

Neutral Citation Number: [2022] EAT 59

Case No: EA-2020-000506-VP

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 10 December 2021

Before :

HIS HONOUR JUDGE JAMES TAYLER
MISS S M WILSON
MS V BRANNEY

Between :

MR SEAN THOMAS LEACY
- and -
BUILDING CRAFT COLLEGE

Appellant

Respondent

Mr R Beaton (instructed under the auspices of Advocate) for the **Appellant**
Mr R Kohanzad (instructed by Peninsula Business Services Ltd) for the **Respondent**

Hearing date: 9 & 10 December 2021

REASONS FOR REFUSAL OF ADJOURNMENT

HIS HONOUR JUDGE JAMES TAYLER:

1. At paragraph 29 of the judgment dismissing this appeal it was noted that an application was made to postpone the appeal hearing. For reasons given orally at the time, we refused that application. I directed that those reasons should be transcribed and inserted into the judgment, but that was not done. Having regard to the many months of delay awaiting the provision of the written judgment because of administrative issues, I did not consider it appropriate to require that those further reasons be transcribed before the judgment was finalised. I directed that if either party considered the adjournment refusal reasons were necessary they should contact the EAT and request them. The claimant has requested the reasons. Regrettably, there has been further administrative delay in them being provided. They are as follows.
2. At the outset of the hearing we discussed the management of the appeal with the parties. The notice of appeal raises a number of points. The first section asserts procedural unfairness. Paragraphs 1 to 6 deal with the claimant's contention that the hearing time allocation was reduced; and the way in which the time available was split between himself and the respondent was such that the hearing was unfair. At paragraph 7 the claimant contended that he was constantly interrupted and prevented from building a case, and guillotined. At paragraph 8 the claimant asserts that he was not allowed to put all of his prepared questions, but was required simply to put his case on discrimination.
3. The remaining paragraphs of the notice of appeal deal with various other specific complaints about the hearing.
4. The matter was considered on the sift by Mr Justice Griffiths, who allowed the matter to proceed. Griffiths J focussed on grounds 1 to 8, concluding that they appeared to be arguable. He noted the contention that there had been a last minute shortening of the time estimate and the brunt of the curtailment of time fell on the claimant.
5. No directions were made on the sift pursuant to paragraph 12 of the **EAT Practice Direction**,

presumably because the focus on allowing the appeal to proceed was on the overall issue of time allocation. Paragraph 12.1 of the **EAT Practice Direction** provides that where complaints are to be made in respect of procedural irregularity, full particulars must be given in the notice of appeal. Subsequent provisions of the **EAT Practice Direction** deal with the way in which, once such particularity has been given, the appeal should proceed. It may be necessary to obtain an affidavit from the claimant, the respondent and then to send them to the employment tribunal for comment.

6. In respect of paragraphs 7 and 8 of the notice of appeal, there is no particularity of how the claimant's questioning was cut short and how precisely, and in what circumstances, he was required merely to put his allegations of discrimination to the witnesses.
7. In discussion of the difficulties that raised for dealing with the appeal, the claimant's position initially was he wished to pursue the appeal on the basis of the notice of appeal as it stands. We gave an opportunity for a brief postponement so that the matter could be clarified. The claimant was able to provide instructions to Counsel who now acts for him under the auspices of the Advocate scheme. After the break an application was made that this hearing be postponed so that the claimant could submit a statement together with a list of all questions that he wished to ask and contended he was not able to, and to seek the full notes of all the claimant's cross-examination from the employment tribunal. An application been made previously for those notes that was refused by Judge Keith.
8. We have considered the application with care, having regard to the overriding objective. We are well aware that the claimant was a litigant in person at the employment tribunal. We understand the challenges that brings. However, we have to deal with the matter in a manner that is just to both parties. We are concerned that this application is made at a very late stage. The judgement was given after a hearing in September 2019. It is likely to be very difficult for the tribunal to respond to allegations about the precise nature of cross-examination. The process is likely to be lengthy and may, or may not, provide material that assists the EAT in dealing

with the allegations. If there are specific allegations about particular questions the claimant was not permitted to ask, and about how the claimant was required to put his case, there is a possibility the notice of appeal may require amendment. We asked the claimant's representative whether he could give an example of the best type of material that might be obtained. We were taken to an email at paragraph 12A of the supplementary bundle that suggested that the bursar, who was not a witness before the tribunal, may have indicated a desire for the claimant to leave the respondent's employment. We were told that the claimant wished to put that email to the principal of the college, Mr Conway, but was not permitted to do so. That is different to the general allegation that is made about curtailment of questioning. If there is an allegation that the employment tribunal refused to allow the claimant to put a specific document to a witness, that allegation could have been set out in the notice of appeal. Overall, we consider that, even taking account of the fact that the claimant was a litigant in person at the time the notice of appeal was submitted, he could have set out the specific questions he wished to put to witnesses but was not permitted to do so, and set out how he asserted he was required only to put his claim of discrimination.

9. To postpone the appeal to allow such detailed to be provided now would not be proportionate to the issues in the case, it would involve substantial delay and significant additional expense, not only for the parties, but also for this tribunal. Two days have been put aside for this hearing and a full panel has been made available to hear the matter. It is important that the resources of the EAT are used in the most effective manner to ensure that other parties do not have their appeals delayed.
10. The primary allegation is about the overall assignment of time in the hearing. We have the necessary detail to consider the appeal in respect of that issue.
11. We consider that it must have been apparent to the appellant that at some stage, were specific allegations of improper conduct of the tribunal to be asserted, particularity would have to be given. That problem has not been considered prior to the outset of the appeal hearing. We

consider that to postpone the appeal would not be in compliance with the overriding objective. Accordingly, we refuse the application for postponement and the appeal will be considered on the basis of the specific matters set out in the notice of appeal.