

HOUSE OF LORDS EXTENDS UK EMPLOYMENT LAW TO OVERSEAS WORKERS

In recent years, one of the most obscure areas of employment law has been the legal position of overseas workers. UK employment law has been slow to respond to the challenge of an increasing number of internationally mobile workers, itself a product of globalisation. Whether such workers were pilots or globe trotting executives, those on cross-border secondments or civil servants on foreign assignments, there was no clear code for determining the level of protection available.

Some clarification has at last been provided by the House of Lords in the case of *Lawson v. Serco*. This case related to the right of an overseas worker to claim unfair dismissal in the UK, despite working abroad.

Serco, the multinational service company, employed Mr Lawson as a security supervisor on Ascension Island in the South Atlantic Ocean, where Serco was contracted to service the RAF base. Mr Lawson resigned after six months on the island, claiming constructive dismissal.

The House of Lords decision starts from the position that the right to claim unfair dismissal applies to employees working in Great Britain at the time of dismissal. This will expand protection for those who are dismissed in the UK even if they have been posted here for a limited period of time.

- “Peripatetic” employees (who travel frequently between different locations) will be able to claim unfair dismissal in the UK if their “base” is in the UK. In working out a person’s “base”, the tribunal should look at the reality of the situation and not simply what the contract of employment says.
- Expatriate employees will struggle to claim unfair dismissal in the UK, but may be able to do so if there are powerful factors showing that the employment relationship has a closer connection with Great Britain than with the foreign country. The House of Lords gave as examples media foreign correspondents and those who, like Mr Lawson, worked overseas in what was effectively a British social enclave.

However, there is still not complete clarity. Many tribunals will still have to look at the situation of employees in detail before determining whether they can claim unfair dismissal in the UK. Also, confusingly, the legal position of employees will be different if they wish to bring claims of discrimination or breach of contract (where the law applies two different tests). At Russell Jones & Walker, we have represented numerous clients in these positions and have an excellent track record in persuading tribunals in the UK to accept jurisdiction.