Appeal No. UKEAT/0132/14/JOJ

EMPLOYMENT APPEAL TRIBUNAL

FLEETBANK HOUSE, 2-6 SALISBURY SQUARE, LONDON EC4Y 8AE

At the Tribunal
On 6 February 2015
In chambers
On 22 May & 16 June 2015
Judgment handed down on 29 June 2015

Before

HER HONOUR JUDGE EADY QC

(SITTING ALONE)

MRS M KOUDRIACHOVA APPELLANT

UNIVERSITY COLLEGE LONDON RESPONDENT

Transcript of Proceedings

JUDGMENT

APPEARANCES

For the Appellant	Written submissions
For the Respondent	Written submissions

SUMMARY

JURISDICTIONAL POINTS

Claim in time and effective date of termination

Extension of time: reasonably practicable

ET claims of unfair dismissal and for unlawful deductions presented one day out of time; whether the ET had erred in holding it had been reasonably practicable for the claims to have been presented in time and thus that it had no jurisdiction to determine them.

Held:

Dismissing the appeal. The ET had concluded that the Claimant had lodged her claims one day out of time because of her mistaken belief as to when the time limit expired. It did not find that belief had been reasonably held. That was a permissible view on the evidence before the ET.

As for whether the ET ought properly to have taken account of the conclusion of a different ET on a different claim by the Claimant against the Respondent, that argument was not tenable: (1) at the time the ET made its ruling in the present claims, the other ET's decision had not been made, still less sent it to the parties; and, in any event, (2) the two ETs were answering different questions.

Moreover, the fact that the Respondent had not raised the time limit point earlier did not mean that the ET was not bound to consider it. This was a jurisdictional point and could be taken at any time.

Generally, the ET adopted the correct approach and reached a conclusion entirely open to it on the evidence and findings of fact.

HER HONOUR JUDGE EADY QC

Introduction

1. I refer to the parties as the Claimant and the Respondent as they were below. I use the abbreviation "ET" to refer to the Employment Tribunal and "EAT" when referring to this court. The appeal is that of the Claimant against a Judgment of the London (Central) ET (Employment Judge Glennie sitting alone on 9 December 2011), sent to the parties on 1 February 2012. The Claimant appeared before the ET in person, assisted by her daughter. The Respondent was then represented by a solicitor. Subsequently it has been represented by Ms McCann, counsel.

2. By its Judgment the ET struck out the Claimant's claims of unfair dismissal, unlawful deductions from wages, and breach of the **Working Time Regulations** on the basis that those complaints had been presented out of time such that the ET did not have jurisdiction to consider them. It is with that decision that this appeal is concerned.

The Background Facts and the Relevant Procedural History

3. The Claimant was initially appointed to a fellowship with the Davy Faraday Research Laboratory of the Royal Institution of Great Britain for five years, from 1 September 2005 to 30 August 2010. With effect from 1 August 2007 her appointment was transferred to University College London, where she was employed as a Senior Research Associate in the Department of Chemistry, until she was dismissed by reason of redundancy on 28 February 2011. Thereafter the Claimant lodged three ET claims: (1) on 8 March 2011, claiming unlawful deduction from wages and/or breach of contract (case no. 2200942/2011); (2) on 28 May 2011, claiming unlawful deductions from wages and breach of the **Working Time Regulations** (case no.

2201990/2011); (3) on 28 May 2011, claiming unfair dismissal, sex discrimination, race discrimination and age discrimination (case no. 2201995/2011).

4. The hearing of the claims in case no. 2200942/2011 took place on 17 May, and 11 and 12 August 2011, with the London (Central) ET (EJ Walker sitting with members) then deliberating on 1 December 2011 and 26 January 2012. The ET upheld the Claimant's claims for unlawful deductions in part, but dismissed the majority of her claims. The ET's Judgment and Reasons, comprising 36 pages (170 paragraphs), were sent to the parties on 6 February 2012. The Claimant then sought to appeal; the grounds including various allegations of procedural irregularities subsequently put into affidavit form, and comments in response sought from the Employment Judge and the ET members. At a hearing under Rule 3(10) of the **EAT Rules**, on 26 March 2014 (HHJ Birtles presiding), the proposed appeal was found to disclose no reasonable basis for the matter to proceed and was accordingly dismissed.

5. Meanwhile, at a Pre-Hearing Review on 9 December 2011, the ET (EJ Glennie sitting alone) struck out the unfair dismissal case in case no. 2201995/2011, and the entirety of the claim for unlawful deduction of wages and/or breach of the **Working Time Regulations** in case no. 2201990/2011, on the basis that these claims had been presented out of time by one day when it had been reasonably practicable for the Claimant to have presented them in time and thus the ET did not have jurisdiction to consider them. The discrimination complaints in case no. 2201995/2011 were, however, permitted to proceed to a Full Hearing, at which any jurisdictional points could be taken including whether it would be just and equitable to extend time for the lodging of those complaints. The ET's decision in this regard was sent to the parties on 1 January 2012. The hearing of the discrimination complaints is yet to take place.

6. The Claimant sought to appeal these further Judgments of the ET. Her two proposed appeals in this regard also came before the EAT at the Rule 3(10) Hearing on 26 March 2014. At that hearing the Claimant had the benefit of pro bono representation by counsel acting under ELAAS. As a result of the oral argument made on the Claimant's behalf, the EAT was persuaded that the appeal against the strike-out of her claims (in cases 2201995/2011 and 2201990/2011) should be permitted to proceed on the following bases:

(1) It was perverse of the ET to find that it was reasonably practicable for the Claimant to present her claims in time; alternatively, the ET erred in failing to take into account material considerations and/or failed to give adequate reasons. Specifically the error made by the Claimant was one she had made in her earlier claim (relying - on the Claimant's case - on advice she had been given by a member of the ET staff), which had been permitted to proceed. The inconsistency in approach in these two matters was a material factor that the ET ought properly to have taken into account and/or given adequate reasons as to why it did not consider it relevant. Alternatively it was perverse to reach such an inconsistent finding.

(2) Additionally, the Respondent itself had considered the unfair dismissal claim to have been presented in time and, in all the circumstances (which included the Claimant acting as a litigant in person when English was not her first language), the ET's conclusion to the contrary was unsustainable.

All other grounds of appeal in both appeals were dismissed.

7. HHJ Birtles having thus given permission for the appeal to proceed on the limited bases identified, this matter was listed for a Full Hearing on 26 September 2014. In the event that

hearing did not take place, as it was adjourned on the Claimant's application the day before. That was the Claimant's second application for the hearing to be adjourned. She had earlier requested that it be listed for a different date to enable her to obtain representation from counsel who had previously appeared for her under ELAAS but that application had been refused (see EAT order seal dated 9 September 2014 and the reasons given on that occasion).

8. The subsequent application was made on medical grounds and was allowed but with the caveat that the Claimant was to provide full medical evidence making it clear why the postponement was necessary (see EAT order seal dated 25 September 2014). In response to that order the Claimant provided a further copy of a doctor's letter but solely on the condition that it could not be disclosed to the Respondent. The Claimant was given the further opportunity to provide full medical evidence which could be disclosed to the Respondent (see EAT order seal dated 16 January 2015) but she has chosen not to do so.

9. In any event, the hearing of the appeal was listed to come before me on 6 February 2015. The day before, the Claimant again applied for a postponement of the hearing. That application was refused for the reasons accompanying my Order seal dated 5 February 2015.

10. At the hearing on 6 February 2015, the Claimant was initially not in attendance but various telephone communications were had with members of the EAT staff, as recorded in my Judgment given that day. The Claimant, accompanied by her daughter, did attend for the hearing shortly after 11:45am but, for the reasons explained in my Judgment of 6 February 2015, it was not practicable to proceed with the hearing of the appeal. Given that I have adopted the unusual course of ultimately determining this appeal on the papers rather than at a further oral hearing, care should be taken to read my Judgment of 6 February 2015 and my

subsequent reasons for declining to review my decision in this regard (see EAT order seal dated 23 March 2015). For convenience, I have annexed these documents to this final Judgment, along with the earlier Orders seal dated 9 September 2014, 25 September 2014, 16 January 2015 and 5 February 2015. In any event, both parties were afforded the opportunity to lodge further submissions in writing for the purposes of the consideration of the appeal on the papers. The Respondent has chosen not to do so. The Claimant has made further written submissions relating to my Judgment of 6 February 2015 and my subsequent decision on her application for review, but not engaging with the points raised by her appeal.

Submissions

The Claimant's Case

11. I turn, then, to the written submissions on the appeal made in the Claimant's skeleton argument. The first point made is that the ET proceedings in question had been underway for some time before the Respondent raised the jurisdiction point; indeed, it only did so on 22 August 2011, the day before a case management discussion hearing.

12. Secondly, the Claimant explains that she had been advised by "the ET helpline" in respect of claim 2200942/2011, that, by submitting the claim on 8 March 2011, she would be "in time" in respect of a decision taken on 8 December 2011. She says the ET in that case had accepted her evidence that such advice was "probable" and her claim was allowed to proceed: "*no one-day out of time argument were never made by the Respondent or the Tribunal*".

13. The Claimant had further understood, following advice from the ET staff, that she had until 31 May 2011 to issue her subsequent unfair dismissal and unlawful deductions claims but adopted the same approach as for the earlier claim and thus submitted those claims within the

same timeframe as advised for that earlier claim; hence lodging both claims on 28 May 2011. It was wrong and inconsistent for the ET to adopt a different course in this respect in relation to the claims lodged on 28 May. Accepting that there is a high test for any perversity challenge, the ET should have adopted the same approach as in the other case before EJ Walker.

14. The Claimant additionally states that she had been ill in the days following a hearing on 17 May 2011 and had had internet problems on 27 May 2011.

The Respondent's Case

15. The issue of when the jurisdiction point had been raised was not a relevant matter. As EJ Glennie had recognised, the fact that the point might not have been appreciated at an earlier stage would not change the position that the ET was bound to consider the question (see paragraph 8 of the reasoning).

16. To the extent that it was suggested that EJ Glennie should have had regard to the earlier reasoning of the EJ Walker ET, that was plainly wrong as the Walker ET only determined the claims before it in late January, and its Judgment was only sent out to the parties in early February 2012; that is, *after* the determination of the point on the Pre-Hearing Review now under consideration.

17. In any event it was not a perverse conclusion. On anyone's case the ET1 had been presented one day out of time for these claims. The time issues for the Walker ET, which concerned unlawful deductions from wages/breach of contract claims, were different. The cause of action for those claims crystallised - and, therefore, time began to run - only on the termination of the Claimant's employment; 28 February 2011. The Claimant had lodged her

claim with the ET on 8 March 2011. The considerations for the Walker ET were necessarily different to those for the Glennie ET. No issue arose from the different conclusions reached.

18. EJ Glennie had proper regard to the facts of the case. Those included the Claimant's evidence as to her mistaken belief that she had until 28 May 2011 to present her claim; the fact that she was acting in person; the advice she said she had received; her language difficulties and so on. He also had regard to the relevant statutory provisions and case-law. He made findings of fact that were entirely open to him on the evidence adduced, which included the finding that, in her conversation with a member of the ET staff:

> **"18. … [the Claimant] specified the end of February as being the date at which her employment came to an end and got [an] answer along the lines that in that case the deadline would expire at the end of May … nothing more specific than that."**

The Relevant Legal Principles

19. The relevant statutory provisions are contained in section 23 and section 111 of the **Employment Rights Act 1996**. Section 23 relates to claims for unlawful deductions from wages and provides as follows:

> **"(2) Subject to subsection (4), an employment tribunal shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with –**
>
> > **(a) in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from when the deduction was made, or**
> >
> > **(b) in the case of a complaint relating to a payment received by the employer, the date when the payment was received.**
>
> …
>
> **(4) Where the employment tribunal is satisfied that it was not reasonably practicable for a complaint under this section to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable."**

20. Section 111 relates to the bringing of an unfair dismissal claim and relevantly provides:

> **"(2) Subject to the following provisions of this section, an employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal -**

> **(a) before the end of the period of three months beginning with the effective date of termination, or**
>
> **(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months."**

21. Time limits in unfair dismissal claims and wrongful deduction claims before the ET raise questions of jurisdiction, not process. They are mandatory. To use the statutory language, "*An Employment Tribunal shall not consider a complaint …*". Jurisdiction cannot be conferred by the agreement of the parties or by waiver or estoppel; it is, further, a matter that can be raised at any time (**Radakovits v Abbey National plc** [2009] EWCA Civ 1346). Where a litigant is aware of the right to make a claim, that puts them on enquiry. Where that litigant then makes an error in presenting their claim out of time due to a mistaken belief as regards the applicable time limit, the question is whether the mistaken belief itself was reasonably held (per Brandon LJ in **Walls Meat Co Ltd v Khan** [1979] ICR 52, CA, at paragraph 60).

Discussion and Conclusions

22. The relevant facts cannot now be in dispute. The Claimant was dismissed on 28 February 2011. The claims that are the subject of consideration on this appeal were required to be lodged on or before 27 May 2011. In fact the Claimant lodged her claims the following day - 28 May 2011 - one day out of time. The reason she did so, on the ET's findings, was because of her own mistaken belief that she had until 28 May 2011 to put in her claim.

23. The Claimant said that her mistaken belief was based on advice given to her by members of the ET staff. That, however, was a contention considered by EJ Glennie, having heard the Claimant's evidence on this point. His finding of fact does not permit of such certainty in terms of the advice the Claimant may have been given. He found the Claimant got a not entirely specific answer to a not entirely specific question (paragraph 18):

> **"I find it probable that what happened is that Dr Koudriachova specified the end of February as being the date at which her employment came to an end and got [an] answer along the lines that in that case the deadline would expire at the end of May and I think it likely that what was said was in fact nothing more specific than that."**

24. The question then was whether the Claimant's mistaken belief itself was reasonably held. The ET took the view it was not: the onus was on the Claimant to obtain specific advice or clarification; she did not do so. That may be because, when she contacted the ET office, she interrupted or spoke over or did not properly listen to what was being said to her. It may be because she never asked the question with sufficient particularity (see the findings at paragraphs 17 to 18 of the ET Reasons). Either way, the implication of the ET's conclusions is that the Claimant's belief was not reasonably held. Indeed the Employment Judge's finding was rather stronger than that. His conclusion was that it was the Claimant's own mistaken belief that had led her to lodge her claims on 28 May (see paragraph 29), that belief being derived from her view that "a month is a month" and:

> **"… 28 February was the last day of the month, 31 March was the last day of the next month, and so on so that one reached 31 May as the last day of the third month after 28 February." (See the recitation of the Claimant's evidence at paragraph 16 of the ET Reasons).**

The ET's conclusion was thus entirely permissible on the evidence before it and the findings of fact it made.

25. The only point that would then arise was the point on which this appeal has been permitted to proceed to a Full Hearing, namely whether the Employment Judge failed to have regard to a different approach to this point by another ET. Putting to one side the fact that different ETs may reach different conclusions on the same facts (that, after all, is what judicial discretion is all about), I can see that, in some cases, a different view formed by another ET might give rise to a material factor that should be taken into account.

26. Here, however, the view of the other ET relied on was not available to EJ Glennie in any event. The Walker ET Judgment and Reasons were not sent out until after EJ Glennie had reached his decision. Perhaps it could be said that the Walker ET erred in not having regard to EJ Glennie's decision. It certainly cannot properly said, however, that EJ Glennie erred in law in not having regard to a decision that had not been made, let alone sent to the parties, at the relevant time.

27. In any event the two ETs were answering different questions. The Walker ET was concerned with an unlawful deductions or breach of contract claim. The cause of action, in either event crystallised (on the ET's view), only at the end of the Claimant's employment; 28 February 2011. She then had three months to lodge her claims. She did so well within that period, on 8 March 2011; so the issue did not arise. The Walker ET did not have to make a finding as to the fact and/or reasonableness of the Claimant's mistaken belief.

28. For completeness, I have also considered whether it might be said that the ET reached a perverse conclusion on the question whether the point had not been spotted by the Respondent or the ET itself at an earlier stage. In my judgment, however, the ET was entirely correct in its approach to this question (see paragraph 8). The timing was not the relevant question. This was a jurisdictional point and could be taken at any time (**Radakovits**).

29. As for the other matters raised by the Claimant, relating to her health in mid-May and/or her IT difficulties, these are not matters permitted to proceed to the Full Hearing of the appeal. In any event they were duly considered on the evidence and rejected by the ET as irrelevant to the question why the claim had been presented out of time (see paragraphs 22 to 24).

30. Having considered all the matters that have been put before me on this appeal, I am satisfied that the ET here adopted the correct approach and reached a conclusion that was entirely open to it. No error of law is disclosed, and I duly dismiss the appeal.

ORDER ANNEX

EMPLOYMENT APPEAL TRIBUNAL

Appeal No UKEAT/0132/14/JOJ

B E F O R E

HER HONOUR JUDGE EADY QC
IN CHAMBERS

IN THE MATTER of an Appeal under Section 21(1) of the Employment Tribunals Act 1996 from the Judgment of an Employment Tribunal sitting at London Central and sent to the parties on the 1st day of February 2012

B E T W E E N :

Mrs M Koudriachova — Appellant

- and -

University College London — Respondent

UPON the Appellant having appealed against the decision of the Deputy-Registrar to refuse her application for a postponement of the listing of her appeal

AND/OR UPON the Appellant having renewed her application for a postponement of the listing of her appeal

AND for the Reasons set out below

IT IS ORDERED THAT:

(1) The Appellant's appeal against the Deputy-Registrar's refusal of the application to postpone is refused.
(2) The Appellant's further application for a postponement of the listing of this appeal is refused.

THE TRIBUNAL DIRECTS that any application for leave to appeal should be made direct to the Court of Appeal within 21 days of the seal date of this Order

Reasons

1. At the hearing of the Appellant's application under r.3(10) EAT Rules 1993 (as amended) 26 March 2014, His Honour Judge Birtles permitted the appeal in UKEATPA/0403/12/JOJ (now UKEAT/0132/l4/JOJ) to proceed to a Full Hearing on amended grounds, but dismissed all other proposed Grounds of Appeal.
2. At the r.3(10) Hearing, the Appellant had been represented by Ms McNair-Wilson, of counsel, acting under ELAAS.
3. By letter 14 April 2014, the EAT wrote to the Appellant requesting that she provide her dates to avoid for six months (from May 2014) to enable her appeal to be listed. That letter expressly stated: "It is also important that we are advised of Counsel's details (if instructed) at the same time to avoid difficulties or conflicts with the future hearing". The letter warned: "A response is required within 7 days from the date of this letter. Late responses will not be considered. If you do not provide this information, a date will be fixed without further reference to you."

4. By email sent at 23:34 21 April 2014, the Appellant notified the EAT as follows:

> "My legal representative Ms.McNair-Wilson is not available on 6, 20-23 May (inclusive), 30 May - 31 October (maternity leave).
>
> In addition, I would prefer if 2 May and 12-16 May (inclusive) can be avoided."

5. Effectively the Appellant was thus offering 10 working days in the first month of the six month period for the listing of her appeal. Although she referred to her chosen counsel's availability, she did not otherwise (as the EAT's letter requested) provide her details.
6. In any event, there is a file note that records that the EAT contacted the Appellant by telephone on 18 June 2014 (leaving a voicemail to this effect), stating that the listing of the appeal could not be delayed or deferred to November and observing that the named representative had not represented the Appellant before the Employment Tribunal.
7. By Notice dated 23 June 2014, the parties were duly warned that the hearing of this appeal would be listed for two hours on 26 September 2014.
8. By email of 18 July 2014, the Appellant observed that the listing of her appeal was for a date on which her legal representative would not be available and noted that the directions (given in standard form) would also require steps to be taken in August and early September. She therefore urged that the hearing be re-listed for a later date, to allow her ELAAS representative to take part in the proceedings, urging that this would be "essential for the fair consideration of the case".
9. This email has been taken to constitute an application for a postponement of the listing of the appeal. I observe that the email suggests that the Respondent's late submission of its Answer in these proceedings meant that the appeal could not be listed during May 2014, when the Appellant states that her legal representative would have been available. This is a point that the Appellant has reiterated at various points in her correspondence with the EAT but it does not assist her. It is, of course, correct to observe that the Appellant had effectively identified 10 working days in May for the listing of her appeal but it was unlikely that hearing could have been listed so early in the six month period for which dates had been requested, not least as it would have been difficult to allow sufficient time for compliance with the EAT's standard directions. That should have been apparent to the Appellant from any consideration of the EAT's Practice Direction. Even if she had not engaged with the likely directions at that stage, however, she would have been aware that the EAT's listing office would be looking at a period of six months, not simply the first month in that period.
10. For completeness, I note that the Appellant's email of 18 July 2014 suggests that her representative would be on maternity leave until 1 October 2014. That is not what was stated in her dates to avoid, which clearly put the maternity leave period as finishing only on 31 October 2014.
11. By email of 15 August 2014, the Respondent emailed to the EAT seeking to resist the application for a postponement. Having observed that the Appellant could and should have made any such application much earlier, the Respondent contended that there was no reason why the Appellant had not sought (and arranged) alternative representation for the appeal given that she was aware that her ELAAS representative was going to be unavailable for a substantial period. The Respondent also observed that, on 24 July 2014, the Appellant had filed a Notice of Appeal against His Honour Judge Birtles' dismissal of her other Grounds of Appeal. Having attached a copy of that document, the Respondent submitted that it demonstrated that he Appellant was quite capable of representing her interests in the EAT appeal. Finally, the Respondent noted that the appeal "relates to claims made by the Claimant in 2011 and there are outstanding complaints of sex and race discrimination in claims 2201995/11 in the Central London Employment Tribunal which have yet to be heard as they are stayed pending the outcome of this appeal. It is therefore in the interests of justice for the current appeal to be resolved as soon as possible."
12. Having considered the competing submissions of the parties, on 15 August 2014, the Deputy Registrar refused the application for a postponement, observing that the Appellant had not provided Counsel's contact details (when providing her dates to avoid) and concluding that it was "unsatisfactory and not in the spirit of the overriding objective to delay this matter until November when [the Appellant's legal representative] returns from maternity leave."
13. Having received that decision, the Appellant forwarded to the EAT an email from Ms.McNair-Wilson (her ELAAS representative) of 1 April 2014, in which she had informed the Appellant:

> "I will contact ELAAS and put myself formally on the record as representing you going forwards.

> I have not yet received the formal notice from the Tribunal. These things are commonly fairly slow. Could I ask that you email me as soon as the Notice is received plus the date of any forthcoming appeal. The last individual I represented at a hearing like your own forgot to tell me the date of the hearing until the week before, when I was no longer available. Unfortunately I was not able to represent him. So if you would like representation then please keep me informed of dates as soon as you are made aware yourself."

14. Although Ms McNair-Wilson might have stated that she would make contact with ELAAS, that did not mean that she had in fact gone "on the record" with the EAT. No such notification has ever been received by the EAT. What the email does make clear, however, is that the Appellant would need to keep in close contact with Ms McNair-Wilson if she was to be sure of obtaining her services as a representative at the appeal hearing. Ms McNair-Wilson could not guarantee her availability on an open-ended basis.
15. The Appellant also further emailed the EAT to make the point that it is at the request of the Respondent that the Employment Tribunal proceedings have been stayed pending the appeal. She states that she has always resisted this course. She again states that the Respondent's delay meant that the appeal could not have been listed in May and resists the suggestion that she should have made her application for a postponement any earlier.
16. Subsequently a dispute has arisen between the parties as to the preparation of the EAT bundle and the Appellant has again emailed the EAT observing that her difficulty in opening large file attachments from the Respondent and her intermittent email access means that she must "put in a further application for the postponement" of her appeal.
17. In considering the Appellant's applications - whether taken as an appeal against the decision of the Registrar or as a renewed application for a postponement - I start by reminding myself of the injunction of the overriding objective, that is that I must seek to deal with this case justly. In so doing, I recognise that the EAT must seek, so far as practicable, to ensure that the parties are on an equal·footing. That does not, however, mean that the EAT is obliged to list an appeal to enable a particular advocate to appear for an otherwise unrepresented party when to do so would delay the listing of the appeal, particularly where the advocate in question did not appear below. I understand that litigants may well wish to retain the same representative but that is not a prerequisite for the fair hearing of an appeal.
18. In this case, the representative in question is unavoidably unable to represent the Appellant at the listed hearing of the appeal. The likelihood of that occurrence should have been apparent to the Appellant from an early stage after the r.3(10) hearing. She could not reasonably have expected the listing of her appeal to be delayed pending the return of counsel from maternity leave. She has, therefore, had the opportunity since April of this year to seek to obtain alternative representation or to prepare to represent herself.
19. The Appellant asserts that it might be difficult to obtain another representative for the hearing of her appeal on a pro bono basis. That does not accord with the experience of the EAT but, in any event, she has provided no evidence of any attempt to seek such alternative representation. I am not persuaded that a prompt approach to the Bar Pro Bono Unit, the Free Representation Unit or to the clerk to Ms McNair-Wilson would have met with a negative response. In any event, it appears that the Appellant has not sought to test that possibility.
20. Moreover, having read the extensive correspondence and submissions on this matter, along with the Appellant's application for appeal to the Court of Appeal, I note that she is a highly articulate litigant with an obvious familiarity with her case. Allowing that this Court is quite used to unrepresented parties appearing before it, I see no reason why she should be prejudiced if ultimately she represents herself at the hearing of this appeal.
21. In making these observations, I have also had regard to the apparent dispute that has more recently arisen in respect of the preparation of the appeal bundle. The difficulty seems to be one that could be readily overcome by a degree of basic co-operation between the parties. The Appellant should be in a position to receive and respond to communications from the Respondent relating to compliance with the EAT's directions. It is likely that she would have to do so even if Ms McNair-Wilson were able to represent her at the hearing of the appeal. If there is a substantive difficulty receiving large file attachments (although the documents in question would seem to be uncontroversial in nature and should already be in the Appellant's possession) that is a matter that should be readily capable of resolution. None of this provides any good basis for a postponement of the hearing of this appeal or for non-compliance with the EAT's directions.

22. Having considered the possible prejudice to the Appellant in not granting a postponement of the appeal hearing, I must also have regard to the potential prejudice to the Respondent if I allowed it, as well as to the interests of justice more generally.
23. This is an appeal which relates to a Tribunal claim filed in 2011 and a decision of the ET of 31 January 2012 (sent to the parties on 1 February 2012). If the Appellant is successful, the Employment Tribunal will need to then actually consider the merits of the underlying claims. The interests of justice dictate that, given the length of time that has passed since the events that are in issue took place, this appeal is heard sooner rather than later. In my judgment that is the overriding concern at this stage and I consider it outweighs the Appellant's desire to be represented by her named counsel.
24. I accordingly dismiss the appeal against the decision of the Deputy-Registrar and/or the renewed application for a postponement of this hearing.

D A T E D the 9th day of September 2014

TO: Dr M. Koudriachova the Appellant
Messrs Pinsent Masons LLP for the Respondent

The Secretary, Central Office of Employment Tribunals, England & Wales

(Case No.2201990/2011 & 2201995/2011)

EMPLOYMENT APPEAL TRIBUNAL

B E F O R E

Appeal No UKEAT/0132/14/JOJ

HER HONOUR JUDGE EADY QC
IN CHAMBERS

IN THE MATTER of an Appeal under Section 21(1) of the Employment Tribunals Act 1996 from the Judgment of an Employment Tribunal sitting at London Central and sent to the parties on the 1st day of February 2012

B E T W E E N :

Mrs M Koudriachova — Appellant

- and -

University College London — Respondent

UPON the Appellant having applied for the hearing of her appeal (presently due to be heard before me tomorrow, Friday 26 September 2014) to be adjourned for medical reasons (having provided an undated letter apparently signed by a Doctor James Cook from Addenbrooke's Hospital, Cambridge, confirming that the Appellant has been booked in for urgent surgery that day)

AND UPON the Respondent having objected to this application - noting the Appellant's previous attempts to have this matter taken out of the list; observing that it will suffer wasted costs if the application is allowed; contending that inadequate evidence has been provided by the Appellant in support of her application and submitting that there are underlying ET proceedings that will be further delayed if the appeal is not heard tomorrow

IT IS ORDERED THAT:

(1) The Appellant's application for an adjournment of the listing of this appeal is allowed.
(2) The parties are directed to provide their dates to avoid for the re-listing of this appeal within 7 days of the seal date of this Order.
(3) The Appellant is to provide full medical evidence in support of her application, which should be from a medical practitioner and should confirm the nature of the surgery that had to be undertaken on 26 September 2014, the date when the appointment for that surgery was made and the reasons why it had to be undertaken that day.
(4) The parties are permitted to apply on paper on notice to the other party to vary or discharge this Order: the Employment Appeal Tribunal itself reserves the right to vary or discharge this Order on prior notice to the parties.

THE TRIBUNAL DIRECTS that any application for leave to appeal should be made direct to the Court of Appeal within 21 days of the seal date of this Order.

D A T E D the 25th day of September 2014

TO: Dr M. Koudriachova the Appellant
Messrs Pinsent Masons LLP for the Respondent

The Secretary, Central Office of Employment Tribunals, England & Wales

(Case No.2201990/2011 & 2201995/2011)

EMPLOYMENT APPEAL TRIBUNAL

BEFORE

Appeal No UKEAT/0132/14/JOJ

HER HONOUR JUDGE EADY QC
IN CHAMBERS

IN THE MATTER of an Appeal under Section 21(1) of the Employment Tribunals Act 1996 from the Judgment of an Employment Tribunal sitting at London Central and sent to the parties on the 1st day of February 2012

B E T W E E N :

Mrs M Koudriachova — Appellant

- and -

University College London — Respondent

Upon consideration of the Appellant's e-mail of 13 January 2015

AND for the reasons set out below

IT IS ORDERED THAT:

1. By 4.00pm 27 January 2015, the Appellant is to provide to both the EAT and the Respondent the full medical evidence upon which she seeks to rely as complying with paragraph (3) of the Order seal dated 25 September 2014 (such evidence being disclosed to the Respondent solely for the purposes of the current proceedings).
2. To the extent that she fails to do so, the Appellant will be debarred from seeking to rely on that evidence in response to any application that might be made by the Respondent arising out of her application of 25 September 2014 and the Order allowing the postponement of the earlier listing of this appeal.
3. The parties are permitted to apply on paper on notice to the other party to vary or discharge this Order; the Employment Appeal Tribunal itself reserves the right to vary or discharge this Order on prior notice to the parties.

THE TRIBUNAL DIRECTS that any application for leave to appeal should be made direct to the Court of Appeal within 21 days of the seal date of this Order.

Reasons

(1) The Appellant's appeal herein was listed to be heard on Friday 26 September 2014. The day before that hearing was due to take place, the Appellant e-mailed the EAT applying for a postponement of the hearing for medical reasons. She attached an undated letter apparently signed by a Doctor James Cook from Addenbrooke's Hospital, Cambridge, confirming that the Appellant had been booked in for urgent surgery on 26 September 2014.

(2) The Respondent objected to this application. It noted the Appellant's previous attempts to have this matter taken out of the list; observed that it would suffer wasted costs if the

Appellant in support of her application; and submitted that there were underlying ET proceedings that would be further delayed if the appeal is not heard tomorrow.

(3) Having considered the Appellant's application and the Respondent's submissions in response, I allowed the application but directed that the Appellant was to "*provide full medical evidence in support of her application, which should be from a medical practitioner and should confirm the nature of the surgery that had to be undertaken on* 26 *September 2014, the date when the appointment for that surgery was made and the reasons why it had to be undertaken that day*" (see paragraph (3) of the Order seal dated 25 September 2014).

(4) As of 30 December 2014, the Appellant had not complied with the requirement to provide medical evidence to the EAT. A letter of that date was duly sent to her, requiring the evidence to be provided by no later than 4.00pm 13 January 2015.

(5) By e-mail of 13 January 2015, the Appellant stated she was "re-sending the doctor's letter". She further stated:

> "Please note that the medical information is provided to the EAT in confidence. I re-iterate that I do not give permission to pass medical information to the Respondent …"

(6) It may be arguable that the attachment to the Appellant's e-mail - which appears to be a copy of the earlier letter with further manuscript additions - fails to comply with the terms of the Order seal dated 25 September 2014.

(7) Moreover, in stating that the letter cannot be forwarded to the Respondent, the Appellant is seeking to deny the other party to this appeal the opportunity to make informed representations on the evidence upon which she relies.

(8) The earlier postponement was granted on condition that the Appellant provide full medical evidence. The Respondent is entitled to understand the basis upon which the earlier application was made and allowed.

(9) To the extent that the Appellant might wish to rely on any medical evidence to resist any application that the Respondent might subsequently make, the Respondent must be entitled to have sight of that evidence.

D A T E D the 16th day of January 2015

TO: Dr M. Koudriachova the Appellant
Messrs Pinsent Masons LLP for the Respondent

The Secretary, Central Office of Employment Tribunals, England & Wales

(Case No.2201990/2011 & 2201995/2011)

EMPLOYMENT APPEAL TRIBUNAL

Appeal No UKEAT/0132/14/JOJ

B E F O R E

HER HONOUR JUDGE EADY QC
IN CHAMBERS

IN THE MATTER of an Appeal under Section 21(1) of the Employment Tribunals Act 1996 from the Judgment of an Employment Tribunal sitting at London Central and sent to the parties on the 1st day of February 2012

B E T W E E N :

Mrs M Koudriachova — Appellant

- and -

University College London — Respondent

Upon the Appellant's application (by email sent at 12:08, Thursday 5 February 2015) for a postponement of the hearing of this appeal due to commence at 10:30 Friday 6 February 2015

AND for the reasons set out below

IT IS ORDERED THAT:

1. The application is refused

THE TRIBUNAL DIRECTS that any application for leave to appeal should be made direct to the Court of Appeal within 21 days of the seal date of this Order.

Reasons

1. The Appellant has had ample notice of the hearing of her appeal. This is, indeed, the second listing of this hearing (the initial listing of 26 September 2014 having been postponed upon the Appellant's application of 25 September 2014) and so there has been plenty of opportunity for the Appellant to ensure that she is in a position to present her case (with or without assistance) on her appeal.
2. The EAT is well used to parties representing themselves and there is no reason to think that the Appellant would be unable to do so. The Appellant refers to the stress that she is under and to the fact that this impacts upon her ability to communicate in English (not her first language). She does not, however, submit any medical documentation to suggest that her levels of stress give rise to any medical condition. Many litigants before the EAT (and other Courts) experience levels of stress. That does not give rise to a good basis for the

postponement of a hearing. As for the Appellant's professed language difficulties, aside from her employment in English higher educational establishments for a number of years, I note that her various communications with the EAT demonstrate a good command of the English language and that she was able to represent herself before the Employment Tribunal (at various hearings) and in circumstances that she characterised as very stressful on occasions. I do not accept that the Appellant has demonstrated any proper basis for thinking that she cannot properly represent herself at the hearing of her appeal tomorrow.

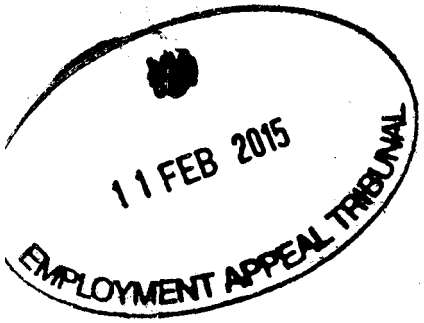
3. As for the written documentation upon which she relies. The Appellant has previously been assisted in the presentation of her appeal, with full amended grounds of appeal having been prepared on her behalf by counsel instructed under ELAAS. The skeleton argument that she has lodged with the EAT gives every appearance of being a final draft and does not suggest that it requires further up-dating. In any event, skeleton arguments had to be exchanged and lodged with the EAT in advance of the hearing and so there would be no basis, for the Appellant to seek to lodge a further/re-drafted/up-dated skeleton argument.
4. This appeal relates to an ET claim lodged on 28 May 2011. The underlying claim is one of unfair dismissal in respect of the termination of the Claimant's employment on 28 February 2011. If her appeal succeeds, this matter would need to be remitted to the ET for consideration of that claim, which will, by then, be over four years after the events in issue. In any event, other claims of unlawful discrimination relating to her employment (so, prior to 28 February 2011) have been stayed pending the determination of this appeal. I must also take into account the interests of the Respondent in this regard and, more generally, the risk to the fair determination of the claims before the ET if the hearing of this appeal does not proceed tomorrow. I further keep in mind the requirements of the overriding objective. In my judgment, it is quite clear that justice will not be served by further delay in this matter and I accordingly refuse the application.

D A T E D the 5th day of February 2015

TO: Dr M. Koudriachova the Appellant
Messrs Pinsent Masons LLP for the Respondent

The Secretary, Central Office of Employment Tribunals, England & Wales

(Case No.2201990/2011 & 2201995/2011)



EMPLOYMENT APPEAL TRIBUNAL

Appeal No UKEAT/0132/14/JOJ

B E F O R E

HER HONOUR JUDGE EADY QC
IN CHAMBERS

IN THE MATTER of an Appeal under Section 21(1) of the Employment Tribunals Act 1996 from the Judgment of an Employment Tribunal sitting at London Central and sent to the parties on the 1st day of February 2012

B E T W E E N :

Mrs M Koudriachova — Appellant

- and -

University College London — Respondent

UPON HEARING Mrs M Koudriachova, the Appellant, in person and Ms Koudriachovia (the AppellanT's daughter) on the Appellant's behalf, and Ms C McCann, of Counsel, on behalf of the Respondent

AND UPON hearing an application of the Appellant for an adjournment

AND UPON the Appellant's behaviour and conduct in court being such that the hearing cannot proceed today (the Appellant apparently not being in a position to represent herself and having no other representative and the Court not being in a position to properly hear from the Respondent or to give a Judgment or directions without interruptions from the Appellant)

AND UPON the Court not having material upon which to form a concluded view as to whether the Appellant's conduct was voluntary or indicative of some medical condition

IT IS ORDERED THAT

1) The full hearing of this appeal will be adjourned for 28 days.

2) Within 28 days of the seal date of this Order, should she wish to progress her appeal at an oral hearing, the Appellant is to provide to the Court medical evidence that can be disclosed to the Respondent (on the basis that it is disclosed only for the purposes of these proceedings), which demonstrates that (and explains why) the Appellant was indeed medically unfit to proceed with the hearing of her appeal today and thus required the adjournment of this hearing.

3) Upon receipt of such evidence but, in any event, after 28 days, this matter be restored to Her Honour Judge Eady QC (or some other Judge of this Court) for further consideration.

4) If the medical evidence has not been provided in accordance with the Order at 1) above, the Court shall proceed to deal with this matter on the papers as it sees fit. This may include making a final determination of this appeal on the papers as are presently before the Court.

5) If the Appellant has provide medical evidence in compliance with paragraph 1) of this Order, which on its face might justify the adjournment of today's hearing, the Court will then give further directions as it sees fit, which may include a direction that further medical evidence be provided to explain precisely what condition(s), if any, would have to be put in place for the Appellant to be able to attend a hearing before this Court if she is unable to obtain representation.

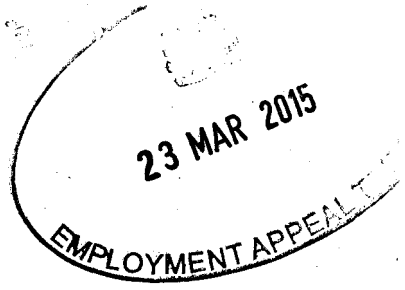
IT IS DIRECTED THAT any application for leave to appeal should be made direct to the Court of Appeal within 21 days of the seal date of this Order.

D A T E D the 6th day of February 2015

TO: Dr M. Koudriachova the Appellant
Messrs Pinsent Masons LLP for the Respondent

The Secretary, Central Office of Employment Tribunals, England & Wales

(Case No.2201990/2011 & 2201995/2011)



EMPLOYMENT APPEAL TRIBUNAL

Appeal No UKEAT/0132/14/JOJ

B E F O R E

HER HONOUR JUDGE EADY QC
(In chambers)

IN THE MATTER of an Appeal under Section 21(1) of the Employment Tribunals Act 1996 from the Judgment of an Employment Tribunal sitting at London Central and sent to the parties on the 1st day of February 2012

B E T W E E N:

Mrs M Koudriachova — Appellant

- and -

University College London — Respondent

UPON the Appellant's email 3 March 2015 being treated as an application (out of time) for a review of the Order of the Employment Appeal Tribunal seal dated 11 February 2015

AND UPON consideration of that application in the light of the full history of this matter and the Judgment given on the adjournment of the Full Hearing of the Appellant's appeal on 6 February 2015

AND for the reasons provided below

IT IS ORDERED THAT:

1. The application for review is allowed in part. Paragraph 4) of the EAT's Order seal dated 11 February 2015 is varied to read as follows:

   4) If the medical evidence has not been provided in accordance with the Order at 1) above, the Court shall proceed to deal with this matter on the papers as it sees fit. This may include making a final determination of this appeal on the papers as are presently before the Court along with any supplemental written submission and authorities as lodged by the parties (and served on the other party) in accordance with any future Order of this Court
2. Pursuant to this direction, as varied, within 21 days of the seal date of this Order ,the parties are permitted to lodge with the Employment Appeal Tribunal (to be served on the other party at the same time) a supplemental written submission, along with any additional authorities on which they might seek to rely
3. Upon receipt of any such written submissions and, in any event, on the expiration of 21 days from the seal date of this Order, this matter will be restored to Her Honour Judge Eady QC (or some other Judge of this Court) for further consideration.
4. Save as allowed at 1. above, the application for review is refused.
5. The parties are permitted to apply on paper on notice to the other party to vary or discharge this Order; the Employment Appeal Tribunal itself reserves the right to vary or discharge this Order on prior notice to the parties.

IT IS DIRECTED THAT any application for leave to appeal should be made direct to the Court of Appeal within 21 days of the seal date of this Order.

Reasons

1. No reason has been provided as to why the application for review has been made late. It is plainly more than 14 days after the seal date of the relevant Order (which sets out directions that were explained at the hearing on 6 February 2015 in any event).
2. Moreover, it is not accepted that the use of the terms "behaviour" and "conduct" carry any pejorative connotation. The terms of the Order reflect that the Appellant behaved in a way that meant that the full hearing of her appeal could not take place on the day on which it had been listed (after having previously been postponed at her application). For reasons given in the Judgment delivered on the day, the Court was unable to reach a concluded view as to the reasons for/cause of that behaviour. The Order was thus expressed in neutral terms and the directions expressly permitted any relevant medical evidence explaining the reasons for the Appellant's behaviour to be disclosed if relied on by the Appellant.
3. As for the information available to the Court on 6 February 2015, that was referred to in the Judgment given on the day and the transcript of that Judgment should be referred to for an explanation of what was taken into account in this regard.
4. For the record, it should be noted that the Court arranged for a member of its staff with first aid responsibilities to be present at the back of the Court during the hearing on 6 February 2015. It is correct to say that no-one present considered it necessary to call an ambulance. Equally, however, the Judgment given on 6 February 2015 allowed that the Appellant might wish to see a doctor or hospital that day, albeit that such a course would have had to have been a matter for her.
5. As for the future progress of this appeal, the Order seal dated 11 February 2015 gave directions which allowed for the possibility of a resumed oral hearing (should medical evidence be provided to demonstrate why the Appellant had not been able to participate in the previously listed hearing) or for this matter to be dealt with on the papers. No medical evidence having been disclosed, for the reasons already given, the Court will now proceed to determine this appeal on the papers, which include the skeleton arguments served by the parties in advance of the hearing on 6 February 2015.
6. That said, it is allowed (as the Appellant's email suggests) that the written skeleton arguments previously served might have envisaged that the submissions made therein would be supplemented by oral argument. In the circumstances, the interests of justice allow that the earlier Order should be varied to provide that, within 21 days of the seal date of this Order, the parties should be permitted to lodge with the Employment Appeal Tribunal (to be served on the other party at the same time) a supplemental written submission, along with any additional authorities on which they might seek to rely.

3.

D A T E D the 19th day of March 2015

TO: Dr M. Koudriachova the Appellant
Messrs Pinsent Masons LLP for the Respondent

The Secretary, Central Office of Employment Tribunals, England & Wales

(Case No.2201990/2011 & 2201995/2011)