

Neutral Citation Number: [2025] EAT 131

Case No: EA-2024-000129-JOJ

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 17 September 2025

Before:

JUDGE KEITH

Between:

LILIANA VASSALLO

-and-

(1) MIZUHO INTERNATIONAL PLC
(2) MIZUHO BANK LTD

Appellant

Respondents

Althea Brown (instructed through **Advocate**) for the **Appellant**
Mark Greaves (instructed by **Stephenson Harwood LLP**) for the **Respondents**

COSTS JUDGMENT

SUMMARY

Practice and Procedure - Costs

The Respondents' applications under Rule 34A of the EAT Rules 1993 (as amended), for costs against the Claimant, succeeded. An award for costs was made on two bases. The first was that one aspect of the Claimant's grounds of appeal was misconceived, for the reasons set out in **Vassallo v Mizuho International plc and another** [2024] EAT 170. The Claimant's conduct in pursuing that ground was also unreasonable, in failing to seek to agree a note of what was said before the EJ; and in failing to provide her own notes, while objecting to the Respondents' application for the EJ's notes, which she then disputed.

The second basis was the Claimant's unreasonable conduct in a number of respects. The first was in relation to the grounds of appeal themselves, which referred in turn to a separate reconsideration application, without making it clear which parts of that application were relevant. This had the effect of confusing the scope of the permitted grounds of appeal and was compounded by the fact that the Claimant's skeleton argument advanced points beyond the permitted grounds of appeal, all of which had to be resolved at the hearing. In addition, the Claimant lodged an unagreed, unpaginated core bundle which omitted the grant of permission; an authorities bundle which was not cross-referenced in the skeleton argument, did not contain side-references and was barely referred to in the hearing. The costs award was reduced from the amounts sought by the Respondents, in light of the Claimant's limited means to pay those costs.

JUDGE KEITH:

1. This judgment follows an application by the Respondents for costs against Ms Vassallo, to whom I refer as the Claimant, as I did in a previous judgment, or in the alternative, her Counsel, Ms Brown. The Respondents indicated during a substantive hearing on 19th June 2024, at which this Tribunal gave full oral reasons for dismissing the Claimant’s appeal, that they would be applying for costs. In Tribunal orders of 19th June, the Tribunal directed that the Respondents should make their applications in writing by 11th July 2024, and the Claimant would provide comments by 1st August 2024. By consent, the Tribunal would then decide the application for costs on the papers. The Claimant then sought a ‘judgment in writing’ (i.e. with written reasons), which were provided and may be found at: **Vassallo v Mizuho International plc and another** [2024] EAT 170 (the ‘First Judgment’).

2. I do not recite the full litigation history, except where necessary to explain my decision.

The Respondents’ costs application

3. The Respondents applied for costs against the Claimant under **Rule 34(1) of the Employment Appeal Tribunal Rules 1993**, (the ‘EAT Rules’). In the alternative, they applied for their costs against Ms Brown pursuant to **Rule 34C**. Wasted costs were only pursued to the extent that the Claimant sought to argue that responsibility for any default lay with Mr Brown. They sought an order for costs in the total sum of £10,882.50 on two bases.

The first basis of the application

4. The Respondents sought their costs in dealing with the Claimant’s arguments, in which she had alleged that the Employment Judge (‘EJ’) had not received evidence or submissions from the Claimant as to what had transpired at the time she presented her Claim Form to the Employment

Tribunal. This Tribunal found that the allegation was misconceived, on the basis that the Claimant's assertion was factually incorrect, at paras [49] to 51] of the First Judgment. This was based on the EJ's notes and a witness statement and contemporaneous notes of the Respondent's instructed solicitor. Costs attributed to this totalled £8,230.

5. The Respondents relied on the following litigation history. On receiving the Claimant's Notice of Appeal dated 30th January 2024, the Respondents had provided to her a copy of their notes of the hearing, on 27th February 2024, with a view to agreeing them. She responded on 11th March 2024 that she could not agree to their accuracy but did not provide notes of her own. The Respondents sought these from her on 12th March 2024, but she ignored the request. Consequently, the Respondents made clear in their Answer to this Tribunal that they disputed the facts on which the ground was premised and on which permission had been granted. On 15th March 2024, the Respondents applied to this Tribunal for an order that the EJ provide his notes. The Claimant objected to the application, asserting that the Respondents' notes were inaccurate, but without providing her own. On 16th April 2024, this Tribunal ordered that the EJ's notes be provided. This Tribunal referred to those notes as being consistent with the Respondent's position (para [50] of the First Judgment).

6. The Respondents rely on this Tribunal's finding that part of the Claimant's appeal was misconceived. The Respondents point to a failure by the Claimant to take an accurate note of the hearing before the EJ; to mispresent what submissions had been made to the EJ; and to dispute the accuracy of the Respondents' solicitors notes and the EJ's notes.

The Claimant's response to the first basis

7. At the time of responding to the costs application, on 13th December 2024, the Claimant also applied, out of time, for permission to appeal to the Court of Appeal and sought to rely on an authorised transcript of the hearing before the EJ. In simple terms, the Claimant maintained that she

was correct in her allegations as to what had been said before the EJ and this Tribunal had proceeded on mistaken facts. Given that I have given reasons for refusing permission, it is important that I do not elaborate on them in rejecting that contention, but instead for completeness, set out those reasons, dated 1st July 2025, below:

“Reasons

1. The application for permission to appeal has been made substantially out of time. It is necessary to explain parts of the litigation history, which are complex.
2. Contrary to the grounds, the EAT’s judgment, which the Appellant seeks to appeal, was not “dated 29th November 2024,” in the sense that it was a reserved judgment on that date. Full oral reasons were given at the hearing, at which the Appellant was legally represented, in accordance with the Appellant’s legal practice, on 19th June 2024. The orders dismissing the appeal were sealed on 22nd June 2024. Also, as is standard, the Appellant was informed that any application for permission to appeal should be made to the Employment Appeal Tribunal within 7 days, or the Court of Appeal within 21 days, of the seal date (22nd June 2024). The one legal issue which remained to be decided was the Respondent’s costs application, as to which the judgment made further directions.
3. Although the application for permission is dated 10th December 2024, it was filed with the EAT on a later date, by email on 13th December 2024. The Appellant acknowledges that the application for permission is out of time, but claims (erroneously) that time began on 29th November 2024.
4. The application followed the Appellant’s earlier request, out of time, for written reasons of the EAT’s oral judgment. The EAT had refused that earlier request, but noted that in any event, the Appellant had separately sought, at her own expense, a transcript of the full hearing. In fact, both a transcript and written reasons were later prepared for the EAT to review. As a result, written reasons were nevertheless approved and sent to the parties on 29th November 2024.

Application to rely on new evidence

5. With the application for permission to appeal, the Appellant enclosed a separate transcript of the EJ hearing, which had taken place on 19th December 2023, and on which she sought to rely as fresh evidence both in relation to her application for permission and in response to the costs application. The relevance of the transcript was said to be (in summary) that the EJ’s notes of the hearing, and the separate notes of the Respondents’ solicitors, did not accurately reflect what had been said at the hearing, such that both the EJ erred; and the EAT erred in reliance on the EJ’s notes and those of the Respondents’ solicitors.
6. In light of the production of the transcript, of its own motion, the EAT considered whether it was appropriate to review its judgment under Rule 33 of the Employment Appeal Tribunal Rules 1993 (‘the Rules’), either on the basis that the EAT made an error in making its judgment; or that the interests of justice required a review. The EAT directed the parties to confirm whether they agreed that the transcript was accurate and sought the parties’ written positions on how the transcript affected (if at all) the legal analysis and conclusions in the judgment, such that a review was appropriate; and if a review were appropriate, the procedure by which that review should be decided, i.e. whether on the papers or at a hearing. The EAT indicated that it would then consider what directions were appropriate. The Respondents’ position was that the transcript did nothing to undermine the EJ’s and the EAT judgments and if anything, strengthened them. They disputed that there should be a review. The Appellant submitted that the EAT’s judgment was flawed based on reliance on the EJ’s notes and those of the Respondents’ solicitor.

Previous decision on review

7. Following representations, the EAT refused to review its application, in a decision of 23rd May 2025. It reminded itself of Zinda v Governing Body of Barn Hill Community High & Ors 2011

ICR 174, in particular, §47, that such a review would be rare, and should not be a substitution for an appeal. The Appellant had not produced (or even apparently sought) a transcript of the EJ hearing, before the EAT hearing on 19th June 2024. The EAT had not ignored any evidence or any incontrovertible fact. Similarly, it was not in the interests of justice to grant a review. The contested issue focussed on the effect of the precise words said in the hearing before the EJ, on his and the EAT's judgments. The effect was heavily contested between the parties. The EAT had raised the question of a review, on the basis that it might, for example, relate to a single, uncontested fact. Having considered the parties' submissions, that was not the case, and a review was not appropriate, given the interests of justice in the finality of litigation.

Decision on whether to extend time and application for permission to appeal

8. The Appellant has sought an extension of time. She refers to her application having been made more than 7 days after the decision "dated 29th November 2024". Time began on 22nd June. Her application was made on 13th December. The Appellant referred to her preparation for costs submissions (in respect of which an extension of time was granted), her Counsel's limited availability, and her own difficult personal circumstances. While she applied for an extension of time to make costs submissions, on 22nd July 2024, she did not apply then for an extension of time to apply for permission.
9. The grounds cite the EAT Practice Direction 2023, §13.1, but do not apply it. The Appellant and her Counsel were present when the EAT gave the fully reasoned oral judgment in June. Even assuming that time ran from 29th November (which it did not), the application to extend time was not made before the expiry of the time limit. The grounds themselves rely entirely on the ET transcript, which the Appellant only apparently sought after the EAT hearing on 19th June 2024. Even taking into account the Appellant's mother's illness in the period after June 2024, in reality, the delay in seeking permission has been caused by the delay in seeking the ET transcript, in circumstances in which the Respondent had made clear to the Appellant before the June 2024 hearing its position on what was said in the ET hearing, in seeking the EJ's notes. It was not necessary for the Appellant to await the written reasons for the EAT's oral decision, before applying for permission. The ET transcript could, with reasonable due diligence, have been obtained before the June 2024 hearing. While Counsel's availability (or lack thereof) is cited, that is a general proposition, without further detail. The Appellant could, via or with the assistance of Counsel, have made an earlier application for permission.
10. The EAT therefore refuses to extend time for the application for permission.
11. For the avoidance of doubt, had it extended time (which it does not) it would have refused permission. The ET transcript would not have an important, or indeed any influence on the EAT's decision to dismiss the appeal, nor does it disclose any arguable error. The EJ had stated in the impugned decision, at §52, "It is clear from email correspondence provided in the hearing bundle that an earlier version of the claim form had been prepared which did contain a reference to a whistleblowing claim in box 8.1. Therefore consideration must have been given to a whistleblowing claim by the claimant and her legal representatives at the time the claim form was submitted. Given the claim form that was submitted did not contain any reference to a whistleblowing claim, I am satisfied that an informed decision must have been made not to pursue a whistleblowing claim when the claim form was submitted."
12. In her appeal to the EAT, the Appellant had maintained that the EJ did not receive submissions as to what had transpired between her and her then legal representatives as to what should or should not be in the claim form; or submissions as to whether the Appellant had been aware that the claim submitted did not contain reference to her whistleblowing claims; or whether the Appellant had taken an informed decision not to pursue a claim for whistleblowing dismissal.
13. The EJ's hearing notes, which the Appellant had disputed, had recorded Counsel's submissions that the Appellant "did not know she had a claim" and "speculation - appears to be poorly represented which is why previous claims not." The agreed transcript records the EJ's comment, "I think the Respondent has repeatedly said she [the Appellant] was legally represented and what appears to be her position is that she was ignorant of these claims it has never been addressed...as to what the reason was why this was not included in the particulars of claim." Counsel in response submitted, "She [the Appellant] did not know." The EJ is also recorded in the transcript as saying, "I am less clear why those whistleblowing detriments were not raised within the particulars of

claim. I am struggling a little bit with the concept of ignorance of the law bearing in mind that she was legally represented at the date of the particulars of claim. So the particulars claim are drafted with legal assistance and there was no reference to whistleblowing detriments at that point in time....” Counsel’s answer was that, “...My understanding of it and of course I have asked the claimant about it and obviously the limit we have got because she is privileged... The bottom line may well have been the dismissal being in October and her not understanding - not appreciating that the reason for dismissal might be linked to the whistleblowing. The whistleblowing then freestanding, I just think that the claimant felt very strongly about it but I think she was poorly - it was poorly reflected.... Just poorly represented. I wish there was a better way that I could say it.” The EJ noted that Counsel was trying to avoid blaming former representatives without an evidential basis. However, it was the same Counsel, despite their caution before the EJ, who had challenged the EJ’s decision, on the basis set out above. On any fair reading of the transcript, the EJ’s notes were materially correct. While the EJ was conscious of the assertion of privilege, Counsel unarguably made submissions on the Appellant’s ignorance about the facts relevant to a dismissal claim and a possibility of poor representation in relation to the detriment claims, which the Judge evaluated, but did not accept.”

8. The Claimant relied on accepted principles that the power to make costs orders should be exercised sparingly, that costs orders are the exception rather than the rule, and that this was a high hurdle, which was why costs orders were not made in the majority of cases. The Claimant added that, “it is accepted the absence of a detailed note made by or on behalf of the Claimant presented some difficulties but it is worrying whether even if she had been able to produce a note, it would have made a difference. It is against this backdrop that the Claimant had no option but to obtain a transcript of the proceedings.”

The second basis of the application

9. The second aspect was in relation to additional costs incurred because of the Claimant’s unreasonable conduct of the appeal, specifically multiple failures to comply with the procedural requirements of the 2023 Practice Direction of the EAT then in force (the ‘Practice Direction’). The costs attributed to this were £2,652.30. It is important to note, in fairness to the Claimant’s Counsel, that she did not purport to conduct litigation (nor is she authorised as such).

10. The Respondents set out the parts of the Practice Direction with which the Claimant had failed to comply.

a. Compliance by litigants in person - Paras [1.4.2] to [1.4.3] made clear that parties to

appeals had to comply with relevant sections of the Practice Direction, including litigants on person. Paras [3.8.4] to [3.8.5] stated that grounds of appeal should set out numbered grounds and not incorporate other documents.

- b. Notes of evidence - Para [8.10.6] required parties to use best endeavours to agree a note of evidence, and a Judge's note was not to be supplied because a party had not kept their own notes of evidence. If a party unreasonably failed to co-operate in agreeing a note, they could be ordered to pay costs.
- c. Core bundle - Para [13.3.2] set out the documents which needed to be included in a 'core bundle,' which included the sift decision, and para [11.4.1] confirmed that it should be paginated. Para [11.3.2] confirmed that the core bundle should contain no other documents in a set list. Para [11.4.5] emphasised the need for the parties to co-operate in agreeing a bundle, failing which they would be at risk of costs.
- d. Skeleton argument – para [11.6.6] stated that paragraphs in the skeleton argument needed to make clear which ground they related to and should not incorporate arguments from other documents.
- e. Authorities bundle – para [11.7] limited the number of authorities save in exceptional cases, and required that they should be in chronological order, indexed, bookmarked in electronic versions, with 'sidelines' for relevant passages.

11. The Claimant had not attempted to agree a note of evidence provided by the Respondents. She had never provided any notes of her own, despite being asked. The Respondents had, at the earliest stage, identified their dispute with the facts on which the ground relied, so that that they had no choice but to seek the EJ's notes, which the Claimant opposed.

12. In relation to the Claimant's core bundle, without liaising with the Respondents or seeking their agreement, the Claimant filed a bundle which was unpaginated, and which omitted the order and reasons for permitting the appeal to proceed (which were necessary to understand the precise scope the grant or permission). The Respondents were forced to produce a bundle of their own.

13. In relation to the Claimant's skeleton argument, it did not make clear which arguments were relied on for which ground of appeal, and this Tribunal found that many of arguments went beyond the permitted grounds of appeal (see paras [25], [37] to [38, [43] and [46] of the First Judgment).

14. In relation to the Claimant's authorities bundle, there was in fact no bundle at all, rather an incomplete index and various pdf documents, more than the standard limit, without sidelining. The authorities were not cited in the skeleton argument, so it was unclear how they were relevant.

15. The Claimant's oral submissions, via Counsel, made no mention of the authorities in her authorities bundle (instead citing a different authority); advanced points not in the skeleton argument, and reiterated misconceived arguments about what had been said before the EJ.

The Claimant's response to the second basis

16. The written response on behalf the Claimant contained a bare reference that "For the avoidance of doubt, the Claimant rejects the Respondents' submissions that the alleged procedural failings relied on amount to unreasonable conduct." The response did not explain why not, or engage further, even when read with the rest of the response. It also provided no details of the Claimant's ability to pay any order. As a consequence, this Tribunal directed the Claimant to provide such details, to the extent to which she sought to rely on them. On 13th July 2025, the Claimant provided a witness statement as to her financial means. On 18th July 2025, she provided a second statement (in reality, submissions) on why she disputed that costs ought to be awarded against her. She did not dispute any of the cited sections of the Practice Direction, she accepted that she was expected to comply with them, but argued the Practice Direction did not contain any warning that a failure to comply should result in a costs order. There was no assumption that she should have to pay costs, and this Tribunal was able to 'work through' the defects in the bundle. The applications were a 'highly aggressive stance' adopted to force her to abandon her claim. The delay in obtaining the transcript of the EJ's hearing was down to delays on the part of the Employment Tribunal administration.

The Claimant's ability to pay any order

17. The Claimant's witness statement of July 2025 states that she is without work, having made over 200 job applications; has no assets to speak of, is living in rented accommodation, living on Universal Credit, and has a credit card debt, which while not, in an absolute sense, significant, amounts to six months' income. These details are corroborated by Universal Credit documents, bank statements and a credit card statement, together with a signed witness statement in which the Claimant confirms that she understands the importance of the truth of her statement.

The Law

18. The power to make costs orders (as opposed to wasted costs orders) is contained in the following relevant passages of the EAT Rules:

“General power to make costs or expenses orders

34 (1) In the circumstances listed in rule 34A the Appeal Tribunal may make an order ('a costs order') that a party....('the paying party') make a payment in respect of the costs incurred by another party('the receiving party').

When a costs or expenses order may be made

34A (1) Where it appears to the Appeal Tribunal that any proceedings brought by the paying party were unnecessary, improper, vexatious or misconceived or that there has been unreasonable delay or other unreasonable conduct in the bringing or conducting of proceedings by the paying party, the Appeal Tribunal may make a costs order against the paying party.

(2) The Appeal Tribunal may in particular make a costs order against the paying party when–

(a) he has not complied with a direction of the Appeal Tribunal;....

The amount of a costs or expenses order

34B (1) Subject to sub-paragraphs (2) and (3) the amount of a costs order against the paying party can be determined in the following ways–

(a) the Appeal Tribunal may specify the sum which the paying party must pay to the receiving party;....

(2) The Appeal Tribunal may have regard to the paying party's ability to pay when considering the amount of a costs order.”

19. I have considered the authorities cited to me. This Tribunal confirmed in **D'Silva v NATFHE and Ors** UKEST/0126/09 that an order for costs in this jurisdiction is an exceptional course of action, and the discretion should not be exercised to punish a party for unreasonable conduct. Rather, unreasonable conduct is a pre-condition and a relevant factor in deciding whether to order costs (para [13]). I should identify any unreasonable conduct, as well as its effect (and the effect of pursuing a misconceived ground of appeal) (see **Sud v Ealing London Borough Council** [2013] EWCA Civ

949). My assessment need not be detailed or minute, but a broad-brush approach against the background of the totality of the relevant circumstances. There is no requirement of causality between the conduct and costs (see paras [20] and [41] of **Yerrakalva v Barnsley Metropolitan Borough Council and another** [2011] EWCA Civ 1255).

Discussion and conclusions

20. I have already found that one of the Claimant's grounds of appeal pursued before this Tribunal was 'misconceived' for the purposes of **Rule 34** of the **EAT Rules**. I do not elaborate further on my reasons for doing so. I have next considered whether it would be appropriate to also consider the question of 'wasted costs' pursuant to Rule 34C, against Ms Brown. I have concluded that the latter would not be appropriate, for the following reasons. First, the Respondents only pursued this to the extent that the Claimant sought to argue the responsibility for any default lay with Ms Brown. The Claimant has not. Second, Ms Brown has not conducted litigation on behalf of the Claimant. Rather, she has conducted the advocacy.

21. Turning to the question of the effect of pursuing the misconceived ground of appeal, this cannot be considered in isolation from the Claimant's conduct in doing so. The Respondents have referred to this in their submissions, referring to their attempts to resolve the issue through production of their own notes, seeking to obtain the EJ's notes, (a course which was opposed), and without any provision of notes from the Claimant. I accept the Respondents' submission that the Claimant's conduct of the litigation in failing to cooperate, to reach an earlier resolution of the issue, was also unreasonable.

22. The effect of pursuing a misconceived ground of appeal and the unreasonable conduct in the way that it was pursued has meant the Respondents have incurred the unnecessary costs of preparing an Answer to the ground; considering an application for the EJ's notes and the Claimant's objection to the application; and the additional time spent in preparing for the appeal hearing before me. I accept

that the time spent, as indicated in the detailed list in the Respondents' submissions, is not excessive by reference to the amount of work, totalling Counsel's additional fees of £3,480 and instructed solicitors' time costs of £4,750. There is a separate question of how much I should order, taking into account the Claimant's means, which I have considered in the context of the second basis of the application.

23. On the second basis of the application, I also accept the Respondents' submissions that the Claimant's conduct of the litigation was unreasonable, in respect of the grounds of appeal themselves, which referred in turn to a separate reconsideration application, without making it clear which parts of that application were relevant. This had the effect of confusing the scope of the permitted grounds of appeal, for which the Respondents' Counsel had to prepare and respond to. The confusion is reflected at paras [16] and [17] of the First Judgment. This was compounded by the fact that the Claimant's skeleton argument advanced points beyond the permitted grounds of appeal, all of which had to be resolved at the hearing, as noted at paras [43] and [46]. In addition, the Claimant lodged an unagreed, unpaginated core bundle which omitted the grant of permission; an authorities bundle which was not cross-referenced in the skeleton argument, did not contain side-references and was barely referred to in the hearing. The effect of all of this was to put the Respondents' legal representatives to needless extra work. The Claimant does not claim ignorance of the Practice Direction, knew that she needed to comply with relevant parts of it (and did not dispute that she did not comply) but says that she was ignorant of the consequences, namely that she might be liable for costs incurred as a result of such conduct. That is not a sustainable argument. In relation to the core bundle, the Practice Direction expressly stated at para [11.4.5] that a "party that fails properly to cooperate in producing a bundle will be at risk of an order of costs." The same is true in relation to a skeleton argument (para [11.6.7]). The fact that this Tribunal was able to "work through" the defects does not take away from the fact that the Respondents were forced to carry out work which they might otherwise have avoided. The Claimant's further response that the costs application is an aggressive "stance" seeks to sidestep the Claimant's responsibility for her conduct.

24. I am satisfied that, as with the first basis of the costs application, the additional time spent was proportionate to the issues. They comprise Counsel's additional fees of £1,815 and the instructed solicitors' time costs of £837.50, so that the additional total costs are £2,652.50.

25. I have, however, considered the Claimant's means to pay the total costs sought of £10,882.50. On the facts before me, I find that the Claimant is substantially impecunious, with no assets, no income beyond limited Universal Credit benefits, and debts amounting to some six months' income. Considering the Claimant's unsuccessful job applications to date, there no reason to expect that the Claimant's means to pay will improve at any time in the near future. There is also no evidence or reason to suppose that the Claimant will receive any other monies from any third party (she does not seek to blame Ms Brown, which might otherwise be the basis for a professional negligence claim).

26. In light of the Claimant's extremely limited financial means, and no likely improvement in that position in the near future, I make an award on both bases of the costs application, in the total of £1,000. This comprises the first basis of pursuing the misconceived ground and in the conduct of that aspect of the appeal, in the sum of £750; and £250 in relation to the second basis of the application, based on wider unreasonable conduct. No order is made for wasted costs.