Neutral Citation Number: [2023] EAT 171

Case Nos: EA-2021-001337-JOJ
EA-2021-001465-JOJ

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 12 December 2023

Before :

HIS HONOUR JUDGE BEARD

- -

Between:

Mr Haziz Rahim

Appellant

- and -

(1) The Big Word

(2) thebigword Overseas Interpreting Limited

Respondents

- -
- -

Mr Lucas Nasif (instructed through **Advocate)** for the **Appellant**
Mr Richard Ryan (instructed by DLA Piper UK LLP) for the **Respondents**

Hearing date: 12 December 2023

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JUDGMENT

SUMMARY

JURISDICTIONAL, PRACTICE AND PROCEDURE

Grounds 1and 2 were allowed because it appeared that the Judge had not appreciated that the claimant had applied in writing to amend the claim in relation to factual matters that were set out in the original ET1 attachment. It was potentially the case that the amendment should have been allowed and if that had occurred the parameters of the case would have been significantly different impacting on the question as to whether the claim was in time. As the matter would be remitted for the ET to consider the amendment and any impact that decision might have on the time limits issue it was inappropriate for the EAT to deal with grounds 3 and 4 as this might impact on the ET's decisions in respect of the amendment.

Ground 5 was dismissed because it was a contention of perversity, the judge had evidence upon which he could reach the conclusions he did, the high threshold for a perversity argument was not reached.

HIS HONOUR JUDGE BEARD:

1. This is an appeal against the judgment of Employment Judge Barrowclough at the East London Employment Tribunal, heard on 16 and 17 September 2021. The Employment Judge concluded that the claimant's claims -- which he identified as disability discrimination; and discrimination on the grounds of religion or belief; and being subjected to a detriment and/or dismissed for making a protected disclosure; and for notice pay, holiday pay and other payments -- had all been presented out of time and that there was no just and equitable reason to extend. Although not expressed clearly as a separate point it is obvious that findings that the Employment Judge found it was reasonably practicable to present the claims to which the alternative test was to be applied.

2. I shall refer to the parties they were in the tribunal below as claimant and respondent. The claimant has prepared a skeleton argument which deals with a number of issues which do not relate to the matters permitted to proceed to this appeal in the judgment of His Honour Judge Tayler. I am not, therefore, going to consider those issues; they simply do not form part of the appeal. On that basis that Mr Nasif, who appears on behalf of the claimant, has indicated that he would rely on the written submissions that were provided for the Rule 3(10) hearing in April of this year as the submissions that he will advance before me in this appeal hearing.

3. The amended grounds of appeal are as follows:

(i) Ground 1, relates to a failure to identify the issues prior to striking out the claim referring to the case of E **v (1) X (2) L and (3) Z** UKEAT/0079/20 and also **Cox v Adecco Group Limited** [2021] ICR.

(ii) Ground 2 relates to failure to consider the amendment application dated 2 September 2021 prior to striking out the claim This ground is based on a communication emailed

to the tribunal by the claimant containing various documents which included one which related to what the claimant described as "relabelling". Mr Nasif has argued the decision is wrong because the claimant had made an amendment application, that it was not too late to deal with the application, and it ought to have been considered prior to any question of strike out. Again, this argument relies upon the decision in **Cox v Adecco Group**.

(iii) The third ground contends that the judge erred in finding that the appellant had presented out of time. The basis of that contention is that the judge proceeded on the incorrect assumption that the last act relied upon by the claimant was on 12 March 2020 and did so without considering an argument that were later dates which the claimant relied upon.

(iv) The fourth ground is that judge erred in the test applied in respect of just and equitable discretion. It is argued that the Judge relied on only one factor i.e., disbelieving the reasons advanced by the claimant. The claimant relies on decisions in **Abertawe Bro Morgannwg University Local Health Board v Morgan** [2018] EWCA Civ 640 and **Rathakrishnan v Pizza Express (Restaurants) Ltd** [2016] IRLR 278 in support.

(v) The fifth ground of appeal was that the judge erred in finding that the respondent identified by the judge as the correct respondent was indeed the correct respondent. The argument raised was that the contract was not signed, that the communications with the appellant were with TBW Group Limited employees, the appellant was recruited and assessed and vetted by TBW Group Limited and the appellant was paid by TBW Group Limited, and all of the documentation from the claimant named TBW.

4. The first thing that I ought to say in respect of this appeal is that the claimant provided an attachment to his ET1 claim form running to 204 pages, which, in my judgment, was virtually

incomprehensible in the way it is structured. The document draws no distinction between what are put forward as complaints or claims and what amounts to evidence of those complaints or claims. The format is to make an assertion and then to follow that up with a number of items which are, general, either lists or "copy and paste" email contents. I have no doubt that that the employment judge, who was of course working in much more constrained circumstances than I in reading the same material, was faced with a Herculean task of making sense of this document. It is not, in my judgment, the type of document which should ever form part of a pleaded case and should have been rejected as a claim that could not be sensibly responded to. One clear aspect is that the claimant is a language interpreter and that is the work which he was undertaking under the auspices of one of the respondents.

5. But the claim was accepted by the ET and was listed to be heard at what is referred to as a "closed preliminary hearing", on 26 January 2021 before Employment Judge Allen. The purpose of such a hearing is to consider the claims which appear in the claim form and to make further directions for the progress of the claim. Again, in my judgment, at this hearing Employment Judge Allen was faced with an impossible task of attempting to decipher the claims made. Indeed, Employment Judge Allen thought that the task was so difficult that she said this:

> "After considering the above forms, and after discussion with the respondent's counsel, it was clear to the tribunal that the respondent was arguing that the tribunal had no jurisdiction to consider all of the claimant's claims due to them all being out of time for reasons that were set out."

The respondent had other jurisdictional arguments, but it was on that basis that the judge listed an "open preliminary hearing" to determine the issue of what claims were being made by the claimant. In terms, the preliminary hearing was to decide what claims the claimant was making, and to

thereafter consider whether those claims were out of time and, finally, to consider what the correct name of the respondent ought to be. After consultation with the parties it was agreed that a two-day hearing would be adequate. That decision, therefore, set the parameters for the hearing of 16 and 17 September before Judge Barrowclough.

6. The judgment of Judge Barrowclough concludes that the correct identity of the employer was the second named respondent. On that basis the claim against the first respondent should therefore be dismissed. Further in the judgment is the identification of the claims as being disability discrimination, discrimination on the grounds of religion and belief, being subjected to a detriment and/or dismissed for making protected disclosure, and for notice pay and holiday pay and other payments. All of these claims were struck out as being presented outside of the relevant time limits.

7. The judgment concludes that the claim was presented to the employment tribunal on 22 September 2020. As far as ACAS conciliation was concerned, that had taken place on 14 August 2020. The judge states that he had heard oral evidence from the claimant and from Mr Paul Clarke, who was the head of global operations for the group of companies that appears as second respondent. He indicates that he had read witness statements from two other individuals presented by the claimant but who did not attend to give evidence. The Judgment refers to the written closing submissions and to the documentation before the tribunal to running to 935 pages. The Judge points out that the claimant's witness statement ran to 100 pages which ran to 856 paragraphs. The Judge sets out that he read from paragraph 686 onwards, because that is where the claimant focused on events after 29 February 2020, a date which seemed to be the end of the claimant's engagement with the respondent. He also refers to the claimant having prepared a 12-page skeleton argument. I'm aware that there was an 8-page skeleton argument prepared by the respondent's counsel, Mr Ryan, who also appears before me.

8. In terms, the judge decided in paragraph 14 of the judgment the complaints were as he set out in the judgment, but it is worth reading that paragraph in full into this judgment.

> "The complaints advanced by the claimant in these proceedings, save for those already dismissed on withdrawal, I identify as follows: (a) disability discrimination; (b) discrimination on the grounds of religion or belief; (c) being subjected to detriment and/or dismissal for making a protected disclosure (ss. 43A & 103A **Employment Rights Act 1996**) and (d) for notice pay, holiday pay and other payments. For current purposes, it is not necessary to specify what *type* of discriminatory conduct is being alleged (e.g. direct, indirect, failure to make adjustments, etc) and I consider the mental and physical impairment relied on by claimant hereafter in relation to whether the claim was presented in time. Nor do the various amounts of payment need to be detailed."

9. In dealing with whether the complaints were submitted in time, in paragraph 17, Judge Barrowclough set out a brief description of the statutory law. However, the Judge makes no reference to any case law guiding the approach of the employment tribunal in dealing with such claims. In paragraph 18, he refers to a dispute as to the actual effective date of termination and says this:

> "which in this case could also be the date on which time started to run for the purposes of the Claimant's discrimination complaints. The EDT has been suggested as being 1 March 2020 (the contract anniversary date), 4 March (to which date the Claimant says he was paid), or 12 March (when the Claimant was informed of the termination in Alex Keaney's email at page 285). In my judgment, both the EDT and the date on which the Claimant's discrimination claims crystallise are 12 March 2020, when the Claimant was clearly told that his contract was terminated with immediate effect, following his period of leave (which

> is referred to by Mr Keaney), and which termination gives rise to the Claimant's discrimination complaints."

10. The Judge asserts that the claimant did not make an amendment application. The Judge states that he was not considering an amendment. In paragraph 16 of the judgment, he said that he had heard evidence from the claimant and Mr Clarke and the claimant wanted to introduce yet more documentation in order to raise additional complaints which the claimant was contending was based on the "relabelling principle". The Judge refused that application on the basis that it was too late to do raise such matters, but he also states this: "… particularly since no application to amend the ET1 had been presented". In terms, it seems to me, there is a clear indication that the Judge was under the impression that there was no application made to amend before the hearing.

11. In further dealing with the judgment it is appropriate that I mention that, in paragraph 5, the evidence, given orally by Mr Clarke and not disputed that the claimant had signed a document, amounting to an agreement, on 19 February 2019. That document was incorrectly dated and referred to the wrong country of work as "Iraq" when in fact "Afghanistan" was where the claimant was deployed.

12. Paragraph 7 of the judgment makes reference to a series of emails. This is correspondence between the claimant and recruiters or managers for thebigword.com. The Judge states that this is a trading name for the international group of companies under the holding company thebigword Group Limited. The Judge indicates that there was a presumption that the claimant and second respondent entered into an agreement for services because a copy of that written agreement signed by the claimant was to be found in the bundle. In terms, he came to a conclusion as follows:

> "The second respondent is the only appropriate respondent to all of the claimant's

complaints."

He did this on the basis that the contractual relationship was clearly between the claimant and the second respondent. That references to "TBW" or "TBW Global" was an informal shorthand and that dealings the claimant had concerning various matters that he conducted were with people who were either employees of the second respondent or clearly acting as agents on its behalf. It was on that basis that he drew the conclusion that the second respondent was the correct respondent in the case.

13. The long and difficult to understand attachment to the ET1 (and therefore part of the pleaded case) is of some importance. Given that the 14 August 2020 shows contact with ACAS then it is clear that the date of 15 May 2020 will be of importance as a potential limitation point. I first turn to page 175 of my bundle, which has part of that pleading. It is clear within that document that on 8 July 2020, the claimant is sent an email from Alex (representing a respondent) which relates to flights and payment for flights and refers back to a contract. On the same day, a little later in the day, in a further email the point is made that the contract clearly outlines what the contract terms will and will not cover in terms of flights. There is also a reference to a 9 July conversation with a representative of a respondent in the attachment. In addition, there dates given of complaints before 8 July 2020 and after 15 May 2020.

14. At page 345 of my bundle, contained within a document beginning at page 337 entitled "Relabelling my claim" reference is made to emails on 31 May 2020. The document referring to discrimination on religion, disability and in respect of being a whistleblower. There the claimant argues that he has been ignored as his emails to the respondent have not being responded to. Further, dealing with events in June 2020 he refers to discrimination by Alex who gave a response setting out that the claimant's contract had expired. More importantly, given what I have already referred to, the document refers to the 8 and 9 July emails and, in particular, that an offer of payment for a new role

was set at a low rate because of discrimination.

15. The argument advanced on behalf of the claimant is that the attachment to the ET1 contains allegations and it is those allegations that are followed by the lists and the "copy and paste" extracts, which I have referred to. It is accepted that they appear without further explanation in the ET1, but it is argued that these are then explained in the document which I have referred to as the "Relabelling" document.

16. The claimant contends that the judge did not actually consider what claims were actually advanced, as required by the order of Judge Allen. The foundation for that argument is that the judge did not consider the issue of post-termination discrimination at all. Instead, the Judge simply engaged in labelling claims and did not, as he should have done, descend into the detail of what those claims were entailed. That, it is argued, is what the preliminary hearing order actually required him to do. The argument in respect **Cox v Adecco** is that it is clear that no one gains by hopeless cases being pursued, but it is appropriate to take care in cases where a strike out is to be considered in claims of discrimination. It is important in terms that the reasonable detail of those claims is considered. Although **Cox** deals with strike out on the basis the case having no reasonable prospect of success, it is argued that there has to be a reasonable attempt at identifying claims and issues before considering the position. That applies to strike outs which are based on no reasonable prospect of success or strike outs, as in this case, based on when time begins to run for the purposes of proceedings. The claimant who claims discrimination is entitled to have a proper analysis of those pleadings undertaken. The argument is that this is an example where a claim has been dismissed before that analysis has been undertaken. Therefore, it was not possible for the tribunal to consider whether claims were presented in time and further to consider whether there was a meritorious argument for extending time without identifying those claims with clarity.

17. The second ground deals with considering the amendment. It is contended that it is clear that any application to amend should, necessarily, be dealt with prior to any decision as to striking out the case. The reason for that is it is not possible to tell the parameters of a case until that happens. It is contended that it was wrong for the Judge to suggest that an application to amend was presented too late because this application was both in writing and was made some two weeks before the hearing. It was also argued that the Judge was clearly mistaken in asserting that no application to amend had been presented.

18. Reference was made to **Mbuisa v Cygnet Healthcare Ltd** UKEAT/0119/18. It was held that particular caution should be exercised if a case was badly pleaded, particularly by litigants in person. In **Cox v Adecco**, his Honour Judge Tayler emphasised the need for the ET to identify claims correctly in order to consider whether to strike out a claim. Read together whether an amendment should be permitted may include, as part of the exercise of discretion, the balance of justice in allowing or refusing the amendment if it would result in there being an arguable claim that the claimant should be permitted to advance.

19. In terms of the argument with regard to the identification of the respondent, it is clear that the basis of that argument is a perversity argument. It is contended that those matters that were set out in the grounds of appeal were matters that the judge should have taken account of and did not and therefore reached a conclusion that he was not permitted to reach in all the circumstances.

20. The respondent refers to the particular difficulties faced by the Employment Judge in dealing with this claim. Those difficulties included the lengthy documentation that formed the claim and to which I have already referred. However, adding to the difficulty was the constant communication, by email, from the claimant to the ET. It is said that this is conduct which has continued in the EAT and up to today with the claimant having sent three emails to the EAT today. (I had indicated that I have

not received or read these emails). More to the point, emails and new documentation was being presented to the Judge on the day of hearing and that had been a constant feature of the claimant's approach to the litigation. In terms, the argument was that the claimant had obscured his own claims by the breadth of communication that he had with the ET and the amount of material that he was sending to the tribunal.

21. The skeleton argument from Mr Ryan, who was present at the ET hearing, sets out that on 16 September at 4.57 am, seven hours before the start of the hearing, a skeleton argument was sent, witness testimony was provided on the first day, and that the claimant was cross-examined at length. On the second day of the hearing at 9:18 am and 10:01 am further documents and submissions were sent by the claimant, well after the close of the pleadings. He stated that this was a further attempt to introduce yet more documentation and to argue further complaints by relying on relabelling. The indication also made was that the claimant had brought further complaints against the respondent, relying on post-termination matters, primarily based on the claimant sending further emails.

22. The respondent's position, relying on **Cox v Adecco**, refers particularly to the duties that fall on a claimant to present a case, not just those that fall on a respondent or the ET. The point is made that in the first preliminary hearing there were problems identifying the claim. That the order from Judge Allen formally limited the claimant's claim to only those matters within the ET1. The claimant's habit of simply listing post-termination communications were, it is argued, an inadequate basis upon which to identify or permit an amendment. This is particularly so given the claimant's adoption of a process of, as the respondent puts it, "dumping materials" on the respondent and the ET. This is exacerbated by the lack of a clear and cogent factual basis for the claims made, in both the ET1 and the correspondence, which was obscured because of the claimant's provision of clearly irrelevant documents such as newspaper articles.

23. It is accepted by Mr Ryan that the judgment does not address all the matters raised and discussed. He argues that the Judgment does not need to address everything, but in particular also contends that the Judge was approaching matters on the basis of the skeleton arguments that had been presented. It is argued that the Judge was entitled to rely on his own knowledge of the case and the assessment of the claimant's application for amendment to reject it.

24. In respect that the specific grounds, it is argued that the Judge did identify the claims and that he did so in the judgment at paragraphs 14 and 15. The Judge achieved this by delving into the huge mass of documents and making a factual determination that the claimant was relying on a last act of discrimination in March of 2020. That was done by focusing on the pleaded case. It is argued that there was no failure to consider the amendment application. The issues were identified at the start of the hearing and the claimant did not refer to the 2 September application. Paragraph 16 shows that the Judge is dealing with additional complaints raised during the course of the hearing and after evidence was concluded. The oral submissions had been considered, along with written submissions and there were documents which showed that the claimant relied on case law referring to relabelling. It is argued that the judicial discretion that was exercised should not be readily susceptible to challenge.

25. In terms it is argued that the respondent was entitled to know, when preparing for the September hearing, to tailor their approach dealing only with the facts as pleaded in the ET1. This was particularly the case given the matters being dealt with at the hearing pursuant to the Allen Order.

26. I will return to grounds 3 and 4 below.

27. In terms of ground 5, it is contended that the issues were fully argued before the Employment Judge who made a finding of fact based on evidence. That evidence included the contractual

documentation and the oral evidence of someone who was a senior person in the organisation.

28. The respondent's submissions made in the alternative relate to the reasonable prospect of success and that the claim would have suffered a strike out. It is argued that this was, in fact, the claimant trying to address weaknesses in his claim and that he would alter the claim artificially by adding a more recent event to support the time limit. That, in terms of a civil case **Mainline Pipelines Limited v Thomas and Eleanor Phillips** [2023] EWHC 2146 Ch it is clear that a litigant in person is in no better position than someone represented by a lawyer when it comes to dealing with or obeying the rules of court.

29. It is argued that there is a risk in this case that allowing the appeal would encourage the claimant to submit further pleadings. In effect it would encourage the claimant to make multiple, ambiguous and transformative applications. It is said that a blunt rejection of an amendment application does not need the recital of the **Selkent** principles. For the sake of brevity, whilst it would not always be appropriate to fail to set them out, it was an appropriate approach in this case.

30. This case clearly demonstrates the immense difficulties that employment judges often face. Many claimants (and some respondents) are litigants in person, and the way in which they set out a case can vary considerably. This will range from the under-pleaded case, where it is not clear what factual claims are being relied upon to, as in this case, the over-pleaded case. The latter present the greatest difficulty because, quite frankly, if there are claims over which the ET has jurisdiction, they are so deeply buried it is virtually impossible to define what they are, other than from simply finding headings of types of discrimination, for example.

31. The difficulties in this case, as I indicated during the course of discussions with counsel, could have been obviated by rejecting the claim under Rule 12. This was a claim that could not be sensibly

responded to without taking up significant ET time and resources. However, that was not done in this case. Further, given what has been described for the approach of the claimant dealing with this case, it would have also been possible for the respondent to make an application -- whether it would be successful or not I do not opine -- for a strike out on the basis that there had been unreasonable aspects to the conduct of the claim. There is a limit to Employment Judges being required to "roll up their sleeves" to progress a case where the overriding objective (which includes a fair distribution of the ET's resources between different cases) would be put at risk. In short this is a claim which should not have been considered or responded to until it was put into an understandable format.

32. However, despite that I have to consider this case on the same basis as it was dealt with by the Judge. I have to approach a case as it was to be dealt with at a preliminary hearing where the aspects of the claim were to be identified and where those aspects were being tested as to whether the claims brought were within the time limits or, if not, circumstances existed where time limits could be extended.

33. It seems to me that the argument advanced in ground 1 has a significant force. This is because, in terms, a claim when made is not simply a matter of setting out a label of e.g., disability or religious discrimination. It is made up of elements: a claimant has to state this happened to me and the reason why this happened is because of discrimination. It is a factual description of events to which the ET applies a statutory framework to test whether those facts meet the definition of a particular type of discrimination. That requires an employment tribunal to descend into the detail of the claim when it is identifying a claim. In my judgment that is particularly important where time limits are involved. That is because there needs to be a clear point in time where the cause of action arises which starts a clock running. That will be a factual set of circumstances and not a simple label.

34. The success of the respondent's argument that the judge did identify the claims by referring

to the evidence of the claimant and the documents set out by the claimant. In doing so the Judge was able to fix that date as 12 March 2020 seems to me to depend on my finding as to the grounds which relate to the amendment application.

35. In the document seeking an amendment the claimant refers specifically to continuing acts. Further, that is with reference to emails which are specifically included within the original ET1 attachment. It seems clear therefore that the claimant, particularly in terms of discrimination, was arguing that there were matters which he relied upon beyond the 12 March 2020. The claims which he had made under the heading "Withdrawn offers without a valid excuse" and which he had identified as a breach of contract, were also to be relied upon as acts of discrimination. It appears to me therefore that it was incumbent upon the employment judge to consider that application before deciding on the parameters of the claim. In those circumstances **Cox v Adecco** applies in this way: the Judge, when approaching the **Selkent** principles, would have to consider whether or not that was a significant amendment, whether it was a relabelling, and whether to reject the amendment.

36. Despite Mr Ryan's very persuasive arguments it seems to me that paragraph 16 of the judgment does not reflect that approach. The judge does not deal with an amendment application at all and instead indicates there was no application. I have no doubt that this was because that amendment application had not been drawn to his attention by the claimant until the second day of the hearing. Further the manner of that application was made without making the Judge aware that the application had been made in writing on 2 September, some two weeks before the hearing. In my judgment it was however an application which ought to have been considered and conclusions drawn. It had been made in writing, it had been communicated to the respondent, and it was a matter that should have been dealt with at the outset of the hearing.

37. What I am not prepared to do, because it is inappropriate for me to do so, is to say that it is an

amendment application that ought to have been allowed. That is a decision for the employment tribunal following the **Selkent** guidelines. It is not a matter that I should deal with on appeal.

38. The findings by the judge as to what claims were made in my judgment set out the headings but not the substance of the claims. Because the amendment application was not dealt with then extent of those claims has not been considered. The judgment does not set out anything in law beyond a part recital of the statues in respect of time limits. The judgment does not set out any analysis for an amendment rejection, but instead states that there is no application for an amendment. I believe this is probably because the judge was not clearly aware of the application. This was both because of the amount of material before the Judge and the failure of the parties to draw this application to his attention. The amendment was clearly applied for in writing before the hearing and there was no indication, particularly when the case involves a litigant in person, that the application to amend had been abandoned, particularly so in that it was raised by the claimant on the second day of the hearing.

39. The amendment application specifically refers back to emails that are set out in the ET1 attachment. It is possible that a Judge could consider those to be a minor amendment providing further particulars of an existing claim or alternatively that it amounts to a more detailed amendment where the matters supporting a breach of contract claim was now to be claimed as discrimination. Those are matters, as I have already indicated, for the employment tribunal and not for me to decide.

40. It is for that reason that I am not going to deal with grounds 3 and 4. In my judgment I would be in danger of trespassing on the employment tribunal's jurisdiction by making comments about matters of amendment and just and equitable extensions of time in relation to this case. Were I to make decisions as to whether the Judge erred, where I have already considered that it is the ET's decision to make, I would plainly be expressing views which could influence a decision which is not mine to make. There is a danger in respect of ground 4 that were I to find on the just and equitable

discretion test that that could again interfere with a new discretionary decision based on whatever result happens from the amendment application being dealt with.

41. Ground 5, as has been accepted, is clearly a perversity argument. I simply say this. The Judge saw the witnesses and analysed the relevant documents. He analysed the circumstances overall. The threshold for a perversity argument is a high one. It essentially requires me to draw a conclusion that no judge, taking account of the evidence before this Judge, could have drawn the conclusions that this Judge did. I see no basis for that perversity challenge threshold to be met in this case. There was evidence, both oral and documentary. The judge analysed that evidence. The judge was entitled to draw the conclusion he did based on the contractual document that he had seen, along with those other aspects of oral evidence that the correct respondent was the second respondent.

42. I want to add some comments in respect of this case. This matter was listed for two days before the ET. The average tribunal hearing day is six hours in length, sometimes a little longer. The bundle in this case, along with other documents, such as the claimant's witness statement and the skeleton arguments, amounted to 1,055 pages. In terms of reading a page of A4 material at normal point-12 printing, that is generally estimated to be achieved, on average, at a pace of one minute per page. On that basis alone the amount of documentation before the judge in this case amounted to 18 hours of reading time; three hearing days. That is without considering the consistent new materials from emails with attachments sent by the claimant.

43. The judge is to be commended for getting as far as he did with this case because, in my judgment, the following matters also need to be upheld. That the judge was correct to say that the claims of failure to pay holiday pay and other contractual payments are out of time and cannot be pursued any further. However, no judge dealing with this claim should face that level of documentation in future. The position is clear no Employment Judge has available three days of

reading time prior to a two day hearing in the current system. Further it would not be necessary in the interests of justice for all of the current material to be put before the judge. The content of the claim needs to be considered in that light and, as I have indicated, the position should be reflected in this way. The claimant is not the only claimant before the tribunals. Other claimants and respondents need their cases dealt with. The overriding objective indicates that there should be a fair distribution between claimants and other parties of the tribunal's resources. This amount of material is not a fair use of the tribunal's resources.

44. I consider that on the basis of my reasoning grounds 1 and 2 of the appeal should be allowed, that I give no further consideration to grounds 3 and 4 and that ground 5 of the appeal should be dismissed. In those circumstances, given that there is no reason that this should not be remitted to the same Judge. There is nothing to indicate that Judge Barrowclough was anything other than professional in his approach to this case. Therefore, this should be remitted to the same Employment Tribunal for rehearing unless in the view of the Regional Employment Judge such an arrangement becomes impracticable or impossible in which case the matter be remitted to be heard by a differently constituted Tribunal as directed by the Regional Employment Judge.