

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

At the Tribunal  
On 24 May 2013

**Before**

**THE HONOURABLE MR JUSTICE LANGSTAFF (PRESIDENT)**

**MS K BILGAN**

**MS N SUTCLIFFE**

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MS P ROWE

APPELLANT

MRS R HALSALL T/A MALVERN NURSING HOME

RESPONDENT

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Transcript of Proceedings

JUDGMENT

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## **APPEARANCES**

For the Appellant

No appearance or representation by  
or on behalf of the Appellant

For the Respondent

MR RICHARD REES  
(Representative)  
Peninsula Business Services Ltd  
The Peninsula  
2 Cheetham Hill Road  
Manchester  
M4 4FB

## **SUMMARY**

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

The Claimant did not turn up to pursue an appeal relating to apparent bias. She could not be contacted. Nor had she supplied documents, though repeatedly asked, and then directed by the EAT to do so; and had not attended before a Judge as ordered to explain why not.

Accordingly, after waiting for 1 hour in case she appeared, the Tribunal proceeded to hear the appeal. There was no sufficient evidence of bias, a document which purported on its face to be an affidavit having been disowned by the Claimant in a subsequent letter to the EAT, and bias was not self-evident from the face of the Employment Tribunal's letter refusing a review of an automatic strike-out for non-compliance for failure to disclose documents to the ET and Respondent despite orders to do so.

Accordingly, the appeal was dismissed on its apparent merits.

**THE HONOURABLE MR JUSTICE LANGSTAFF (PRESIDENT)**

1. This is an appeal against a decision to refuse a review. The circumstances are these. On 13 July 2012 the Claimant's claim of race discrimination and victimisation, unfair dismissal and a detriment for making a public-interest disclosure (whistleblowing) were struck out for non-compliance with unless orders for disclosure. The Claimant applied for what was described as a review. Employment Judge Lancaster, at Leeds, refused to grant a review, for reasons that were set out in a letter to the Claimant on 3 August 2012. Although the Claimant appealed against that decision on grounds that asserted that Employment Judge Lancaster had erred in law in the way he approached the exercise of his discretion to refuse a review, only one ground was permitted to proceed to this hearing by Slade J on 20 December 2012. That ground was alleged bias.

2. The Claimant was, in accordance with the usual practice, ordered to file an affidavit. At that time she was represented by solicitors. She swore an affidavit, in the sense that she went through the formal process of swearing one, on 10 January 2013. That verified a schedule in which the Claimant set out her own account of events that, it was maintained, the Judge had impermissibly taken into account in his decision, thereby indicating bias.

3. On 17 February 2013, in a handwritten letter to "Judge Slade", by which is plainly meant Slade J, who had presided over the rule 3(10) application at which permission was given to proceed to this Tribunal, the Claimant said this:

**"I wish to inform the tribunal that I no longer want Bashir and Green Solicitors to represent me and would be appreciated [sic] if the tribunal would forward to me all relevant documents for me to continue with my case.**

**I Pauline Rowe of the above address do clarify that the Affidavit signed of 10 January 2013 is invalid as the oath was taken on a wrapped up parcel book and not on the Bible. Mir knowing**

UKEAT/0622/12/DM

**as a Moslem he was not allowed to lie did wrap the book in a brown paper [the next words are not photocopied] refused to unwrap the parcel when asked to do so. He then pressurised me into swearing on the alleged Bible. The time was 3.45pm with a taxi waiting outside to take the documents to Bashir and Green Solicitors in which Adrian Green paid £9 out of his pocket for the Affidavit and further paid for the return trip of the taxi that took me there and back.**

**Mir did commit a breach of law by perverting the course of justice.**

**I believe the affidavit was designed and engineered by you Judge Slade solely for respondent to make the application to strike out the case on scandalous grounds whilst they, the tribunal officials were breaking the law in failing to recognise the points of law were in the case as I was dismissed on the first day of the hearing. Why did the respondent only had to [sic] comment or give an answer when they commit racial discrimination. The comment is to make the application to strike out the case.**

**In conclusion whilst you, Judge Slade have all these evidence [sic] in front of you, it will be unwise for the tribunal not to follow the rule of law in this matter. I look forward to hearing from you.”**

4. It thus appears, on the face of it, that the Claimant does not stand by the contents of what on the face of it was a properly sworn affidavit of 10 January 2013. Accordingly, there is no evidence filed in accordance with Slade J’s order, and there is no evidential material that can support the allegation of bias.

5. The matter is compounded by the non-appearance of the Claimant this morning. We waited for an hour and a couple of minutes for her to arrive in case she had been delayed. The staff inform us that they have telephoned the Claimant’s last known telephone number. Mr Richard Brown telephoned more than once and has had no response. David Mead, in the court office, has also phoned; he too has had no response. In case there might be an alternative telephone number on which the Claimant might be contacted to see if there had been a problem in her getting to this Tribunal, the former solicitor, Mr Green, was telephoned. The only number he had was the number that the staff had already phoned.

6. There has been no other indication in recent weeks that the Claimant intended to pursue this appeal. She was written to to require her assistance in preparing the case for the appeal that had been permitted to proceed. Thus on 8 April 2013 she was written to at the address on file UKEAT/0622/12/DM

to which she had asked correspondence to be addressed to be reminded that she must lodge four copies of an agreed indexed and paginated bundle of documents by 26 April, skeleton arguments by 10 May 2013, and a bundle of authorities by 17 May; the date of this hearing was clearly stated. That did not happen, so on 30 April 2013 a further letter was sent, telling the Claimant that she had not complied with the order to lodge the bundles. The direction was given that unless the bundles were lodged by 4.00pm on 7 May 2013, she would be required to appear before a Judge to explain why the court's direction had been ignored. An order was enclosed, made by the Registrar, to that effect. It was later changed to 14 May 2013 and an order sent to that effect. There was no response to those letters or to that order. A bundle of documents has been lodged but that was done by the Respondent.

7. Accordingly, the Claimant has taken no active step to pursue her appeal after having parted company from her former solicitors and written the letter she did in February 2013. Mr Rees, a consultant who appears for the Respondent, tells us he has had no contact with or from the Claimant. In those circumstances, we have no evidential material, apart from that which might be intrinsic in the decision made by Judge Lancaster, upon which we could come to a conclusion that there had actually been bias here; the burden of proof is on the Claimant. Since we are satisfied that it is not obvious, though it may be possible, that there was bias apparent in the approach of Judge Lancaster, we have no sufficient basis for concluding that in this case it would have appeared to a fair-minded observer informed of the facts that there was a real possibility that the Judge might have been biased in saying what he said.

8. It follows, first, that we have concluded we should proceed with this hearing, there having been no explanation for the Claimant's non-attendance and non-prosecution of her appeal. Secondly, we have concluded that we should look at the merits of the appeal on the UKEAT/0622/12/DM

information that we have. The consequence of that is for the reasons we have given there is insufficient material to support the allegation of apparent bias that has been made. The appeal must therefore fail and is dismissed.