DechertOnPoint

February 2012 / Special Alert

A legal update from Dechert's Employment Law Group

When Can Employees Working Abroad Bring Claims for Unfair Dismissal in Great Britain?

In the recent case of *Ravat v Halliburton Manufacturing and Services Ltd* the Supreme Court confirmed that whether an employee is entitled to the right not to be unfairly dismissed depends on whether Great Britain is the place with which, in comparison with any other, their employment has the closer connection.

This *DechertOnPoint* explores the background to the decision in *Ravat* and summarises the key principles to be drawn from it.

The Background

The territorial scope of British employment law is an important question for employers to consider as they become increasingly international and employees are required to move around the world to service trans-border business. The fact that an employee works outside Great Britain does not necessarily mean that the employment law of Great Britain will not apply. In order to reduce the potential exposure to claims, employers should therefore be aware of the rights to which their international employees are entitled, including the right not to be unfairly dismissed.

Section 94 of the Employment Rights Act 1996, which confers on employees the right not to be unfairly dismissed, is silent on its territorial scope and it has therefore been for the courts to interpret its territorial application. In *Lawson v Serco Ltd* in 2006 the House of Lords (now the Supreme Court) outlined the following three types of case by reference to which eligibility to claim unfair dismissal is to be assessed:

- Standard cases – employees working in Great Britain at the time of their dismissal will benefit from the right not to be unfairly dismissed.
- Peripatetic employees (such as, for example, pilots) – these employees will benefit from unfair dismissal protection if their base is in Great Britain.
- Expatriate or posted employees (such as those working on a British military base abroad) – these employees are unlikely to benefit from unfair dismissal protection if they work and are based abroad, particularly if their employer is not based in Great Britain. Examples of such employees who may qualify are those working abroad but for a British employer for the purposes of a business carried on in Great Britain, and those working for British employers operating within an extra-territorial political or social enclave.

Subsequently, in *Duncombe v Secretary of State for Children, Schools and Families (No 2)* in 2011, the Supreme Court noted that the right not to be unfairly dismissed will only exceptionally cover employees who are working or based abroad. It noted that the general principle appears to be that, for such an employee to benefit from the right not to be unfairly dismissed, their employment must have much stronger connections both with Great Britain and with British employment law than with any other system of law. It also noted that there is no hard and fast rule and that it is a mistake to try and

"torture" the circumstances of an individual's employment to make it fit into one of the categories outlined in *Lawson*.

Ravat

In *Ravat*, the Supreme Court held that an employee who lived in Great Britain but worked in Libya was entitled to claim unfair dismissal in Great Britain because almost all of the factors pointed toward Great Britain as the place with which, in comparison with any other, his employment had the closer connection.

Mr Ravat, a British Citizen who lived in Preston, Lancashire, was employed by a UK subsidiary of Halliburton Inc, based near Aberdeen, until he was made redundant in May 2006. Since 2003 he had been working in Libya whilst continuing to live in Great Britain. His working pattern was such that he worked for 28 consecutive days in Libya followed by 28 consecutive days at home in Preston. Whilst in Libya he carried out work for a German subsidiary of Halliburton Inc. He reported to managers based in Libya and Cairo except in relation to HR issues which were dealt with by his UK employer's Aberdeen office and its HR representative who was based in Libya.

Mr Ravat was under no obligation to do any work during the 28 days while he was at home, although he occasionally did a little work which was incidental to his overseas employment such as responding to emails. He received the same benefits, including pay structure and pensions, as UK-based employees except for those benefits that were purely local, such as his car allowance. He was paid in sterling into a UK bank account and he paid UK income tax and national insurance by way of PAYE.

The Supreme Court held that the general rule - namely that the place of employment is decisive in deciding where an employee can bring employment claims - is not an absolute rule and exceptions can be made where the individual's connection with Great Britain is sufficiently strong to show that this can be justified.

The Supreme Court considered that Mr Ravat's case did not fit into any of the three categories identified in *Lawson*. However, it held that Great Britain was the place with which, in comparison with any other, his employment had the closer connection. The factors pointing towards this conclusion were that:

- the employer's business was based in Great Britain;
- the employer chose to treat Mr. Ravat as a commuter meaning that he was entitled to all benefits to which he would have been eligible had he been working in Great Britain;
- Mr Ravat's employment contract stated that it should be governed by British law;
- Mr Ravat had been assured by his employer that he would continue to have the full protection of UK employment law following his move to Libya;
- the documentation given to Mr Ravat indicated that it was the employer's intention that the relationship should be governed by British employment law; and
- Mr Ravat lived in Great Britain.

Key Points for Employers to Note

Ravat confirms that employees may benefit from the right not to be unfairly dismissed even if their employment situation does not fall easily within one of the three categories set out in *Serco*. The key test appears to be whether, on the facts, the connection between the circumstances of the individual's employment and Great Britain and with British employment law are sufficiently strong to enable it to be said that it would be appropriate for the employee to benefit from the right not to be unfairly dismissed. Employers should note that this is a question of fact and degree so will always depend on the particular circumstances of an individual's employment. There are, therefore, likely to be circumstances where it will not be easy for employers to be absolutely confident whether or not a particular employee benefits from the right not to be unfairly dismissed.

Importantly, the Supreme Court also noted that employees who are truly expatriate, because they both live and work outside Great Britain, must show an especially strong connection with Great Britain and British employment law to be able to bring employment claims in Great Britain. On the other hand, employees who are not truly expatriate by reference to the approach evidenced in this case, such as Mr Ravat, do not need to show such a high standard of connection to enable one to say that their case was exceptional. Employers therefore need to consider carefully not only whether internationally mobile employees may be able to bring employment claims in Great Britain but also how any dismissal process should best be handled in order to minimise any potential resulting liabilities.

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