Neutral Citation Number: [2026] EAT 62

Case Nos: EA-2023-001490-JOJ,
EA-2024-000048-JOJ

**EMPLOYMENT APPEAL TRIBUNAL**

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 21 April 2026

**Before** :

**THE HON. LORD FAIRLEY, PRESIDENT**

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**Between :**

**MR A IKEJI**

**Appellant**

**- and -**

**(1) WESTMINSTER CITY COUNCIL**
**(2) MS V PIQUET**

**Respondents**

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**Mr A Ikeji**, the Appellant, in person
**Mr T Lester**, of Counsel, for the **Respondents**

Hearing date: 21 April 2026

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# JUDGMENT

## SUMMARY

***Practice and procedure; costs; whether Tribunal erred in concluding that claimant had been dishonest about a fact central to his claim of victimisation***

The appellant brought a claim in the Employment Tribunal in which he alleged that he had been victimised by the respondents contrary to section 27 of the **Equality Act, 2010** ("**EqA**"). He maintained that he had been subjected to two detriments. The first was said to be the withdrawal, on 23 February 2023, of a job offer previously made to him. The second was a failure to give him an opportunity to comment upon apparent discrepancies in the information provided by him about his employment history in the course of his job application. He submitted that these detriments were each because he had done certain protected acts.

Following a full merits and remedy hearing on 28 and 29 November 2023, the Tribunal dismissed his claim. It found that the reason for the detriments was not any protected act, but rather that the appellant had been dishonest with the respondents in the course of his job application.

The respondents made an oral application for costs in the sum of £18,000. They maintained that the appellant had lied about facts related to his employment history and that this was central to the issue of liability in the victimisation claim. They submitted that this amounted to unreasonable conduct in terms of rule 76(1)(a) of the rules of the Employment Tribunal, 2013. The Tribunal agreed and made a costs order for £3,000. A reconsideration application by the appellant was refused.

The appellant appealed against the costs order and the reconsideration decision contending that the Tribunal had erred in concluding that he had lied to the respondents by failing to take account of his own subjective beliefs about his employment history. He maintained that the fact that those beliefs were wrong did not amount to a basis for a conclusion that he had lied.

**Held:**

In the course of reaching conclusions about the respondents' reasons for imposing the detriments in question, the Tribunal required to consider the credibility and reliability of the evidence given by the respondents' witnesses on that issue. In carrying out that exercise, the Tribunal considered whether or not the appellant had, in fact, lied in the course of his job application and at his interview. That was an entirely legitimate approach. The Tribunal was entitled to have regard to all factual findings made by it as part of the process of determining the respondents' reason for imposing the detriments.

The Tribunal reached a unanimous conclusion that the appellant had been knowingly dishonest in his dealings with the respondents. That conclusion of fact was open to it on the evidence. No error of law was apparent in its reasoning. The Tribunal had considered the appellant's subjective state of mind and had concluded that he had knowingly lied.

The appeals were refused.

## THE HON. LORD FAIRLEY, PRESIDENT

## Introduction

1. The appellant, Mr Ikeji, brought a claim in the Employment Tribunal in which he alleged that he had been victimised by the respondents contrary to section 27 of the **Equality Act, 2010** (“**EqA**”). Following a full merits and remedy hearing on 28 and 29 November 2023, the Tribunal delivered an oral judgment with oral reasons in which it dismissed his claim.

2. The respondents immediately made an oral application for costs in the sum of £18,000. Having heard submissions, the Tribunal made a costs order, but limited the amount of it to £3,000. Written reasons were sent to the parties on 30 November 2023. The first of the appeals before me today is against the decision to make the costs order. The second is against a subsequent refusal by the Tribunal, on 3 January 2024, to reconsider that decision.

## The proceedings below

*The merits*

3. In the proceedings before the Tribunal, the appellant maintained that he had been subjected to two detriments. The first was said to be the withdrawal, on 23 February 2023, of a job offer previously made to him. The second was said to be a failure to give him an opportunity to comment upon apparent discrepancies in the information provided by him about his employment history. He submitted that these detriments were each because he had done certain protected acts. The protected acts he relied upon consisted of the bringing of Tribunal claims against three previous employers: MTR Crossrail, Morden College and Office for Rail and Road (“ORR”).

4. It was not disputed before the Employment Tribunal that the appellant had brought such proceedings or that his doing so amounted to protected acts for the purposes of section 27 **EqA**. It was also not in dispute that the appellant had been made subject to the claimed detriments. The disputed issue before the Tribunal was simply the causation question of whether the detriments were “because” the appellant had done the protected acts (or any of them) in terms of section 27 **EqA**.

5. The respondents’ position was that the detriments were not to any extent because of any of the protected acts. Rather, the cause of the detriments was said to be the discovery of material inconsistencies between the appellant’s own account of his employment history and the information provided by his referees. Those inconsistencies involved (a) apparent over-statement by the appellant of the periods for which he had been employed respectively by Morden College and ORR; (b) apparent mis-representations of the positions held by him with both Morden College and ORR; and (c) an apparently incorrect suggestion that he remained in the employment of ORR at the date of his job application to the first respondent in November 2022 and in January 2023 when, in truth, his employment with ORR had been terminated by ORR in July 2022.

6. On that latter point, materials provided to the Tribunal showed that the appellant had presented an ET1 claim form against ORR on 15 July 2022 with Tribunal reference 3204202/2022 in which he had made a complaint of automatically unfair dismissal contrary to section 103A of the **Employment Rights Act, 1996** (whistleblowing). Within that claim, the

appellant gave the effective date of termination of his employment with ORR as 12 July 2022 and made an application for interim relief. Interim relief was refused in a reserved Judgment and reasons sent to the parties on 4 January 2023.

7. The Tribunal found (ET § 33) that the appellant knew that he had been dismissed by ORR in July 2022 because that:

> "…was the basis upon which he presented a claim for unfair dismissal and made an application for interim relief."

It also concluded that the appellant:

> "…was not giving accurate information to the respondents when he told them in January 2023 that his employment with ORR was ongoing."

8. The Tribunal's reference to January 2023 was to the date of the appellant's job interview with the respondents on 12 January 2023. The Tribunal concluded that the appellant's representation at that interview that his employment with ORR was continuing was inconsistent with his application for interim relief which had been refused around a week before that date.

9. The Tribunal further noted (ET § 34 and 61) that the appellant had continued to mislead the respondents about his employment status with ORR in an email dated 8 February 2023 in which he falsely stated that he had given notice of termination of his employment with ORR following his receipt of a conditional offer from the first respondent.

10. The Tribunal ultimately accepted the respondents' evidence that the discovery of the various discrepancies between the appellant's own account of his employment history and the information provided by his referees was what caused the offer of employment to be withdrawn on 23 February 2023. It also accepted the respondents' evidence that the number and significance of the discrepancies were the reasons for the appellant not having been given an opportunity to explain them. The Tribunal accordingly dismissed the victimisation complaint.

*The costs application*

11. Immediately following the Tribunal's announcement of its decision, the respondents made an application for costs. They maintained that the appellant had lied about facts that were central to liability in the victimisation claim, and that this amounted to unreasonable conduct in terms of rule 76(1)(a) of the rules of the Employment Tribunal, 2013.

12. The appellant's counsel resisted the costs application under rule 76(1)(a) on the basis that the appellant had been "unclear in his own mind as to whether his employment [with ORR] had come to an end" and did not believe that he had lied about anything.

13. The Tribunal rejected the submission for the appellant. The key section of its reasons on liability for costs is set out at ET § 98 to 101 as follows:

> 98. The effect of our decision on liability is that the claimant did not tell the truth to the respondent when telling them in his job application and at interview that he remained employed by ORR. He knew and brought a claim in London East on the basis that he had been dismissed on 12 July 2022. This was a central

> fact in the case and it was the most significant of the discrepancies that weighted in the minds of the respondents when they withdrew the job offer. We agree with what was stated in the respondents costs warning of 3 October 2023, that he provided false or misleading information during the recruitment process which resulted in the conditional offer being withdrawn.
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> 99. Both sides agreed that the decision in **Arrowsmith** [**v. Nottingham Trent University** [2012] ICR 159] holds that a lie on its own will not necessarily be sufficient to found an award of costs. It will always be necessary for the tribunal to examine the context and to look at the nature, gravity and the effect of the lie in determining the unreasonableness of the alleged conduct.
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> 100. We find unanimously that there was a lie in respect of a central fact related to liability which made…it unreasonable to pursue the claim. The respondent had a firm basis for the withdrawal of the offer, as they explained in the withdrawal letter of 23 February 2023 in terms of there being disparities with the application. We find that the claimant knew or ought reasonably to have known that in maintaining to the respondents that he remained in ORR's employment, this was untruthful. We do not accept his submission that he was unclear as to whether he had been dismissed. He maintained in his claim against ORR that he had been dismissed…
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> 101. Our finding is that the threshold test in rule 76(1)(a) is met.

14. The costs warning letter from the respondent to the appellant dated 3 October 2023 contained the following passage:

> "The evidence clearly shows that you provided false and / or misleading information during the recruitment process, which resulted in your conditional offer being withdrawn, and there was no reason in the circumstances to offer you the opportunity to explain before withdrawing the conditional offer. Any alleged protected act(s) are completely irrelevant."

15. Having considered the appellant's means and ability to pay, the Tribunal limited the quantum of the costs award to £3,000.

## The reconsideration application

16. On 29 November and 3 December 2023, the appellant made applications for reconsideration of the decisions on liability and costs. He attached to that application a transcript of his interview with the respondents on 13 January 2023. At paragraphs 154 to 157 of that Transcript, he is recorded as having represented to the respondents that his employment with ORR was both current and permanent. At paragraph 159, the appellant is recorded as telling the respondents that his contract with ORR:

> "was supposed to end on the 12th of July, but kept being extended for all kinds of reasons."

17. In a decision intimated on 3 January 2024, the Tribunal refused to reconsider its decisions on the merits or on costs. It noted that the transcript did not support the appellant's case.

## The grounds of appeal

18. The proposed grounds of appeal lodged by the appellant on 20 December 2023 and 8 January 2024 against the costs order and against the reconsideration decision respectively were each rejected under rule 3(7) of the EAT rules. At a rule 3(10) hearing before HHJ Auerbach on 12 March 2025, however, three amended grounds were produced following the involvement of ELAAS. These amended grounds were permitted to proceed to a full hearing but only insofar as they related to the issue of costs. The amended grounds are dated 12 March 2025 and are the same in both appeals. They are in the following terms:

> 1. The Tribunal erred at paragraph 98 in concluding that the effect of its decision on liability was that the Claimant had not told the truth about remaining employed by ORR. That was not the effect of their decision, which was based not on any such alleged dishonesty but rather on the reasons for the Respondents' decision not to hire him. This incorrect assumption of dishonesty founded the Tribunal's conclusion that it was entitled to make a costs order under rule 76(1)(a).
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> 2. The tribunal erred at paragraph 98 in concluding that the Claimant's decision to bring employment tribunal proceedings, in particular for interim relief, demonstrated that he subjectively knew that his employment had terminated and that therefore what he said in his job application and interview was untrue. The Claimant's consistent position throughout the case was that he had brought those proceedings with the specific intent of affirming his contract with ORR which he subjectively believed subsisted.
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> 3. In both of the above grounds, the tribunal erred in failing to adequately focus in the costs context on an evaluation of whether the Claimant should be treated as having acted unreasonably. They ought to have considered that on his case he genuinely believed that the facts stated in his job application and interview were true and that if there was any doubt about that then the Respondents ought to have made further enquiries with him about it. In so erring, the Tribunal failed to shift perspective away from an evaluation of the Respondents reasons and the objective truth of what the Claimant had said, and onto whether he subjectively believed his own case.

## The appellant's skeleton argument and submissions

19. On 1 April 2026, the appellant lodged a skeleton argument for this appeal. Paragraphs 3 to 5 of that skeleton contain arguments for which permission was not granted by HHJ Auerbach on 12 March 2025. It is not, therefore, competent, for the appellant now to seek to advance those arguments for which permission has not been given. Whilst skeleton arguments may be useful as means of providing greater clarity to the pleaded grounds for which permission has been granted, it is not open to an appellant to add to or supplement grounds of

appeal in a skeleton argument (**Advocate General for Scotland v. Milroy** [2026] EAT 25 at paragraphs 48 to 51).

20. Arguments in the skeleton that are not contained within the amended grounds of appeal are that (a) the Tribunal misapplied **Arrowsmith** (skeleton, para 3); (b) failed to recognise that victimisation can occur subconsciously (**Nagarajan v. London Regional Transport** [1999] IRLR 572 (skeleton para. 4); and (c) reached a perverse decision in the reconsideration application by ignoring the transcript of the 12 January interview (skeleton para. 5).

21. The part of the skeleton that relates to the grounds of appeal for which permission has been given is contained within paragraph 2. The appellant submits, in summary, that the Tribunal erred in concluding that he did not tell the truth in saying to the respondents in November 2022 and on 12 January 2023 that he was still employed by ORR. He submits that, in the context that he had made an application for interim relief, the Tribunal failed to consider whether he subjectively believed, at the time of his job application to the first respondents, that his employment with ORR was continuing. Even if his beliefs about his employment history with ORR were wrong, that did not amount to a basis for a conclusion that he had lied.

22. In oral submissions, the appellant suggested that it was clear that he had been "open and transparent" with the respondents.

## Respondents' submissions

23. The respondents submit that the appellant's amended grounds are unsustainable. The Tribunal was clear that it had considered and rejected the appellant's explanation that he subjectively believed that his employment with ORR was ongoing. It did so, in particular at ET § 100. The Tribunal had also explicitly considered the Claimant's evidence on this point at ET § 33, and had rejected it, concluding that the appellant knew that he had been dismissed in July 2022.

24. In these circumstances, the Tribunal did expressly consider whether the appellant subjectively believed his own case, when making the unanimous finding (at ET § 100) that he had lied in relation to a fact that was central to liability.

## Relevant law

25. Rule 76(1)(a) of the Employment Tribunal rules of 2013 states:

> "A tribunal may make a costs order or a preparation time order, and shall consider whether to do so, where it considers that –
>
> (a) a party (or that party's representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted.

## Analysis and decision

26. In the course of reaching conclusions about the respondents' reasons for imposing the detriments in question, the Tribunal required to consider the credibility and reliability of the evidence given by the respondents' witnesses on that issue. In carrying out that exercise, the Tribunal considered whether or not the appellant had, in fact, lied in the course of his job application and at his interview. That was an entirely legitimate approach. The Tribunal's explanation of it at ET § 98 to 100 was an accurate explanation of its thought processes. The Tribunal was entitled to have regard to all factual findings made by it as part of the process of determining the respondents' reason for imposing the detriments. There is no merit, therefore, in ground 1.

27. Contrary to the submission for the appellant in grounds 2 and 3, the Tribunal considered his subjective state of mind. It reached a unanimous conclusion that he had been knowingly dishonest in his job application and at his interview on 12 January 2023. That conclusion of fact was open to it on the evidence. No error of law is apparent in its reasoning. There is no basis on which this Tribunal could properly interfere with that conclusion.

*The skeleton argument*

28. For completeness, I have also considered the arguments that are contained only in the appellant's skeleton argument but not in his grounds of appeal.

29. The first of these – that the Tribunal mis-applied **Arrowsmith** – is misconceived. The Tribunal gave correct self-directions on **Arrowsmith** at ET § 99, and correctly applied those directions at ET § 100. It noted that the appellant's lie was a central fact related to liability that made it unreasonable to pursue the claim. No error of law is apparent in that conclusion. This argument was part of the pre-amendment grounds in the reconsideration appeal and was rightly found by the sift judge to disclose no arguable error of law. It was not renewed at the rule 3(10) hearing.

30. The second argument – that the Tribunal mis-applied **Nagarajan** – is simply an attempt to re-try the merits of the victimisation complaint. It is also an attempt to overturn the very clear findings on causation that the Tribunal made at ET § 55 to 68. The role of this Tribunal is not to re-try the case on its facts.

31. The third argument – a suggestion of of perversity in relation to the Tribunal's observation in the reconsideration decision that the transcript did not assist the appellant – is not arguable. Contrary to the submissions made by the appellant in this appeal, the transcript plainly shows that he was not open and transparent at his interview on 12 January 2023. Rather, it corroborates the Tribunal's original conclusion that he was not honest with the respondents about his employment history with ORR.

## Disposal

32. For these reasons, the appeals against the costs order of 30 November 2023 and the reconsideration decision of 3 January 2024 are each refused.