Hilary Term
[2012] UKSC 1
On appeal from: [2010] CSIH 52

JUDGMENT

Ravat (Respondent) *v* Halliburton Manufacturing and Services Ltd (Appellant) (Scotland)

before

Lord Hope, Deputy President
Lady Hale
Lord Brown
Lord Mance
Lord Kerr

JUDGMENT GIVEN ON

8 February 2012

Heard on 22 November 2011

Appellant
John Cavanagh QC

(Instructed by Paull & Williamsons)

Respondent
Aidan O'Neill QC
Christine McCrossan
(Instructed by Lefevre Litigation)

LORD HOPE, with whom Lady Hale, Lord Brown, Lord Mance and Lord Kerr agree

1. This case is about the employment status of individuals who are resident in Great Britain and are employed by a British company but who travel to and from home to work overseas. Halliburton Manufacturing & Services Ltd ("the appellant") is a UK company which is based at Dyce, near Aberdeen. It is one of about 70 subsidiary or associated companies of Halliburton Inc, which is a US corporation. It supplies tools, services and personnel to the oil industry. The employee, Ismail Ravat ("the respondent"), lives in Preston, Lancashire and is a British citizen. He was employed by the appellant from 2 April 1990 as an accounts manager until he was dismissed with effect from 17 May 2006. The reason for his dismissal was redundancy. The respondent complains that he was unfairly dismissed. The complication in his case is that at the time of his dismissal he was working in Libya. The question is whether the employment tribunal has jurisdiction to consider his complaint.

2. An employment tribunal sitting in Aberdeen (Mr RG Christie, sitting alone) held on 23 November 2007 that it had jurisdiction. That decision was set aside by the Employment Appeal Tribunal (Lady Smith, sitting alone) in a judgment which was given on 14 November 2008. The respondent appealed under section 37(1) of the Employment Tribunals Act 1996 to the Inner House of the Court of Session. On 22 June 2010 an Extra Division (Lord Osborne and Lord Carloway, Lord Brodie dissenting) allowed his appeal: 2011 SLT 44. The appellant now appeals to this court.

3. The question whether the respondent's complaint of unfair dismissal can be heard in Scotland is, as the decisions below show, not an easy one to answer. Section 94(1) of the Employment Rights Act 1996 provides: "An employee has the right not to be unfairly dismissed." Section 230(1) of that Act provides that "employee" means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment. Neither of these provisions contains any geographical limitation. Nor is any such limitation to be found anywhere else in the Act. As Lord Hoffmann observed in *Lawson v Serco Ltd* [2006] UKHL 3, [2006] ICR 250, para 1, the statement in section 244(1) that the Act extends to England and Wales and Scotland means only that it forms part of the law of Great Britain and does not form part of the law of any other territory, such as Northern Ireland (to which the subsection states the Act does not apply), for which Parliament could have legislated.

4. Yet it is plain that some limitation must be implied. As Lady Hale noted in *Duncombe v Secretary of State for Children, Schools and Families (No 2)* [2011] UKSC 36, [2011] ICR 1312, para 5, it was agreed in that case that section 94(1) could not apply to all employment anywhere in the world. That must indeed be so: see also *Lawson*, para 6, where Lord Hoffmann said that all the parties in that case were agreed that the scope of section 94(1) must have some territorial limits. But this does not solve the problem as to where the line is to be drawn between those cases to which section 94(1) applies and those to which it does not. It is not straightforward. As Louise Merrett, *The Extra-Territorial Reach of Employment Legislation* (2010) 39 Industrial Law Journal 355, has pointed out, increasing labour mobility together with the proliferation of multinational companies and groups of companies has made the international aspects of employment law important in an ever-growing number of cases. The present case is an illustration of the problems that this gives rise to.

The facts

5. As I have already said, the respondent was working in Libya when his employment was terminated. From 1990 to 1995 he worked for the appellant in London. For the remainder of the period that he was employed by it he worked overseas, initially in Algeria. In March 2003 he was offered and accepted a transfer to Libya. The arrangement was on what was known as a commuter or rotational basis: employment tribunal's judgment, para 5. The appellant described the respondent's status in documentation attached to his employment contract as that of a UK commuter. This was because he continued to live in Great Britain and travelled to and from his home to work for short periods overseas. He worked for 28 consecutive days in Libya, followed by 28 consecutive days at home in Preston. In effect he was job sharing, working back-to-back with another employee. During the 28 days when he was at home the work was done in his place by another employee on the same arrangement. His rotational work pattern was in accordance with the appellant's international commuter assignment policy. Some of its overseas employees were accorded expatriate status. But that was not done in the respondent's case because he did not live abroad full-time. His travel arrangements and costs for commuting between his home in Preston and his workplace in Libya were paid for by the appellant.

6. The work that the respondent carried out in Libya was for the benefit of Halliburton Co Germany GmbH, which was another subsidiary or associated company of Halliburton Inc. The German company was charged by the appellant for the respondent's services. His duties included dealing with statutory compliance in relation to tax, audits and financial control and ensuring that all day to day transactions were reported to the German company in Germany. He reported on a daily basis to an operations manager based in Libya, but on policy and compliance issues he reported to an African Region Finance Manager, Mr

Strachan, who was employed by another UK Halliburton subsidiary, Halliburton Management Ltd, based in Cairo. On human resources his contact was with the appellant's human resources department in Aberdeen and with another of its employees who was its human resources representative in Libya.

7. The respondent had little by way of day to day contact with the Aberdeen office while he was in Libya, and he had no formal obligation to do any work during the 28 days while he was at home. Any duties that he performed in Great Britain, such as responding while at home to emails, were incidental to that overseas employment. A feature of the appellant's commuter policy was that while he was working on a foreign assignment the employee's terms were such as to preserve the benefits, such as pay structure and pensions, for which he would normally be eligible had he been working in his home country other than those which were purely local such as a car allowance: employment tribunal's judgment, para 6. The respondent was remunerated on the normal UK pay and pension structure that applied to the appellant's home-based employees. He was paid in Sterling into a UK bank account, and he paid UK income tax and national insurance on the PAYE basis.

8. In 2003, when he started work in Libya, the respondent was concerned to know whether his employment contract would remain governed by UK employment law: employment tribunal's judgment, para 13. He asked his manager there what his position was and was assured that he would continue to have the full protection of UK law while he worked abroad. He was given a copy of a document in which overseas managers were told to contact the appellant's human resources team in Aberdeen when they were considering action in relation to poor performance, misconduct, dismissal or redundancy. The decision to dismiss him was taken by Mr Strachan of Halliburton Management Ltd under guidance from the Aberdeen human resources department. The respondent then invoked the appellant's UK grievance procedure, as he was advised that he was entitled to do by the human resources department. The grievance hearing, the redundancy consultations and the respondent's appeal against his dismissal all took place in the appellant's offices in Aberdeen. The respondent received a redundancy payment from the appellant. It was stated to have been paid to him in accordance with the Employment Rights Act 1996: see section 135, which confers the right to a redundancy payment to an employee who is dismissed by the employer by reason of redundancy.

The implied limitation

9. The question as to what connection between Great Britain and the employment relationship was required to confer rights on employees working abroad was considered in *Lawson v Serco Ltd* [2006] UKHL 3, [2006] ICR 250.

Three appeals were heard together in that case, as illustrations of the situations in which the question of territorial scope might arise. Mr Lawson was employed as a security adviser at the British RAF base on Ascension Island. Mr Botham was employed as a youth worker at various Ministry of Defence establishments in Germany. Mr Crofts was a pilot employed by a Hong Kong airline but was based at Heathrow. Having been presented with these examples, the appellate committee sought to identify the principles which should be applied to give effect to what Parliament might reasonably be supposed to have intended and attributing to Parliament a rational scheme: para 23, per Lord Hoffmann. As Lord Hoffmann, with whom all the other members of the committee agreed, observed in the final sentence of that paragraph, that involved the application of principles, not supplementary rules.

10. Lord Hoffmann took first what Parliament must have intended as the standard, normal or paradigm case: the employee who was working in Great Britain at the time of his dismissal: paras 25, 27. Then there were peripatetic employees. The former rule, which was introduced by section 22 of the Industrial Relations Act 1971, was that the right not to be unfairly dismissed did not apply to an employment where under his contract of employment the employee "ordinarily works outside Great Britain". The solution that was adopted in the application of that formula to peripatetic employees was to ask where the employee was based: *Wilson v Maynard Shipbuilding Consultants AB* [1978] QB 665, per Megaw LJ; *Todd v British Midland Airways Ltd* [1978] ICR 959, 964, per Lord Denning MR. Adopting this approach, Lord Hoffmann said that the common sense of treating the base of a peripatetic employee as, for the purposes of the statute, his place of employment remained valid: para 29. That dealt with the case of Mr Croft, the airline pilot, who was based at Heathrow.

11. This left the cases of Mr Lawson and Mr Botham, neither of whom was working in Great Britain at the time when he was dismissed. Lord Hoffmann called them expatriate employees, and he acknowledged that the problem in their case was more difficult: para 35. He recognised 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. But he thought there were some who did, and that one should go further and try, without drafting a definition, to identify "the characteristics which such exceptional cases will ordinarily have": para 36. He then mentioned a number of characteristics which should be regarded as sufficient to take such cases out of the general rule that the place of employment is decisive. It would be very unlikely that someone working abroad would be within the scope of section 94(1) unless he was working for an employer based in Great Britain. But that would not be enough. Something more was necessary: para 37.

12. He went on in paras 38-39 to give examples of cases in which section 94(1) might apply to an expatriate employee: the employee posted abroad to work for a

business conducted in Great Britain, and the employee working in a political or social British enclave abroad, which were sufficient to cover the cases of Mr Lawson and Mr Botham. In para 40 he added this comment:

> "I do not say that there may not be others, but I have not been able to think of any and they would have to have equally strong connections with Great Britain and British employment law."

13. Pausing there, it is plain that it would be difficult to fit the respondent's case into any of the categories identified by Lord Hoffmann in *Lawson*. He was not working in Great Britain at the time of his dismissal. He was not a peripatetic employee. He was not working abroad as an expatriate in a political or social British enclave. Nor had he been posted abroad to work for a business conducted in Great Britain, as he was commuting from his home in Preston and the company for whose benefit he was working in Libya was a German company. But in *Duncombe v Secretary of State for Children, Schools and Families (No 2)* [2011] ICR 1312, para 8 Lady Hale sounded a salutary warning against that approach to the problem. After summarising the principles that were to be derived from *Lawson*, she said:

> "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 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."

14. One has to search quite carefully through Lord Hoffmann's speech for statements of general principle. But they are there. In para 1 he said:

> "Putting the question in the traditional terms of the conflict of laws, what connection between Great Britain and the employment relationship is required to make section 94(1) the appropriate choice of law in deciding whether and in what circumstances an employee can complain that his dismissal was unfair? The answer to this question will also determine the question of jurisdiction, since the employment tribunal will have jurisdiction to decide upon the unfairness of the dismissal if (but only if) section 94(1) is the appropriate choice of law."

In para 36, having said 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 but that he thought that there were some who do, he said:

> "I hesitate to describe such cases as coming within an exception or exceptions to the general rule [that section 94(1) applies to persons employed in Great Britain] because that suggests a definition more precise than can be imposed upon the many possible combinations of factors, some of which may be unforeseen. Mr Crow submitted that in principle the test was whether, despite the workplace being abroad, there are other relevant factors so powerful that the employment relationship has a closer connection with Great Britain than with the foreign country where the employee works."

15. The response that Lord Hoffmann then gave to that submission needs to be carefully noted:

> "This may well be a correct description of the cases in which section 94(1) can exceptionally apply to an employee who works outside Great Britain, but like many accurate statements, it is framed in terms too general to be of practical help. I would also not wish to burden tribunals with inquiry into the systems of labour law of other countries. In my view one should go further and try, without drafting a definition, to identify the characteristics which such exceptional cases will ordinarily have."

16. Lord Hoffmann was dealing in that passage with those whom he had called expatriate employees. Mr Crow appeared for the Secretary of State for Foreign and Commonwealth Affairs and the Ministry of Defence, whose interest was to argue that the employment tribunal did not have jurisdiction to hear Mr Botham's claim for unfair dismissal. Lord Hoffmann's rejection of Mr Crow's test as too general to be of practical help in that context, where it was possible to identify the guiding characteristics more precisely, is understandable. But it is important not to lose sight of the fact that he acknowledged that the principle that Mr Crow had identified might well be a correct description of the cases in which section 94(1) could exceptionally apply to an employee who works outside Great Britain. He also described it as an accurate statement. His reasons for declining to adopt it in the case of the expatriate employees were (1) that it was framed in terms that were too general to be of practical help in their case and (2) that tribunals should not be burdened with inquiry into the systems of labour law of other countries. But I do

not see these as reasons for rejecting it in a case such as this which cannot readily be fitted into one or other of Lord Hoffmann's three categories.

17. Neither of the specific examples of expatriate employees given by Lord Hoffmann in *Lawson* applied to the employees in *Duncombe*. They were teachers employed by the British Government to work in European schools abroad. They were employed in an international enclave, not a British enclave. But their employment had no connection with the country where they happened to work. Also discussed in *Duncombe* were the cases of Wallis and Grocott, who were employed by the British government in NATO establishments in Europe where their servicemen husbands were working (*Ministry of Defence v Wallis* [2011] ICR 617). The Secretary of State's argument that their cases did not come within the scope of section 94(1) because they fell within neither of the cases identified as exceptional in *Lawson* was rejected. In para 16 of *Duncombe* Lady Hale, delivering the judgment of the court, said:

> "In our view, these cases do form another example of an exceptional case where the employment has such an overwhelmingly closer connection with Britain and with British employment law than with any other system of law that it is right to conclude that Parliament must have intended that the employees should enjoy protection from unfair dismissal."

She went on to identify what in para 17 she referred to as a very special combination of factors on which that conclusion depended. They included the fact that the teachers and the wives were employed under contracts governed by English law, which she said must be relevant to the expectation of each party as to the protection which the employees would enjoy.

18. The respondent's case does not fall within the further example of the expatriate employee within the scope of section 94(1) provided by *Duncombe*. But Lady Hale's remark in para 8 that 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, is directly in point. The judgment in that case was delivered on 15 July 2011, just over a year after the date when the judges of the Extra Division delivered their opinions. Their reasoning and that of Mr Christie in the employment tribunal and Lady Smith in the Employment Appeal Tribunal was based entirely on the guidance that they took from Lord Hoffmann's speech in *Lawson*. They did not have the advantage of reading Lady Hale's judgment in *Duncombe*.

The decisions below

19. The differences of opinion in the employment tribunal, the EAT and the Extra Division are striking. On the one hand, the respondent's case was seen as that of an expatriate employee whose case could not be brought within Lord Hoffmann's examples of cases falling within that category. On the other, it was seen as a case which could be resolved in the respondent's favour by applying principles that can be derived from his analysis.

20. In the employment tribunal Mr Christie said in para 39 of his judgment that, having regard to what he took to be the general principle to be applied in the case of employees working outside Great Britain, it did not seem to him to be necessary as a first step to place any particular claimant into one or other of Lord Hoffmann's categories:

> "Nothing which he says suggests that that is an essential. It seems perfectly conceivable that an employee may have his place of work in another country abroad, but carries it out in a manner or in circumstances where he cannot properly be described as peripatetic or expatriate, and yet be operating in an employment relationship which has a substantial connection with the UK. Prior to coming to this particular case, I have had in mind a British citizen who, for example, works abroad on what is often referred to as a 'rotational system' of working, say, four weeks in Africa followed by three weeks on leave at home with his family in, say, Edinburgh – and so on, following the pattern."

He referred in the next paragraph, by way of analogy, to the oil rig worker who was flown out to the Continental Shelf to work for two weeks and was then flown back to stay at home in, say, Dundee for the next two weeks. He did not become peripatetic merely because the rig he might be transferred to was in the Norwegian sector or was off the coast of West Africa. Having examined all the circumstances peculiar to this case, he concluded in para 54 of his judgment that there remained a sufficiently substantial connection between the employment relationship and Great Britain to enable him to hold that the tribunal had jurisdiction.

21. In the Employment Appeal Tribunal Lady Smith said in para 14 of her judgment that she took from Lord Hoffmann's judgment that the fact that an employee was recruited by a British company in Great Britain to work for it abroad would not, in itself, be enough for jurisdiction. She referred to the principle identified by him in para 1 of his speech for the appropriateness of recognising jurisdiction in each case (see para 14, above). She then examined what she referred

to as his discussion of the different categories into which a person's employment could fall in a case where the jurisdiction question arises. In para 18 she noted that in his discussion of the expatriate category Lord Hoffmann did not approve of a test of substantial connection. On the contrary, he was saying that it was not enough. In para 35 she said that she was satisfied that the tribunal erred in law:

> "It applied a test of 'substantial connection' with Great Britain and should not have done so. A test of 'substantial connection' falls far short of the criteria inherent in the principles identified by Lord Hoffmann, to which principles I have already referred. It also took account of the proper law of the parties' contract and the reassurances given to the claimant by the respondents about the availability to him of UK employment law, neither of which was relevant."

In paras 37-38 she said that the respondent fell plainly within Lord Hoffmann's third category – the expatriate category, and that, far from there being something more to show that it was appropriate that there should be jurisdiction, there was something less. The respondent was not working for the appellant's business at home, but was working in the operation of a German company and was dismissed by an employee who had his work base in Cairo.

22. In the Extra Division Lord Osborne said in para 15 that he took from Lord Hoffmann's reference to "an employee who works and is based abroad" when dealing with what he termed expatriate employees that he meant someone whose place of work and base, which included his place of residence, was situated in a foreign country. Referring to the passage in para 40 of Lord Hoffmann's speech, where he said that he could not think of any other examples of expatriate employees to whom section 94(1) might apply but that they would have to have equally strong connections with Great Britain and with British employment law (see para 12, above), he said:

> "Since, in my view, the respondent cannot properly be seen as an expatriate employee, this particular observation is not of direct relevance to his situation. However, I consider that what is said comes, perhaps, as close as anything in this judgment to an indication of the kind of connection with Great Britain and British employment law that an employee would require to show to be able to invoke successfully the jurisdiction of an employment tribunal in connection with a claim based upon section 94(1). Thus, the reference to 'strong connections with Great Britain and British employment law' seems to me to be important."

23. In para 16 of his opinion Lord Osborne said that it was not necessary for a claimant to demonstrate that he might properly be placed in one of the categories considered in detail by Lord Hoffmann. An employee might have a place of work in a foreign country but carry it out in a manner and in circumstances in which he could not properly be described as peripatetic or expatriate. In para 19 he said that it was not possible, without qualification, to affirm the decision of the employment tribunal as words used by the chairman suggested that he considered that the task that he was undertaking was the exercise of a discretion. Lord Hoffmann had made it clear in para 24 of his speech in *Lawson* that it was a question of law, although involving judgment in the application of the law to the facts. But Lord Osborne concluded in para 20 that the tribunal ultimately reached a correct conclusion on the facts.

24. Lord Carloway said in para 27 that, as he read Lord Hoffmann's speech, he was setting out three definitive categories of employment, "into which every person is capable of being squeezed." In para 29 he said that an expatriate employee is one who lives and works abroad. That did not apply to the respondent, who had his home in England. In para 30 he indicated that he saw the respondent as more peripatetic than expatriate, as these words were used by Lord Hoffmann. But he went on to ask himself a broader question. This was whether, notwithstanding the foreign elements, Parliament intended section 94(1) to apply to someone in the respondent's circumstances whose employer did not regard him as an expatriate but as a commuter and dealt with all his contractual entitlements in Dyce. He answered that question in the affirmative. Lord Brodie, who dissented, said in paras 54-55 that in his opinion there was no question but that the respondent fell into Lord Hoffmann's expatriate employee category, that living arrangements did not comprise a necessary element in any of them and that he did not see the respondent as falling within the exceptional cases of persons working abroad that he had identified.

Discussion

25. I have set out the reasoning in the judgments below at some length because it shows that, as Mr Christie observed in para 38 of his judgment in the employment tribunal, Lord Hoffmann's analysis in *Lawson* did not have the effect of eliminating uncertainty and that those who have been looking to it for guidance have found it difficult to apply. Mr Christie's complaint was that it seemed to remain a very open question as to what exactly amounts to a sufficient or sufficiently substantial connection with Great Britain, and that there was little by way of guidance which employment tribunals might grasp to assist in what test they are to apply or how to go about their task. Lady Hale's comment in *Duncombe*, para 8, that there is no hard and fast rule and that 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, will have gone a long way to address this problem. But Mr Cavanagh QC for the appellant described this case as much more mainstream because it will cover a much larger class of employees than any one of Lord Hoffmann's categories. The problem that it raises must be resolved by applying the relevant guiding principles to the facts described in the employment tribunal's judgment.

26. As I have already indicated (see para 14, above), it is possible on a careful reading of Lord Hoffmann's speech in *Lawson* to find what he saw as the guiding principles. The question in each case is whether section 94(1) applies to the particular case, notwithstanding its foreign elements. Parliament cannot be taken to have intended to confer rights on employees having no connection with Great Britain at all. The paradigm case for the application of the subsection is, of course, the employee who was working in Great Britain. But there is some scope for a wider interpretation, as the language of section 94(1) does not confine its application to employment in Great Britain. The constraints imposed by the previous legislation, by which it was declared that the right not to be unfairly dismissed did not apply to any employment where under his contract of employment the employee ordinarily worked outside Great Britain, have been removed. It is not for the courts to lay down a series of fixed rules where Parliament has decided, when consolidating with amendments the previous legislation, not to do so. They have a different task. It is to give effect to what Parliament may reasonably be taken to have intended by identifying, and applying, the relevant principles.

27. Mr Cavanagh drew attention to Lord Hoffmann's comment in *Lawson*, para 37, that the fact that the relationship was "rooted and forged" in Great Britain because the respondent happened to be British and he was recruited in Great Britain by a British company ought not to be sufficient in itself to take the case out of the general rule. Those factors will never be unimportant, but I agree that the starting point needs to be more precisely identified. It 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.

28. The reason why an exception can be made in those cases is that 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. The

expatriate cases that Lord Hoffmann identified as falling within its scope were referred to by him as exceptional cases: para 36. This was because, as he said in para 36, 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. 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.

29. But it does not follow that the connection that must be shown in the case of those who are not truly expatriate, because they were not both working and living overseas, must achieve the high standard that would enable one to say that their case was exceptional. The question whether, on given facts, a case falls within the scope of section 94(1) is a question of law, but it is also a question of degree. 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. Mr Cavanagh said that a rigorous standard should be applied, but I would not express the test in those terms. 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.

The respondent's case

30. It is true that at the time of his dismissal the respondent was working in Libya and that the operations that were being conducted there and in which he worked were those of a different Halliburton associated company which was incorporated and based in Germany. It is true also that the decision to dismiss him was taken by Mr Strachan who was based in Cairo. But I would not attach as much importance to these details as I would have done if the company for which the respondent was working in Libya was not another associated Halliburton company. The vehicles which a multinational corporation uses to conduct its business across international boundaries depend on a variety of factors which may deflect attention from the reality of the situation in which the employee finds himself. As Mr Christie said in the employment tribunal, it is notorious that the employees of one company within the group may waft to another without alteration to their essential function in pursuit of the common corporate purpose: para 53. All the other factors point towards Great Britain as the place with which, in comparison with any other, the respondent’s employment had the closer connection.

31. The appellant's business was based in Great Britain. It was to provide tools, services and personnel to the oil industry. That was why it sent the respondent to Libya, even though the actual work itself was in the furtherance of the business of another Halliburton subsidiary or associate company: see the employment tribunal's judgment, para 53. It chose to treat him as a commuter for this purpose, with a rotational working pattern familiar to workers elsewhere in the oil industry which enables them to spend an equivalent amount of time at home in Great Britain as that spent offshore or overseas. In the respondent's case this meant that all the benefits for which he would have been eligible had he been working in Great Britain were preserved for him.

32. Lady Smith said in the EAT that the employment tribunal was wrong to take account of the proper law of the parties' contract and the reassurance given to the respondent by the appellant about the availability to him of UK employment law, as neither of them were relevant. The better view, I think, is that, while neither of these things can be regarded as determinative, they are nevertheless relevant. Of course, it was not open to the parties to contract in to the jurisdiction of the employment tribunal. As Mr Cavanagh put it, the parties cannot alter the statutory reach of section 94(1) by an estoppel based on what they agreed to. The question whether the tribunal has jurisdiction will always depend on whether it can be held that Parliament can reasonably be taken to have intended that an employee in the claimant's position should have the right to take his claim to an employment tribunal. But, as this is a question of fact and degree, factors such as any assurance that the employer may have given to the employee and the way the employment relationship is then handled in practice must play a part in the assessment.

33. The assurances that were given in the respondent's case were made in response to his understandable concern that his position under British employment law might be compromised by his assignment to Libya. The documentation he was given indicated that it was the appellant's intention that the relationship should be governed by British employment law. This was borne out in practice, as matters relating to the termination of his employment were handled by the appellant's human resources department in Aberdeen. This all fits into a pattern, which points quite strongly to British employment law as the system with which his employment had the closest connection.

34. Mr Cavanagh submitted that the fact that the respondent's home was in Great Britain was of no relevance. Why, he said, should the place where you are living when you are not working be relevant at all? All that mattered was the place where he was working. His place of residence did not matter, and it should be left out of account. It is true that his place of work was in Libya and not in Preston. But the fact that his home was in Great Britain cannot be dismissed as irrelevant. It was the reason why he was given the status of a commuter, with all the benefits that were attached to it which, as he made clear, he did not want to be prejudiced

by his assignment. Here too the fact that his home was in Preston fits in to a pattern which had a very real bearing on the parties' employment relationship.

35. 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. Mr Christie said in para 54 of his judgment that his conclusion that the balance was in favour of the respondent fell within the band of reasonable responses available to a reasonable chairman of employment tribunals. This remark was seen by both Lady Smith in para 36 of her judgment in the EAT and by Lord Osborne in the Extra Division, 2011 SLT 44, para 19 as an indication that he considered the task that he was undertaking as the exercise of a discretion. His remark was perhaps not very well chosen, but I do not think that his judgment when read as a whole is open to this criticism. The test which he applied was whether there was a substantial connection with Great Britain: see paras 39 and 47. It would have been better if he had asked himself whether the connection was sufficiently strong to enable it to be said that Parliament would have regarded it as appropriate for the tribunal to deal with the claim: see para 29, above. But I think that it is plain from his reasoning that he would have reached the same conclusion if he had applied that test. Lord Osborne said in para 20 of his opinion that the tribunal reached a conclusion that it was entitled to reach and that it was a correct conclusion. I agree with that assessment. So I too would hold that section 94(1) must be interpreted as applying to the respondent's employment, and that the employment tribunal has jurisdiction to hear his claim.

Conclusion

36. I would dismiss the appeal. I would also affirm the Extra Division's interlocutor, the effect of which is that the case will be remitted to the employment tribunal to deal with the merits of the respondent's claim that he was dismissed unfairly.