Neutral Citation Number: [2026] EAT 70

Case No: EA-2023-000761-JOJ

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 7 May 2026

Before :

HIS HONOUR JUDGE JAMES TAYLER

- -

Between :

MRS M G HARKINS **Appellant**

- and -

MARKS & SPENCER PLC **Respondent**

- -
- -

Rad Kohanzad (instructed by Lawson West Solicitors Limited) for the **Appellant**
Grace Holden for the **Respondent**

Rule 3(10) Hearing
Hearing date: 7 May 2026

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JUDGMENT

SUMMARY

Practice and Procedure

The very limited circumstances in which a respondent might make submissions at a Rule 3(10) Hearing considered.

HIS HONOUR JUDGE JAMES TAYLER:

1. This judgment deals with a brief point of procedure that arose at a Rule 3(10) hearing.

2. After an appeal is submitted to the EAT it is "sifted" on the papers: see Section 4 **EAT Practice Direction**. A Judge of the EAT considers whether there are reasonable grounds for bringing the appeal. That process is provided for by Rule 3(7) of the **Employment Appeal Tribunal Rules 1993 (as amended)** ("**EAT Rules**").

3. If the judge considers that all, or any, of the grounds should proceed to a full or preliminary hearing, that will be provided for in an Order. If the Order directs a full hearing, the respondent will be given a time within which to reply - 28 days unless otherwise directed: Section 9.1.2 **EAT Practice Direction**.

4. If the Judge is of the opinion that all, or any, of the grounds should not proceed, generally because they are not arguable, that opinion will be set out in a Rule 3(7) letter.

5. If the prospective appellant is dissatisfied with the opinion given in a Rule 3(7) letter an application can be made under Rule 3(10) **EAT Rules**: see Sections 4.4 and 5 of the **EAT Practice Direction**. The Rule 3(10) application is determined at a hearing. The purpose of the hearing is to determine whether any grounds that have been subject of a Rule 3(7) opinion should be permitted to proceed. Rule 3(10) hearings are designed for a brief assessment, having heard clear and concise submissions from the appellant. They are generally listed for one hour.

6. Usually a Rule 3(10) hearing is attended only by the appellant, although the other potential party or parties ("the respondent") are notified, and occasionally attend to observe.

7. Section 5.4.2. of the **EAT Practice Direction** states:

> The other party or parties to the appeal will not usually be able to speak at the Rule 3(10) Hearing but may attend to observe. If they do attend, the Judge may give them an opportunity to make brief submissions on any particular issue if it is in accordance with the overriding objective.

8. This allows a Judge to request assistance from the respondent about a specific issue, rather than providing a right to make submissions.

9. It is not desirable that Rule 3(10) hearings should turn into a dress rehearsal for the appeal. If

a respondent attends wishing to make detailed observations on the grounds of appeal they will almost certainly be disappointed. It is very unlikely that the respondent will be asked by the Judge to contribute. The respondent will generally waste their time and costs. An attempt by a respondent to argue matters of substance is likely to make the appellant's point that the appeal is arguable.

10. In very limited circumstances the respondent might ask to be heard. Any request to be heard should be carefully limited to knock out points that demonstrate that a ground is unarguable because, for example, there is a fundamental error in a ground of appeal, that can be demonstrated to be such without any need to look at detailed documentation or to ask the Employment Tribunal about what happened.

11. In this case, the respondent submitted a skeleton argument that briefly commented on a number of the grounds of appeal but also stated that ground 9, which asserted that a finding of fact was not supported by evidence, was incorrect, and provided an extract from Counsel's note demonstrating that the matter was dealt with in evidence. Having read the skeleton, Counsel for the claimant withdrew ground 9.

12. Ms Holden, who produced the skeleton argument for the respondent, attended the Rule 3(10) hearing. Because Mr Kohanzad withdrew ground 9, it was not necessary for me to invite her to contribute. I did not consider I would be assisted by hearing from the respondent on the other grounds which I permitted to proceed to a full hearing.

13. The submission of a skeleton argument for a respondent will very rarely be appropriate at a Rule 3(10) hearing. I accept in this case that Ms Holden was seeking to assist. Advance notice of a point such as that raised about ground 9 was to the benefit of the claimant and the EAT. But that is a very rare occurrence.

14. Save in exceptional circumstances, a respondent should not seek to make any submissions in respect of a Rule 3(10) application.

15. If it were thought at the sift stage that the involvement of the respondent would assist a Preliminary Hearing would have been fixed at which the respondent could submit a brief written

submission designed only to establish that there are no reasonable grounds of appeal (in respect of some or all of the grounds of appeal set out in the Notice of Appeal). Very occasionally, respondents are permitted to attend Preliminary Hearings and make oral submissions. That would be provided for in the Order fixing the Preliminary Hearing.