

Neutral Citation Number: [2026] EAT 59

Case No: EA-2024-001245-OO

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 22 April 2026

Before:

MARCUS PILGERSTORFER KC
DEPUTY JUDGE OF THE HIGH COURT
IN CHAMBERS

Between:

MR ISAAC BICKLEY
- and -
JOHN LEWIS PLC

Appellant

Respondent

Revised

No appearance or representation for the Appellant
No appearance or representation for the Respondent

JUDGMENT

Practice and Procedure: Rejection of ET1

SUMMARY

The Claimant legally changed his name by deed poll between the issuing of an EC certificate and the presentation of the ET1 form, resulting in different names appearing on the two documents. The Tribunal rejected the claim under Rule 12(1)(e) of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure Regulations 2013.

Held, allowing the appeal by consent:

1. The Tribunal erred in law by rejecting the claim without considering whether the Claimant had made an error “in relation to a name”. Further, the Tribunal failed to consider whether Rule 6 entitled it to treat the requirement of Rule 12(1)(e) as satisfied.
2. In this case the only conclusion open to the Tribunal was that the claim fell to be accepted. A decision to accept the claim as at the date of presentation (9 July 2024) would be substituted.

MARCUS PILGERSTORFER KC, DEPUTY JUDGE OF THE HIGH COURT:**Introduction**

1. When an Employment Tribunal receives a claim, it must decide whether to accept or reject it. One of the matters considered is whether the claimant's name on the claim form matches that shown on the early conciliation ("EC") certificate. The reason for this is obvious: it acts as a check to ensure that, where no EC exemption applies, the claimant has actually engaged in the required conciliation process. But what of the situation where a claimant's name is legally changed in the interval between obtaining the EC certificate and presenting the claim? This might arise for many reasons. This case involves change in gender identity, but there are other circumstances in which a person might choose to change their name, including, perhaps most commonly, marriage. Here, the Claimant changed his name by deed poll from Miss Annabel Bickley to Mr Isaac Bickley. As a result the names on the ET1 and EC certificate did not match and the Tribunal rejected his claim. Did it err in law in so doing?

2. This judgment gives my reasons for answering that question in the affirmative, and agreeing with the parties that the appeal should be allowed. I refer to the parties as they were before the Tribunal below.

Appeals Allowed by Consent

3. Rule 6(5) of the **Employment Appeal Tribunal Rules 1993** (as amended) ("the EAT Rules") provides that:

"Where the respondent does not wish to resist an appeal, the parties may deliver to the Appeal Tribunal an agreed draft of an order allowing the appeal and the Tribunal may, if it thinks it right to do so, make an order allowing the appeal in the terms agreed."

4. In **J Sainsbury Plc v Moger [1994] ICR 800**, the EAT (Mummery J presiding) explained that the appeal tribunal would not, as a general rule, allow an appeal by consent unless satisfied that there were good reasons for doing so: see 806E-807D. The reasons for this were reiterated by HHJ Jeffrey Burke QC and members in **Sakharkar v Northern Foods Grocery Group Ltd**

t/a Fox's Biscuits (2013) UKEAT/0314/12 (at §17) and HHJ Richardson in **Dozie v Addison**

Lee Plc (2013) UKEAT/0328/13 (at §20). In HHJ Richardson's words:

"The Appeal Tribunal does not allow appeals by consent without scrutiny. There are good reasons for taking this course. Firstly, judgments and orders of the Employment Tribunal and of Employment Judges are entitled to respect. It is in the interests of justice and good order that they should stand unless there is good reason for upsetting them. Secondly, parties sometimes agree to the setting-aside of judgments or orders for purely tactical reasons. These are not in themselves good reasons for setting aside judgments and orders. Thirdly, parties do not always think through the consequences of allowing an appeal. There may easily be a misunderstanding as to the effect of doing so or the scope of what the Tribunal will decide after the appeal is allowed. ... Fourthly, there is sometimes a wider public interest in a judgment beyond the interests of the parties to the litigation in question. This is something the Appeal Tribunal will wish to consider."

5. In **Moger** the EAT explained why reasons should be given by the appeal tribunal for allowing an appeal by consent (at 808B):

"The practice of the appeal tribunal accords with a convention that those who make judicial decisions affecting the rights of parties should give reasons for their decisions. The industrial tribunal which heard the complaint, the industrial tribunal to whom a matter is remitted and the public, as well as the parties, are entitled to an explanation for the tribunal's decision. The duty to give reasons also helps to concentrate the minds of the tribunal members on the relevant issues and arguments. For those reasons we decline to accede to the request that we should not give reasons for our decision on this appeal."

6. In that case, the EAT required the parties to attend before it in order to satisfy it that there were good reasons for allowing the appeal by consent. That may now properly be described as the usual course. In certain circumstances, however, the EAT can be satisfied on the papers, and without a hearing, that both parties are fully aware of the situation and that it is a proper case for allowing the appeal. An example of such a situation, given in **Moger** at 806H, is where the parties have reached an overall settlement of their dispute and have agreed as part of that settlement that the decision of the Tribunal is in error.

7. The Practice is now reflected in the **Practice Direction of the Employment Appeal Tribunal 2024** at §8.16.6:

“If the parties reach an agreement that the appeal should be allowed by consent, and that an order made by the Employment Tribunal should be reversed or varied or the matter remitted to the Employment Tribunal on the basis that the decision contains an error of law, it is usually necessary for the appeal to be heard by the EAT to determine whether there is a good reason for making the proposed order. The EAT will decide whether the appeal can be dealt with on the papers or at a hearing at which one or more parties or their representatives should attend to argue the case for allowing the appeal, and making the order that the parties wish the EAT to make.”

8. In the present case, the Respondent does not contest the appeal and, as I shall explain, invites the EAT to make an order allowing the appeal by consent. That is a disposal which corresponds precisely with that which the Claimant seeks by way of his appeal. I have carefully considered the documents filed and, for the reasons which follow, I am satisfied that an error of law is disclosed in the decision under challenge such that it is appropriate to allow the appeal by consent. Further, I am satisfied that this matter can be dealt with on the papers without a hearing. The issue is a discrete point about the rejection of an Employment Tribunal claim. The consequences of allowing the appeal are clear: the claim will be accepted by the Tribunal and the claim will proceed to be case managed and heard. There is no residual complexity requiring a hearing or submissions. I am satisfied that both parties are aware of the situation and the consequences. Given this, it would not be in accordance with the overriding objective to list (and require attendance at) a hearing.

Background

9. On 9 July 2024, the Claimant presented an ET1 claim form to the Employment Tribunal. It raised a complaint of discrimination relying on the protected characteristic of “gender reassignment”. By a letter dated 16 August 2024, Legal Officer Freeman rejected the claim (“the Decision”). In the Decision, the Legal Officer explained:

“...although there is an early conciliation number in section 2 of the claim form, the name of the prospective claimant on the early conciliation certificate is not the same as the name of the claimant on the claim form.”

10. At the time of the Decision, Schedule 1 to the **Employment Tribunals (Constitution and Rules of Procedure Regulations 2013** (“the 2013 Rules” and “the 2013 Regulations”, as appropriate) were in force. Regulation 10A and 10B(3)(a) of the 2013 Regulations authorised a Legal Officer to determine, *inter alia*, a referral under Rule 12(1)(e). The reference to an Employment Judge in that rule falls to be read as a reference to a Legal Officer: see Reg 10B(2) of the 2013 Regulations.

11. Rule 12(1)(e) of the 2013 Rules provided:

12.— Rejection: substantive defects

(1) The staff of the tribunal office shall refer a claim form to an Employment Judge if they consider that the claim, or part of it, may be—

...

(e) one which institutes relevant proceedings and the name of the claimant on the claim form is not the same as the name of the prospective claimant on the early conciliation certificate to which the early conciliation number relates;

12. It is also relevant to extract Rule 12(2A):

“(2A) The claim, or part of it, shall be rejected if the Judge considers that the claim, or part of it, is of a kind described in sub-paragraph (e) or (f) of paragraph (1) unless the Judge considers that the claimant made an error in relation to a name or address and it would not be in the interests of justice to reject the claim.”

13. These requirements are now to be found in Rule 13(1)(f) and 13(4) of the **Employment Tribunal Procedure Rules 2024** (“the 2024 Rules”) which came into force on 6 January 2025¹. The slight differences of wording are not material.

14. In the present case when the EC Certificate was issued by ACAS, the Claimant was known as Miss Annabel Bickley. However, by the time he presented the claim to the Employment Tribunal, he had changed his name by deed poll to Mr Isaac Bickley.

15. Late in the evening of 25 September 2024, the Claimant appealed to the EAT. This was

¹ A Legal Officer remains authorised to determine a referral under the 2024 Rules: see the Practice Statement authorising Legal Officers to carry out functions of a judicial nature in the Employment Tribunals (Senior President of Tribunals, 6 January 2025).

deemed received on 26 September 2024 in accordance with Rule 37(1A) of the EAT Rules. The Claimant did not provide a copy of the Decision and the appeal was regarded as not properly instituted. The Decision was ultimately provided and the appeal deemed properly instituted on 30 September 2024, 3 days late. By Order of the Registrar dated 27 May 2025, an extension of time was granted for the appeal.

16. In June 2025, Lord Fairley (President) stayed the appeal and requested that the Tribunal reconsider the rejection of the claim form. This was done by REJ Foxwell (“the Judge”) in a decision sent to the parties on 30 October 2025. By then the 2024 Rules had come into force and the Judge considered the case by reference to them. Although no application was made directly to the Tribunal, the Judge treated the Claimant’s appeal as an application under Rule 7(2) of the 2024 Rules (which grants a power to retake a decision made by a Legal Officer) and/or pursuant to Rule 14 of the 2024 Rules (reconsideration of rejection of claim). The Judge extended time for those applications to be made. The Judge decided to accept the claim with effect from 25 September 2024.

17. The Judge considered that the Decision of the Legal Officer “followed the strict wording of Rule 13(1)(f)”. At paragraph 6 the Judge said:

“The claimant’s name on the two relevant documents, the early conciliation certificate and the claim form, is different. Subject to what I say below about rule 13(4), I cannot say, therefore, that the Legal Officer’s decision was wrong in this sense.”

18. The Judge did not consider that Rule 13(4) of the 2024 Rules applied because the Claimant had not made an error in relation to his name. Accordingly, the Judge held that were he simply to retake the Legal Officer’s decision applying Rule 7(2) he would arrive at the same result which he described as “unsatisfactory and unjust”. Nonetheless, the Judge decided he could treat the defect as rectified on 25 September 2024 when the Claimant was to be treated as having made an application under Rule 14, and by explaining that Isaac Bickley was formerly Annabel Bickley. In accordance with Rule 14(4) of the 2024 Rules, the Judge directed the claim be accepted and treated as presented on 25 September 2024.

19. At first sight this acceptance decision was good news for the Claimant. However, as the Judge recognised, acceptance on 25 September 2024 (as opposed to on 9 July 2024) gave rise to limitation issues. REJ Foxwell said this at paragraphs 17-18:

“17. This decision may have other consequences. Based on the pleaded effective date of termination (18 February 2024), the claimant’s original claim form was presented within the statutory time limit as extended under the early conciliation provisions. This time limit seems to have expired on 20 July 2024, such that acceptance of the claim on 25 September 202[4] would place it out of time.

18. If this analysis is correct, I would hope that any Tribunal would take account of the unusual circumstances of this case in deciding whether a just and equitable extension of time is appropriate. I cannot, of course, make such finding at this stage in the proceedings nor bind the hands of any future Tribunal seized of the case.”

20. Following the reconsideration, this appeal was referred again to the President. He remained of the view that the appeal was arguable and considered the point remained of consequence given the live time-bar issue. He gave directions for the preparation and listing of the appeal.

21. No appeal has been brought against REJ’s Foxwell’s reconsideration decision.

22. In accordance with the President’s directions, the Respondent filed an Answer on 7 January 2026 indicating that it did not intend to resist the appeal. The Respondent confirmed that it was not itself taking an issue with the timing of the claim, but recognised that the limitation problem operated as a jurisdictional bar. Following an enquiry by the EAT on 24 February 2026, the Respondent confirmed on 27 March 2026 that it agreed the appeal should be allowed by consent.

Error of Law

23. In **Clark & Others v Sainsbury’s Supermarkets Ltd [2023] IRLR 562**, Bean LJ held that (§3):

“When industrial tribunals were established more than half a century ago the purpose of Parliament was to create a speedy and informal system free from technicalities. It has been repeatedly stated that employment tribunals should do their best not to place artificial barriers in the way of genuine claims.”

24. The requirement in Rule 12(1)(e) of the 2013 Rules² is that the name of the claimant on the claim form must be the same as the name of the prospective claimant on the EC Certificate. The Claimant in this case fell foul of that requirement because he had changed his name by deed poll after obtaining the EC Certificate and before submitting the ET1. Had he given his name on his ET1 as he did in his Notice of Appeal – “Mr Isaac Bickley, formerly known as Miss Annabel Bickley” – in my judgment the requirement would have been satisfied. That is because the same name would have appeared on the ET1, and the Claimant would also have included an explanation that his new legal name was Isaac Bickley. The Claimant did not, however, do that.

25. The Tribunal’s reaction to discrepancies of the type identified in Rule 12(1)(e) of the 2013 Rules is governed by Rule 12(2A). Rule 12(2A) mandates that in such a case the claim (or part of it) shall be rejected unless two criteria are satisfied. They are (i) it is considered that the claimant made an error in relation to a name or address and (ii) it would not be in the interests of justice to reject the claim or part of it. I agree with the view of REJ Foxwell in the reconsideration decision that the proper construction of this Rule requires both criteria to be satisfied in order to avoid the consequence of mandatory rejection. So much is clear from the use of the word “and”.

26. I respectfully disagree, however, with the Judge’s view that the Claimant in this case cannot be taken to have made a relevant error. Relevant errors in Rule 12(2A) include errors “**in relation to a name**” (my emphasis). In my judgment this is a wider concept than one limited to giving the wrong name, or making errors of syntax or spelling of a name. Errors that are in some way connected to or linked to a name properly fall within this language and therefore the Rule. Whilst the Claimant gave his correct legal name (as it had become by the time of the ET1), he did not also give his previous name (as it was at the time of the EC certificate) and explain that it had changed by deed poll. Given that Rule 12(1)(e) required correspondence between the name of the claimant on the ET1 and the prospective claimant named on

² I shall refer to the 2013 Rules in this section as these were in force at the time of the Legal Officer’s decision and that is the decision subject to the appeal. However, as noted above, differences in the corresponding provisions of the 2024 Rules are immaterial.

the EC Certificate, that failure may legitimately fall within the concept of an error “in relation to a name”.

27. The appeal in this case is not against the Judge’s decision on reconsideration but against the initial rejection Decision taken by the Legal Officer. It was clear on the face of the ET1 that the underlying claim against the Respondent was one of discrimination because of gender reassignment. There is no indication in the reasons given by the Legal Officer that any consideration was given to Rule 12(2A) or whether the two criteria set out there were satisfied. In particular, there is no suggestion the Legal Officer considered whether the Claimant had made an error in relation to a name of the type I have described. Given what was clear on the face of the ET1, I conclude there was an error of law by the Legal Officer failing to consider and apply Rule 12(2A).

28. Furthermore, at the time of the Decision taken by the Legal Officer, Rule 6 of the 2013 Rules provided:

“A failure to comply with any provision of these Rules (except rule 8(1), 16(1), 23 or 25) or any order of the Tribunal (except for an order under rules 38 or 39) does not of itself render void the proceedings or any step in the proceedings. In the case of such non-compliance, the Tribunal may take such action as it considers just, which may include all or any of the following –

- (a) waiving or varying the requirement;*
- (b) striking out the claim or the response, in whole or in part, in accordance with rule 37;*
- (c) barring or restricting a party’s participation in the proceedings;*
- (d) awarding costs in accordance with rules 74 to 84.”*

29. As Bean LJ observed in **Clark** the waiver power in Rule 6 is “a very wide one” (§43). Save where expressly disapplied, and provided the irregularity arises from a failure to comply with a provision of the Rules or any order of the Tribunal³ (as opposed to a separate statutory requirement⁴), Rule 6 enables the Tribunal to take such action as it considers just⁵.

³ Note that the wording of Rule 6 of the 2024 Rules refers additionally to the failure to comply with any provision of a practice direction: see Rule 6(1) of the 2024 Rules.

⁴ See for example section 18A of the **Employment Tribunals Act 1996** and the discussion of **Cranwell v Cullen (2015) UKEAT/0046/14** at §44 of **Clark**.

⁵ See further the overruling of **E.ON Control Solutions Ltd v Caspall [2020] ICR 552** in **Clark** at §48

30. Had it been necessary, I would also have concluded that the Legal Officer erred by failing, in accordance with Rule 6, to consider whether it was just to treat the requirements of Rule 12(1)(e) as satisfied in the circumstances of this case as appeared from the ET1 form, notwithstanding the technical irregularity arising from different names appearing on the EC certificate and ET1 form.

Disposal

31. That leaves the question of disposal. In my view it is appropriate for this Tribunal to retake and substitute a decision. There is only one permissible answer.

32. Applying what is now Rule 13(4) of the 2024 Rules, in my judgment the Claimant made an error in relation to the name given on the ET1 form of the type I have described. I am satisfied that it would not in all the circumstances be in the interests of justice to reject the claim and therefore substitute a decision that the ET1 form be accepted on the date of original presentation: 9 July 2024.

33. In the alternative, applying Rule 6, I would have decided that in response to the irregularity, it was just to take the action of treating the requirement of what is now Rule 13(1)(f) as satisfied. This is because the Claimant gave his name accurately on the EC certificate and ET1 claim forms as at the date of those documents, and the difference was due to his name changing by deed poll in the interim.

Conclusion

34. For these reasons, I allow the appeal by consent and substitute a decision that the claim is accepted as at the date of its presentation – 9 July 2024.