceed and will be listed for a separate hearing. Case Management orders will be issued.

Employment Judge Boyle

Date 3 February 2023

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

9 February 2023

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FOR EMPLOYMENT TRIBUNALS