

Neutral Citation Number: [2025] EAT 192

Case No: EA-2022-000081-JOJ

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 10 December 2025

Before :

HIS HONOUR JUDGE SHANKS

Between :

MR NALAMOLU BRAHMAIAH

Appellant

- and -

**CENTRAL AND NORTH WEST LONDON
NHS FOUNDATION TRUST**

Respondent

The **Appellant** did not attend nor was represented
Mr Sapandeep Singh Maini-Thompson (instructed by Weightmans) for the **Respondent**

Hearing date: 10 December 2025

JUDGMENT

SUMMARY

PRACTICE AND PROCEDURE

The claimant appealed against a decision of the ET allowing the respondent extra time for serving their ET3 and against the consequential refusal of his application for default judgment on the ground that he was not given a proper opportunity to be heard on the issue.

The respondents conceded the point and agreed that the appeal should be allowed and the matter remitted to the ET to decide after giving the claimant a proper opportunity to be heard. The claimant sought a decision from the EAT that he should be granted a default judgment and did not agree the terms of an order proposed by the respondents.

The appeal was allowed and the matter remitted as the respondents had conceded. An order for costs was made against the claimant/appellant on the basis that his position was misconceived and unreasonable and had given rise to an unnecessary hearing.

HIS HONOUR JUDGE SHANKS:

1. This is an appeal by the claimant below against a decision of Employment Judge Wisby which was sent out on 13 January 2022 refusing to reconsider an earlier decision, itself sent out on 25 November 2021. That decision was effectively that the time for the respondents to put in their ET3 should be extended and implicitly that an earlier application by the claimant for judgment in default should be refused.

2. The claimant was and remains employed by the respondent Trust as a nurse, I am told working at a hospital in Central London. On 3 August 2021, he presented an ET1 at the Central London Employment Tribunal, alleging race discrimination, unlawful deduction of wages and other breaches of his employment rights. I have asked, but nobody seems very clear as to any of the detail of those claims and it does not really matter for today's purposes.

3. On 25 August 2021, so three weeks after the presentation of the ET1, the case was listed for a preliminary hearing to take place on 23 November 2021. The ET3 form was due to be lodged on 8 September 2021. That did not happen, for whatever reason. On 21 September 2021, the claimant applied for judgment in default.

4. On 1 October 2021, the respondent Trust did, in fact, present an ET3. The hearing on 23 November 2021 went ahead but the claimant was not in attendance and I think a fair inference is that he was not given proper notice of the hearing, or was given notice but he was not given a proper opportunity to participate. The hearing went ahead. Employment Judge Wisby extended the respondent's time for lodging the ET3 and, as I say, thereby implicitly agreed that the claimant's application for judgment in default should be refused and she said this at paragraph 4 of the Record of Preliminary Hearing from 23 November 2021:

“The Tribunal bore in mind that the claimant had applied for a default judgment and questioned when the respondent received the notice of claim. However, the Tribunal accepted that the notice of claim had only come to the respondent's attention on 23

September 2021, after the deadline of 8 September 2021. Having considered the ET3 and grounds of resistance, the Tribunal concluded it was in the interests of justice for the ET3 and the grounds of resistance to be accepted, no prejudice in the preparation of the case would be suffered by the claimant at this stage since his claims need to be particularised. No directions had passed and the hearing date is not impacted.”

5. It is accepted, as I have said, that the claimant was not given a proper opportunity to participate in that hearing. He applied to set aside that decision and then by a decision which is recorded in a letter from the Employment Tribunal dated 13 January 2022 Employment Judge Wisby refused that application and in the last paragraph of that letter she said:

“The claimant’s application for a default judgment was fully considered at the preliminary hearing. It was not granted. The decision to accept the respondent’s ET3 and grounds of resistance is not set aside. The reason the decision was taken to accept the ET3 are set out in paragraph 4 of the relevant order.”

6. The claimant appealed against that decision and I regret to say that the appeal has been subject to appalling procedural delays. I have not gone into the cause of those precisely, but finally, happily, the matter came before HHJ Tayler on 15 May 2024. The claimant was represented by counsel, Mr Crozier, and Mr Crozier prepared a detailed skeleton argument, which is at page 100 in my bundle, and persuaded HHJ Tayler that, as he put it at paragraph 27 of the skeleton:

“It is reasonably arguable that the claimant did not have a fair or proper opportunity to be heard in opposing the respondent’s application to extend time and, the claimant says, did not even know of the application or the documents provided to the ET. In these circumstances, applying any of the approaches to set aside or reconsideration identified above, it is reasonably arguable that the EJ was bound to set aside the original decision or find some other means of hearing the claimant’s opposition to the respondent’s application before a final decision on the respondent’s application was reached. But EJ Wisby’s view was that the decision would not be altered ...”

And this is the essential point:

“... the claimant needed to be given a fair opportunity to be heard and the Employment Tribunal needed to understand the claimant’s objection to the respondent’s application before this issue could be finally determined. The claimant therefore seeks to advance

the following ground of appeal in substitution for it in the existing grounds...”

And then the ground is set out.

“The ET erred in failing to set aside its order granting the respondent’s application for an extension of time to present its ET3, response or to reconsider the respondent’s application at a hearing in circumstances where the claimant did not have any proper opportunity to respond to the respondent’s application.”

7. Judge Tayler set this appeal down for a full hearing in relation to those matters, dismissing all other grounds of appeal. That full hearing has been listed before me today, another 18 months on into the process, it being 10 December 2025. Unfortunately, the claimant is not here. He applied for an adjournment late last week. That came before me on the papers. I refused it unhesitatingly. He was posted a letter giving that result on Friday. He apparently will not take emails so that the hope is that the letter got through to him in time for today but the EAT responded as soon as reasonably practicable to his application and he certainly could not have assumed that it would be granted. So he should have been here and he is not here and so I have not heard from him this morning.

8. Happily, the respondents, represented today by Mr Maini-Thompson, concede the basic point, which is that the claimant was indeed not given a proper opportunity to be heard in opposing the application by the respondents to extend time for the ET3 and they accept that that issue, *i.e.*, whether there should be extra time for the ET3 and whether there should be a default judgment, should be remitted to the Employment Tribunal to be heard with the claimant having a proper opportunity to be heard by the Employment Tribunal (I have suggested probably not Employment Judge Wisby, just for convenience).

9. The appellant has communicated over the last 18 months and he noted that the respondents were conceding the basic point on the appeal but he has put forward a draft order which is at page 118 which asks for rather more than a simple order providing that the appeal is allowed and for remittal. He has asked first that his application for judgment in default should be allowed by this Tribunal. That, I am afraid, would not be appropriate. The complaint was that he was not heard on

the issue and the remedy for that is that he should be heard, not that he should necessarily succeed. So that is hopeless.

10. He also asked for an order from this Tribunal that he be given time off work to deal with this case and that the respondents should pay his legal costs and all other expenses involved in the case. Again, those are not matters that the EAT can give orders on. Possibly to some extent they may be matters he can raise with the Employment Tribunal, although I am not sure an Employment Tribunal can order a respondent to give a claimant time off work in any event. But they are certainly not matters that should concern the EAT.

11. I have taken into account what he has said on the papers and, of course, Mr Maini-Thompson has shown me that and has answered the points and I reject any such points and I will make an order simply allowing the appeal and remitting the issue to be heard by an employment judge who is not Employment Judge Wisby.

Costs application made by respondents

12. The respondents have applied for an order for costs against the claimant, Mr Brahmaiah, under rule 34 and 34A of the Employment Appeal Tribunal Rules. I have already given a short judgment in relation to today's hearing and the outcome thereof. As I said, the respondents have, at various stages since May 2024, indicated that they are willing to concede the appeal and have the matter remitted. The claimant has not agreed to that course. He put forward a draft order which I have already quoted from at page 118 in the bundle, which contained requirements that were simply misconceived and he has refused to agree terms with the respondents. He has not attended today and the Trust have had to send counsel along to represent their interests today, not knowing that he was not going to be here, of course.

13. The respondents wrote to the claimant on 20 November 2025. They enclosed the bundle that they had had to prepare because he refused to cooperate in dealing with the bundle. They said that

they had tried to resolve the matter, they told the claimant that he had sought to extend the scope of the whole appeal. They said that they would have to send counsel on their behalf and they said that that would cost £1,500 plus VAT and that if he insisted on the hearing going ahead they would seek an order in that sum for costs. That letter was sent by post to the claimant's home address, which is the way that he has asked to be served with documents, and the solicitors have had absolutely nothing in response. He did, as I have already mentioned, make an application to the EAT by post for an adjournment of today's hearing. The EAT received that on 3 December 2025. He did not copy the respondents into that. I dealt with it on paper last week urgently. We did not trouble the respondents with it and I responded in a letter that was sent out by post on Friday, 5 December, refusing his application for an adjournment. I have already dealt with that in the earlier judgment.

14. So, Mr Maini-Thompson applies for costs in the sum I have mentioned, £1,500 plus VAT, which I think is £1,800, and he draws my attention to rule 34A, which says:

“Where it appears to the Appeal Tribunal that any proceedings brought by the paying party were unnecessary ... misconceived or that there has been ... other unreasonable conduct in the ... conducting of proceedings by the paying party, the Appeal Tribunal may make a costs order against the paying party.”

I have left out unnecessary words in that quotation. It seems to me that this is clearly a case where there have been unnecessary and misconceived applications in relation to the draft order the claimant was putting forward and that he has behaved unreasonably in his conduct of these proceedings so that that initial test is satisfied.

15. I then have a discretion and I can take into account his means. He is not here. He was warned of this application. So I have nothing before me about his means. That is his fault and I am not going to take into account his means but, as a matter of discretion, I am going to make an order for costs against him. This could all have been avoided, this time could have been used for other business of the EAT and the Trust, which have to spend money on our healthcare, is having to spend money on lawyers and so on and so it seems to me entirely right that an order for costs should be made and I

will make an order in the full sum claimed, which he was warned of, which is £1,800. So that will be part of the order that we send out to him today.