

20/5/05 Pilots' claims of unfair dismissal to be heard in UK

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A group of former Cathay Pacific airline pilots who have been trying to bring unfair dismissal claims against the Hong Kong-based carrier in an English employment tribunal on the basis that their home base was Heathrow have won the right to have their cases heard in the UK.

But the airline said yesterday it intended to appeal to the House of Lords.

Eversheds, the law firm acting for Cathay, said it had "genuinely believed" it was applying the appropriate law when it dismissed them under less stringent Hong Kong procedures. But Shupson Millar, acting for the pilots, said: "These are some of the most flagrant unfair dismissals I've seen and the company has tried to avoid liability by hiding behind jurisdictional points."

The case has highlighted the difficulty of trying to apply nationally-based employment laws to 21st century working practices.

Last year, the English courts tried to clarify the circumstances in which statutory unfair dismissal rights applied to expatriate employees, by saying the 1996 Employment Rights Act was designed to cover "employment in Britain".

But even then, it was admitted that borderline cases would depend on "an assessment of all the circum-

stances of employment in the particular case". Lawyers, meanwhile, acknowledged it would take a number of cases to establish what was meant by "employment in Britain". That guidance itself is now subject to an appeal to the Lords, due to be heard in November.

All these difficulties were apparent in yesterday's split Court of Appeal decision in which Lord Phillips, master of the rolls, was at odds with two other senior members of the judiciary.

The six pilots, who live in the UK, were employed by Cathay, but allocated to a "European base area". As a result, they held formal contracts with Vota, a Hong Kong-registered subsidiary, rather than Cathay itself. Their salaries were paid into Hong Kong accounts and they held Hong Kong pilots' licences. Training and discipline also took place in Hong Kong, while work contracts were governed by Hong Kong law. But their hours of duty began and ended in London and their pay reflected a lower cost of living than that of Hong Kong.

Lord Phillips took the view that the pilots' place of work could not be said to be Britain "just because that is whether their flight cycles begin and end". But Lord Justice Waller and Lord Justice Kay disagreed, saying they were employed in Britain because of the way their contracts required them to "live and work".

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