Case Number: 2207403/2017

EMPLOYMENT TRIBUNALS

Claimant		**Respondents**
Ms H Hamam	**v**	British Embassy in Cairo (1) Foreign and Commonwealth Office (2)

PRELIMINARY HEARING

Heard at: Central London Employment Tribunal **On: 7-8 June 2018**
and in Chambers
on 13 & 15 August
and 5 December 2018

Before: Employment Judge Norris

Appearances
For the Claimant: In person
For the Respondent: Ms C Callaghan, Queen's Counsel

JUDGMENT

1. The Tribunal does not have jurisdiction to hear the Claimant's claim, which is accordingly struck out.

2. The full Hearing listed to start on 15 January 2019 is vacated.

REASONS

Background to the claim

1. The claim was lodged on 29 September 2017 and the response on 22 November 2017. The Claimant, an Egyptian national who latterly and until her dismissal in June 2017 had been a Vice Consul at the First Respondent and employed by the Second Respondent, had ticked unfair dismissal, race discrimination and "another type of claim", as to which she had stated "Whistleblowing and protected disclosure, Victimisation for Representations on Disciplinary Hearings".

2. Particulars of claim were contained in a 17-page document appended to the claim form. They said that the Claimant had been subjected to "a sustained campaign of race discrimination", the elements of which were said to be "differential treatment, unlawful harassment, exclusion and unfair dismissal"; whistleblowing and protected disclosure in February 2016 and March 2017 in the public interest, followed by "victimisation". The elements of that were said to be "unlawful harassment,

exclusion and unfair dismissal"; victimisation following the Claimant's representation of colleagues at disciplinary hearings, the elements of which were again "harassment, exclusion and unfair dismissal" and unfair redundancy. Arguably, there was also a claim being brought under the Human Rights Act 1998, regarding an alleged breach of Article 14 ECHR.

3. The Respondents resisted the claims. In a covering letter which accompanied the response on 22 November 2017, the Respondents asserted that the Tribunal did not have jurisdiction to hear the claim, or any part of it, because the Claimant's employment had insufficient connection with Great Britain to bring her under the protection of the Employment Rights Act 1996, Employment Relations Act 1998 and/or Equality Act 2010. Article 14 ECHR does not, the letter said, confer any standalone rights. A preliminary hearing ("PH") as to jurisdiction was requested.

4. The Claimant resisted the application for a PH and confirmed that she was not intending to bring a complaint under Article 14.

The Preliminary Hearing

5. On 23 February 2018, EJ Glennie ordered that a two-day PH should take place on 15-16 March, postponed on 2 March to 7-8 June 2018, to consider whether the Tribunal has jurisdiction to hear the claim. The Claimant was initially hoping to be able to attend that hearing virtually, but this proved not to be possible and she attended in person, accompanied by a companion. The Respondents' two witnesses did however attend via video link from Cairo and the Respondents were represented in London by Ms Callaghan QC, who was accompanied by her instructing solicitor Ms Haider.

6. The Claimant explained to me that she had prepared four bundles with sub-folders but on reflection had decided that this would not be fair to me to present me with such material, and had removed her documents. She had therefore delivered a single, smaller, bundle. However, she appeared to think that the order of documents in a bundle was important; I explained that it was not, and nor was the description given by the Respondents in their index. All that mattered was the evidence. Therefore, we proceeded using the Respondents' bundle, to which I return below.

7. The Claimant also told me that she had deliberately decided not to submit a witness statement, and that she did not want to be cross examined. On the first morning, I explained the potential ramifications if she did not give evidence herself, which was that much of the Respondents' evidence might be unchallenged and I could give little weight to submissions that tended to suggest a different factual matrix from that put forward by the Respondents. I suggested that if she did, on reflection, wish to do so, we could use the other documents she had submitted as the basis for her evidence. We left it that she would think about it and could decide when the time came.

8. The Claimant asked that the video link should be switched off other than when the witnesses were giving their evidence. I explained that the hearing was being held in public and that I considered it necessary for the Respondents' witnesses to be able to hear and see what was happening at the hearing, since they would be giving evidence, even when they were not actively doing so. The link was duly connected throughout the live sessions, but was switched off or muted during adjournments. I also explained to the Claimant that if she needed a break at any time, she had only to ask, and that she could ask procedural questions as required.

9. I permitted the Claimant to make an opening statement to the Tribunal, in view of her status as a litigant in person against Queen's Counsel and because the Claimant

assured me she would take only five minutes, although I explained further that I was hearing the case on jurisdiction and not on the merits. The Claimant asserted in essence that Parliament had intended somebody like her to be subject to British employment law, in light of the position she held and that her employer was not just a British establishment but the British government itself. Ms Callaghan briefly responded to remind me that the Respondents' case is the Claimant did not enjoy such protection because she is not a British national and lived and worked at all material times outside the UK. The Claimant, she asserted, would be unable to overcome the very high hurdle of showing much stronger connections with Britain than with Egypt.

10. We heard evidence from the Respondents' two witnesses in turn, both of whom were cross-examined by the Claimant. I return to their evidence below. Following the conclusion of the Respondents' case, we discussed once more whether the Claimant would be giving evidence. She explained that she had had a significant medical event in March and her doctor had been very clear that she should not be put under the stress of giving evidence, which is why she had not submitted a witness statement. She wished to rely on her submissions. I explained again that any evidence set out in her submissions would carry less weight if it had not been tested. I reminded the Claimant that it was entirely her choice whether she gave evidence or not, and said I would adjourn for five minutes (though in fact we took closer to ten) for her to reach a final decision. That decision was that the Claimant would not give evidence.

11. Ms Marriot for the Respondents was then briefly recalled to answer some additional questions as I needed to have some evidence on the Claimant's position in relation to certain factors such as recruitment, salary and benefits which it was thought likely she could answer, as indeed she did.

12. In order to make findings on facts relevant to the consideration of the preliminary issue, and in light of the case law relied on by the parties, I canvassed with them a list of factors that I believed should feed into that consideration, while inviting the parties in their submissions to address me on any other factors they thought relevant. These factors, to which I return below, were:

    a. Recruitment – the place where the Claimant was recruited and the process undertaken to recruit her;
    b. The location in which she worked;
    c. The location of her home;
    d. Where her line management and HR support services were situated;
    e. Her pay, including the currency in which she was paid;
    f. The benefits for which she was eligible, including medical insurance (such as repatriation during critical illness or in an emergency), pension and flights;
    g. Her eligibility to join a union;
    h. Any mobility clause;
    i. The governing law of the contract;
    j. Taxation;
    k. The Claimant's security status, including her access to areas within the Embassy and whether she had signed the Official Secrets Act;
    l. Training given;
    m. The redundancy payment and process followed;
    n. Disciplinary and grievance issues;
    o. Holiday entitlement;
    p. Whether the Claimant worked in what might properly be described as a "British enclave";
    q. Local law;

r. Where the Claimant lodged her "whistleblowing" complaint;
s. The Claimant's nationality.

13. The Claimant and Ms Callaghan then spoke in turn, either side of the lunch break on day two, to their lengthy written submissions. I gave the Claimant a brief "right of reply" at the conclusion of the Respondents' submissions.

14. In light of the time taken to hear the evidence and submissions, and the fact that Court of Appeal decisions were awaited in two potentially significant cases (to which I return below), judgment in this case was reserved. To the extent necessary, the parties were given 14 days from the later of the two decisions in which to exchange and send to the Tribunal their further written submissions. No further submissions having been received within that time limit, I have reached the decision below. In reaching my decision, I had careful regard to the parties' submissions, but in light of their length and the need to promulgate this decision in a timely manner, I do not repeat them at length below.

Documents considered at the PH

15. As noted above, I had before me the Respondents' bundle comprising two lever arch files and running to over 700 pages. In addition, I had the Respondents' witnesses' written statements, a bundle of authorities and the parties' written submissions. I had regard to the pages to which I was specifically referred, but I did not deliberately look at other, unreferenced, material, unless it was in searching for an item to which I was referred. As we did not refer to the Claimant's bundle, I kept it separate and did not consider the contents.

The Law

16. The bundle of authorities contained reports of seventeen cases plus additional materials. I set out below what I consider to be the salient points in relation to each of the cases referred to before me.

16.1.1 *Bryant v FCO (unreported) 10 March 2003 EAT* – the EAT upheld the findings of the ET that it did not have jurisdiction to hear the Claimant's claims of unfair dismissal, sex discrimination and breach of the Equal Pay Act. Mrs Bryant, argued, as did the Claimant in the case before me, that as the employee of a mission in another country (in Mrs Bryant's case, Italy), she would be unable to sue the state in the courts of another state. Mrs Bryant argued that as a British national, employed abroad in a diplomatic mission by the British government, unable to sue their employer abroad because of the existence of diplomatic immunity, she should be allowed to sue in the courts of the employer.

16.1.2 The EAT said this:

> "*[Mrs Bryant's] case … was that, whatever may be the case in relation to those who are not British nationals, working full time abroad, for commercial employers, whom she accepted did not get the benefit or should not get the benefit of any extra territoriality, there ought to be a provision for those who, like she, are British nationals and citizens, working for the British government; and albeit subject to local law, nevertheless are unable, or at any rate possibly unable, to take the benefit of the local Courts if immunity be not waived by their employer.*
>
> *There is no basis upon which we can construe [the Employment Rights Act] in order to add that box, or that category of people, on to the existing legislation. … The Tribunal cannot possibly so rewrite the legislation; it would be a matter for Parliament, as we see it, if for anyone*."

16.2.1 *Lawson v Serco [2006] ICR 250 HL* – in which Lord Hoffman identified three categories of employee, other than those working in Great Britain, who would potentially come within the scope of ERA:

- those posted abroad to work for the purposes of a business conducted in Great Britain;
- those working in a British political or social enclave abroad; and
- possibly others having "*equally strong connections with Great Britain and British employment law*".

16.2.2 Historically, the statute had expressly excluded those ordinarily working "*outside Great Britain*", and while the particular section (s.196) had been repealed by the Employment Relations Act 1999, Lord Hoffman considered "*the importance which Parliament attached to the place of work*" to retain "*persuasive force*". Hence, he agreed that the standard, normal or paradigm case would be where the employee was working in Great Britain. He suggested that for peripatetic employees, such as airline pilots, international management consultants and salesmen, the question would be where they were "*based*".

16.2.3 This did not help for expatriate employees, who were by definition likely to be both working and based abroad. Lord Hoffman found that for such employees to fall within the scope of British labour legislation, there would have to be "*unusual*" circumstances, emphasising that these would be "*exceptional*" cases. He referred to the arguments before him, noting that it was suggested that the test should be "*whether, despite the workplace being abroad, there are other relevant factors so powerful that the employment relationship has a closer connection with Great Britain than with the foreign country where the employee works*". He considered this statement to be framed in terms too general to be of practical help, and outlined instead the characteristics that such exceptional cases would ordinarily have: the employee would be working for an employer based in Great Britain, but there needed to be "*something more*" even where the employee might have been British himself, and have been recruited in Britain – that "*something more*" might be that the employee would be posted abroad by a British business for the purposes of a business carried on in Great Britain.

16.2.4 Lord Hoffman said that it is necessary to have "*something more*" in the case even of an employee working abroad for an employer based in Britain, even where that employee is themselves British or recruited in Britain. That employee must be a representative of a business conducted "*at home*", not merely working for a business conducted in a foreign country which belongs to British owners or a branch of a British business. He gave the example of "*a foreign correspondent on the staff of a British newspaper, who is posted to Rome or Peking and may remain for years living in Italy or China but remains nevertheless a permanent employee of the newspaper who could be posted to some other country*". He had no doubt that *Bryant* (above) was rightly decided, but said that in Mr Lawson's case, there was no local community; he was in practice working on a British outpost in the South Atlantic. "*Although there was a local system of law, the connection between the employment relationship and the United Kingdom was overwhelmingly stronger*".

16.2.5 Alternatively, Lord Hoffman suggested that there might be an exception for an expatriate employee of a British employer working in an "*extra-territorial British enclave in a foreign country*". He noted that Mr Botham, one of the claimants before him, was one such, working in a military base in Germany, as was Mr Lawson, an employee of a private company, Serco Limited, who provided security services at the RAF base in Ascension Island. He distinguished Mr Lawson in that

role from a hypothetical person who had "*taken up employment in a foreign community*", such as if his employer were providing security services for a hospital in Berlin, saying that on Ascension, "*Although there was a local system of law, the connection between the employment relationship and the United Kingdom was overwhelmingly stronger*". He posited that there might be other examples, of which he could not think at the time, but was clear that they would have to have "*equally strong connections between Great Britain and British employment law*".

16.3 At the end of the following year, Elias J sitting as the President of the EAT, considered the ruling in *Lawson*, and concluded in *Bleuse v MBT Transport Limited & Another*[1] that a German national, living in Germany and working in mainland Europe, albeit for a company registered in the UK and with a contract that provided for English law and the exclusive jurisdiction of the English courts, did not "*have his base*" in Great Britain and could not claim the protection of ERA. Elias J referred to Lord Hoffman's use of the phrase "*rooted and forged*" in Great Britain when describing the employment relationship (although in fact Lord Hoffman himself had expressed concern over those words earlier in his judgment in *Lawson*). While in *Bleuse* the employer was based in the UK, Mr Bleuse himself did not operate out of the UK and had virtually no connection with it.

16.4 In *Ministry of Defence v Wallis & Another*[2], by contrast, the Claimants were the wives of serving members of the British forces, employed by the MOD in the British section of international schools in Belgium and the Netherlands, while their husbands were posted to NATO organisations. Their connections to the UK were described as "*clear, firm [and] sound*", being recruited there, as dependants of those in the armed forces, employed by the UK Government on terms governed by English law (appearing potentially to contradict what had been said in *Bleuse*) and in furtherance of a policy to bolster the recruitment of UK armed forces personnel to the NATO institutions. Mummery LJ acknowledged that the claimants' performance of their entire work outside the UK was "*potentially a major obstacle to bringing unfair dismissal claims*", but considered that although they were not in a British enclave overseas but an international enclave, this did not prevent them from having "*similarly strong connections*" to those in an exclusively British enclave (Elias LJ confirmed that they were "*equally strong*"); he acknowledged that these were unusual circumstances. Mrs Wallis and the other claimant Mrs Grocott were distinguishable from "*directly employed labour*" - those recruited abroad on local labour terms and paying local taxes.

16.5.1 The case of *Duncombe v Secretary of State for Children, Schools and Families (No 2)*[3] also concerned a teacher working abroad, though this time in the European Schools in Germany. In *Duncombe,* the teachers were recruited as British public servants to be posted abroad and in order to fulfil the UK Government's obligations to other EU Member States. Finding for the claimant, the Supreme Court noted that:

- The employer was based in Britain; indeed, it was the British Government. This, they said, was the "*closest connection that any employer can have*" with the UK;

- The employees were employed under contracts governed by English law; the terms and conditions of employment were either exclusively those of English

[1] [2008] ICR 288
[2] [2011] ICR 617
[3] [2011] ICR 1312

law or a combination of English law and the international institutions for which they worked;

- They were employed in international enclaves and did not pay local taxes; and
- It would be anomalous if a teacher employed by the Government to work in a European School in England were to enjoy different protection from one working in the same sort of school but in another country.

16.5.2 As with *Wallis,* it was noted that this was a "*very special combination of factors*". However, in *Duncombe* the Supreme Court moved further from Elias J's observation in *Bleuse* regarding the lack of significance of contracts being governed by English law. The *Duncombe* judgment referred to the fact, noted above, that the employees were employed under contract governed by English law, and concluded, "*Although this factor is not mentioned in Lawson v Serco Limited, it must be relevant to the expectation of each party as to the protections which the employees would enjoy*".

16.6.1 This "theme" was taken further in the case of *Ravat v Halliburton Manufacturing and Services Limited*[4], in which the Supreme Court in Scotland also found that the employee was entitled to the protection of ERA notwithstanding that his employer (a British company based near Aberdeen) was an associated company of a US corporation and he worked in Libya for the benefit of another, Germany-based, associated company. In that case the claimant, a British citizen, lived in Great Britain and his commuting costs were met by his employer and he was paid in pounds sterling with deductions for UK tax and national insurance. Once more, he was assured that he had the protection of UK employment law, and on his dismissal for redundancy the consultation and hearings in that regard, and those in relation to his grievance, took place in Aberdeen.

16.6.2 In *Ravat*, the Claimant would spend 28 days in Libya before returning to the UK for the same period; he was, in effect, job-sharing, the Supreme Court found. His costs were cross-charged by his employer to the German associated company, and he reported to an operations manager in Libya and for policy and compliance to an Africa region finance manager based in Cairo. One of the significant findings of fact for present purposes was that before he started work in Libya, Mr Ravat made express enquiries and was given assurances that his contract would continue to be governed by UK employment law. He had started working for Halliburton in London from 1990 to 1995; from then until his dismissed in May 2006 he worked overseas, initially in Algeria and subsequently from 2003, as noted, in Libya; he was described as a "*UK commuter*" in documentation.

16.6.3 The Supreme Court referred to the submission argued before Lord Hoffman in *Lawson,* namely "*whether, despite the workplace being abroad, there are other relevant factors so powerful that the employment relationship has a closer connection with Great Britain than with the foreign country where the employee works*" and noted that one of the reasons he rejected it was because it was too generally framed to be of practical help. However, they noted that if there was a case that could not be readily fitted into one of other of the three *Lawson* categories, that question might assist. Identifying principles that might be relevant, Lord Hope, giving the unanimous decision, noted:

- The employment relationship must have a stronger connection with Great Britain than with the foreign country where the employee works. Place of employment may be decisive but that is not an absolute rule.

[4] [2012] ICR 389

- Where an employee lives and works outside Great Britain there must be an especially strong connection with Great Britain and with British employment law for an exception to be made for them.

- The proper law of the parties' contract and the reassurance given by the employer about the availability of UK employment law was not determinative but was nonetheless relevant.

16.6.4 In relation to the latter point, in particular he said, "… *the parties cannot alter the statutory reach of s.94(1) by an estoppel based on what they agreed to. The question whether the tribunal has jurisdiction will always depend on whether it can be held that Parliament can reasonably be taken to have intended that an employee in the Claimant's position should have the right to take his claim to an Employment Tribunal. But as this is a question of fact and degree, factors such as any reassurance that the employer may have given to the employee and the way the employment relationship is then handled in practice must play a part in the assessment*."

16.6.5 Lord Hope went on: "*The assurances that were given in the Claimant's case were made in response to his understandable concern that his position under British employment law might be compromised by his assignment to Libya. The documentation he was given indicated that it was the employer's intention that the relationship should be governed by British employment law. This was borne out in practice, as matters relating to the termination of his employment were handled by the employer's human resources department in Aberdeen. This all fits into a pattern, which points quite strongly to British employment law as the system with which his employment had the closest connection*."

16.7.1 The Tribunal's attention was drawn next to *Bates van Winkelhof v Clyde & Co LLP & another*[5], in which the claimant was a solicitor working for a UK firm, Shadbolt and Co, and had been seconded to a law firm, FK Law, in Tanzania. The claimant had an employment contract with FK Law, as was necessary to satisfy local working regulations. When Shadbolts terminated its agreement with FK Law and entered an agreement with another law firm in Tanzania, Ako Law, the claimant's employment transferred to Ako Law. Clyde and Co LLP, the respondent in that case, purchased elements of Shadbolts, including that in which the claimant was engaged, and the claimant became a member of the equity partnership. Between February 2010 and January 2011, she spent 78 days working in Clyde & Co's London office, where she had both an office base and a secretary; she paid National Insurance contributions in England although her tax was paid in Tanzania.

16.7.2 Elias J said, in dealing with the question of whether the Tribunal had territorial jurisdiction to hear the claimant's discrimination claims (the claimant having failed to show that she was a "worker" so as to give it jurisdiction to hear her whistleblowing claims), "*The comparative exercise will be appropriate where the [employee] is employed wholly abroad. There is then a strong connection with that other jurisdiction and Parliament can be assumed to have intended that in the usual case that jurisdiction, rather than Great Britain, should provide the appropriate system of law. In those circumstances it is necessary to identify factors which are sufficiently powerful to displace the territorial pull of the place of work… that is not necessary where the applicant lives and/or works for at least part of the time in Great Britain… All that is required is that the tribunal should satisfy itself that the connection is, to use Lord Hope's words, 'sufficiently strong to enable it to be said*

[5] [2012] IRLR 992

that Parliament would have regarded it as appropriate for the tribunal to deal with the claim".

16.8 In *Simpson v Intralinks Limited*[6], the EAT explained that there is a distinction between the applicable law relating to a contract or tort, the place (forum) in which the case should be determined and the territorial scope of a domestic employment statute. A choice of law by the parties would not prevent the application of "mandatory rules" of the law of the country in which the employee worked, unless the contract was more closely connected with another country.

16.9.1 In *Dhunna v CreditSights Limited*[7] the claimant originally lived and worked in the UK, but in time wished to live in and market the respondent's products from Dubai. The respondent in that case is a British company operating from London but with a parent company in New York. It duly opened an office in Dubai and the claimant moved there permanently although remaining on the London payroll; he was paid in US Dollars without deduction for tax or National Insurance in the UK; he was not included in the UK pension plan but he did retain the benefits of UK statutory and bank holidays. All his expenses and those of his office in Dubai were paid for by London. The first instance Judge records him as having emailed a colleague shortly after his departure explaining that he was glad to be out of the UK and hoped never to return. It is also recorded that Mr Dhunna received assistance from the UK but in the Employment Judge's conclusion "*He was only on [the respondent's] payroll and received administrative support from it as a matter of convenience*".

16.9.2 In the EAT, Slade J noted that the *Lawson* guidance had been "*developed*" in subsequent authorities and overturned the Employment Judge's decision that the Tribunal did not have jurisdiction to hear the claims. Restoring that original decision however, the Court of Appeal held that the position remains that the employee must be able to except himself, by showing sufficiently strong and exceptional circumstances, from the general rule that an employee working or based abroad will not be within the territorial jurisdiction of ERA. There is no requirement for a Tribunal to undertake a comparison of the competing systems of law to ensure that if a claimant is denied a remedy in the UK, he is guaranteed one in another jurisdiction.

16.10 *R (Hottak) v Secretary of State for Foreign and Commonwealth Affairs and another*[8] concerned Afghan nationals employed by the British Government and working in Afghanistan as interpreters with the British forces. The Court of Appeal (Rimer J), dismissing their appeals against a finding that the Court had no jurisdiction to hear their claims of discrimination under the Equality Act 2010, said:

"*…the present claimants were and are subject to the heaviest burden. They are not British citizens: they are Afghan nationals. They lived in Afghanistan. They were recruited in Afghanistan. Their employment contracts were governed by Afghan law. They worked exclusively in Afghanistan and there was no UK, international or peripatetic element to their employment. There was no provision either in their contracts or in any inter-state agreement that they were to be treated as resident in the UK for any purpose. … Their contracts did not provide for their pay to be subject to UK taxation. Their contracts included express statements of undivided loyalty to their employer but there is nothing materially special about that for present purposes; employees ordinarily owe duties of fidelity to their employers. While they worked at what may be regarded as British enclaves in Afghanistan,*

[6] [2012] ICR 1343
[7] [2014] IRLR 953
[8] [2016] 1 WLR 3791

they were also part of an indigenous Afghan community, where Afghan law applied; and they could and would return to their Afghan homes when on leave. They were not employed on the same footing as British staff or British service personnel …

As for the point that any claim … against the UK Government in local courts would be likely to be met with a plea of State Immunity, Mr Swift QC for the defendants submitted that this will always be the case for employees engaged abroad locally by the UK Government, but that it is not a factor which, without more, can bring their employment contracts within the exceptional type of case to which section 94(1) of the 1996 Act or Part 5 of the 2010 Act, can be assumed to be intended to apply. He said that the same consideration would also have applied to Mrs Bryant [see above]. *I agree."*

16.11.1 *Jeffery v The British Council*[9] was one of the cases on appeal to the Court of Appeal as at the date of the PH, the other being *Green v SIG Trading Limited*. The Court of Appeal decision in these two cases was handed down on 16 October 2018. Mr Jeffery worked for the British Council in Bangladesh. The EAT, overturning the first instance decision, concluded that there was jurisdiction to hear his claims of unfair dismissal, whistleblower detriment and discrimination. Mr Green worked in Saudi Arabia but lived in Lebanon and was employed by a British company. The ET and EAT both concluded that there was no jurisdiction to hear his claims of unfair dismissal and whistleblower detriment.

16.11.2 In Mr Jeffery's case, findings were made that he is a UK citizen, recruited in the UK but almost always working abroad in teaching centres. He did not live in the UK or own a home there, but he did own properties which he rented out, visited his parents in and intended to retire to the UK. His contract expressly provided that it was governed by the laws of England and Wales. His salary was payable in sterling; it was paid in London and funded in London, and there was a notional deduction for UK tax. He was entitled to a Civil Service pension, free accommodation and other benefits, including statutory sick pay. He could use the FCO diplomatic bag, and he was subject to the Official Secrets Act. The Respondent is described as a "*non-departmental public body*" and is on a list of organisations "*which while not directly part of government, are recognised as playing such a part in the life of the nation that it is right to afford a Civil Service pension to their employees*".

16.11.3 The EAT had found that the elements which were "decisive" were the Civil Service Pension, the tax equalisation adjustment and the nature of the Respondent. The Court of Appeal did not demur from those findings.

16.11.4 Mr Green, who as I have noted above, lived in Lebanon but worked in Saudi Arabia (his accommodation being paid for by his employer) was treated as exempt from UK tax and national insurance. On limited occasions he was required to attend the UK for training or meetings but he was working on an entirely new venture and did not perform any work for the benefit of the UK business. He owned no property in the UK. However, his contract was expressly governed by English law and contained a mobility clause under which he might be required to work in the UK and Ireland. His line manager, IT, HR and payroll support were based in the UK and he was paid in sterling. The Court of Appeal concluded that it did not have jurisdiction to hear his complaints. His employment did not have a sufficiently strong connection with Great Britain.

[9] [2018] EWCA Civ 2253

16.12 *Nica v Xian Jiatong Liverpool University*[10] - Dr Nica is a Romanian national who went to work in China as part of a joint venture with a UK university, following a short period (around six months) of residence and work in the United Kingdom. His place of work according to his contract and as a matter of fact was China and all the acts of which he complained had taken place there. He was paid in Chinese currency and his contract incorporated Chinese regulations. He was found not to have a sufficiently strong connection with the UK and therefore could not bring claims of discrimination.

16.13 *Bamieh v EULEX*[11] - In this case, it was not disputed that the Tribunal had jurisdiction to hear the Claimant's complaints against the Foreign and Commonwealth Office. English law applied to her contract; she lived permanently in London and was based there before being seconded to Kosovo where she stayed in temporary accommodation paid for by expenses. On appeal, it was decided (Simler P) that the Tribunal also had jurisdiction to consider complaints of whistleblowing detriment against two individual Respondents, because they similarly had an especially strong connection with Great Britain and its employment law system; and no other system of law was, in reality, available.

16.14 *Al Barbary v Ambassador of the United Kingdom in Cairo*[12] – a case in which it was determined by the South Cairo Court of First Instance that it lacked jurisdiction to hear a complaint by a former employee of the Second Respondent in the present case, on the basis that the Second Respondent had "*enjoined judicial immunity*".

16.15 *British Airways PLC v Mak*[13] – in which the Court of Appeal upheld the Tribunal and EAT's decisions that they did have jurisdiction to hear complaints of race and age discrimination brought by international cabin crew working for British Airways on flights between Hong Kong and London. This conclusion was reached on the basis that their work was done "*partly in Great Britain*", in view of their duties conducted after landing in and prior to take off from the UK; and their undertaking of training in the UK. Though their duties in London were a small percentage of their work overall, it was a "*regular and crucial*" percentage.

16.16.1 The Tribunal's attention was also drawn to the decision of HHJ Peter Clark in *Lodge v Dignity & Choice in Dying and another*[14]. The respondents in that case were a not-for-profit company and a charity, both of whose offices are in London, the claimant working for them initially in London at their offices or from her home in Ealing via a laptop connected to a virtual private network (VPN) as their Head of Finance. Her contract stated that the applicable law was that of England and Wales, with exclusive jurisdiction being that of the English courts.

16.16.2 Ms Lodge is Australian and within a year of her starting work for the Respondents, she returned with her family to live in Australia following the illness of a close relative, but continuing to work via the VPN from her home in Melbourne. She no longer paid tax or National Insurance in the UK but took up Australian residence and hence benefited from lower tax rates than if she had been a "foreign" resident, and she was subject to the Australian tax regime. Although she worked what might be described as normal office hours locally, she also made herself available for contact with London during London office hours; and she returned to London for two weeks each year to assist with the annual audit, in addition to two other occasions annually (the AGM and the yearly away day).

[10] Unreported – 23 August 2017 EAT
[11] 2200909/15 ET and unreported 19 January 2018 EAT
[12] 27 December 2006 (translated into English)
[13] [2011] ICR 735 (CA)
[14] [2015] IRLR 184

16.16.3 The Employment Judge's direction to himself on that occasion summarised the position:

"The basic question is whether Parliament can reasonably be taken to have intended that an employee in the claimant's position should have the right to take his claim to an Employment Tribunal. That is a question of fact and degree. It is not necessary for the claimant to demonstrate that the case falls within any particular exception to a general rule. In the case of a truly expatriate employee who works and lives abroad, there must be an especially strong connection with Great Britain and British employment law and it may not be sufficient to establish that there is a stronger link with Great Britain than with the jurisdiction in which the employee works".

16.16.4 In *Lodge*, the Employment Tribunal concluded that Parliament could not have intended that an Australian citizen, living and working in Australia and having relocated there at her own request, under the Australian tax and pension regime, should be able to bring a claim under ERA before the Tribunal. However, this decision was overturned on appeal since it was held that the Claimant came within the third category of *Lawson* employees, namely those referred to at paragraph 16.2.5 above. In effect, Ms Lodge was no different from an employee who is posted to work abroad with consent, notwithstanding that her remote working was done at her express request and solely for her own family reasons. She continued to conduct all her work (albeit from a PC in Melbourne, Australia) for the benefit of the Respondents' London operations. It assisted HHJ Clark in his conclusion that she had no right to bring a claim in Australia and that when she brought a grievance it was handled in London. She was working as a virtual employee in Australia rather than a physical employee in London, but other than that, there was no difference.

Evidence

17 I heard evidence from Mr William Neil, Consular Regional Operations Manager (CROM), and from Ms Allison Marriot, the Respondents' Head of Corporate Services in Cairo.

18 <u>Mr Neil's statement</u>
Mr Neil's witness statement explained that Mr Neil had been the Claimant's line manager from May 2016 until her dismissal in June 2017. Line management of consular staff generally rests, he said, with the Consul or CROM at Post, notwithstanding that the Claimant also received occasional requests from the Second Respondent's staff and Press Office in London, and despite his regular travels to other regional Posts. During such travels, he maintained 1-2-1 contact with his team and had teleconferences and regular face-to-face meetings with those employees.

19 Mr Neil distinguished the Claimant being tasked with responding to a request from London for advice or information, for instance, with her being line managed by anyone in the London office. Similarly, he noted that she might be asked to follow up a query from the Second Respondent's London-based Global Response Centre (e.g. when a British national was hospitalised in Egypt) or Child Protection Unit or to reply to consular inquiries and complaints, which she would have to clear with the Second Respondent's Consular Directorate in London and with him, to ensure accuracy and consistency. She did not respond directly when questions were raised by UK Members of Parliament, but information or clarification might be sought from her by the Second Respondent so that letters could be sent out.

20 Although the First Respondent is considered "inviolable" (in the sense that nationals of the host state cannot enter without invitation), it is part of the local community and has as its objective the representation of the UK's interests and building and improving relations with the host country. It pays local taxes and social insurance for its locally engaged staff.

21 Mr Neil noted that the Claimant was not a diplomat and did not have diplomatic immunity, although she had consular immunity, meaning that when carrying out her consular functions, she was immune from local jurisdiction.

22 The Claimant's role was to provide assistance and support to British nationals finding themselves in difficulty or encountering issues in Egypt (e.g. when they were hospitalised or imprisoned), using her local knowledge and language skills. She authorised the issue of Emergency Travel Documents and passports to British nationals, retaining a working stock of around ten such documents to which only she had access; Mr Neil himself had sole access to a working stock of around 200. The Claimant was tasked in 2016 with responding to the annual request from the Second Respondent in London for the inventory of stock held. She would also have contact with the Legalisation Office in London to provide information or answer queries about the genuine nature of documents issued by the First Respondent.

23 The Claimant was in contact with the Second Respondent's Crisis Management department in London during two crises in Egypt, as a member of the Post's crisis team; all consular members of staff in Cairo are designated as such. The Claimant set up the Consular Contact Centre in that she was the point of contact at Post to answer customer enquiries. She had to report regularly to various officials (e.g. police and mental health advisers) at the Second Respondent's Consular Directorate to resolve complex cases involving British nationals in Egypt. The Claimant held a Government Procurement Card for low-value purchases; she accounted online for her expenses incurred in carrying out her duties, and performed other administrative tasks.

24 While the Claimant carried out consular cover at two other posts, once in 2015 and once in 2017, this was on a voluntary basis, and for one to two weeks on each occasion. She remained based in Egypt. She may also have undertaken a course within her first three months and thereafter occasional training at the Second Respondent's offices in Whitehall. Other training was undertaken at regional centres or at the Embassy.

25 It was Mr Neil, with Mr Smith (CROM Levant), who made the decision to make the Claimant's post redundant following their review of the Egypt consular network in March 2017. The Consular Regional Director Ms Gates, based in Muscat, endorsed their key recommendations, which included the "deletion" of the Claimant's role. HR advice as to the Claimant's redundancy was taken from the Abu Dhabi hub and legal advice from the local legal adviser (Honorary Legal Counsel) as to the meeting of local terms and conditions. No approval from the Second Respondent's HR Directorate was required. The Claimant's termination payment (the equivalent of two months' salary per year of service, in line with local terms and conditions) was paid in US Dollars as a result of hyperinflation. The First Respondent had to bid to the Middle East North Africa (MENA) Finance Hub to have funding made available to meet this termination payment.

26 Mr Neil supplemental questions – Mr Neil explained the role of the consular section of the First Respondent, giving examples of the work it performs. He said that the Claimant was paid normally in Egyptian pounds and employed in line with the local Terms and Conditions of Service (T&CoS). He confirmed that it is standard

procedure to issue these to new starters, as they contain everything they need to know regarding their employment. The Claimant had signed the Annexes to the letter of appointment. References in the documentation to "local law" were to Egyptian law.

27 He said that the Claimant was recruited locally in Egypt. She was not directly managed from the UK at any time. He was her line manager, and this is clearly reflected in her appraisals for the period when he was the manager. She drafted her objectives and scope of responsibilities and agreed them with him as her line manager.

28 Mr Neil explained that the embassy, like all embassies, is inviolable in that the building and grounds are not open for "just anyone" to walk into; even the Egyptian police are not permitted into the compound or to enter buildings, and Egyptian officials need an invitation to do so.

29 He believed that by the end of her employment, the Claimant was spending very little time on assistance cases, and the majority would have been taken up by administration, providing training to the team and learning and development in Egypt.

30 Mr Neil explained the difference between himself as a Crown Servant employed by Her Majesty's Diplomatic Service, recruited in the UK and working for the diplomatic services overseas (with diplomatic immunity) and someone like the Claimant, engaged as a consular officer, with limited exemptions to allow her to carry out her functions. He contended that if a diplomat was involved in a car accident and killed someone, they would be exempt from prosecution or from giving evidence, because of their immunity; by contrast, consular officers would be subject to the laws of the country where they worked. Diplomats are never engaged locally in the host country, or on T&CoS for locally engaged staff. There is a global mobility clause in diplomats' contracts as they are expected to move on every few years to another assignment in another country. The Claimant had no such mobility clause in her contract.

31 Mr Neil also went into some detail as to the Claimant's responsibilities, for example in issuing emergency travel documents, and the extent of her liaison with the Global Response Centre (GRC) in London. He emphasised that line management responsibility for the Claimant remained with him or his predecessor even when she was working on something at the GRC's request. He elaborated on other issues addressed by his witness statement, such as the Claimant's attendance on training courses and her holding of a Government Procurement Card.

32 He emphasised that he had not been required to, nor had he, sought approval from the UK to make the Claimant redundant. The Claimant had informed him that the T&CoS required voluntary redundancy (VR) to be offered to the consular staff; he had accordingly gone (albeit after the decision had been made) to the Claimant's colleague, the other Vice Consul in Cairo, who had not expressed any interest in VR and therefore he had endorsed the original decision to make the Claimant redundant.

33 Cross examination of Mr Neil – he confirmed that he managed the Claimant remotely while he was travelling, as he did with his other reports (the Claimant conceding that he was her line manager). He was insistent that the Claimant was not showing on the database as the owner of the vast majority of the consular cases, and that he had reminded the team at a meeting (when the Claimant was present) to adjust the record to show themselves as the case owner if they were providing assistance. He

did not know whether this was because the Claimant would be the last point of contact for the Contact Centre in Malaga. He had no reason to doubt the accuracy of the data.

34 Mr Neil was also clear that while the Claimant might well have received instructions from other sources than himself (e.g. the GRC in London), this did not alter his status as her line manager. Nor did he accept that if the crisis consular manager was not present, that role fell to the Claimant. He did not consider the absence of the lead was significant, because he said that the First Respondent works on a 24/7 basis during a crisis; he thought that a UK-based employee Ms Thomas would have been the first person to be managing the team in the CROM's absence, although he was not aware of this happening; at any rate, he did not accept it would have been the Claimant.

35 Mr Neil accepted that the Claimant could have worked for up to two weeks in Dubai while he was her line manager, and that she may have provided information for drafting a press release (or more than one) and/or might have been asked to draft wording which would then have been approved by someone else.

36 There was no re-examination of Mr Neil.

37 Ms Marriot's witness statement – this explained that the Claimant was an LE (Locally Engaged) member of staff, recruited and employed in Egypt in accordance with the terms and conditions applicable to LE staff. The Claimant was a member of the Local Staff Association (LSA), whose function is to promote dialogue, consultation and negotiation on local terms and conditions. There is no mobility requirement for LE staff, by contrast with those based in the UK, who are recruited by Her Majesty's Government in the UK and posted to a British Mission overseas.

38 Ms Marriot drew the distinction between: the Claimant's entitlement to allowances and benefits (including pension) and that offered to UK-based staff; accreditation at the post for the Claimant (again, by contrast to UK-based staff); and security clearance levels including access to zones within the post. She asserted that the British Embassy in Cairo is not a "British enclave" that has no connection to the local community, but is instead a place to develop and improve links for a number of issues between Britain and the host country.

39 Further, Ms Marriot dealt with the Claimant's contentions around the usage of the Second Respondent's Employee Services team in London, particularly the Employee Assistance Programme and learning & development. She set out the explanation for the Claimant's grading, pay structure and the human resources support team in place in Cairo.

40 Supplemental questions of Ms Marriot – Ms Marriot explained that the T&CoS are subject to review with the LSA; indeed, whenever they are reviewed, the LSA is consulted. She referred to examples of evidence of the Claimant's membership of the LSA in the bundle. She also gave evidence that the Claimant had been a member of the LSA committee. She could not be certain, but thought this would have been in around 2012-2014. She noted that UK-based staff are not permitted to be members. Ms Marriot told me that she is a member of the UK civil service union, which LE staff are not permitted to join.

41 Ms Marriot also dealt with the question of posting abroad. She repeated (as she had said in her witness statement) that the Claimant could not be posted to another country, whereas for someone in Ms Marriot's position, there are mobility requirements under which staff must bid for new jobs every four years. They may

spend four years in the UK but then two postings overseas before returning to the UK again. Ms Marriot sees herself as having a career, whereas locally engaged staff have a job.

42 Developing this point, Ms Marriot said that she was recruited in the UK and posted to Cairo. She is allocated a house which is maintained by a team and her utilities are paid from government funds. Her health insurance and medical bills are also paid for by the UK government to a standard equivalent to the NHS; if necessary, there is a facility for her to be evacuated to the UK rather than being treated in Egypt. She receives a number of allowances, such as for cost of living, hardship, remoteness and language. There is a "degree of hardship" scale to work these out. None is available to LE staff. Ms Marriot is entitled to one trip home at the beginning of her assignment and one at the end, with one every two years while posted abroad. She is given the equivalent of the fares home, which she could instead use to travel around the world, to take a break from Egypt which is not her home, unlike the position for the Claimant. Locally engaged staff do not receive any fares or fare equivalence.

43 For LE staff there is however a local medical provision, under which the Respondent takes out a contract with the local provider EGYcare, and that gives the staff private medical cover. That contract does not cover evacuation to another country.

44 Ms Marriot was asked about the security levels at the Embassy. She is aware of: Official (all staff must be cleared to this level, including for LE having a police check); Confidential (she said that in this mission they can be certain nationalities but this does not include Egyptian. They are UK-based nationals living in Egypt on LE terms but they have a reference check in the UK); Secret Clearance (this includes all posted workers. It does not give access to all areas, and some partners across the government are cleared to SC level but they will not have access to areas which do not impinge on their work); Developed Vetting (this is for FCO staff, and it gives access to all areas. People cleared to DV level can see material with a classification of Secret and above). LE staff must be cleared to Official and some (but not Egyptian staff) can be cleared to Confidential. The Claimant was cleared to Official, which is the lowest as set out above and was not permitted to do some things in consequence.

45 The mission is divided into coloured zones reflecting the clearance levels. They are: white (the main operational zone with corporate support, consular and international trade – these are teams who do not need to access classified material regularly); green (MOD, counterterrorism and political); and red (security, technical and another team which Ms Marriot was not permitted to discuss). The Claimant was entitled to move around the white zone freely and in the green zone only if escorted.

46 Dealing with the question of whether the mission is an "enclave", Ms Marriot said that the embassy offices are in a garden city. The diplomats live in Zamalek, which is close by, and Maadi, which is further out and closer to the international schools. Nobody lives in the compound.

47 As regards counselling services, all staff can use the employee assistance programme on all matters, usually by making a call or sending an email. Similarly, all staff can use the facility for the coaching development of officers. The diplomatic academy and gives formal and online learning (mostly accessed online).

48 Ms Marriot referenced again the question of currency, which she had dealt with in her statement. She said that the Second Respondent does not hold a Sterling account, so it does not pay in GBP. There is a conversion into the foreign currency.

She was happy that the payslips matched up. She also explained that the bonus had been delayed in payment until permission was received to pay it in US Dollars. So far as normal pay was concerned, the Claimant was paid in livres egyptiennes prior to the move to dollars, and her pay was subject to Egyptian tax and national insurance deductions. Ms Marriot herself is paid in Sterling to a UK bank account, she told me in answer to my question.

49 Following the introduction of Unified Grading in 2014, the Claimant was moved sideways (rather than being promoted) and given the grade B3(L). The "L" designation indicates that she is locally-based.

50 Cross examination of Ms Marriot – Ms Marriot acknowledged that she had not witnessed the Claimant being handed a copy of the T&CoS with her initial offer letter. The Claimant said that she worked for seven years without being given, or seeing, or asking for a copy of the T&CoS. Ms Marriot was unable to comment in response. She was not aware of the T&CoS containing any wording to the effect that the Claimant's terms and conditions were subject to local employment law.

51 On day two, the Claimant asked Ms Marriot what proof there was that she had been an active member of the LSA. Ms Marriot referred to the bundle, and in particular an email dated 19 February 2013, in which the Claimant was listed as having been at a meeting called by the LSA to discuss changes due to be implemented. It set out minutes, and asked for feedback and any other comments. The Claimant replied, "Thanks a million to you both. Yes, covers all concerns and the end statement is strong". There was a minor dispute as to whether the Claimant was active in the association, Ms Marriot's view being that this was a matter of choice on each member's part. Every member of Locally Engaged staff is, she said, a member, and the committee (which the Claimant accepted she was on for a year) negotiates on behalf of the LSA.

52 Ms Marriot confirmed that the Second Respondent has a diplomatic academy which is based around the globe and has regional training hubs on that basis. She acknowledged that the Employee Assistance Programme is based on the UK. Coaching Services are not necessarily based in the UK and can be around the globe. The Human Resources Directorate is based in London but coaches are recruited throughout the world and could be based anywhere. She confirmed that the Union flag flies over the Embassy premises. Visitors are all searched and have to be escorted, just as they are in any other Government building. The First Respondent pays building tax of 6% which is reciprocal because the Egyptian Embassy in London pays Council Tax on its commercial operations.

53 I asked Ms Marriot a number of questions. She told me that all diplomatic positions are advertised online and within the Second Respondent. Some are on the civil service website. Ms Marriot applied for the role of Head of Corporate Services though an internal application via the UK HR department and then to the Deputy Head based at the time in Cameroon. She was interviewed by the Deputy Head and two others via video link, and then offered the position through the UK HR department. Her role is governed by diplomatic service regulations with terms and conditions of service. She does not recall having a contract as such for her 32 years in service. She assumes that UK law is applicable to her employment. She has a house in the UK. She does not have one in Egypt. As noted above, her accommodation is paid for by the Respondent.

54 Ms Marriot is paid in sterling, including for her bonus. She was not eligible for the same bonuses as the Claimant, specifically in relation to the consular bonus because she is not included in the list of consular staff. Ms Marriot has a bank

account in the UK and pays UK tax and National Insurance contributions on a Pay as you Earn basis. When she rented out her house in the UK, she used to complete a UK tax return but is no longer required to do so. Ms Marriot also has an Egyptian bank account, but no element of her salary is paid into it; she uses it to send money for her living expenses. She has a pension in the UK and is not eligible to join the pension scheme in Egypt. All Egyptian LE staff pay into the social insurance scheme, from which non-Egyptian staff are excluded. Ms Marriot is eligible for a free British passport; LE staff are not offered this benefit. She is cleared to DV, with access to all areas. She has had higher levels of clearance in the past but they are not applicable to her present role.

55 As to training, Ms Marriot completes hers online; she has not been back to the UK for two years to attend a course in person, although she has attended two formal training sessions overseas in Dubai in that period. If she was made redundant, Ms Marriot would receive a payment under UK Civil Service terms. She was not aware of the detail, but would know where to find it if she was at risk of redundancy. If there were any disciplinary or grievance issues, they would be dealt with in Cairo by the line managers, or if they were raised against Ms Marriot, by the Deputy Head of Mission or possibly the Ambassador. She would raise her own grievance if she had one to the Deputy Head of Mission, who is her line manager. HR Support would come from the HR department in London.

56 As to holiday entitlement, Ms Marriot has a standard 30 days, common to all diplomatic and UK civil service staff after one year's service. She also receives a further eight days' holiday as a "hardship allowance" for bring based in Cairo.

57 There was no re-examination. However, I permitted the Claimant to ask a further question of Ms Marriot, namely whether the LE staff are all appraised against the civil service competency framework, which Ms Marriot confirmed they are.

58 As I note at paragraph 11 above, the Claimant had indicated she would not be giving evidence and, following a break, she confirmed that position. However, Ms Marriot was then recalled, to answer questions about what she knew of the Claimant's own position vis à vis some of the pertinent factors identified.

59 Ms Marriot said that the Visa Sections Managers are recruited locally in Egypt, with an advert being placed by the Corporate Services sections into the local labour market. Applications are submitted to the Corporate Services team and sifted by a hiring manager. Applicants who go forward are then invited to an interview at which they are scored against competencies with the winning applicant invited to take up the position. There is no London interview; the whole process is done locally. Nobody in London would have had any say in the Claimant's recruitment.

60 LE staff call Egypt home (specifically, Cairo, for the most part). As to management and HR support, there are two choices. Corporate Services provide a local HR function to Arabic speakers and there is a local HR hub in Abu Dhabi to which they all have access covering the Middle East region. LE staff are paid in Egyptian pounds or US Dollars. There has to be a system of going through "dollarization" every six months and they will revert to Egyptian pounds if the criteria are not met.

61 LE staff are not eligible for the civil service pension and indeed receive none, other than that offered by the social insurance scheme. This is not quite the equivalent of UK National Insurance contributions. It is similar in terms of how it is paid in that it is a standard amount of contribution and the employer also pays (a more significant contribution). The deductions are made from LE staff pay at source (as is their tax)

and handed over to the Egyptian government. LE staff do not pay UK tax or National Insurance.

62 So far as Ms Marriot is aware, the Claimant does not own any UK property. For training, certain positions including those in consular assistance have compulsory training elements which may be conducted in the UK. Elective training may also be in the UK or overseas and will be agreed between the LE staff member and their line manager and included in their PDP. The funding is taken from a local budget in Cairo apart from certain training which is funded centrally. Ms Marriot's own training is funded by the UK HR department in advance of her position abroad. Training on leadership skills, and that specific to her post, as well as the travel costs of attending it, are all funded from the UK. If she were to be disciplined, Ms Marriot thought she would be called back to the UK.

63 I accepted the evidence of both Mr Neil and Ms Marriot, unchallenged as it was by any evidence from the Claimant and supported, where necessary, as it was by the contents of the bundle.

Findings of Fact on the Preliminary Issue

64 The Claimant is an Egyptian national. Her letter of appointment, sent from the Management Section of the First Respondent, is dated 3 August 2008 and reads:

"*LETTER OF APPOINTMENT*

I am writing to offer you an appointment as Visa Section Office Manager with the British Embassy in Cairo with effect from 3 August 2008. Your starting salary will be LE 6,724. The salary is based on 36 hours a week.

All terms and conditions of service are detailed in the Terms and Conditions document.

If you are prepared to accept employment under these conditions, would you please sign the acceptance at the Annexes below. Although the conditions of service are offered in good faith, the right is reserved to change them at any time as necessary. You will, however, be given adequate notice of such changes

Yours sincerely

Kevin Curran
First Secretary Management"

65 The second page of the letter is signed in three places by the Claimant and dated in each instance 19 August 2008. These declarations are described as Annex A, B and C, and deal with private business interests and other employment (i.e. the Claimant is declaring that she has none), intellectual property (the Claimant is declaring that computer programmes or systems developed by her as part of her duties using Embassy hardware or software will become the property of the British Government) and an acknowledgment of the Letter of Appointment. Under the latter point, the Claimant expressly agrees to accept the Letter as containing the conditions governing her employment by the First Respondent.

66 The First Respondent's Terms and Conditions document in the bundle bears the footer "Version 1, Issued March 2017". It is headed throughout "British Embassy Egypt. Terms and conditions for LE staff". It was common ground that in this instance, "LE" stands for "Locally Engaged", not to be confused with the usage of the same initials in describing the currency ("Livre Égyptienne").

67 The Claimant denied that she had ever received this document. I found that denial hard to accept. In the first place, the Letter of Appointment expressly refers to it. Secondly, the Claimant has not produced any other terms and conditions. She did not strike me as someone who would have accepted an offer, much less signed a letter in three places, without knowing what she was committing herself to. As I find below, the Claimant was active in representing colleagues (indeed, I gather it is part of her claim that she was treated unfavourably for doing so). Further, in October 2012, the Claimant emailed a colleague regarding work done by the Local Staff Association, drawing their attention to the provision that the inclusion of a probation period for an internal promotion would be against "Egyptian Labour law".

68 Further, the bundle contains an email from the Claimant to Peter Scott, Operations Manager in Cairo, dated 20 December 2009 in which the Claimant says "… *I was definitely hired as a Grade LE2. This was advised to me verbally at the time as well as being written clearly on the letter sent to me with the information pack containing the Embassy guidelines and rules*" (which I take to be a reference to the T&CoS document). I therefore find that she did see this document, which was revised subsequently and of which she again received copies. In the October 2012 email referred to above, the Claimant distinguished this document from the Second Respondent's policy when she said that the policy "also resonates the same", i.e. they are separate documents.

69 Whether the Claimant saw the document in 2007 or only in its subsequent versions, however, the contents are consistent. The Foreword by the Ambassador (then Sir Derek Plumbly) begins:

> "*Local staff are an Embassy's most valuable resource. You provide continuity that we could not hope to achieve without you. You offer an invaluable source of knowledge, insight and expertise which is vital both in helping UK-based colleagues settle into their postings to Cairo, and more generally in helping the post to achieve its objectives. We are all part of one team*".

70 Albeit this document is described as Version 1, the foreword continues:

> *"These terms and conditions supersede all other versions, and have been written in consultation with the Local Staff Association. They are designed to provide guidance to staff on which is expected to them as employees of the Embassy and, more importantly, how they can expect to be treated as individuals and members of our staff. … If anyone has any worries about the manner in which they are being managed or has any other concerns about their employment or terms and conditions at the Embassy, they should take those concerns to the SMO [Senior Management Officer] in the first instance. If you do not feel that your concerns are being treated with sufficient importance you should speak to the Deputy Head of Mission or myself".*

71 The Charter of Principles for Local Staff sets out the following:

> "*We will observe good employment practice in dealing with all staff.*
>
> *LE staff:*
>
> - *should be recruited through free, open and fair competition.*
> - *are offered detailed terms and conditions of service which will be set out in accordance with local law and the practice of other good local employers;*
> - *should be included wherever appropriate in all post activities;*

- *should have access to training to meet personal (and career) development needs identified by or agreed with line managers;*
- *are encouraged to join the local staff association, and should be represented on Post Management Committees and other bodies as appropriate.*

We have made appropriate provision, in accordance with local law and the practice of other good local employers, for the health and welfare needs of staff employed locally, including the provision of safe working conditions, sick leave, maternity and other benefits."

72 I note here that the role of the Local Staff Association is set out elsewhere in the bundle, and includes agreeing terms and conditions of service with the Management Section, assisting LE staff in filing grievances and attending meetings, pursuing bullying and harassment claims, ensuring LE staff better understand their rights and obligations and liaising and co-operating with the Consulate General in Alexandria on terms and conditions of service.

73 Under the heading "Introduction", the Terms and Conditions document states:

"*Your Terms and Conditions of Service whilst in the employ of the Embassy are set out in this document. … the T&CoS contained in these instructions shall be considered an integral part of, and be read and accepted in conjunction with, the letter of appointment*".

74 Under "Contract of Employment", it continues:

"The T&CoS contained herein may be varied from time to time by the Embassy at its discretion, but will be reviewed annually in order to conform as far as practical with local practice, and to ensure that fair and reasonable working conditions are applied to all Locally Engaged (LE) staff. … in the event of any questions arising regarding the interpretation of these conditions of employment or about any relevant matter not covered by them, the decision of Her Majesty's Ambassador (HMA) will be final and binding on you. …"

75 Other terms and conditions included:

- An entitlement to 15 working days' annual paid leave in the first year of service, rising to 21 days leave after a year and after 10 years (provided the employee is aged at least 50) to 30 working days;
- 14 days' paid leave per annum to recognise Egyptian and British public holidays;
- Up to five days' compassionate leave;
- Sick leave with full pay for up to six months followed by half pay for the next six months;
- 90 days' full paid leave for maternity, including at least the first 45 days after delivery, provided the employee has at least ten months' continuous service at the Embassy, and up to two years' further maternity pay;
- Two weeks' paternity pay on completion of 26 weeks' continuous service before the baby's due date;
- One month's paid Pilgrimage Leave after five full continuous years with the Embassy;
- The deduction by a contractor of Income Tax and Social Insurance payments at source, to be paid directly to "the appropriate Authorities";
- The payment of a subsistence allowance if required to perform official duties outside Cairo;

- Access to a medical scheme operated by the First Respondent through a private company, Egycare. This had a number of exclusions, including where treatment and consultations took place outside the Arab Republic of Egypt;
- A retirement age of 60 for Locally Engaged staff. The T&CoS note that "Exceptionally, you may at the discretion of HMA, continue employment at the Embassy on a fixed term annually reviewed contract".

76 In addition, there is a section entitled "Redundancy", which says:

> "*Every effort will be made to prevent redundancy, including by natural wastage or by redeployment within the Embassy. However, staff may be made redundant when there is a reduction in the requirement for staff in the Embassy. The overall policy of the Embassy is to pay compensation in line with Egyptian law and general local practice. … At least one month's notice will be given to staff who are made redundant. … The termination of the employment contract shall entitle the employee to compensation, which shall be equal to 24 month's [sic] pay or one months' pay per year of employment, whichever is the greater*".

77 For the reasons set out above, I find that these terms and conditions were accepted by and applicable to the Claimant.

78 Administrative matters relating to the Claimant's employment were dealt with in Cairo. For instance, in August 2012, the Claimant wrote to Mr Korad, Senior Management Officer at the First Respondent, requesting him to remove a document from her personnel file. From this, I find that the physical personnel file for the Claimant was held in Cairo.

79 In November 2009, a new version of the Terms and Conditions document was issued, with the Foreword now bearing the picture and name of Ambassador Asquith. Save for that, the Foreword remained as contained in the previous draft. Many of the remaining terms and conditions also remained identical to the 2007 draft, although some benefits had changed. For instance, there was now a "Warm Clothing Allowance", available once every five years, for warm clothing bought for official business visits to the UK between 1 September and 31 March. Employees were entitled to up to five days' paid leave provided they commit to returning to work.

80 In both versions of the T&CoS, LE staff were not permitted to work in the Embassy out of hours without first alerting their presence to UK security staff, CSO or SMO and with prior agreement of the line manager. In the 2009 version, pursuant to provisions coming into effect from 6 April 2009, all emails with images attached or inserted and sent to non-FCO addresses were to be monitored from London; LE staff sending out inappropriate images would be "dealt with under local misconduct provisions" following notification to the Deputy Head of Mission by the London team.

81 In August 2012, apparently pursuant to an advert from the First Respondent's HR department place in or around January of that year, the Claimant was appointed to the role of Vice Consul with retrospective effect to 1 May 2012, with a commensurate pay increase. She continued to be paid in Egyptian pounds. The confirmation letter was sent by the First Respondent's Corporate Services Manager and countersigned by the Claimant.

82 I have evidence of the Claimant's pay for several months in the bundle. She was paid, according to the payslips, in Egyptian pounds, with deductions for "Social insurance" and "salary tax". She received a bonus. I do however also have an undated letter suggesting that following a Local Staff Association vote, salaries would be "reset" from Egyptian pounds to US dollars, for six months.

83 The Claimant's next appraisal, in February 2013, noted that she had settled in well, including comments that: "*Colleagues in London reported being satisfied with the style, frequency and content of reporting from [the Claimant]" … "drafting of travel advice and wardens messages in my absence has gone well" … She is an active member of the Local Staff Association and is regularly consulted by colleagues from across the post for her opinions*".

84 Concluding comments included:

> "*[The Claimant] was one of the key staff involved in a high profile consular case (the "S[redacted]" case). She demonstrated good judgement throughout and when called upon to be directly involved in case handling issues (visiting the men in prison and taking part in calls at the Prosecutor's office) she performed well. Her efforts were recognised by Minister Burt, who wrote to her offering his thanks when the case was successfully resolved"*
>
> and
>
> "*[The Claimant] regularly has to cover for me while I am travelling. I am confident that while I away [sic] things will be managed well. I regularly receive positive feedback from colleagues at post and in London on how things have gone while I am away. [The Claimant] did an effective job in compiling different parts of the post crisis management plan when I had to travel at short notice. While I was in London in November, [the Claimant] was effective in dealing with questions relating to the plans for an evacuation of British Nationals from Gaza."*

85 The Countersigning Officer's comments noted that the job of Vice Consul had been "recently localised" and praised the Claimant for rising to the challenge of her new role well.

86 In January 2015, a third version of the T&CoS was issued, under the Foreword this time of the new Ambassador John Casson. His Foreword differed slightly from his predecessors'. It stated:

> "*Locally employed staff are vital to the running of any British mission overseas. This is even truer in a place like Egypt. You are essential in achieving the British Government's objectives and creating an environment that allows your UK-based colleagues achieve theirs…".*

87 Other terms remained largely unaltered. In the Redundancy section however, the termination of the employment contract was now said to entitle the employee to "*compensation, which shall be two months' salary per year of service for open contract staff. Staff employed on fixed term contracts will be compensated by paying the remainder of their contract value*".

88 Under Annex A of the document, the Allowances Policy was set out. This included a "Deputising Allowance", payable in two circumstances: "LE Staff deputising LE Staff" and "LE Staff deputising UK Based Staff".

89 In December 2015, the Claimant was confirmed as having been given official security clearance, by letter from the Second Respondent's Personnel Security team in the UK. The letter also stated, however: "*Access to any classified assets and information, or unescorted access to the Confidential Areas of Post is not permitted*". It was common ground that the Claimant did not sign the Official Secrets Act at any stage during her employment with the First Respondent.

90 In early 2017, a review was conducted of the Egypt Consular Network. A report was produced following that review dated 5/6 March 2017. It appears the outcome of this review was announced on 24 April 2017 by Mr Neil. The Claimant was given notice of redundancy. At or around the same time, the Claimant raised concerns under the Second Respondent's Whistleblowing and Raising a Concern policy.

91 I make no findings as to either the fair or (as the case may be) unfair conduct of the redundancy process or the Claimant's concerns, because I am not dealing with the merits of the case. However, I note that the Claimant raised those concerns and what she saw as a lack of progress thereon with Ms Lesley Beats, of the HR Management Advice Service in London, and that Ms Beats informed the Claimant that "we do take any concerns seriously and welcome you raising them". She did not suggest that this was an incorrect forum in which to do so, and/or that the Claimant should address the matter exclusively at a local level.

92 Ms Marriot wrote to the Claimant on 30 April 2017, confirming her redundancy with effect from 30 June 2017 and notifying her that she would receive "any accrued entitlements and any outstanding pay … as detailed in Terms and Conditions for staff employed in the British Embassy, Cairo". The Claimant did, it appears, receive an enhanced package in accordance with the third version of the T&CoS, namely two months' salary per year of service.

Conclusions on the Preliminary Issue

93 I have considered carefully the factors for and against the Tribunal having jurisdiction to hear this case. I have concluded on balance that it does not. I take in each instance where the evidence was available (in light of the Claimant's decision neither to give oral evidence nor to draft a written witness statement) the terms applicable to Ms Marriot or other United Kingdom-based employees and those applicable to the Claimant (while taking into account the fact that Ms Marriot was senior to the Claimant).

94 My conclusions on the factors that I consider are relevant to the determination are as follows:

a. Recruitment – the place where the Claimant was recruited and the process undertaken to recruit her. This was Egypt, and the process used was run from Cairo. This contrasts with the place and process used to recruit Ms Marriot, which was London and run by senior managers in London. I accept Ms Marriot's evidence that nobody in London would have had any influence over the Claimant's recruitment or that of other LE staff. I also accept Mr Neil's evidence that diplomats are never recruited locally in a host country;

b. The location in which the Claimant worked – again, this was Cairo, predominantly and certainly permanently. Unlike the position with Ms Marriot, the Claimant was not expected or indeed required to relocate regularly or at all, though I do accept that she did volunteer to work (and indeed did work) in Dubai as confirmed by Mr Neil for at least a week, quite possibly on more than one occasion, and may have attended courses abroad, to which I return below. I distinguish however between attending courses and "working" in the United Kingdom, in any true sense of the word;

c. The location of her home – this is Egypt, and I was not shown any evidence of her owning any property in the UK, by contrast with Ms Marriot, for instance, for whom the positions are reversed. Indeed, Ms Marriot's accommodation in Egypt is funded by the Respondents, whereas the Claimant's is not, and Ms Marriot receives allowances to reflect the "hardship" for her of living abroad where a

foreign (to her) language is spoken. Naturally, again the Claimant does not, since she is an Egyptian national and it would offend commonsense for her to receive a hardship allowance to live in her home country and/or to speak Egyptian. By similar token, it would offend commonsense for Ms Marriot to receive a Warm Clothing Allowance when she returns to the UK;

d. Where her line management and HR support services were situated – again, I am satisfied that notwithstanding the Claimant's line manager (certainly during Mr Neil's tenure) was not always present on site in Cairo, this would have been because he was regularly travelling around the other countries he managed; he remained her line manager with support from HR hubs and/or the Arabic speaking service supplied by Corporate Services, whereas Ms Marriot's own line manager, while based in Egypt (though I gather on a posted basis similar to Ms Marriot's own position), would also seek HR support from the UK.

   The Claimant was not managed from London while she worked at the First Respondent, though she may have received occasional instructions or requests (and clearly did receive praise for a job well done) from the different departments that were based there. I also note that she would occasionally receive letters or other official instruction from someone based in London (I take note for instance the fact that her official security clearance letter was issued by the Second Respondent's Personnel Security team in the United Kingdom and her emails could be subject to scrutiny by another London-based team). Nonetheless, at all times she was subject to the direct line management of someone based and working in MENASA. Had disciplinary issues arisen from the scrutiny of her emails (though I saw no evidence that this was ever the case), they would have been dealt with locally. I have found above (paragraph 78) that her staff file was held in Cairo;

e. Her pay, including the currency in which she was paid – the Claimant was always based in Egyptian Pounds or US Dollars, into her Egyptian bank account, and never in Sterling. When she was paid in Dollars, it was to avoid the financial hardship caused by the devaluation of the Egyptian currency. By contrast, Ms Marriot was always paid in Sterling into her British bank account and never in Egyptian Pounds, nor did she ever receive any form of wages into her Egyptian bank account;

f. The benefits for which she was eligible, including medical insurance (such as repatriation during critical illness or in an emergency), pension and flights – I have set out above the details of the benefits to which Ms Marriot was entitled, and, by contrast, those to which the Claimant was entitled. It is particularly pertinent that the Claimant was not entitled to join the Civil Service pension scheme; Ms Marriot and Mr Neil were. There is a clear differentiation in both the Allowances Policy (as referred to in paragraph 88 above) and the Foreword to the T&CoS (paragraph 86) between LE and UK-based staff;

g. Her eligibility to join a union – I accept Ms Marriot's evidence, supported by the emails in the bundle, from which it is clear the Claimant could and did join the LSA and was indeed on the committee for at least a year as she herself admitted and was otherwise an "active" member; by contrast, membership of that association is not open to non-LE staff and conversely, nor is membership of the UK civil service union open to LE staff;

h. Any mobility clause – the Claimant had none. Ms Marriot by contrast not only **can** be moved around but is in fact **obliged** to relocate regularly. I accept her

evidence of the job/career distinction and am satisfied that the same is not applicable to the Claimant;

i. The governing law of the contract – I am satisfied that while this does not appear to have been specified, the Claimant's contract was governed by Egyptian law, and that she knew it to have been. By contrast, and again, although Ms Marriot says it has never been specified in writing to her, it appears that the governing law for her contract would be that of England and Wales;

j. Taxation – the Claimant paid only local Egyptian taxes and no tax or national insurance in the UK; Ms Marriot's position was again the opposite of that;

k. The Claimant's security status, including her access to areas within the Embassy and whether she had signed the Official Secrets Act – the Claimant was only vetted to the same standard as all LE staff and while she had security clearance, did not (and could not) as such have access to all areas. She did not sign the Official Secrets Act. Ms Marriot by contrast was vetted to a far higher level (though the most important factor behind that may have been that she was senior to the Claimant) and did have access to all areas;

l. Training given – I accept the Claimant's assertion that she attended a course, (in fact, more than one), in the UK. Mr Neil's evidence, which I have accepted, was that all new consular officers used to attend a week's mandatory training within three months of starting their employment, and that that took place in the UK. Further, the Claimant attended at least a two-day course for child safeguarding in 2016 the UK, agreed by Mr Neil's predecessor as part of her personal development plan for that year. Nonetheless, I also accept his evidence that in 2014, 2015 and 2016, the Claimant attended consular conferences and that they were always held somewhere in the MENASA region (Dubai, Abu Dhabi, Oman, Jordan and the like);

m. The redundancy payment and process followed – this was in accordance with local law and paid in Egyptian pounds by wire transfer into the Claimant's Egyptian bank account. I accept Mr Neil's evidence that he did not require the Second Respondent in London's approval to make the Claimant redundant and nor did he seek it, but that he decided with Mr Smith, CROM Levant, which positions would be deleted from the structure, and this was approved by the Consular Regional Director in Muscat; I further accept that he liaised with the HR hub in Abu Dhabi and took local legal advice from the Honorary Counsel as to the process to follow; and the Claimant's redundancy payment was financed from the MENA budget;

n. Disciplinary and grievance issues – in line with what I have said above, the Claimant's line management being in the local region meant that any such issues would normally be expected to be dealt with locally rather than from London. I deal below with the contrasting position when the Claimant raised her disclosures however;

o. Holiday entitlement – the Claimant received, as I have noted, time off to recognise Egyptian public holidays as well as those in the UK. As a starting point, she received 15 days' basic annual leave, rising to 21 after a year, by contrast to UK civil servants who by then would be on 30. The Claimant would have to be aged over 50 and to have worked for the Respondent for at least 10 years to receive such an entitlement. Further, the leave allocation would not appear to meet UK law under the Working Time Regulations and would potentially be unlawful in the UK under anti-discrimination law on the basis of the age

requirement. There was no evidence before me that any UK-based civil servant will be entitled to a month off with pay after five years for "Pilgrimage leave". Further, the Claimant was not entitled to the additional days' hardship allowance to which Ms Marriot was entitled;

p. Whether the Claimant worked in what might properly be described as a "British enclave". Of course, I heard no evidence from the Claimant on this, but she did not challenge Ms Marriot's analysis that the British workers abroad do not live on the Embassy grounds but in the Cairo suburbs, unlike (say) a military base, where the workers tend to live in a community that retains its essentially British feel (e.g. British schools, supermarkets etc). I accept that the British flag flies above the Embassy. It does not, without more, mean that it is a British enclave in the Lord Hoffman sense;

q. Local law application – I have referred above to the email, for instance, that the Claimant sent in 2012 to the effect that the inclusion of a probation period would be against "Egyptian labour law", and to the fact that the Charter of Principles for Local Staff specifically refers to "local law and the practice of other good local employers" and to the calculation of the redundancy payments "in line with Egyptian law", to none of which the Claimant objected;

r. Where the Claimant lodged her "whistleblowing" complaint – I have found that the Claimant addressed her complaint to London, and thereafter chased London for a response, and she was neither re-directed nor was it suggested that she should have raised the matter locally;

s. The Claimant's nationality – she is Egyptian.

95 Finally, then, I analyse those facts against the authorities and conclude as follows:

a. In *Bryant*, the claimant was a British national. This Claimant is not. Mrs Bryant was the employee of a mission abroad, but she accepted that if one is not a British national and if one works full time abroad for a commercial employer, one should not get protection. This Claimant did not work for a commercial employer but for the British government, but in my view, although that is of course a very close connection indeed with the United Kingdom, that is the only element on which she can argue she should have the benefit of UK law; and just as the EAT found in *Bryant*, she is unable to take the benefit of the local courts if immunity is not waived. But that is not the decisive factor, and in *Lawson,* Lord Hoffman said that he had no doubt *Bryant* was rightly decided;

b. Looking at *Lawson*, here the Claimant is not a British worker posted abroad; I have found that she is not working in a British enclave and there is no "equally strong" connection with Britain and UK employment law on my findings. Indeed. the factors as I have set out at 94 above are almost all and almost exclusively the other way;

c. This Claimant has similarities with the claimant in *Bleuse*, where there was no jurisdiction when the worker did not operate out of the United Kingdom and had virtually no connection with it;

d. In *Wallis*, unlike the present Claimant's position, the workers were recruited in the United Kingdom and were the dependants of serving members of the British forces. They were distinguished from those in a category in which this Claimant falls fairly and squarely – directly-employed labour, recruited abroad on local labour terms and paying local taxes;

e. The only similarity the present Claimant has to *Duncombe* is that her employer was the British Government, and while, as I note above, that is definitely a "strong connection", all the other factors (British public servants to be posted abroad, English law governing the contracts, terms and conditions referable to English law, living in enclaves and not paying local taxes) are absent from this Claimant's employment;

f. *Ravat* is another example where there are striking and compelling differences from this Claimant's position; he is a British citizen whose employer met commuting costs (as this Respondent does for Ms Marriot but not for the Claimant); he paid United Kingdom tax and NI, and was paid in Sterling; he was assured UK law would apply and his redundancy was handled in Aberdeen. He was splitting his time between Libya and the United Kingdom and described as "job sharing" in consequence; none of those factors is present here, and the Claimant was given no such assurances of the applicability of United Kingdom law as was Mr Ravat;

g. In *Bates van Winkelhof,* it was noted that where there is a strong connection with another jurisdiction it will be assumed that Parliament thought that jurisdiction would provide an appropriate system of law, absent factors to displace that pull. As I have noted above, I have not found factors that are sufficient to displace the pull to Egypt;

h. From *Dhunna*, I conclude that I am not required to undertake a comparison to ensure that if the Claimant is denied a remedy in the United Kingdom she will be guaranteed one in another jurisdiction;

i. Indeed, in *Hottak*, which is perhaps most relevant here, it was found that the fact – heavily relied on by this Claimant in her submissions - that the Respondent will claim State immunity in another jurisdiction (or is the British government) is not a factor to displace the pull of that jurisdiction's law. If one replaces the word "Egyptian" for the word "Afghan" in the passages I have quoted above at 16.10, we have this Claimant (save in relation to one exception – which is nonetheless not in her favour – that she did not live in a British enclave as did the *Hottak* interpreters);

j. In *Jeffery*, two of the three very strong factors in his favour are absent here – the pension and tax factors – and the only other one is the fact of the Respondent being the British government, whereas in his case it was an NGO. However, for that now to sway my decision in this Claimant's favour, I would have to go counter to *Bryant* and *Hottak*, and I do not understand from the Court of Appeal's decision in *Jeffery* that this factor in isolation should take me that far;

k. For *Green*, indeed, there were stronger "pull" factors towards the United Kingdom than for this Claimant but he still did not qualify for the protection of UK law;

l. Similarly, with *Bamieh*, which was heard before *Jeffery* and *Green*, there were far stronger factors than exist for the Claimant in this case;

m. In *Mak*, the factors were the element of regular and crucial percentages of work being done in the UK. The present Claimant did visit the UK on a small number of occasions for training, but even if I accept her case on that at its highest, it was not regular by any stretch of the imagination, and she indeed just had a small number of days' training early in her career whereas later it could and was done either in Egypt or elsewhere abroad; and

n. Finally, in *Lodge*, the claimant was effectively found to be a United Kingdom-based employee posted abroad with her consent. That is not the case for this Claimant.

96. Accordingly, taking all the factors and authorities into account, the Tribunal does not have jurisdiction to hear the Claimant's claims, or any of them, and they are therefore struck out.

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Employment Judge Norris

8 December 2018

Sent to the parties on:

13 Dec. 18

For the Tribunal: