

**EMPLOYMENT APPEAL TRIBUNAL**  
FLEETBANK HOUSE, 2-6 SALISBURY SQUARE, LONDON EC4Y 8AE

At the Tribunal  
On 11 July 2017

**Before**

**THE HONOURABLE MR JUSTICE SOOLE**

**(SITTING ALONE)**

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MR M HASSAN

APPELLANT

(1) BARTS HEALTH NHS TRUST  
(2) DR S RYAN  
(3) MR M PANTLIN

RESPONDENTS

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Transcript of Proceedings

JUDGMENT

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Corrected

**APPEARANCES**

For the Appellant

MR M HASSAN  
(The Appellant in Person)

For the Respondents

No appearance or representation by  
or on behalf of the Respondents

## **SUMMARY**

### **PRACTICE AND PROCEDURE - Bias, misconduct and procedural irregularity**

On a Rule 26 ‘initial consideration’ on 26 August 2015 before presentation of the ET3 response, the London Central Employment Tribunal directed a Preliminary Hearing on a jurisdictional issue, to be heard on 2 October 2015. Before receipt of notice of that hearing, the Appellant applied for transfer of the case to another region on grounds of alleged bias. The Tribunal responded with a direction on 9 September 2015 that the issue of transfer would be considered at a Preliminary Hearing on 20 October. At the Preliminary Hearing on 2 October the Tribunal struck out parts of the claim on the grounds of *res judicata* / **Henderson v Henderson** / abuse of process; and noted that the application to transfer would be considered on 20 October.

Appeal allowed against the directions and Orders of 26 August, 9 September and 2 October on grounds that (i) the effect of Rules 26 and 54 is that the Tribunal’s jurisdiction for ‘initial consideration’ and any consequent direction for a Preliminary Hearing is dependent on receipt of the ET3 response; and/or (ii) that the transfer application should have been listed for Preliminary Hearing before, not after, the Preliminary Hearing on the jurisdictional issues. The application for transfer was remitted to London Central. The Appellant’s applications under **EAT Rules** Rule 27(1) / **EAT Practice Direction 2013** paragraph 10.3 for Orders for disclosure and for the admission of other evidence were refused.

**A** **THE HONORABLE MR JUSTICE SOOLE**

1. This is the Full Hearing of grounds 1 and 2 of the Appellant's appeals against two  
B Decisions of the London Central Employment Tribunal, namely:

(i) 26 August 2015 - Employment Judge Potter directing that a Preliminary  
Hearing to consider whether the Employment Tribunal ("the ET") has jurisdiction  
to consider Mr Hassan's complaint should be heard on 2 October 2015.

C (ii) 9 September 2015 - Employment Judge Goodman directing that Mr Hassan's  
application for his case to be transferred from London Central to another region  
would be considered at a Preliminary Hearing on 20 October 2015.

D 2. The Order for a Full Hearing on these grounds was made by the President, Simler J, on  
26 January 2016 following a Rule 3(10) Hearing. She refused permission on the remaining  
E grounds which alleged fraud and collusion by the London Central ET and the Respondents.  
Permission to appeal on those further grounds was refused by the Court of Appeal on 3 March  
2017.

F 3. Notice of today's hearing was sent to Mr Hassan on 21 April 2017. Today he submitted  
that that notice was unlawful. Indeed, he submitted that this hearing was unlawful. By email  
dated 7 July 2017, Mr Hassan applied to adjourn today's hearing. That was refused on the  
G same day by Kerr J.

H 4. On 10 July 2017, yesterday, Mr Hassan lodged a 41-paged document entitled, "*Notes  
and Comments*", which further rehearsed his allegations against the Respondent, the London  
Central ET and the EAT.

**A** 5. This morning, he supplied three bundles of documents and two skeleton arguments.  
The first headed, “*Skeleton argument for the E.A.T’s hearing of 11/7/2017*”, ran to 154 pages.  
The second skeleton argument, headed, “*Skeleton argument for the E.A.T’s hearing of*  
**B** *11/7/2017 in respect of the Claimant’s interim application seeking to establish the committed*  
*fraud by Judge David Richardson in the Claimant’s appeals against the same Respondent from*  
*the made decisions by Central London ET*”, ran to 107 pages.

**C** 6. Despite the clear and narrow ambit of the appeal, Mr Hassan has, through his written  
and oral submissions today, sought to raise a range of wild allegations of collusion and bias on  
the part of London Central ET and the EAT. By way of one example, this has included the  
**D** assertion that a Decision of the East London ET, dated 6 January 2017, in another of his claims  
against the Respondent, had made findings of fraud against the London Central ET. On  
consideration of that Decision, the Tribunal was simply recording his submissions and  
**E** allegations to that effect.

7. All that said, I have allowed, with considerable indulgence, Mr Hassan to address me  
from his arrival this morning at about 11.30 - he was held up in traffic - until 3.00 this  
**F** afternoon. In the course of his submissions, he took me to a number of pages and passages in  
his skeleton arguments.

**G** 8. I reject his submissions that any of this material or allegations are relevant to this  
appeal. In any event, nothing I have seen or read indicates any basis for these allegations. I  
also reject his submission that today’s hearing is unlawful, whether under Article 6 of the  
**H** ECHR or otherwise.

**A** 9. By letter to the EAT dated 24 March 2017, the Respondents’ solicitors advised that they are not opposing the appeal “*in the interests of costs, proportionality and to ensure that the Claimant’s claims are heard and determined in the Employment Tribunal without further delay*”. Rule 6(5) of the **EAT Rules 1993** provides that in such circumstances:

**B** “... the parties may deliver to the Appeal Tribunal an agreed draft of an order allowing the appeal and the Tribunal may, if it thinks it right to do so, make an order allowing the appeal in the terms agreed.”

**C** In their letter of 24 March, the Respondents’ solicitors said in respect of that Rule:

“In circumstances where the Claimant has on many occasions, objected so strongly to the Respondents and the manner in which he considers that we have handled his litigation on their behalf, the Respondents do not consider that they are ... in a position to agree the terms of a draft Order with the Claimant.”

**D** 10. Mr Hassan has continued to assert that Orders made by the Registrar, whose effect was to treat that letter of 24 March as the Respondents’ answer to the appeal, were unlawful. His appeal against those Orders was dismissed by His Honour Judge Richardson on 8 June 2017.

**E** There is no basis for him to pursue the argument.

**F** 11. I return to the appeal. This Tribunal has made clear that it does not allow appeals by consent without scrutiny. The good reasons for that caution are identified in the judgment of His Honour Judge Richardson in **Dozie v Addison Lee plc** UKEAT/0328/13, decision dated 13 August 2013, at paragraph 20. I must therefore conduct that necessary scrutiny.

**G** 12. Mr Hassan was employed by the First Respondent (“the Trust”) as a Locum Consultant Gynaecologist in Reproductive Medicine and Surgery between 23 July 2012 and 30 April 2013. He brought proceedings against the Trust based on alleged public interest disclosures and

**H** breach of contract. The claim proceeded in the London Central ET. By a Reserved Judgment with Reasons promulgated on 2 June 2014, following a Full Merits Hearing between 17 and 27

**A** March 2014, all his claims were dismissed. Mr Hassan’s appeal against that Decision has subsequently been dismissed by this Tribunal and the Court of Appeal.

**B** 13. In the meantime, on 18 June 2015, Mr Hassan presented this claim. As the President, Simler J, observed in her judgment on 26 January 2016 these fresh proceedings raise issues that, at the very least, overlap substantially with the issues raised in the original claim.

**C** 14. By letter dated 28 August 2015, Mr Hassan asked the London Central ET to transfer the case to another region on the basis of an alleged conflict of interest. As I have indicated, he makes allegations of misconduct, fraud, collusion and bias against the London Central Region.

**D** 15. In the meantime, on 1 September 2015, he received a letter dated 26 August 2015 from the London Central ET which was a notice of a Preliminary Hearing on 2 October 2015, to consider whether the ET had jurisdiction to consider his complaints. In response to that letter, **E** Mr Hassan wrote, on 4 September 2015, asking again for the matter to be transferred to another region. By letter dated 9 September 2015, he was notified of Employment Judge Goodman’s decision that his application to transfer the case would be considered at “the Preliminary **F** Hearing on 20 October”.

16. On 18 September 2015, the Respondents presented their ET3 response.

**G** 17. Given the use of the definite article in the letter of 9 September, i.e. “the Preliminary Hearing”, a question arises as to whether the reference to “20 October” rather than “2 October” was a typographical error. **H**

A 18. At the Preliminary Hearing on 2 October 2015, Employment Judge Snelson made  
Orders that the Tribunal had no jurisdiction in respect of Mr Hassan’s claim to the extent that  
the claim was based on events prior to 31 May 2013. He reached the conclusion on the grounds  
of *res judicata* and/or **Henderson v Henderson** [1843] 3 Hare 100 and/or abuse of process.

B  
C 19. Under paragraph 8 of the “Observations” in that Order, there is reference to Mr  
Hassan’s pending application to transfer the claim to another region. In consequence, I am  
satisfied that there was no typographical error in the decision letter of 9 September 2015.

D 20. Rule 26 of the **Employment Tribunal Rules of Procedure**, under the heading “Initial  
consideration”, provides :

“(1) As soon as possible after the acceptance of the response, the Employment Judge shall consider all of the documents held by the Tribunal in relation to the claim, to confirm whether there are arguable complaints and defences within the jurisdiction of the Tribunal (and for that purpose the Judge may order a party to provide further information).

E (2) Except in a case where notice is given under rule 27 or 28, the Judge conducting the initial consideration shall make a case management order (unless made already), which may deal with the listing of a preliminary or final hearing, and may propose judicial mediation or other forms of dispute resolution.”

F 21. Rule 54 provides, under the heading “Fixing of preliminary hearings”:

“A preliminary hearing may be directed by the Tribunal on its own initiative following its initial consideration (under rule 26) or at any time thereafter or as the result of an application by a party. The Tribunal shall give the parties reasonable notice of the date of the hearing and in the case of a hearing involving any preliminary issues at least 14 days notice shall be given and the notice shall specify the preliminary issues that are to be, or may be, decided at the hearing.”

G 22. Ground 1 of the appeal is that the direction of 26 August 2015 was wrong in law  
because the effect of Rules 26 and 54 is that the Employment Judge’s jurisdiction for ‘initial  
consideration’ and for any consequent direction for a preliminary hearing are dependent on  
H receipt of the response to the claim. Accordingly, since the response was not presented until 18

**A** September 2015, there was no jurisdiction to make the direction of 26 August. In other words, that the direction was premature.

**B** 23. Ground 2 of the appeal is that in circumstances where Mr Hassan was challenging the impartiality of London Central and seeking to transfer to another region, it was an error of law for the determination of that application to be listed on a date after the date for consideration of the jurisdictional issues.

**C** 24. I agree on both counts. On ground 1, the language of the Rules is clear. On ground 2, the application for transfer must logically come first. Accordingly the directions of 26 August  
**D** 2015 and 9 September 2015 must be set aside. It follows that the Judgment and Order made on 2 October 2015 must also be set aside.

**E** 25. The next step must be the Preliminary Hearing of Mr Hassan's application for transfer, which must take place before any Preliminary Hearing on jurisdictional or any other issues. Mr Hassan strenuously opposes the remission of the first matter to the London Central ET, rehearsing his allegations of collusion and bias. As I have indicated, these allegations form no  
**F** part of the appeal, and in any event nothing I have heard or read provides any basis for them. My conclusion is that there is no basis for this appellate Tribunal to refer the matter back to a different region.

**G** 26. Mr Hassan also applies for disclosure of documents and the admission of fresh evidence. The two applications are identified in his letter to the EAT dated 5 April 2017 at  
**H** points (4) and (5), namely:

**“(4) An application seeking an Order for disclosure of documents pursuant to Rule 27(1) of the EAT Rules 1993 and the relevant Judgments of the European Court of Human Rights;**

**A** (5) An application seeking admission of fresh evidences and new documents, [as] per paragraph 10.3 of the EAT Practice Directions 2013 and the relevant Judgments of the European Court of Human Rights.”

**B** 27. From his answers to my questions today, I understood Mr Hassan to accept that those were the relevant applications. However, in the course of his subsequent submissions, at times he put the matter more broadly. I make it clear that my consideration and decision on these matters relates to all applications, however presented in the mass of material before me, for this **C** Tribunal to order the disclosure of further documents or the admission of further evidence.

**D** 28. Returning to points (4) and (5) in the letter of 5 April 2017, paragraph 56 of that letter identifies the documents as: (a) the contracts which the Respondents had issued to appointees (Dr Litha Pepas and Dr Parimalam Ramanathan) after its selection process for the two 12-month fixed-term Consultant posts of March 2013; (b) the verifiable documents supporting the information recorded in the two notices of enforcement, dated 18 December 2015 and 21 **E** December 2015 upon which the Respondents have issued enforcement proceedings from Cardiff County Court. The letter sets out, at considerable length, the alleged relevance of these documents to the underlying claim and to the allegations of fraud and collusion.

**F** 29. The second application is made pursuant to 10.3 of the **EAT Practice Direction 2013**. In support, Mr Hassan alleges collusion and bias by the London Central ET and the EAT.

**G** 30. Rule 27(1) of the **Employment Appeal Tribunal Rules 1993** under the heading of “Attendance of witnesses and production of documents” provides that the Appeal Tribunal may, on the application of any party, order any person to attend before the Tribunal as a witness **H** or to produce any document. Paragraph 10.3 of the **EAT Practice Direction 2013** sets out the

**A** Ladd v Marshall [1954] EWCA Civ 1 principles which apply in respect of applications to admit.

**B** 31. By a decision made on 6 July 2017, ancillary to this appeal, His Honour Judge Richardson refused Mr Hassan’s application for a Preliminary Hearing to deal with these matters. He stated in paragraph 2 of his Reasons:

**C** “2. As I explained in my judgment on 8 June 2017, the appeal in [EAT/0042/16/RN] is on very narrow issues concerned with the ordering of preliminary issues in the Employment Tribunal. The appeal is in fact not opposed. I see no reason why the wide ranging orders which the Appellant seeks are required for the purpose of disposing of this very simple appeal. I am not prepared to order a further preliminary hearing for them. If the Appellant wishes to pursue those applications he may do so at the start of the hearing on 11 July; but I make it clear that I cannot see their relevance to the narrow issues with which this appeal is concerned.”

**D** 32. In the Reasons provided in support of his Decision dated 7 July 2017, Kerr J expressed his agreement with those observations.

**E** 33. In my judgment, there is simply no good basis for this Tribunal to make any Orders for disclosure of documents or for the admission of any further evidence. This appeal was on the narrow jurisdictional grounds which I have identified. Further documents and evidence have no relevance to the issues on the appeal. There is no other reason why this appellate Tribunal  
**F** should exercise its powers under Rule 27 or the **Practice Direction** or otherwise.

**G** 34. My conclusion is that the applications must be refused and are totally without merit.

**H**