

22.03.29

5 Senator S.Y. Mézec of H.M. Attorney General regarding employment protection rules (OQ.58/2022)

Will the Solicitor General advise whether any provision in Jersey law enables U.K. seafaring businesses to employ people using Jersey employment contracts to avoid fulfilling usual employment protection rules in their home jurisdiction, as has been alleged with the recent mass redundancy committed by P.&O. Ferries?

Mr. M. Jowitt, H.M. Solicitor General (rapporteur):

The answer is, no, there is no provision in Jersey law which could have that effect. Seafarers, if they are based in the U.K., as I think the P.&O. employees are, enjoy all the employment rights that exist in U.K. law, and they do so regardless of whether their employment contracts are made under some law other than the law of the United Kingdom. That is so because of section 204 of the Employment Rights Act 1996, that is the U.K. statute, which provides the application of the employee rights that exist in that law apply and it is immaterial for those purposes whether the choice of law governing any person's employment is expressed to be a different law from that of the U.K. The short answer is an employer cannot deprive its U.K.-based employees of their rights under U.K. law by using a Jersey employment contract. I hope that is helpful.

3.5.1 Senator S.Y. Mézec:

That certainly is helpful. With the particular case that I have referenced in the question, we know that many of these people who have been made redundant were employed through Jersey-registered companies. In the event that people are working for Jersey-registered companies but reside in the U.K. and do their work in the U.K., are they bound by the Jersey provisions when it comes to redundancy, for example, the provisions on notifications to the Minister for Social Security and consultation with workers?

The Solicitor General:

No, employment law is primarily geographic in its application. For example, our employment law applies in terms of its rights and its remedies, only to people who work wholly or mainly in Jersey; that is a geographical test.

[10:30]

The short point is that all of those employees at P.&O. because they are based in the U.K. will have the full measure of remedies available to them as a matter of U.K. law, if necessary, through the English courts.

3.5.2 Deputy K.F. Morel:

I thank the Solicitor General for his answer. Could he advise the Assembly: is there a difference between someone working on a boat, they may be based in the U.K. but that route is wholly within the U.K. and someone who works on a ferry that operates on an international route? I think back to a time when there were some sailors operating on the Jersey ferry, which was an international route and, therefore, they were able to operate under international provisions, rather than the geographic provisions that the Solicitor General is referring to.

The Solicitor General:

I think the answer in terms of what Jersey's law is is this, and it is provided for by Article 37 of the Employment Law, our employment law, which applies specifically to mariners. The law is that an individual employee to work on board a merchant ship registered in Jersey shall be treated as an individual, who under his or her contract ordinarily works in Jersey and, therefore, would have application to all the rights and remedies afforded by Jersey law, unless the employment is wholly outside of Jersey, that is a geographical test, or the person is not ordinarily resident in Jersey. There has to be a geographical connection or a nexus between the employee and this Island for that person to have recourse to the remedies under our Employment Law, otherwise that person will have to have recourse to whatever remedies are available in the jurisdiction with which that person has a geographical connection. In the sense of it, they are ordinarily resident in that country or they work on a ship that is registered under that country.

3.5.3 Deputy M.R. Higgins:

Can I ask the Solicitor General if he has been in touch with U.K. counterparts and if he can explain why it is that U.K. Ministers are blaming Jersey law for part of the predicament?

The Greffier of the States (in the Chair):

I am not sure the Solicitor General's reference as far as the minds of U.K. Ministers, I am afraid.

Deputy M.R. Higgins:

Can he tell us what the legal position is then? The U.K. Ministers are saying the problem is Jersey law, can he explain why that is the case?

The Solicitor General:

I cannot speak for U.K. Ministers. I was not aware that they, frankly, were saying that and I have not heard that reported anywhere. But my writ, as it were, or my obligation is to advise the Assembly on the state of Jersey law. I cannot speak for the views that politicians in the U.K. might have about our law and indeed their own law.

3.5.4 Deputy G.P. Southern:

My original question, I think, stands: is there any protection under Jersey law to employees who have a geographical connection with the U.K. or in the fact that they are normally resident in Jersey?

The Solicitor General:

The application of our law, our employment law, is that the person, the employee, must work wholly or mainly in Jersey and that, as I say, is a geographical test. I do not think I can provide any further answer than that. For the employee to have the benefit of our law must work geographically wholly or mainly in this Island.

3.5.5 Deputy G.P. Southern:

Could the Solicitor General indicate what he understands as mainly geographically in Jersey waters? Would that include round trips to the U.K. and to France?

The Solicitor General:

I imagine it is a question of fact in every case if there is ever a dispute that makes its way to a courtroom or a tribunal. But it seems to me that those words are to be given their plain English meaning. One would think that to work wholly or mainly in Jersey means that a substantial amount of your working life takes place within the Island or within its territorial waters.

3.5.6 Senator I.J. Gorst:

Could the Solicitor General confirm from a legal perspective that there is no confusion or complexity in regard to a U.K. resident working mainly in the U.K. falling under U.K. employment legislation, just in the same way that a Jersey resident working in Jersey would fall under Jersey legislation? From a legal perspective there is no confusion or added complexity in that regard.

The Solicitor General:

I do not consider there is any complexity or uncertainty. As I said, I think at the outset one of the principles of employment law is it is geographically focused in its application. The U.K. Act of Parliament is very specific about the application of employment rights there, as indeed is the Jersey law very clear about the application of its rights to employees in Jersey.

3.5.7 Connétable R.A. Buchanan of St. Ouen:

Given what the Solicitor General has said, could he confirm was P.&O. using a Jersey-based entity to employ their U.K. employees? Does it confer them any advantage in terms of evading their U.K. employment responsibilities?

The Solicitor General:

No, it gets no advantage at all.

The Connétable of St. Ouen:

I know the legal profession are not good at speculating, would he like to speculate why P.&O. have done this? [Laughter]

The Greffier of the States (in the Chair):

I think your instincts on that was not a valid question was in fact accurate.

3.5.8 Senator S.Y. Mézec:

I can speculate. There is a widely-held suspicion by officers in the U.K. that what has happened in this particular instance has constituted a breach of law somewhere. Given that they were Jersey-registered companies from which these people were sacked, could the Solicitor General advise whether he thinks that that would open up an opportunity for potential legal action against those companies to be taken in Jersey or would the law require that to be taken in the U.K.?

The Solicitor General:

I think the Senator may be referring to the suggestion that there was a failure to consult prior to the redundancies by P.&O. in the U.K. If that were so and if there is to be either a negotiated settlement or indeed legal action, that will have to be in the United Kingdom for the simple reason that wherever the employing company is geographically, as it were, where it is incorporated, is neither here nor there for the purposes of U.K. law. U.K. law will apply, as I said at the outset, and rights and remedies which it creates will fall to be pursued in England and not in Jersey.