

Case No: EA-2019-001043-AT
(previously UKEATPA/1079/19/AT)

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 13 July 2021

Before :

HIS HONOUR JUDGE JAMES TAYLER

Between :

MR D C HUXLEY
- and -
1) ECO-EYE LTD 2) MR T PUMPHREY

Appellant
Respondents

Mr D Huxley the Appellant in person
Mr P Longley for the First Respondent
Mr T Pumphrey the Second Respondent in person

APPEAL FROM REGISTRAR'S ORDER
Hearing date: 13 July 2021

JUDGMENT

SUMMARY

PRACTICE AND PROCEDURE

The claimant submitted a claim form to the employment tribunal. The employment tribunal gave a judgment holding that the claims had been submitted out of time. Oral reasons for the judgment were given at the hearing. Despite the judgment including a note at the end that clearly stated that written reasons would not be provided unless requested within 14 days of the judgment being sent to the parties, the claimant failed to request written reasons within time.

The claimant submitted an email to the EAT seeking to appeal, but did not explain why he had not supplied written reasons as required by the **EAT Practice Direction**. After time for submitting the appeal had expired the claimant copied the EAT into an email requesting written reasons from the employment tribunal out of time. The employment tribunal refused the request.

The email requesting written reasons out of time was treated as constituting the claimant's explanation why he had not supplied written reasons for the judgment with the appeal. The only ground of appeal was "failure to have regards to material evidence" without any particulars. An extension of time was granted for the proper institution of the appeal. The respondent appealed that determination. The appeal was allowed. There was no good, let alone exceptional, reasons for departing from the normal approach to time limits in the EAT. The claimant should have read the **EAT Practice Direction** and given his explanation for failing to provide reasons for the employment tribunal judgment within the time limit for presenting the appeal. The claimant had also failed to comply with paragraph 3.4 of the **EAT Practice Direction** that required him to make a written application requesting the EAT to exercise its discretion to hear the appeal without written reasons or to request written reasons from the employment tribunal. Such an application would have been

doomed to failure because the appeal could not properly be considered without the written reasons of the employment tribunal, nor was there any good reason why the tribunal should be required to provide written reasons out of time in circumstances in which the appellant failed to ask for them within the time limit set out clearly in the judgment and had not identified any proper grounds for appeal despite having heard the oral reasons for the judgment.

HIS HONOUR JUDGE JAMES TAYLER:

1. This is an appeal by the respondent against the decision of Ms J Smailes, authorised to act on behalf of the registrar, with seal date 14 January 2021, granting an extension of time to the appellant for the appeal to be treated as having been properly instituted, after the appellant had provided a written explanation why reasons for the judgment subject to appeal had not been provided with the Notice of Appeal.

2. The parties are referred to as the claimant and respondent as they were before the employment tribunal.

3. The claimant submitted a claim to the employment tribunal that was received on 27 November 2018. The claimant was dismissed on 4 April 2018. At a hearing on 16 September 2019 the employment tribunal held that the claims had been submitted out of time. It had been reasonably practicable for the claims of unfair dismissal and unlawful deduction from wages to be submitted within time, and it would not be just and equitable to apply a time limit in excess of three months to the claim of age discrimination. Oral reasons were given at the hearing. The usual note was at the end of the judgment:

“Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.”

4. The appellant did not seek written reasons within time.

5. The appellant did not attempt to submit an appeal to the Employment Appeal Tribunal until the last day on which an appeal could be submitted. The appellant sent an email on 7 November 2019

stating that he wished to make an appeal and attaching a variety of documents, including a witness statement that he contended had not been considered by the employment judge, the claim form, response and judgment. The claimant did not explain why written reasons for the judgment had not been provided, or include a request that the Employment Appeal Tribunal exercise its discretion to consider the appeal without reasons being provided or to request the employment judge to provide the reasons outside of the normal time limit.

6. Email exchanges took place between the appellant and the Employment Appeal Tribunal staff on the day that the appellant submitted the appeal. The appellant had not submitted the standard appeal form, EAT1, that is attached to the **EAT Practice Direction**. The EAT staff asked the claimant to provide an EAT1. The EAT staff made a number of requests for information, including the date of the decision the claimant sought to appeal (which is a requirement of the **EAT Practice Direction**). An email was sent by the EAT after 4pm, the cut off for submitting the appeal, stating that the appeal was not properly instituted because neither the written reasons for the judgment had been provided, nor had the claimant provided an explanation. The appellant made an application to the employment tribunal for written reasons to be provided out of time at 16:37 that day, copying the EAT into the email. The email requesting written reasons from the employment tribunal was treated as amounting to an explanation why the written reasons had not been provided, presumably on the basis that it was implicit in the late request that the written reasons had not been provided with the Notice of Appeal because the claimant had not asked for them.

7. The registrar concluded that the appeal had not been properly instituted within time, but allowed the claimant the opportunity to apply for an extension of time by letter dated 6 January 2020. The claimant contended that the appeal was properly instituted within time and/or, in the alternative, that an extension of time should be granted.

8. By an Order with seal date 14 January 2021 Ms J Smailes, acting on behalf of the registrar, granted an extension of time for the submission of the appeal to 8 November 2020 so that it was properly instituted in time.

9. The **EAT Practice Direction** sets out at Paragraph 3.1 the documents that an appellant is required to send to the EAT to institute the appeal properly. If the written reasons, claim form or response are not provided the appellant must provide an explanation: Paragraph 3.1. Paragraph 3.4 requires that where written reasons for the judgment have not been provided a written application must be made by the appellant requesting the EAT to exercise its discretion to hear the appeal without written reasons or to request written reasons from the employment tribunal. No application has been made by the appellant pursuant to paragraph 3.4.

10. Paragraphs 3.6 to 3.7 set out the requirements for the contents of the Notice of Appeal. The appellant is required to identify clearly the point(s) of law which form the grounds of appeal. When the claimant merely stated as his grounds: “failure to have regards to material evidence”, without any particulars. I assume that the “material evidence” included the witness statement that the claimant submitted. The **EAT Practice Direction** requires that points of law should be identified and if it is contended that the tribunal reached a perverse factual determination, full particulars must be given. Words to the effect that the judgment was contrary to the evidence, or that there was no evidence to support the judgment, will be insufficient to constitute valid grounds of appeal.

11. The EAT adopts an extremely strict approach to time limits. The relevant law was reviewed by Underhill LJ in **Green v Mears** [2019] ICR 771. He considered the long-standing authorities, many of which are referred to in the decision of the registrar in this case. The principles applicable to late submission of appeals were considered by Underhill LJ at paragraphs 6 to 20, with an overview

at paragraph 21. Underhill LJ noted that the Employment Appeal Tribunal takes an extremely strict approach to time limits. He concluded that the authorities upon which that approach is founded remain binding. The EAT is entitled to take an approach to time limits that is stricter than some other courts and tribunals. There are significant differences between proceedings in the employment tribunal and EAT to those in the civil courts. While the approach adopted by the EAT is strict, it is not without the possibility of exception.

12. One of the cases in which an exceptional extension of time was granted, relied upon by the registrar in this case, is **Fincham v Alpha Grove Community Trust** UKEATPA/0993/18/RN. HHJ Auerbach considered a case in which a party had sought with great care to comply with the **EAT Rules and Practice Direction**, but had omitted the last page of the rider to the ET3 form. The missing page was not necessary to properly understand the appeal and had been provided as soon as requested. At paragraphs 22 to 24 HHJ Auerbach set out well-established principles about the submission of appeals, including that it is the responsibility of the appellant to ensure all documents are provided. This includes the responsibility of providing an explanation for any failure to provide required documents. Litigants in person are subject to equally stringent application of time limits as represented parties. HHJ Auerbach held the omission of the single page of the response, which did not materially affect the ability of the tribunal to understand the appeal, should in the exceptional circumstances of the case be pardoned and an extension of time was granted.

13. The situation in this case is very different. The claimant submitted a claim form in the employment tribunal outside the normal time limits. While the claimant suggests that was because there were ongoing discussions with the respondent that might have prevented tribunal proceedings being brought, that was held not to be a sufficient reason for an extension of time. The judgment refusing an extension of time stated in clear terms that a request for written reasons must be made

within 14 days of the date that the judgment was sent to the parties. The claimant failed to comply with that time limit. Hence, the claimant not only failed to submit the claim in time but failed to request written reasons from the employment tribunal in time. The reasons for the judgment in this case would not only be of importance, but of paramount importance, to considering an appeal. Without the reasons it is impossible for the EAT to know the reasoning of the employment tribunal that the claimant seeks to challenge.

14. The claimant has not put forward a good reason for not seeking written reasons within time. The claimant's suggestion that he assumed all the reasoning was within the judgment itself is demonstrated to be ill founded by the fact that there is a clear statement at the end of the judgment that written reasons could be requested. Despite the fact that the appellant was present in the tribunal when the decision was given so heard the reasons, the grounds of appeal are hopelessly lacking in detail, stating only that the employment tribunal failed to have regard to material evidence. To the extent that the claimant relies on other documentation submitted by email, such as his witness statement, it was still incumbent upon him to have considered the **EAT Practice Direction** and set out clearly what errors of law the employment tribunal was said to have made. If the claimant contends that the decision was perverse he was required to explain in clear terms why he asserted that was the case.

15. The claimant chose to wait until the last possible day to submit his appeal. It is clear that he did not read the **EAT Practice Direction** and consider the requirements for the proper submission of a Notice of Appeal. The claimant retracted his original suggestion that the EAT staff were at fault in the way they dealt with the matter. It was not for them to ensure that the claimant properly instituted his appeal. They might well not have seen the email he originally submitted. They did see the email and sought to assist the appellant, but were under no duty to do so, and the responsibility for the

failure to properly institute the appeal in time is entirely his fault.

16. This was a case in which there was a serious failure to comply with the provisions of the **EAT Practice Direction**. No explanation was given for the failure to obtain written reasons before time for appealing expired. The appellant failed to make an application for the EAT to consider the appeal without reasons or to seek the reasons from the tribunal out of time as required by paragraph 3.4. I consider that had such an application been made it would have been doomed to failure. This appeal cannot properly be considered without the reasons of the tribunal. There is no good reason why the tribunal should be required to provide reasons out of time in circumstances in which the appellant failed to ask for them within the time limits clearly set out in the judgment and has not identified any proper grounds for appeal.

17. For the appellant to obtain an extension of time he had to show that there really were exceptional circumstances as a result of which the strict time limit should not be applied. I do not consider that there were any good, let alone exceptional, reasons for departing from the normal approach to time limits in the EAT.

18. I allow the appeal against the registrar's order, with the consequence that the appeal was not submitted within time and therefore cannot proceed. The appeal is dismissed.