



# EMPLOYMENT TRIBUNALS

## Claimant

Mr Andrew L Miller

v

## Respondent

WildEarth Group Limited

**Heard at:** Cambridge (by CVP)

**On:** 8 February 2024

**Before:** Employment Judge M Ord

## Appearances

**For the Claimant:** In person

**For the Respondent:** Mr E Dlamini, Attorney

## JUDGMENT on a PRELIMINARY ISSUE (Territorial Jurisdiction)

The Tribunal has territorial jurisdiction to hear the Claimant's complaints.

## REASONS

### Background

1. This case came before me pursuant to an Order of Employment Judge Anstis on 16 November 2023 to determine whether the Tribunal has territorial jurisdiction to determine any or all of the Claimant's complaints.
2. The Claimant worked for the Respondent (a company registered in the UK) as a Business Development Director. His Contract of Employment indicates his start date of 1 August 2021, but the Claimant maintains that his period of continuous employment began on 1 January 2021, (originally with a company from which his employment transferred to the Respondent). His employment ended on 24 March 2023. The question of the date upon which continuous employment began will be determined at another Hearing.
3. The Claimant's address on the contract is a UK address. It was, I was told, his brother's address because at the time he entered into the contract

the Claimant had no permanent address. He was living in South Africa and looking to purchase a property.

4. The Claimant says that at all times he was registered as a UK Resident for Tax purposes.
5. The Claimant says that from the commencement of his employment in January 2021 the Respondent, in particular Mr Wallington and / or Mr Harrison were aware that he was relocating to and would work from South Africa. Indeed, at that time Mr Wallington was relocating in exactly the opposite direction from South Africa to the United Kingdom.
6. The Claimant took me to an email dated 28 December 2020 sent to Mr Harrison which referred to the start date of 1 January 2021 and said,

*“Although I am moving to South Africa... it is easiest... on both sides to continue being a UK Tax Resident.”*
7. Although the Respondent has said before me that it did not know the Claimant was in South Africa, the only document which it referred to was from a third party employee (not connected to the Respondent other than commercially) who asked if the Claimant was in South Africa.
8. The Claimant accepts that from a date in 2021 until his employment ended, he lived in South Africa.

### **Evidence**

9. The following points emerged from today’s evidence and are relevant:-
  - 9.1. The Claimant was employed by a United Kingdom company;
  - 9.2. The Claimant was taxed in the United Kingdom and at the time his unchallenged evidence was that he was, for Tax purposes, resident in the UK and taxed as such;
  - 9.3. The Claimant is an Italian citizen (although the relevance of that point is limited);
  - 9.4. The Claimant’s Contract states that the Claimant’s normal place of work is “any location that does not restrict his ability to execute his responsibilities”;
  - 9.5. The Contract is subject to the Laws of England;
  - 9.6. Throughout the Claimant’s employment he was taxed under the United Kingdom Tax / PAYE system and his pay and deductions were made in pounds sterling, although the Contract states that his salary would be paid in US Dollars;
  - 9.7. The Respondent seeks to rely upon the fact that on its own evidence, 95% of the Respondent’s content (wildlife safari filming)

is created in South Africa, but the Claimant's unchallenged evidence was that he was not engaged in Content Production and his Business Development role was entirely separate from the process of Content Creation, and

- 9.8. The claimant, in an email of December 2020 advised the respondent that he was moving to South Africa but would continue to be resident in the UK for tax purposes.
10. I have been referred by the Respondent to a First Instance decision of Employment Judge Gumbiti-Zimuto in the Reading Employment Tribunal (Case Number: 3305823/2021) which found on the facts of that case – applying the well known provisions of the case of Serco v Lawson [2006] UK HL3 - that the Employment Tribunal had Territorial Jurisdiction to consider a complaint of unfair dismissal from a UK Citizen who worked for a UK company in Indonesia, but who did not pay tax in either the UK or Indonesia under a contract which was subject to the jurisdiction of the Courts of England and Wales.
11. I reminded myself of the findings and principles laid down in Serco v Lawson.
12. I have heard evidence from both the Claimant and Mr Crawford-Brunt, Director of the Respondent company and on behalf of the Respondent Mr Dlamini made closing submissions. The Claimant also made submissions in writing which I received part way through the Hearing.
13. I have reached the following conclusions.

### **Conclusions and The Law**

14. The Employment Tribunal has jurisdiction to hear the case. This is a simple and straight forward matter as the Respondent is a company based in England and Wales, having its Registered Office in Dorset.
15. Under Rule 8(2) of the Employment Tribunal Rules of Procedure 2013, (following Regulation 1215/2012 of the European Parliament and Council) a complaint may be made to the Employment Tribunal in England and Wales if the Respondent resides or carries on business in the UK.
16. For this purpose “resides” is the equivalent of “domiciled” within the EU Regulations which includes a company having its statutory seat (i.e. its Registered Office) in England and Wales.
17. The more difficult question is whether the Tribunal has territorial jurisdiction and in particular whether under the Employment Rights Act 1996 the Tribunal's territorial jurisdiction extends to the instant case.
18. The starting point is that the Employment Rights Act 1996 applies to employment in Great Britain. However, there are circumstances where it may cover working abroad. The question is whether the connection with

Great Britain and British employment law is sufficiently strong to enable it to be said that Parliament would have regarded it as appropriate for the Employment Tribunal to deal with the Claim.

19. Where an employee works and lives wholly abroad the question is whether their employment relationship has a much stronger connection with Great Britain and British employment law than with any other system of law.
20. Where a person is posted abroad by a British employer for the purposes of a business carried on in Britain, the Tribunal would have jurisdiction to deal with the case of that person. On balance (although ultimately it does not matter) I find that the Claimant does fall into that category. He was, prior to joining the Respondent or the predecessor employer, living in the United Kingdom and later moved to South Africa. The Respondent and the predecessor company were United Kingdom companies and the predecessor company was related to the Respondent.
21. The Claimant, in any event, comes within the jurisdiction of the Employment Tribunal as there is a strong connection with Britain and British employment law. The employee was engaged on terms and conditions which show that English law and their terms were those which govern the arrangements.
22. The Claimant was entitled to work from any location. He chose, for family reasons, to work from South Africa. He was, on the face of the contract, entitled to do so and prior to any engagement on which he relies had made the Respondent aware of his intentions by his email of 28 December 2020.
23. The Claimant was registered for tax in the United Kingdom. He has a National Insurance number in the UK and his salary was paid to him in pounds sterling after deductions of PAYE Income Tax and National Insurance. I understand that the Respondent has applied for and obtained a refund of National Insurance contributions. I do not know how this was achieved, nothing has been provided to me in that regard. If the refund included those deductions made for employee's National Insurance contributions then ultimately these should be refunded to the Claimant.
24. The law of England is the relevant law in the Contract. That is relevant but not determinative. Here this was a contract negotiated by the Claimant and I am not told that the Contract was in any standard form for the Respondent. On the basis that this was a tailored Contract which specifically refers to the Law of England, then that is fact which I weigh in the balance.
25. The Claimant therefore was employed by a United Kingdom company to work wheresoever he chose. He was taxed by the UK PAYE system, had a UK National Insurance Number and worked under a Contract with English law as the applicable law. There is no mention of any relevant or appropriate court to which disputes should be referred.

26. The Claimant, prior to 2021, on his evidence before me, lived in the United Kingdom.
27. Although the Respondent made much of the Claimant's work location, and (although this is for another Hearing) that the Claimant's Contract should be voided because of an alleged misrepresentation, there was nothing put before me to indicate that any and if so, which, jurisdiction should be preferred to that of the Courts of England and Wales. Other than the Claimant's working location (and he was entitled to work anywhere) there was no connection with South African jurisdictions.
28. I am satisfied that the contractual terms as recorded above and the facts of the matter as set out above, are sufficient to establish a close connection with the jurisdiction of England and Wales and I have not been directed to any other jurisdiction with a closer connection.
29. I am therefore content that the Tribunal has jurisdiction to entertain and determine the Claimant's complaints.

13 February 2024

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Employment Judge M Ord

Date: .....

Sent to the parties on:21February 2024

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For the Tribunal Office.

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