

Neutral Citation Number: [2025] EAT 125

Case No: EA-2022-001044-RN

**EMPLOYMENT APPEAL TRIBUNAL**

Rolls Building  
Fetter Lane, London, EC4A 1NL

Date: 30 July 2025

**Before :**

**HER HONOUR JUDGE TUCKER**

**Between :**

**THE EXECUTOR OR PERSONAL REPRESENTATIVE  
OF MR IQBAL KHAN, Mr Iqbal Khan trading as I.A Kay & Co**

**Appellant**

**- and -**

**MRS A VIJENDRAN**

**Respondent**

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**MRS SHIFA KHAN (for the Appellant) appeared In Person**  
**No appearance or representation for the Respondent**

FULL HEARING  
Hearing date: 30 July 2025

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**JUDGMENT**

## **SUMMARY**

### **PRACTICE AND PROCEDURE**

In the case before the Tribunal, a Judgment was entered in favour of the Claimant on 23 November 2021. It was sent to the parties on 29th December 2021. The Respondent had failed to lodge a Response. The Tribunal ordered the Respondent to pay to the Claimant a redundancy payment of £8,850 and compensation for accrued but untaken holiday pay of £4,039.36. The Tribunal recorded in decision made on 10 February 2022 that the Respondent had written to the Tribunal on 7 October 2021 and applied for an extension of time in which to lodge a Response. That application was dismissed.

After the Judgment was sent to the parties on 29 December 2021 the Respondent wrote to the Tribunal and made an application for written reasons and an application for reconsideration of the Judgment, setting out detailed calculations about why it considered that the figures ordered to be paid to the Claimant were wrong.

The Employment Judge dismissed both the application for written reasons and the application for reconsideration, recording that under r.21 of the ET Rules of Procedure 2013 (the equivalent rule now being r.22 of the ET Rules of Procedure 2024), the Respondent could only participate in the proceedings to the extent permitted by the Judge who heard the case.

The Respondent appealed against the Judgment sent to the parties on 29 December 2021 on the grounds that there were errors in the calculation of both awards made in favour of the Claimant. The appeal was allowed and the matter remitted to the Tribunal.

The decisions in *Talash Hotels v Smith* UKEAT/0050/19/00 and *Office Equipment Systems Ltd v Hughes* [2018] EWCA Civ were considered and applied. There is no absolute rule that a Respondent who has been debarred from defending a claim on liability is always entitled to participate in the determination of remedy. It would generally, however, be wrong not to read or consider written submissions or representations on remedy from a defaulting Respondent. In this case, the combined decision to refuse to provide reasons, or to consider submissions from the Respondent was an error.

It was unclear why or how the Tribunal had settled upon the figure used for a weeks pay for the purpose of the redundancy calculation given the apparent agreement in the ET1 and ET3 on the level of monthly pay. Further, the basis upon which the award for holiday pay was calculated was wholly unclear. It was not clear if that had been brought as a claim for unlawful deduction from wages, or

under the WTR 1998, when the holiday year was said to have started from, or what, if any agreement, there was between employer and employee as to entitlement to holiday pay.

Those matters needed to be considered by the Tribunal. The claim was remitted.

**HER HONOUR JUDGE TUCKER:**

1. This is my decision in relation to an appeal that was listed for full hearing today. The appeal arises out of sad factual circumstances.

2. I refer to the Claimant and Respondent as they were before the Tribunal.

3. The Claimant worked for the Respondent as an Accounts Assistant from 30 March 1998 onwards. The Respondent was a sole trader running an accountancy firm. In 2020, during the Covid pandemic, the Respondent died. Acting on behalf of the Respondent now is his Executor, his wife. I have expressed my sympathy for the circumstances in which Mrs Khan is now appearing before me and, also, to the Respondent's daughter, Ms Khan who assisted her mother today.

4. The Claimant was born on 21 March 1959. Her employment ended on 1 December 2020, according to her Claim form, although there appears to be information in the bundle that her last day of work was 30 November 2020. On 7 March 2021 the Claimant issued a claim before the Employment Tribunal in which she made a claim for a statutory redundancy payment and for accrued but untaken holiday pay. In that claim she stated that she worked for the Respondent for 30 hours a week and that she was paid a gross salary of £1,200 and a net salary of £1,092. She stated that she was paid notice on termination of one month. She made a claim for a statutory redundancy payment and a claim for compensation for a full year's holiday pay she asserted she was entitled to. The Claim form does not say whether or not she brought her claim for holiday pay as a claim under the Working Time Regulations or as a claim for unpaid wages.

5. The case was initially listed before the Tribunal for a hearing on 8 September 2021. However, at the hearing the Judge converted the final hearing into a Case Management hearing. I have seen a

copy of the Case Management Order made on that day at pages 46 to 49 of the appeal bundle.

6. At the hearing the Judge identified that there may not have been effective service upon the Respondent, Mr Khan's Executor. As a result, the Judge directed that the Claim form should be copied to the Executor or Personal Representative of Mr Khan, both at the postal addresses provided by the Claimant, (two different postal addresses) and also by email to two email addresses that were provided by the Claimant. The Judge also recorded the details of the Claimant's claim. At paragraph 12 the Judge stated:

“Having heard the Claimant and having seen the documentary evidence before it, case statements and P45, the Tribunal records that the Claimant claims she has an entitlement to receive a redundancy payment of £8,850 that was assessed on the basis of an annual gross weekly pay of £5,340 which meant a weekly pay of £295.”

7. The Judge also stated that the redundancy payment was calculated on the basis of 1.5 weeks pay for each full year worked when over 41 years old, and, as the Claimant had worked for over 20 years at the date her employment ended, the calculation was,  $1.5 \times 20 \times £295$  making a total of £8,850.

8. The Judge also recorded at (paragraph 14) that the Claimant claimed sums by way of accrued holiday pay. The Judge stated that the Claimant had claimed that she was entitled to 25 days holiday a year, based on a holiday year which ran from 1 April to 1 March each year. The Claimant asserted that during her last year of employment she did not take any holiday leave at all. The Judge recorded that the Claimant stated that her last working day was 30 November 2021 and that the Claimant assessed that she had 16 days of accrued but untaken holiday on that date. Her claim was calculated using a net daily rate of pay of £252.46. She calculated the holiday pay due to her by multiplying  $£1094 \times 12/52$  (£252.46): £4,039.36 of holiday pay.

9. Subsequently the Tribunal entered a Judgment in favour of the Claimant dated 23 November

2021. That was sent to the parties on 29 December 2021. The Judgment stated as follows:

- “1. The Claimant was dismissed by reason of redundancy and is entitled to a redundancy payment of £8,850.
2. The Respondent has failed to pay the Claimant’s holiday entitlement and must pay the Claimant £4,039.36.
3. The Respondent must pay the Claimant £12,888.36 in total.”

10. The Respondent, the Executor or Personal Representative of Mr Khan, issued an appeal in the Employment Appeal Tribunal against the Judgment which sent to the parties on 29 December 2021. No written reasons were provided for that Judgment.

11. On 5 January 2022 the Respondent applied to the Employment Tribunal for written reasons for the Judgment of 29 December 2021 and for reconsideration of that Judgment.

12. In that application the Respondent contended that:

- a. There had been a miscalculation in the calculation of the redundancy pay which had been ordered to have been paid;
  - i. The appropriate number of weeks to multiply the weekly wage was 29;
  - ii. That the figure used in the calculation for a week’s wage was incorrect and that rather than being £295 it should have been £276.
- b. The calculation of the award for holiday pay was also incorrect, and significantly so;
  - i. The Respondent asserted that the Claimant did not have a written employment contract but that, as her employment began before 1 October 1998 and, if the claim was made by way of a claim under the Working Time Regulations, the leave year should have been calculated as starting on 1 October 2020.
  - ii. Further, it was submitted that the Claimant had only worked for four days a week and that, therefore, by the end of November she had only accrued 3.8 days of holiday leave.

- iii. It was submitted that the Claimant's net pay was £1,094 per month, equating to a daily rate of £63.12;
- iv. Therefore, it was submitted that the compensation accrued for untaken holiday was to be calculated as follows:  $3.8 \times £63.12$  which made a total of £239.85.

13. The Employment Judge considered the correspondence from the Respondent. By a decision dated and sent to the parties on 10 February 2022, the Judge refused the application for written reasons and for reconsideration of the Judgment. The Judge considered that the Respondent Executor should have been aware of the hearing on 8 September 2021 and also should have been aware of the need to respond to the claim by 14 April 2021.

14. The Judge recorded that a further Notice of Hearing was sent to the Respondent Executor, on 21 April 2021 after the initial final hearing had been converted to a Preliminary Hearing. The Judge recorded that the Executor did not attend the hearing on 8 September 2021, which was then adjourned following which arrangements were made for correspondence to be sent to the Executor. The Judge recorded that it appeared that arrangements by the Respondent's Executor were not made to deal with correspondence at all until, on 7 October 2021, the Respondent's Executor wrote to the Tribunal applying for an extension of time. That was application was rejected, with reasons, but even then the Respondent's Executor did not then serve a proposed Response to the Claim; no action was taken until the Judgment was sent to the parties on 29 December 2021 in the terms that I have already set out. The Employment Judge stated that under r.21 of the ET Rules of Procedure 2013 (the equivalent rule now being r.22 of the ET Rules of Procedure 2024), the Respondent could only participate in the proceedings to the extent permitted by the Judge who heard the case. The Judge considered that, pursuant to that rule, because the Executor had not entered a Response, a Judgment was issued in favour of the Claimant on the available material which had been recorded in the Orders and documents sent to the parties.

15. The Judge stated that, in the circumstances, the Respondent was entitled to receive the decision of the Tribunal but was only entitled to participate in any hearing to the extent permitted by the Employment Judge. In this case the Judge concluded that the Respondent was not permitted to take any further part in the proceedings.

### **Submissions**

16. In submissions today the Appellant Executor, assisted by her daughter, has set out that she considers that the figures calculated by the Tribunal were wrong. In particular, it was submitted that, in the 12 weeks before the end of her employment, the Claimant's gross pay had been £1,200. It was submitted that the reliance, or apparent reliance by the Tribunal on a P60 for the year ending 5 April 2020 had been wrong, in particular, because that had meant that the redundancy payment was calculated on a larger salary than the Claimant actually received in the 12 weeks prior to the end of her employment.

17. In addition, it was submitted that the figures that the Respondent's figures for the calculation of accrued but untaken holiday pay were correct, not those advanced by the Claimant.

### **The relevant legal principles**

18. Statute sets out the basis upon which statutory redundancy payments are to be calculated. There is no apparent dispute between the parties about what those principles are. The dispute arises in respect of the figures used: how many years should be used in that computation, 29 or 30, and also what the Claimant's gross rate of pay was during the relevant period prior to dismissal.

19. Section 162 of the Employment Rights Act 1996 sets out that when calculating the amount of a redundancy payment, the calculation is undertaken by reckoning backwards from the end of the

period from the ‘relevant date’ the number of years of employment that the Claimant had worked, and the Claimant’s age during that time.

20. It is well established that a Claimant can bring a claim for holiday pay either as a claim under the Working Time Regulations, or, as a claim under the Employment Rights Act 1996 as a claim for failure to pay wages.

21. Rule 21 of the of the ET Rules of Procedure 2013 provided as follows:

**Effect of non-presentation or rejection of response, or case not contested**

21.—(1) Where on the expiry of the time limit in rule 16 no response has been presented, or any response received has been rejected and no application for a reconsideration is outstanding, or where the respondent has stated that no part of the claim is contested, paragraphs (2) and (3) shall apply.

(2) An Employment Judge shall decide whether on the available material (which may include further information which the parties are required by a Judge to provide), a determination can properly be made of the claim, or part of it. To the extent that a determination can be made, the Judge shall issue a judgment accordingly. Otherwise, a hearing shall be fixed before a Judge alone.

(3) The respondent shall be entitled to notice of any hearings and decisions of the Tribunal but, unless and until an extension of time is granted, shall only be entitled to participate in any hearing to the extent permitted by the Judge.

The equivalent provision now appears in Rule 22 of the 2004 Rules of Procedure.

22. I drew to the Respondent’s attention a decision of the EAT made on 19 September 2009: **Talish Hotels v Smith UKEAT/0050/19/00** and allowed time for her to consider that decision.

23. In **Talish Hotels v Smith** his Honour Judge Barklem considered the decision of the Court of Appeal in **Office Equipment Systems Ltd v Hughes** [2018] EWCA Civ 1842 (CA). In that case it was held that although there was no absolute rule that a Respondent who has been prevented from defending a Tribunal claim, because they have not entered a Response, should always be entitled to participate in the determination of remedy. Nonetheless, the Court of Appeal noted that it would be unusual, and, generally, wrong to refuse to consider written representations or submissions made by a Respondent in relation to remedy, particularly having regard to proportionality and the overriding objective. On the facts of the case that was before His Honour Judge Barklem the Tribunal, as in this case, the Tribunal had refused to provide reasons for the decision that was made; had not allowed the

Respondent to make submissions; and had not considered written submissions in respect of a claim for holiday pay.

## **Conclusions**

24. In terms of calculation of the redundancy payment, there appeared to be no dispute that the Claimant had worked for 20 years when she was over the age of 41. The more difficult point concerned the Claimant's weekly rate of pay. The Judge did not provide reasons for their decision on that issue. The best explanation for the figures reached is that set out at pages 47 to 48 of the appeal bundle, where the Judge recorded what he had seen and heard from the Claimant, which included pay statements and a P45. On the basis of that, the Judge recorded that the annual gross payment made to the Claimant was £15,340. That figure is disputed by the Appellant. I noted also that both the Claimant (in her ET1) and Respondent assert that the gross pay paid to the Claimant per month was £1,200. The basis for the calculation used by the Judge appears to have been at odds with that set out in the ET1, but there is no explanation as to how and why the figure reached was used. It is clear, however, that there is a dispute between the parties as to what the correct week's pay was for the Claimant during the relevant period of time.

25. In respect of the claim for holiday pay, my judgment is that it is very difficult to discern the basis upon which that award was made. All that is recited in the Case Management Order was that the Claimant claimed that she was entitled to 25 days a year, calculated from 1 April to 1 March. There is no indication as to whether the claim was brought under the Working Time Regulations, or indeed as a claim for unlawful deduction from wages. It is not clear why a decision was made to compensate the Claimant on the basis of net, rather than gross, pay. Nor indeed is it clear whether or not the Claimant was asserting that there was an agreement between the parties that she would be paid compensation for accrued but untaken holiday pay at the end of her employment other than in accordance with that which could be awarded by statute.

26. The Respondent was not able to make submissions as to the calculation of the award. Nor was the Respondent provided with Reasons for the figures calculated. The Tribunal made a decision that the Respondent could not, effectively, take part in the proceedings, although the Respondent provided reasons why the calculation of the figures awarded were disputed. In this case, the effect of the decision that the Respondent could take no part in the proceedings, combined with the request for written reasons being refused, and the request for reconsideration being refused amounted to an error of law, alternatively to a serious procedural irregularity. It has meant that the Respondent cannot understand the reasoning of the Tribunal and the basis for calculation of the award. Nor can this Tribunal. I cannot understand why it was that the figure of £15,340 was relied upon from the P60, as opposed to the figures in the Claimant's claim form. Equally, I cannot understand the basis for the assessment of holiday pay.

27. For those reasons I allow the appeal.

28. I have considered carefully the Appellants arguments as to disposal. They Respondent asked me to make a decision today, substituting a decision for the decision the Tribunal made so that these proceedings could come to an end. I sought to explain to both the Executor and to Mr Khan's daughter that the jurisdiction of the Employment Appeal Tribunal is limited; it must determine whether or not there is an error of law in any decision made by an Employment Tribunal. If there has been, it must then consider what order it should make. In this case I am satisfied that there has been an error of law for the reasons I have just given. However, on the information before me it appears that there is more than one outcome which may result from that decision. The Tribunal may wish to consider oral or written submissions; may wish to reconsider its decision as to written reasons or the application for a review. The outcome as a result of taking any one of those steps is not obvious: the same decision may be made, or a different one. It is only when there is only one possible outcome that the EAT can substitute its own decision. See for example *Jafri v Lincoln College* [2014] EWCA Civ 43. That, in

my judgment, is clearly not the case in this instance. I cannot understand the basis for the calculations before me, still less can I conclude which would be the only or correct outcome for the claim for redundancy payment and the claim for unlawful deduction from wages.

29. For those reasons, I consider that the matter should be remitted to an Employment Tribunal. It is ultimately for the Employment Tribunal to determine how to deal with the claims. The Judge may wish simply to consider written submissions from both sides, together with any documentary evidence that the parties seek to put before them. Alternatively, it may be considered that a hearing should be listed. Those decision, however, are ones for the Tribunal to make.

30. That is my decision on the appeal.

31. I add this in the hope that it may assist the parties. During the course of the hearing today it became apparent that the Appellant had taken some legal advice about, for example, calculation of redundancy payments. I was less clear that advice had been taken about wider employment responsibilities. The Respondent may wish to take legal advice. The parties may wish to consider alternative means to resolution of this litigation.