



EMPLOYMENT TRIBUNALS

Claimant: Princess Williams

Respondent: British Broadcasting Corporation

Heard at: London Central (CVP)

On: 18 November 2024

Before: Tribunal Judge Peer acting as an Employment Judge

Representation:

Claimant: In person

Respondent: Ms K. Hosking of Counsel

JUDGMENT

- (1) The respondent was not the claimant's employer at the relevant time. The complaint of unfair dismissal is therefore dismissed because the Tribunal does not have jurisdiction to hear it.
- (2) The respondent was not the claimant's employer at the relevant time. The claimant's complaints under the Equality Act 2010 against the respondent as employer are therefore dismissed because the Tribunal does not have jurisdiction to hear them. The claimant is refused permission to amend her claim to advance any complaint that the respondent is liable under the Equality Act 2010 otherwise than as her employer.
- (3) The claimant worked wholly abroad and has not established sufficiently strong connection to Great Britain or British employment law so as to afford her protection under either the Employment Rights Act 1996 or the Equality Act 2010. The claimant's claim is therefore dismissed in its entirety because the Tribunal does not have jurisdiction to hear it.

JUDGMENT and reasons having been given orally on 18 November 2024 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

INTRODUCTION AND CLAIM

1. The claimant worked as a journalist for the BBC Pidgin Service. After a period of early conciliation between 28 July 2023 and 31 July 2023, the claimant presented her claim form on 31 August 2023. Section 8.1 of the claim form indicates complaints of unfair (constructive) dismissal, sex discrimination and race discrimination. The claimant resigned from her employment by email on 9 May 2023 citing the reason of hostile work environment and referring to a case raised of bullying and harassment against her former line manager.
2. The respondent's defence to the claims is that they are not the claimant's employer which was BBC Nigeria Limited, a separate legal entity, and that the tribunal has no jurisdiction to hear the claimant's claims as she was employed and worked in Nigeria and is not entitled to the protection of either the Employment Rights Act 1996 or the Equality Act 2010.
3. A preliminary hearing was listed to determine the preliminary issues of jurisdiction.

HEARING

4. The hearing was a fully remote hearing by cloud video platform. Neither party objected to the hearing proceeding in this format. There were no material connection difficulties experienced during the hearing and the hearing proceeded effectively as a remote hearing.
5. I had available to me an indexed and paginated hearing bundle of 307 pages (HB) containing the claim form, response form and documents related to the claimant's employment. The HB contained a written statement dated 12 December 2023 from the claimant. I also had a supplemental written statement from the claimant dated 21 October 2024. I had written statements from the respondent's witnesses Hilary Bishop (News Executive for the WS Group) and Afua Yeboah (International HRBP). I also had skeleton arguments from each party. The respondent also provided a bundle of authorities.
6. The claimant was located in Nigeria but had not sought permission to give live evidence from overseas. I explained the need for permission based on the Tribunal's Presidential Guidance, case law and the underpinning rationale related to ensuring the UK's diplomatic relations were not placed at risk. Having taken account of this and the FCDO TEO Unit's publicly accessible list and that Nigeria was a state which was content for individuals to voluntarily give evidence by video to UK tribunals, I gave permission for the claimant to give evidence.
7. I heard evidence from the claimant, Hilary Bishop (News Executive for the World Service) and Afua Yeboah (International Human Resources Business Partner).
8. I heard submissions from the claimant and from Ms K Hosking of Counsel for the respondent.

ISSUES FOR DETERMINATION

9. The issues for determination were discussed and agreed as follows:
 - a. Was the respondent the claimant's employer?
 - b. Does the tribunal have jurisdiction to hear the claimant's claims given she worked in Nigeria?
10. The claimant maintains that the respondent has vicarious liability for the actions of BBC Nigeria Limited as the parent company and that this claim arises off her originating claim form. The respondent's position is that any argument based on agency is not open to the claimant as it is not part of her claim and she has not had permission to amend. The respondent contends in the alternative that there is no basis for departing from the ordinary position that subsidiaries are not in general terms agents for parent companies and vice versa.
11. It was therefore agreed that I would also decide whether permission to amend was necessary and/or whether to grant permission for the claimant to advance the argument that the respondent was liable as principal.

FINDINGS

12. I considered all of the evidence before me and I found the following facts on a balance of probabilities. I have recorded the findings of fact that are relevant to the legal issues and so not everything that was referred to by the parties before me is recorded.
13. The respondent is the British Broadcasting Corporation (BBC). The BBC is incorporated under Royal Charter (RC). The RC (HB133-173) sets out the BBC's public purposes. They include at Article 6(5) to reflect the UK, its culture and values to the world as such coverage to international audiences (HB138). The claimant drew my attention specifically to Article 7(1) and (2) (HB138). Article 7(1) sets out the 'only activities' that the BBC can carry out which include provision of the world service and Article 7(2) provides that in carrying out these activities they must be carried out in accordance with the RC and the Framework Agreement (HB174-245). Article 7(4) expands and states World Service delivery of services is 'aimed primarily at users outside the UK'. There is provision for the Board and for the appointment of staff. I note that nothing in the RC or the Framework Agreement prevents the setting up of subsidiaries under foreign law or mandate or sets out in any detail how staff might be appointed to work in the UK or elsewhere. Article 52(4) refers to the setting up of subsidiaries (HB158). The Framework deals in more detail with matters such as operating licences.
14. The funding for the BBC is a mixture of government grant and licence fee. The licence for the World Service deals with the budget for the World Service (HB 197). Hilary Bishop was asked about funding during cross-examination and gave evidence that this was the case namely that the funding for the Pidgin Service was a mixture of licence fee and government grant.
15. A decision was taken to set up a Pidgin language service. This was to be set up in and operate from Nigeria. The BBC Nigeria Limited (BBCNL) was

incorporated in and is a Nigerian company (HB36). The Pidgin language service was launched in August 2017 (HB246).

16. There is no real dispute and I find that BBCNL and the Pidgin language service was funded by the BBC and that funding was a mixture of the licence fee and government grant.
17. The contract of employment signed by the claimant on 15 May 2017 is with BBCNL (HB39-46). The contract provides and the claimant accepted in evidence that she worked in Nigeria and that her place of work was Lagos. She also accepted that she was required to be able to work in Nigeria and did not have to show any entitlement to work in the UK. She was paid in Naira the local currency and her salary was paid into a bank account held in Nigeria with a Nigerian bank. In addition, deductions from salary were made to contribute to a Nigerian pension fund or retirement savings account (RSA) and for a Nigerian housing fund. This is recorded on her payslip (HB131). The contract provides for leave on Nigerian public and religious holidays. The contractual provision for disciplinary and grievance procedures is as per an Employee Handbook. The contract contains a jurisdiction and choice of law clause which provides that the contract of employment is governed by Nigerian law and the Nigerian courts have exclusive jurisdiction to settle disputes arising out of or in connection with this contract.
18. The Employee Handbook is the BBC Nigeria Employee Handbook (HB50-67 and 76-94) which further provides that its content is based on Nigerian legislation and BBC policy taking account of appropriate best local practice and that in the event of conflict Nigerian law prevails. The Handbook sets out sick leave provisions and refers to 'prevailing Nigerian law'. With regard to raising any grievance, the Handbook sets out that the policy is to raise it in the first instance with the employee's line manager with any appeal to Head of Unit or to an appropriate manager nominated by the BBC.
19. I find that the claimant lived and worked wholly in Nigeria. I find that the claimant entered into a contract of employment with BBCNL, worked under that contract and was paid in accordance with that contract for her work by BBCNL. I find the claimant was employed under a contract of employment governed by Nigerian law which reflected the employment relationship. I find that the claimant was paid in Nigerian currency and her pay was subject to deductions in accordance with Nigerian law for pension and other provision. Accordingly, I find that the legal entity of BBCNL which was a Nigerian company incorporated in Nigeria under Nigerian law was the claimant's employer. I find that the written contract of employment accurately reflects the nature of the relationship in that the claimant was an employee of BBCNL.
20. I find that the employment relationship as provided for in the contract and accompanying documents such as the Employee Handbook was regulated by Nigerian law and provision for matters such as annual leave, sick leave was in accordance with and in adherence to Nigerian law. I find that the claimant's line manager was local in that they were based in Nigeria. I address this further below but further find that in so far as the claimant had

grievances or complaints as to her employment, this was handled in accordance with Nigerian law.

21. Consistently with other features of her contract and the nature of the employment relationship and the place in which her work was performed, the contract provided for the claimant to have recourse to Nigerian courts in the event of any dispute concerning her employment. I find therefore that the claimant had a route to access justice and have any dispute arising out of her employment adjudicated other than by recourse to this Tribunal.
22. The claimant says however that she was recruited by staff based in the United Kingdom of Great Britain and Northern Ireland (UK) and her grievance was handled by UK based personnel.
23. The respondent explained that the Pidgin Service was a new project and at initiation whilst BBCNL had been set up as a legal entity, the service was not staffed so hiring was done from the UK. Typically, where there was a senior local in post that would be the local hiring manager although recruitment/interview processes might involve a UK based member of staff. Thereafter once the team was in place editorial control and day to day operations were done by the BBCNL. I accept this evidence as coherent. I do not find that the manner in which the claimant was recruited of itself undermines the position or my finding that she was employed by BBCNL under the contract of employment referred to above.
24. The claimant's role was as a broadcast journalist for the Pidgin service. I accept that content may have been consumed outside Nigeria and more widely across the Pidgin speaking community including in the UK but that of itself does not undermine the provisions of the contract of employment the claimant entered into with BBCNL or necessarily give rise to any connection to UK employment law. The aim of the service was primarily to meet the needs of local Pidgin speakers but to be available to Pidgin speakers in Nigeria and around the world as an online service (HB 261). Hilary Bishop was asked during cross-examination about editorial control and she gave evidence that there were editorial frameworks and BBC standards to adhere to but also that local laws would govern editorial output and the BBC was subject to those laws. The BBC would share stories between language services. The claimant did not dispute that as a journalist working in Nigeria, she was subject to Nigerian broadcasting code of conduct.
25. The claimant refers to mandatory training in UK law and the need to adhere to BBC standards. She attended this training from Nigeria in 2017 (HB69). The claimant did not attend any training in the UK or, indeed, visit the UK during her employment for any work related purposes. The training covered aspects of UK law relevant to working in media which might be consumed outside of Nigeria including in the UK as published online. The respondent says this is due to the liability or risk to the respondent of claims in defamation from material or content published under the auspices of the BBC. I accept this explanation as coherent. That the claimant had to undergo an element of training to understand aspects of UK law as they touched upon the publication of content does not undermine or directly address the employment relationship in terms of who the legal employer

was. The content of the training and that the claimant received such training whilst situated in Nigeria is not a factor which I find indicates any particular connection to British employment law.

26. The claimant referred to her staff card and that it was marked as property of the BBC with a freepost return address to a London postcode (HB70,71) as indicative of affiliation with the UK. When asked about this in cross-examination, Afua Yeboah agreed the card had a London return address on it and was marked property of the BBC but added that such identity cards could now be printed locally and as such might state something different although she couldn't verify that. In any event, the fact that a BBC identity card which due to the nature of the BBC might be used worldwide to identify the holder as associated with the BBC has an 'if found' London return address plausibly presents as administrative convenience and does not of itself establish any particular connection of the claimant herself to Great Britain or to British employment law.
27. On 10 February 2022, the claimant raised a grievance relating to sexual harassment. She sent this directly to the Support at Work Team (SAW). I acknowledge that given the contents of her grievance she may well have felt she could not follow the Handbook procedure and raise her grievance locally and with line managers even initially. Given the allegations were of sexual harassment, sensitive and serious allegations, the case was regarded as complex and the SAW team managed the grievance and provided HR support. The grievance was investigated and conducted in line with local law reflecting the claimant's contract of employment and applicable employee handbook. The outcome letters dated 18 July 2022 (HB122) and 20 December 2022 (HB298) refers to the grievance being conducted under the BBC Nigeria Employee Handbook. The claimant relies on the handling of her grievance by HR personnel based in the UK as an aspect of control and supervision being exercised over the subsidiary by the respondent.
28. The respondent's evidence is that the process for handling grievances was a new framework set up in 2020 (HB95-97). The framework draws a distinction between on the one hand grievances brought by local recruits in base country or overseas (whether or not on assignment) and UK employees in UK or overseas (whether or not on assignment). The former are handled by International HRBPs and the latter by UK SAW but that in unusual or exceptional circumstances a different approach may be adopted with the agreement of all concerned including the complainant. Where grievances are handled from local recruits, the policy is the applicable local policy.
29. Afua Yeboah is an International HRBP responsible for 18 countries in Africa. During cross-examination she was asked why her office and role was based in the UK and her candid answer was that she didn't specifically know. The framework for the handling of grievances is indicative of a relationship between entities within a group. I find that it is not unusual that a group of companies that operates globally might centralise services such as HR services and situate staff in one location and it is reasonable for the BBC to locate that office in the UK. I do not find that the provision of HR support for a grievance or an overarching framework for the handling of grievances

related to incidents overseas for both local recruits and UK staff overseas is sufficient to support any finding that the respondent is to be regarded as the claimant's legal employer or exercised control so as to be responsible for anything done by the claimant's employer BBCNL or employees of BBCNL.

30. On 9 May 2023, the claimant tendered her resignation by email which included reference to her line manager conducting himself in ways that 'fell short of the required standards and procedures of the BBC rules and labour laws of the Federal Republic of Nigeria which has made me unable to continue working as a journalist of the Pidgin Service in BBC Nigeria Limited.' I note that in her resignation email the claimant herself refers to the situation as regulated by Nigerian employment law and as working in BBCNL.
31. On 28 July 2023 the claimant approached ACAS and early conciliation concluded on 31 July 2023. The claimant presented her claim against the respondent on 31 August 2023. Section 8.1. indicates claims for unfair dismissal, race and sex discrimination. Section 8.2 does not refer to the respondent as a principal or refer to the respondent as vicariously liable or identify an entity or employee said to be an agent of the respondent. The respondent addresses the claim against it in its response and grounds of resistance dated 4 October 2023 on the basis that it was not the claimant's employer given that was how the claim presented and that the claim was 'plainly a claim which should be subject to the courts and legal system of Nigeria'.
32. At paragraph 7 of the claimant's written statement dated 12 December 2023, the claimant sets out her belief that there is concurrent jurisdiction enabling her to choose to bring employment law complaints before the UK tribunals/courts. The reason given in the written statement is 'the Respondent's office/branch in Nigeria which entered into a contract of employment with me only acted on behalf of the Respondent in the UK. The role of the Respondent's office in the entire transaction was only that of an agent acting on behalf of a disclosed principal. Therefore, the office in the UK is vicariously liable for the wrong committed against me by its agent in Nigeria.'
33. In her written statement dated 21 October 2024, the claimant refers at paragraph 3 to the provisions of the RC and Framework Agreement on the basis that they 'inherently confer on this honourable Court the territorial jurisdiction to adjudicate on my claim against the respondent' and further at paragraph 7 that the provisions of the RC and the Framework Agreement override the jurisdiction provision in her contract and at paragraph 10 are superior to her contract of employment. The statement further sets out that because BBC Pidgin is a component of the World Service her employment or work was directly controlled by the BBC Board based in the UK and at paragraph 20 that 'the respondent's parent organization in the UK has exerted a considerable level of control over my employment with BBC Pidgin in Nigeria.'
34. The claimant's written statements therefore refer to the employment as with BBCNL and the claimant does not really appear to contest this rather sets

out factors which she says are illustrative of control by the respondent or which indicate a basis for jurisdiction, other than as provided for within her contract, by recourse to the RC and/or the degree of control by the respondent. I note that an issue for determination before me is whether the respondent is the claimant's employer. I refer to my finding above that BBCNL was the claimant's employer. I find that the claimant raises the contention that the respondent was in a principal/agency relationship with her employer and as such vicariously liable for the first time in her written statement dated 12 December 2023. The contention is not contained within her originating claim. The claimant submits that the witness statement is clarification and context regarding her legal claim against the respondent and that she has not altered the basis of her claim and that the respondent exercised control over BBCNL's operations and the events leading to her constructive dismissal. I find the contents of the originating claim form do not set out particulars of any claim under the Equality Act 2010 against the respondent as a principal.

35. The provision in the claimant's contract does not provide for concurrent jurisdiction and I do not find that provision ambiguous so as to require any consideration as to the correct interpretation of the clause or incongruous such that it might be considered to be the result of an oppressive and unfair bargain. I note that in any event irrespective of what the contract says as to jurisdiction, the Tribunal can only determine complaints where it has jurisdiction to do so and jurisdiction is conferred by statute and further that the RC is not an instrument that can nor does it confer jurisdiction on the Tribunal.

LAW

36. Section 94 of the Employment Rights Act 1996 ("the Act") gives employees a right not to be unfairly dismissed. The right is enforceable by way of complaint to the Tribunal.
37. Section 95 provides that an employee is dismissed when they terminate the contract in circumstances in which they are entitled to terminate it without notice by reason of the employer's conduct. A constructive unfair dismissal claim requires the employee to identify a term of the contract of employment that has been breached by the employer and show that it is a fundamental or repudiatory breach of the contract such that the employee is entitled to terminate the contract.
38. The Equality Act 2010 sets out that where the necessary relationship is established complaint can be brought where there is 'prohibited conduct' such as direct discrimination or harassment because of a protected characteristic including sex, race. There is a definition of employment for this purpose at section 83.
39. Section 109 (Liability of employers and principals) provides that an employer is deemed liable for acts of discrimination carried out by its employees in the course of employment (s109(1)) and that anything done by an agent for a principal with the authority of the principal is treated as also done by the principal (s109(2)). Section 110 makes provision for liability

of employees/agents where something is treated as done by an employer/principal under section 109 which amounts to a contravention of the Equality Act 2010.

40. Neither the Employment Rights Act 1996 nor the Equality Act 2010 contains provision as to territorial limitation. The extent of the Employment Rights Act 1996 is Great Britain i.e. England, Wales and Scotland. The Equality Act 2010 forms part of the law of England and Wales, and Scotland (apart from s190 and Part 15). The extent is the reason reference is made to connection with British employment law.
41. In Lawson v Serco Ltd [2006] UKHL 3, the House of Lords considered the territorial scope of section 94(1) of the Employment Rights Act 1996 from the starting point that some territorial limitations had to be implied on the basis that it was *'inconceivable that Parliament was intending to confer rights upon employees working in foreign countries and having no connection with Great Britain'*. The HL refers to the paradigm case for the application of section 94(1) intended by Parliament as the employee working in Great Britain and at paragraph 36 that: *"The circumstances would have to be unusual for an employee who works and is based abroad to come within the scope of British labour legislation"* and at paragraph 37 that it would be unlikely someone working abroad would be within scope unless working for an employer based in Great Britain but that even so *"The fact that the employee happens to be British or even that he was recruited in Britain, so that the relationship was "rooted and forged" in this country, should not in itself be sufficient to take the case out of the general rule that the place of employment is decisive. Something more is necessary."*
42. In Duncombe v Secretary of State for Children, Schools and Families (No.2) [2011] IRLR 840, SC, Lady Hale summarised the principles derived from Lawson as follows: *"It is therefore clear that the right will only exceptionally cover employees who are working or based abroad. The principle appears to be that the employment must have much stronger connections both with Great Britain and with British employment law than with any other system of law. There is no hard and fast rule and it is a mistake to try and torture the circumstances of one employment to make it fit one of the examples given, for they are merely examples of the application of the general principle."* The case concerned staff working in European schools for children of officials and employees of the EU and it was held that there was an overwhelmingly closer connection to UK law given the factors of a UK employer, a contract with provision for UK law to apply and that the staff were working in enclaves with no local connection.
43. In Ravat v Halliburton Manufacturing Services Ltd [2012] UKSC 1 at paragraph 27, Lord Hoffman stated that, *"the starting point...is that the employment relationship must have a stronger connection with Great Britain than with the foreign country where the employee works. The general rule is that the place of employment is decisive. But it is not an absolute rule. The open-ended language of section 94(1) leaves room for some exceptions where the connection with Great Britain is sufficiently strong to show that this can be justified. The case of the peripatetic employee who was based in Great Britain is one example. The expatriate employee, all of whose services were performed abroad but who had nevertheless very*

close connections with Great Britain because of the nature and circumstances of employment, is another.” The reason for the exception is explained at paragraph 28 as *“the connection between Great Britain and the employment relationship is sufficiently strong to enable it to be presumed that, although they were working abroad, Parliament must have intended that section 94(1) should apply to them.”*

44. In Hottack v Secretary of State for Foreign and Commonwealth Affairs [2016] EWCA Civ 438, the Court of Appeal confirmed that the principles derived from Lawson were applicable to claims under the Equality Act 2010. The case concerned Afghan nationals working in Afghanistan as interpreters for the British military and the Court of Appeal held that the case did not show a sufficiently strong connection between Great Britain and their employment relationship to justify a presumption that Part 5 of the Equality Act 2010 must have been intended by Parliament to apply to them.
45. In Jeffery v British Council; Green v SIG Trading Ltd [2018] EWCA Civ 2253, the Court of Appeal referred to factors connecting the employment with Great Britain being especially strong to displace the territorial pull of the place of work where a person is a ‘true expatriate’ in the sense that they both live and work abroad as compared with a ‘commuting expatriate’ being the category addressed in Ravat where the person was based in the UK but worked abroad. This calls for a comparative exercise.
46. In Bamieh v Foreign and Commonwealth Office and others [2019] EWCA Civ 803, the Court of Appeal referred to the need for *“assessment of the strength of connection with Great Britain and British employment law is one of fact and degree calling for an intense consideration of the factual reality of the employment in question. There is no hard and fast rule; the application of the principle/s hinges on the individual circumstances.”*
47. In Vaughan v Modality Partnership 2021 ICR 535, EAT, the EAT confirmed that the core test in considering applications to amend is the balance of injustice or hardship in allowing or refusing the application taking account of all the circumstances. In the leading case of Selkent Bus Co Ltd v Moore 1996 ICR 836, EAT, the Employment Appeal Tribunal explained that in conducting the balancing exercise relevant factors included the nature of the amendment, the applicability of time limits, and the timing and manner of the application.
48. Kemeh v Ministry of Defence [2014] EWCA Civ 91, the Court of Appeal considered the extent of application of ordinary common law principles when identifying whether any agent/principal relationship existed for the purpose of a discrimination claim under statute. The case concerned the Race Relations Act 1976 and almost identical provision to section 109(2) of the Equality Act 2010. The construction given to the provision in Kemeh was endorsed in Unite the Union v Nailard [2018] EWCA Civ 1203 such that a principal is liable where an agent discriminates ‘in the course of carrying out the functions he is authorised to do’. The prior question is whether there is a principal/agency relationship to be discerned at all. The Court of Appeal held in Kemeh that, whatever the scope of the agency concept, a person employed by a catering contractor to the MOD was not

an agent just because work and services were provided for the benefit of a third party. A parent and subsidiary are not necessarily or inherently in a principal/agency relationship.

ANALYSIS AND CONCLUSIONS

Was the respondent the claimant's employer?

49. I turn first to consider the issue of whether the respondent was the claimant's employer. I address this issue first as a claim for unfair dismissal including a complaint of constructive unfair dismissal can only lie against an employer and as such determination of this issue may be dispositive of that claim but also because determination of this issue is of relevance to the assessment of whether or not there is territorial jurisdiction for the tribunal to consider the claimant's claims at all.
50. I refer to my findings above. I have found that the claimant's employer was BBCNL and I have concluded that the respondent was not the claimant's employer. In so far as the claimant brings a complaint of unfair dismissal including any complaint of constructive dismissal this arises under the Employment Rights Act 1996 against 'the employer'.
51. The respondent was not the claimant's employer at the relevant time. The complaint of unfair dismissal is therefore dismissed because the Tribunal does not have jurisdiction to hear it.

Claimant's discrimination claims and vicarious liability

52. As the respondent was not the claimant's employer at the relevant time, it follows that the Tribunal has no jurisdiction to determine complaints under the Equality Act 2010 brought against a respondent as employer (section 39). Accordingly, the Tribunal has no jurisdiction to hear any such complaints and they fall to be dismissed on that basis.
53. It was before me to determine whether or not permission to amend to include a claim against the respondent based on 'vicarious liability' or otherwise than as the claimant's employer was required and, if so, whether permission should be granted.
54. The claimant submits that the respondent has 'vicarious liability' with regard to her claims under the Equality Act 2010 as the parent company of BBCNL. This claim relies on the status of the respondent as principal rather than as employer and ostensibly section 109(2) of the Equality Act 2010. Such a claim is that the respondent has liability as principal for the alleged acts of discrimination done by its agent/s in the course of carrying out functions they are authorised to do by the respondent/principal. This of itself is unclear as the claimant's skeleton refers simply to 'vicarious liability' and does not specify the statutory provision relied upon in relation to the Equality Act claims. The claimant submitted that it is to be implied from her bringing her claim against the respondent that such a claim arises from the originating claim.
55. I refer to my finding above that a complaint reliant on vicarious liability and far less specifying the type of liability under the Equality Act relied upon is not contended and nor are the necessary particulars set out on the originating claim form. The contention in so far as it is set out appears for

the first time in the claimant's written statement dated 12 December 2023 where the claimant refers to BBCNL as an agent acting on behalf of a principal. The submission made and reason for such a relationship is based on the subsidiary/parent relationship by way of reference to the Royal Charter and the degree of control exercised over BBCNL by the respondent. This control is primarily adherence to standards of broadcasting carrying with it the need for training and adherence to overarching BBC values as espoused by the RC together with provision of HR services such as SAW.

56. I concluded that any such claim does not arise off the originating claim form and no such claim is particularised on the claim form. It cannot be implied from a claim being brought against a person that s109 or other provision under the Equality Act 2010 is being relied on as to the nature of the relationship and the basis for liability where neither section 109 nor any reference to principal or agent or vicarious liability are set out on the claim form. The claim form refers simply to 'BBC' and does not set out any information as to any parent/subsidiary relationship. Accordingly, the claimant requires permission to amend her claim to advance any such complaint.
57. I have also concluded that it is not entirely clear what the particulars of the amendment sought are given in so far as it is discernible that the claimant seeks to raise this complaint it is based on a consideration of parts of her witness evidence and it remains unclear what exactly is being advanced even in the skeleton argument. The amendment sought remains unclear although it would be substantial in relying on a different status for the respondent than that of employer. The amendment is raised in witness statements in different ways. It is not entirely clear who the putative agent or agents are and whether it is just BBCNL and/or extends to individual named employees of BBCNL. It is further not entirely clear what the particulars of the alleged acts of discrimination are, for which the respondent is said to be liable as principal under s109(2) or otherwise. The claim form refers to reporting sexual harassment on 10 February 2022 further to which grievance outcomes were dated 18 July and 20 December 2022 although the claimant has also ticked the box for race discrimination. Any claim based on acts of discrimination which occurred in 2022 would be brought outside the three month time limit laid down in statute and out of time absent an exercise of discretion on a just and equitable basis. Considered now acts occurring up to 9 May 2023 when employment ended would similarly be out of time. It is unclear on what any such discretion would bite on the basis of the evidence and information available to me.
58. There would be prejudice to the respondent in having to respond to those allegations directly as this would require amendment to the grounds of resistance, engaging in the necessary factual enquiry bearing in mind the grievance was investigated and conducted under Nigerian law, and the passage of time is not without relevance given it seems the acts complained of potentially occurred prior to February 2022. In all the circumstances the prejudice to the claimant is limited. I can take into account the factor that the Tribunal does not have territorial jurisdiction to consider any claims brought under the Equality Act and as such the merits and there is plainly no reasonable prospect of allegations succeeding if there is no jurisdiction to hear them. I have had regard to the overriding objective to deal with cases

fairly and justly and in particular acting in ways that are proportionate and also avoiding delay so far as compatible with proper consideration of the issues. Having considered the nature and timing of the amendment, the balance of prejudice and all relevant factors, I concluded that I would not exercise my discretion to grant permission and refused permission to amend.

59. In any event, I do not consider that if it were established that there was a principal/agency relationship where the respondent is the principal for the purpose of liability under the Equality Act 2010 that has the potential to materially affect my conclusion in relation to territorial jurisdiction given the assessment of the features and factors of the claimant's circumstances cumulatively and overall including in particular the nature of the BBC as established by Royal Charter as set out below.

Does the tribunal have jurisdiction to hear the claimant's claims given she worked in Nigeria?

60. I turn to consider the issue of territorial jurisdiction. I have concluded that the Tribunal does not have jurisdiction to hear the claimant's claim of unfair dismissal against the respondent as the respondent was not the claimant's employer. The assessment as to whether the Tribunal has territorial jurisdiction is however applicable to both the claimant's unfair dismissal claim under the Employment Rights Act 1996 and her discrimination complaints under the Equality Act 2010 as the same legal test applies. Although the legislation is silent on territorial jurisdiction, the leading case of Lawson v Serco sets out principles which have been developed and applied by the courts in other cases including Hottack confirming their applicability to claims under both the Employment Rights Act 1996 and the Equality Act 2010 ("the Acts").
61. The claimant submits that notwithstanding the wording of her contract that the Nigerian courts and this Tribunal have concurrent jurisdiction to determine the claims she brings under the Acts and that she can choose to bring her claims before this Tribunal.
62. Lawson v Serco provides that where a person works wholly abroad it is an exception to find that the Tribunal has jurisdiction to hear claims. The case law further provides that the assessment requires demonstration of a 'sufficiently strong' connection to Great Britain and British employment law such that the case is one Parliament must have intended was to be afforded the protection of the Acts. There was no real dispute as to the place of work and I refer to my finding that the claimant worked wholly abroad and in Nigeria. The assessment requires a consideration and comparison of circumstances so as to decide whether the pull is stronger to Great Britain and British employment law so as to displace the connection to Nigeria being the claimant's place of work.
63. I refer to all my findings above. The claimant's employer was a Nigerian company. She was employed by that company in Nigeria and her place of work was Nigeria where she lived including when she was recruited. All the features of her employment were local in the sense that she was paid

the local currency, pension and other provision was in accordance with local law and had no connection to British employment law.

64. The claimant refers to Duncombe. The claimant's case is not on all fours with the facts of the cases in Duncombe. The claimant has access to justice in Nigerian courts in relation to her employment law claims unlike the claimants in Duncombe and her contract provides for this. Recourse to this Tribunal is not her only possible avenue of redress. The claimant lived in Nigeria and was not working there further to posting or secondment or any other type of arrangement with any link to the UK. Although her recruitment may have been conducted by UK based personnel, she was recruited from the outset to work in Nigeria for a company incorporated, registered and located in Nigeria. The claimant was not living within any form of enclave such as a British army base. The work the claimant did was primarily aimed at persons in Nigeria even if some content may have been consumed by persons outside Nigeria including in Great Britain and was subject to broadcasting codes of conduct in Nigeria.
65. I refer to my findings above but in so far as the claimant had any employment related disputes, she was entitled under her contract to have recourse to the Nigerian courts and her contract was governed by Nigerian law. In so far as the claimant raised concerns these would be handled in adherence to Nigerian law as her grievance in fact was.
66. The factors relied upon as pulling the connection away from the place of work in Nigeria to Great Britain are the nature of the respondent as a British public service broadcaster, the funding provision and reference to the overarching RC and Framework Agreement. Whilst the need is to consider the factual reality of the employment in question rather than try and make it fit other examples, the case law is instructive. In Jeffery, the Court of Appeal upheld the conclusion of the EAT that there were factors which outweighed the pull of the territorial place of work.
67. Jeffery was a UK citizen, although he had always worked abroad for the British Council, and in addition his contract was governed by English law even if that was not decisive. This feature is not present in the claimant's case. There were additional key factors in that Jeffery had a civil service pension and adjusted remuneration to remove any tax benefits of being an expatriate worker which also do not apply to the claimant. The claimant's remuneration and pension provision were subject to Nigerian law and do not indicate any link to Great Britain or British employment law.
68. A key factor that was considered was the nature of the British Council which, like the respondent, is an organisation established by Royal Charter with similar public service remit but this was not conclusive and the nature of the work done fell to be considered. I note that unlike in the claimant's case where funding was a mix of government grant and licence fee the school in which Jeffery worked was self-funding. I refer to my findings above that the claimant's work whilst consumed outside Nigeria was primarily aimed at the Pidgin speaking community in that place. The claimant's circumstances overall are different in key respects.
69. Considering the features of the claimant's employment and her circumstances and the factors put forwards said to indicate pull to Great

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Britain and British employment law and weighing these up with all the features of the factual reality of the employment relationship, I have concluded that the place of work/Nigeria is not outweighed or displaced by any especially strong factors connecting the employment to Great Britain. The claimant has not demonstrated that she has a sufficiently stronger connection to Great Britain and British law than to Nigeria, her place of work.

70. I have concluded that the claimant's circumstances having considered relevant factors do not amount to circumstances where an exception should be made when she worked wholly in Nigeria. I am satisfied that it is not consistent with Parliamentary intent to enable the claimant to bring her claims before this tribunal and I have therefore concluded that the tribunal does not have jurisdiction to hear her claims.

71. The claimant worked wholly abroad and has not established sufficiently strong connection to Great Britain or British employment law so as to afford her protection under either the Employment Rights Act 1996 or the Equality Act 2010. The claimant's claim is therefore dismissed in its entirety because the Tribunal does not have jurisdiction to hear it.

Tribunal Judge Peer acting as an Employment Judge

Date 27 November 2024

JUDGMENT SENT TO THE PARTIES ON

3 December 2024

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FOR THE TRIBUNAL OFFICE