Neutral Citation Number: [2025] EAT 201

Case No: EA-2021-000737-RS

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 16 December 2025

Before :

HIS HONOUR JUDGE BEARD

- -

Between :

MRS S BROWN

Appellant

- and -

EAST HANNINGFIELD PRE-SCHOOL

Respondent

- -
- -

Mr Sam Way for the **Appellant**
The **Respondent** did not attend nor was represented

Hearing date: 16 December 2025

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JUDGMENT

SUMMARY

PRACTICE AND PROCEDURE

The claimant presented an ET1 claiming unpaid wages and failure to provide a payslip and P45, but also indicated that further claims might be added after taking advice. A supplementary document referred to disability, bullying, and grievances. The Employment Tribunal issued a Rule 21 judgment on paper for wages only, without considering the claimant's indication of further claims or her email stating she had prepared a witness statement and bundle for the listed hearing.

Under Rule 21 of the Employment Tribunal Rules 2013, a judge may issue a paper judgment only if satisfied that the claim can properly be determined on the available material; otherwise, a hearing must be listed. see **Limoine v Sharma** [2020] ICR 389. The case law emphasises that summary disposal is inappropriate where claims are unclear and that reasonable assistance should be given to litigants in person. On the material before the Tribunal – including the ET1, supplementary document, and claimant's email – the scope of the claim was unclear and potentially wider than wages. The judge should have sought clarification before issuing judgment. Failure to do so fell outside the reasonable exercise of discretion.

Case remitted to the Employment Tribunal under current Rule 22 for reconsideration by any judge.

HIS HONOUR JUDGE BEARD:

1. I shall refer to the parties as they were before the Employment Tribunal, as "claimant" and "respondent". The single ground of appeal which HHJ Tucker permitted to go to full hearing is that the Employment Tribunal erred by issuing a Rule 21 judgment, thus disposing of the claim without allowing the claimant an opportunity to apply to amend her claim. This despite the claimant's express indication in the ET1 that further claims might be added. The Employment Tribunal should have issued judgment on the uncontested wage and pay slip claims and listed a hearing to determine any amendment application and outstanding remedy issues.

2. The chronology of events, which may be of some relevance, given the age of this appeal is as follows. The claimant, on 23 March 2021, presented an ET1 claiming an under- payment of wages of £26.84, a failure to provide a pay slip, and a failure to provide a P45. In addition to this, however, was an indication within the ET1 form that "further claims may be added to this claim which ACAS advised me is permissible. I am taking further advice". There is a supplementary document, which followed the ET1 form, which expands the scope of the claimant's case beyond the initial wage and pay slip issues. It asserts that the claimant considers herself disabled under the Equality Act 2010, and alleges that bullying and workplace grievances compelled her resignation, causing stress and trauma. The document also references complaints to Ofsted and a formal grievance letter sent post termination. This document is relevant to understanding the way in which the claimant argues the single ground of appeal.

3. As is usual in the Employment Tribunal, a case which is considered to fall within the short track parameters, is allocated to a one-hour final hearing. That hearing was listed for 8 June 2021. A notice was sent to the parties on 1 April 2021, and the same letter gave the notification of claim to the respondent. That letter also provided the deadline for an ET3 response as being 29 April 2021. The letter makes it clear that a Rule 21 judgment may be issued if no response is received in time.

On 28 April 2021 the respondent requested an extension of time to present its ET3. In the meanwhile, after 28 April, somewhere in the ET office's system on 29 April 2021 it was found that the respondent had submitted an ET3, albeit that that was not discovered until a much later date. On 4 May 2021, the Employment Tribunal granted an extension to 11 May 2021. The Employment Tribunal sent a letter on 20 May 2021 indicating that no response had been received and that a judgment may now be issued. On 26 May 2021, the claimant emailed the Employment Tribunal. In that email she sought advice on how to submit a witness statement and a bundle for the hearing that was due to take place, as far as she was concerned, on 8 June 2021. In that letter the claimant also sought confirmation from the Employment Tribunal about the indication that there was no response in the letter that was dated 20 May 2021.

4. On 28 May 2021, the appellant was granted a Rule 21 judgment under the Employment Tribunal Rules 2013, which are the rules which applied at the time (albeit updated now). This judgment was based on the sum that the claimant had claimed in her ET1. It did not include any declarations in respect of the pay slip, nor anything about the other matters. The respondent admitted that sum as part of its ET3 response, and, as can be seen from the ET3, there were no responses to the matters that were raised by the claimant in the attachment to her ET1 at the stage where the ET3 response was considered by the judge.

5. The claimant appealed against that judgment on 14 June 2021. The appeal was lodged on the basis that the claimant had included in the ET1 a statement that she had been intending to take advice to add other claims. She was of course prevented from applying to amend by the issuing of the Rule 21 judgment. The appeal was dealt with first by HHJ Auerbach at the Rule 3(7) Employment Appeal Tribunal 1993 stage (the "Sift" so-called). The letter giving that decision which rejected the grounds of appeal was dated 21 February 2023. Following this decision, the claimant applied for an oral hearing in accordance with Rule 3(10). That oral hearing was before HHJ Barklem on 2 August 2023. He issued an order, sealed on 4 August 2023, where the invitation was given to the Employment

Tribunal to give thought to a reconsideration of the original judgment; HHJ Barklem staying the appeal in the meantime. The order also provided that papers would be restored for further consideration before a judge of the EAT if the Employment Tribunal decided not to reconsider. The result of that was that the Rule 3(10) hearing before HHJ Barklem was adjourned generally but with liberty to restore.

6. In a letter dated 20 September 2023, the Employment Tribunal issued a very slightly corrected judgment which dealt with the declaration for the pay slip. However, the Employment Judge declined to reconsider the decision otherwise, setting out reasons for that decision. Amongst the reasons given was that the claimant not entitled to an amendment automatically. Following this the claimant sent a letter to the Employment Appeal Tribunal dated 4 October 2023. She indicated in that letter she wished to appeal the corrected judgment. It will be obvious that this did not, as an approach, comply with the Employment Appeal Tribunal Rules for lodging an appeal. However, an administrative error led to it being given a further appeal number. That meant that the letter came before HHJ Shanks at the Rule 3(7) stage on 7 November 2023. He indicated, quite properly, that the second appeal was unsustainable on the basis that there was an existing appeal in respect of that judgment, and that there was also a decision which permitted liberty to restore the appeal. On that basis, he ordered that it ought to be dealt with at a Rule 3(10) hearing. That rule 3(10) hearing was before HHJ Tucker. The claimant was represented on 19 June 2024 under the ELAAS scheme, and on that occasion the ground which I am dealing with was drafted and advanced as an amended ground. HHJ Tucker gave permission to appeal on the basis of that amended ground of appeal. It is of note that the claimant addressed the judge on other points, but all were rejected as raising no arguable points of law. The order from that hearing, with accompanying reasons, was sealed and sent to the parties on 29 June 2024.

7. I should say that since that date the claimant has made a number of applications to the Employment Appeal Tribunal. On 9 September 2024, after the application had been put before Mr

John Bowers KC, sitting as a Deputy Judge of the High Court, the claimant was sent a letter indicating that her application to include communications with the Information Commissioner's Office was refused as having no relevance to the single ground of appeal. In October 2024 the claimant applied to rely on fresh evidence. She was told that the application was premature and should be made at the stage when bundles were due to be lodged by the administration. However, that application was then considered by the same judge, who once again indicated that the material was not relevant to the single ground of appeal. This decision was communicated to the claimant on 18 November 2024. In July 2025, the claimant applied for a transcript of the hearing before HHJ Barklem. This was refused again as being irrelevant to the appeal. I mention those matters simply to say this. Those issues, if they exist at all, must relate to the claim before the Employment Tribunal ad not the appeal. It is not a matter for this Tribunal because on appeal I can only deal with the single ground of appeal and the reasons advanced in respect of it.

8. On 7 August 2024 this matter was listed for hearing before me. However, given the basis of the appeal, a copy of the ET1 that had been presented to the Employment Tribunal was a necessary document. The bundle included a copy of the ET1 but it was not clear that that was the same as had been presented to the Employment Tribunal. I adjourned the appeal and indicated that it should be expedited and listed before me. As Mr Way has told me today, there are some slight differences between the documents but none which are of significance to this appeal.

9. The claimant's submissions in writing begin with the requirements of Rule 21. She argues that the Employment Judge must first decide whether a proper determination can be made on the available material and, if not, the Employment Judge is obliged to list a hearing. The rule gives the Employment Judge the power to seek further information before deciding whether a proper determination can be made. The claimant argues in this case a hearing was required because of the contents of the ET1, along with the supplementary documentation. The claimant's ET1 and supplementary document expressly indicated the possibility of additional claims. Beyond this, the

claimant had included facts which suggested there were issues beyond unpaid wages. Along with this, the claimant sought to submit a witness statement and a bundle before the listed hearing. In its response, the admissions of liability by the respondent were only for wages and in respect of the P45. Of significance is that the response did not address the wider elements set out in the attached supplementary pages.

10. The claimant submits that the following legal principles are demonstrated by the relevant authorities.

a. Referring first to **Drysdale v Department of Transport (Maritime and Coastguard Agency)** [2014] IRLR 892. It set out that Employment Tribunals will assist litigants in person appropriately in the formulation and the presentation of their case. The case indicates that what is appropriate depends on the circumstances; however, making it clear that the Employment Tribunal must remain impartial when doing so. What is demonstrated is the wide margin of appreciation that is given to an Employment Judge in those circumstances.

b. **Limoine v Sharma** [2020] ICR 389 demonstrates that the judge must be satisfied that the determination under Rule 21 can properly be made, otherwise a hearing is required.

c. Reference was also made to the case of **Moustache v Chelsea and Westminster NHS Trust** [2025] EWCA Civ 185, which demonstrates that the Employment Tribunal's role is arbitral and it is not inquisitorial, but reasonable assistance should be given to litigants in person as part of that.

d. Finally, **Cox v Adecco** [2021] ICR 1307, which said that when dealing with a case involving a strike out (the claimant arguing that this should apply to any other summary disposal) it is inappropriate to order strike out where claims are unclear. Tribunals should assist litigants in person to clarify their claims.

11. The claimant contends that the error of law demonstrated is that no reasonable Employment Tribunal could conclude that the entire claim was determinable on the material before it. The failure to engage with the ET1 and the supplementary document or to consider the claimant's intention to submit further material in the form of a witness statement and the document bundle, meant that the scope of the claim was unclear and, because it was unclear, the Employment Tribunal should have listed a hearing to clarify what the scope was, and considered any amendment sought. The claimant argues on that basis that the appeal should be allowed and remitted to the Employment Tribunal but with an order that a hearing is held.

12. The one authority stressed in oral submissions as of particular importance by Mr Way is **Limoine**. Mr Way pointed out that the circumstances were a little more complex than in the case before me, as that case involved an employer's contract claim. The claimant was required to respond to that employer's claim but failed to do so. At a hearing the Employment Judge entered a default judgment. The successful ground in that appeal, which is argued as relevant here to the first part of ground 1, was that the Employment Judge failed to consider whether the claim was made out on the material then before the Employment Tribunal. HHJ Auerbach sets out the relevant Employment Tribunal Rules and the Presidential Guidance which applied. He then considers the exercise of the case management powers which Rule 21 of the Employment Tribunal Rules 2013 gives to the Employment Judge. Between paras.24 to 28, HHJ Auerbach sets out the structure of Rule 21 as follows:

> "24. It is worth starting by spelling out the structure of the Rule. Rule 21(1) sets out the circumstances in which the remainder of the Rule is engaged. I shall refer to them compendiously as a case in which the claim, which to repeat may be an employer's claim, is undefended or uncontested. In any such case, Rules 21(2) and 21(3) both apply.
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> 25. As to rule 21(2), that requires a Judge to decide whether, on the available material, a *determination* of the claim can *properly* be made, and, to the extent that it can, to issue a Judgment accordingly. Otherwise, a hearing *shall* be fixed. However, the Judge may, to

enable such a decision to be made on paper, seek further information from either or both parties. Clearly, this is intended to enable a Judge in a straightforward case, if appropriate, to issue a Judgment in favour of a claimant without the need for a hearing, avoiding the expense, consumption of Tribunal resource and delay of having to have a hearing in a straightforward undefended case. Although the scope of the Rule is not confined to any particular type of claim, that most naturally and commonly occurs in relation to straightforward undefended money claims for wages, holiday pay and/or notice monies.

26. However, the Rule neither requires nor permits the Judge to enter Judgment simply because the claim is undefended and without giving any further consideration to the matter. As the words that I have emphasised reflect, the Judge needs to be satisfied that a determination can properly be made. Otherwise there has to be a hearing. That means, it seems to me, that the Judge needs to be satisfied, on the information contained in the claim form and any other documents or materials before them, and, in view of the claim being undefended, treating what the party advancing the claim says as undisputed fact, that the factual elements necessary to make good the claim in law are made out.

27. The Judge needs to be satisfied of that before granting a paper Judgment, whether on liability or, as the case may be, remedy. In order to carry out this task the Judge is empowered to require the parties to provide further information - and the use of the word 'parties' makes clear that this could be either or both of them. However, if this process does not resolve any uncertainty then a paper Judgment should not be issued and instead a hearing must be held.

28. I note also that pursuant to Rule 7, where there is relevant Presidential Guidance, while the Tribunal is not bound to follow it, it must have regard to it. It follows that, whenever considering what to do in a case to which Rule 21(1) applies, the Judge should consider the Presidential Guidance, even if they decide for some reason not to follow it in some respect. While much of that guidance may be said to be procedural in nature, it draws attention also to substantive issues that could, in a given case, affect the Judge's decision as to whether further information and/or a hearing is needed, such as whether the claim is clearly stated, where the burden lies and whether there is an obvious jurisdictional problem. It rightly suggests that if there is reasonable doubt about any material matter a hearing should be listed."

13. The claimant argues that two points arise from **Limoine**. Firstly, it is important not to view

Rule 21 as applying as a default judgment, as in civil proceedings. There is no automatic default. There must be consideration of the substance of the claim. Secondly, it is submitted that the Employment Tribunal must apply the same principles in its duties to litigants in person and towards parties having a fair resolution. The claimant argues that such duties arise in other circumstances where there are case management decisions. It is contended that a litigant in person should be in no worse position than applies at a contested hearing compared to an uncontested case.

14. This is an appeal against a case management decision, and the test is that that decision should fall outside the broad range of discretion afforded to the Employment Judge. The extent of that discretion must, the claimant argues, when the decision is one which will finally determine a case, take into account that finality. The claimant argues that the principle to be taken from **Cox v Adecco** is that before there is a summary disposal, the Employment Judge must roll up sleeves and identify what the claim is really about. That is so even if the claim might require an amendment. Therefore, part of the ordinary duty of the Employment Judge is to properly examine the material available to decide whether or not a claim can be decided without a hearing.

15. The claimant submits that the application of these principles means when the documents included in the ET1 and the later email of the claimant are considered, there should have been a hearing. The Employment Judge considered a claim which did not completely align with what the claim actually was, if it the documentation was considered in the round. The claimant had a belief that she could include further claims. As Mr Way argued, the substance of that belief is one which might need to be explored by the Employment Tribunal. Further, the claimant had set out facts attached to the ET1 from which it could be surmised that there were other potential claims. For example, she had set out that she was a disabled person, that she had raised grievances at work. Beyond that, she claims that she was forced out of her job. It would be easy to see this, says Mr Way, as a complaint of constructive dismissal. Finally, he argued that the claimant's email of 26 May 2021 stating that she had prepared a witness statement and a bundle for the hearing should have alerted the

Employment Judge to the possibility in the context of an application or a potential application to amend.

16. The core error, Mr Way argues, in the Employment Judge's decision is shown in the letter of September 2023, and the paragraph where the Employment Judge sets out that there is no entitlement to amend. Whilst that is correct, accepts Mr Way, as far as it goes, it does not go far enough because it does not deal with the right to make that application to amend. In the circumstances, it was argued that this was to hold the claimant to a higher standard of pleading than would be the case in any other case management situation which would have dealt with this pleading. It is further argued that the email of 26 May also asked if the Employment Tribunal can confirm there has been no response, which clearly indicates that the claimant had not seen any response at that stage.

17. Mr Way, as is proper and was very well done, drew my attention to the decisions that might impact on his argument against the claimant's contentions. He indicated that, considering para.37 of the **Moustache** case, it was important to recognise that employment tribunal proceedings are not inquisitorial. Warby LJ, giving the judgment, set out in para.37:

> "Fourthly, however, the ET's role is arbitral not inquisitorial or investigative. It must perform its functions impartially, fairly and justly, in accordance with the overriding objective, the law, and the evidence in the case. It may consider it appropriate to explore the scope of a party's case by way of clarification. That may, in particular, be considered appropriate in the case of an unrepresented party. Whether to do so is however a matter of judgment and discretion which will rarely qualify as an error of law such that the EAT can interfere. The ET has no general duty to take pro-active steps to prompt some expansion or modification of the case advanced by a party where that might be to their advantage. These propositions emerge clearly from a series of decisions of this court and the EAT."

18. During the course of submissions, I raised with Mr Way the impact of decisions in **Chapman v Simon** [1994] IRLR 124, and perhaps more particularly in **Chandhok v Tirkey** [2015] ICR 527 where the then President of the Employment Tribunal, Langstaff J, said at para.17:

> "However, all that said, the starting point is that the parties must set out the essence of their respective cases on paper in respectively the ET1 and the answer to it. If it were not so, then there would be no obvious principle by which reference to any further document (witness statement, or the like) could be restricted. Such restriction is needed to keep litigation within sensible bounds, and to ensure that a degree of informality does not become unbridled licence."

Mr Way accepted that in principle it applied, but pointed to the specific elements where a litigant in person was entitled, as many of the authorities point out, to some degree of support.

19. Unfortunately, the respondent's skeleton argument does not engage with the ground of appeal, and there was no appearance from the respondent. The argument presented argued with claims that have not yet materialised, and may never have been claims that the claimant would pursue. The respondent set out that the claimant's health issues were not linked to workplace stress, and denied that any constructive dismissal claim would be substantiated as the resignation was voluntary and medically advised. The argument continues by arguing there was inappropriate contact with staff of the respondent. There was a denial of any data breach. The skeleton indicates that the current committee members who run the respondent have had no prior involvement, as all the previous members running that organisation left in November 2023. Unfortunately, none of those approaches assist me in coming to a conclusion in respect of this case.

20. At the heart, this is an appeal about how far an Employment Judge is required to assist a party in the formulation and presentation of their case. As is set out in **Drysdale**, that is left to the good sense of the Employment Judge or the Employment Tribunal in most circumstances. However, that said, it is clear that there must be some level of support to the litigant in person. The question here is not what would I have done faced with this material but, instead, was the decision to proceed to make a Rule 21 judgment within the reasonable discretion of the Employment Judge, given the material that was before the Employment Judge? I should say at this point that I am approaching this appeal on the basis of the material that should have been before the Employment Judge in May 2021. It is

certainly not clear to me that the Employment Judge did have all the documentation when making that decision. I am not clear, for instance, whether the response was before the Employment Judge. It appears to me that the September 2023 letter is ambiguous in that regard, and certainly it had not been sent to the claimant before that decision was made. Further, it is not clear to me - and I should say this - that the email of 26 May was also before the Employment Judge. I recognise, as a matter of fact, that the administration of the Employment Tribunal in 2021 was still recovering to a significant extent from the problems that had been created by the various lockdowns that occurred during the Covid pandemic, and the specific regulations that were brought out at that time. But, nonetheless, I have to approach this on the basis of what the judge should have had before him.

21. Whether this was an undefended claim or a claim with an admission made, the first consideration of the Employment Judge is to ask: what is the material to be considered? In this case that material must have been the ET1 and the ET3; the claimant's email which referred to the absence of the response and the indication therefore that the claimant had not seen that response. Further the request about provision of a bundle and a witness statement in preparation for a hearing. The ET1 not only had an express indication that an amendment might be sought following advice to be taken, it also included details of fact which could, if subjected to analysis, show that there was a factual substance for claims, albeit that those claims might require an expansion of detail. If this was a contested case, **Cox** would indicate that those are matters which would have necessarily been required to be explored by the Employment Judge. If I consider Warby LJ in para.37 of **Moustache**, even where it is indicating the importance of the judicial discretion of the Employment Judge, there is reference that "It may consider it appropriate to explore the scope of a party's case by way of clarification". That may, in particular, be considered appropriate in the case of an unrepresented party. Whether there was the potential for a successful amendment application in this case is less the point than whether the judge could be clear that there was no potential amendment. It is that lack of clarity set out in **Moustache** may be of importance here. Again, in terms of **Chandhok v Tirkey**

although the starting point is the ET1, this is an ET1 that did have information in it which could have pointed to a number of potential claims. Those claims that I have identified by considering the ET1 and attached document were potential disability discrimination claims, potential constructive dismissal claims. In additon the potential, because of the mention of Ofsted, of protective disclosure detriment and dismissal claims. There was, in terms, therefore, a series of claims which might have been made and which might have been what the claimant was seeking to clarify by seeking legal advice.

22. The question for me is: given that information, could the Employment Judge reasonably come to the conclusion that the claims could properly be dealt with without a hearing? I am persuaded that the position in May 2021, particularly where the claimant was indicating that there would be a witness statement and a bundle, in conjunction with the express indication of potentially further claims, was sufficient that a pause would have been necessary before making a judgment. It seems to me that it would not be reasonable in those circumstances for a judge simply to issue a judgment in respect of the claim on wages without asking further questions. I am not, however, persuaded that that necessarily means that the judge ought to have ordered a hearing. There would have been little difficulty in the judge asking for the witness statement and the contents of the bundle, given that it was indicated they were already in place, and it would have been a very straightforward question to ask whether there were amendments that were being sought in respect of the claim, given the time that had passed since the issue of the claim in this case.

23. That being so, although I am persuaded that this is a ground of appeal that should succeed, I am not persuaded that there is only one response to that ground of appeal, and I am therefore going to remit this to the Employment Tribunal to be heard, it seems to me, by any judge. I cannot see that there will be a purpose, four years on, in limiting this in any way. That remittal will be for the Employment Tribunal to consider this case as the Employment Tribunal deems appropriate under what is now Rule 22.