8 February 2012

PRESS SUMMARY

Ravat (Respondent) v Halliburton Manufacturing and Services Limited (Appellant) (Scotland) [2012] UKSC 1
On appeal from an Extra Division of the Inner House of the Court of Session

JUSTICES: Lord Hope (Deputy President), Lady Hale, Lord Brown, Lord Mance, Lord Kerr

BACKGROUND TO THE APPEAL

The issue in this case is whether an employment tribunal has jurisdiction in relation to individuals who are resident in Great Britain and employed by a British company but who travel to and from home to work overseas. The Appellant is a UK company based near Aberdeen, which is one of about 70 subsidiary or associated companies of Halliburton Inc., a US corporation. It supplies tools, services and personnel to the oil industry. Mr Ravat lives in Preston, Lancashire, and is a British citizen. He was employed by the Appellant from April 1990 until May 2006, when he was made redundant. He complains that he was unfairly dismissed. At the time of his dismissal he was working in Libya. The question is whether the employment tribunal has jurisdiction to consider his complaint.

Mr Ravat's employment documentation described him as a UK commuter. He worked for 28 consecutive days in Libya, followed by 28 consecutive days off at home in Preston. He was job-sharing, working back-to-back with another employee. Some of the Appellant's employees were accorded expatriate status, but that was not done in Mr Ravat's case because he did not live abroad full-time. His travel costs were paid for by the Appellant. The work that Mr Ravat carried out in Libya was for the benefit of a German associated company of Halliburton Inc. His salary was paid in Sterling to a UK bank account, and he paid income tax and national insurance on the PAYE basis.

An employment tribunal sitting in Aberdeen held that it did have jurisdiction. That decision was set aside by the Employment Appeal Tribunal. Mr Ravat appealed, and the Inner House of the Court of Session allowed the appeal. The Appellant now appeals to the Supreme Court.

JUDGMENT

The Supreme Court unanimously dismisses the appeal and remits the case to the employment tribunal to deal with the merits of the respondent's claim that he was dismissed unfairly. The judgment is given by Lord Hope.

REASONS FOR THE JUDGMENT

Section 94(1) of the Employment Rights Act 1996 sets out the right of the employee not to be unfairly dismissed and section 230(1) sets out the definition of 'employee'. They do not contain any geographical limitation, nor is any such limitation to be found anywhere else in the Act **[3]**. Yet it is plain that some limitation must be implied: section 94(1) cannot apply to all employment anywhere in the world **[4]**.

In *Lawson v Serco Ltd* [2006] UKHL 3, Lord Hoffmann identified three categories of employees who would fall within the jurisdiction of the employment tribunal: employees working in Great Britain; peripatetic employees where the employee is 'based' in Great Britain; and, in some exceptional cases, expatriate employees **[9-12]**. But it would be difficult to fit Mr Ravat's case into any of Lord

Hoffmann's categories **[13]**. The problem that it raises must be resolved by applying the relevant guiding principles to the facts described in the employment tribunal's judgment **[25]**. The question in each case is whether section 94(1) applied to the particular case, notwithstanding its foreign elements. It is not for the courts to lay down a series of fixed rules where Parliament has decided not to do so. Their role is rather to give effect to what Parliament may reasonably be taken to have intended by identifying and applying the relevant principles **[26]**.

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 that is not an absolute rule **[27]**. In some cases, an exception can be made because 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. It will always be a question of fact and degree as to whether the connection is sufficiently strong to overcome the general rule that the place of employment is decisive. The case of those who are truly expatriate because they not only work but also live outside Great Britain requires an especially strong connection with Great Britain and British employment law before an exception can be made for them **[28]**. But it does not follow that the connection that must be shown in the case of those who are not truly expatriate, because they are not both working and living overseas, must achieve the high standard that would enable one to say that their case was exceptional. In this case, the fact that the commuter has his home in Great Britain, with all the consequences that flow from this for the terms and conditions of his employment, makes the burden in his case of showing that there was a sufficient connection less onerous.

The question of law is whether section 94(1) applies to this particular employment. The question of fact is whether the connection between the circumstances of the employment and Great Britain and with British employment law was sufficiently strong to enable it to be said that it would be appropriate for the employee to have a claim for unfair dismissal in Great Britain **[29]**.

In this case, Mr Ravat was working in Libya, for a different Halliburton associated company which was based in Germany, and the decision to dismiss him was taken by an individual based in Cairo. But all the other factors point towards Great Britain as the place with which, in comparison with any other, Mr Ravat's employment had the closer connection **[30]**. The Appellant's business was based in Great Britain. It treated Mr Ravat as a commuter, which meant that all the benefits for which he would have been eligible had he been working in Great Britain were preserved for him **[31]**. Although it was not open to the parties to contract in to the jurisdiction of the employment tribunal, factors such as any assurance that the employer may have given to the employee regarding the applicability of UK employment law, and the way the employment relationship is then handled in practice must play a part in the overall assessment **[32]**. On being assigned to Libya, Mr Ravat was assured that UK employment law would apply to his contract. The documentation he received reflected this, and in fact matters relating to the termination of his employment were handled by the Appellant's human resources department in Aberdeen **[33-34]**. As the question is ultimately one of degree, considerable respect must be given to the decision of the employment tribunal as the primary fact-finder. In the circumstances of this case, section 94(1) must be interpreted as applying to Mr Ravat's employment, and the employment tribunal therefore has jurisdiction to hear his claim **[35]**.

References in square brackets are to paragraphs in the judgment