

Neutral Citation Number: [2026] EAT 104

Case No: EA-2024-000146-RN

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 16 July 2026

Before:

HIS HONOUR JUDGE SHANKS

Between:

MR E SALEH

Appellant

- and -

SINGLETRACK SYSTEMS LTD

Respondent

Mr Chevan Ilangaratne for the Appellant
Mr Tim Sheppard (instructed by Keystone Law) for the Respondent

Hearing date: 6 May 2026

JUDGMENT

PRACTICE AND PROCEDURE

SUMMARY

C appealed against a decision of the EJ that he was not constructively dismissed which followed a 6-day FH. His appeal was allowed to proceed on three grounds. The EAT dismissed the appeal on all three grounds:

- (1) It was said that the EJ’s decision on day 1 of the FH not to order further disclosure from R was perverse. The EAT rejected C’s contention that the decision involved “overriding” an earlier CMO which required some disclosure and the reasons given for the decision were brief but made good sense.**
- (2) It was said that the EJ’s decision on day 3 not to order that unredacted versions of copies of messages relied on should be provided in the “trial bundle” was also perverse. Given the EAT’s finding that the issue of redactions in the bundle had been raised at the outset of the FH and C had confirmed on day 2 that the parties had agreed appropriate redactions, the way the EJ handled matters was not perverse.**
- (3) Although the EJ had not expressly set out the terms of the implied term of trust and confidence or expressly reminded himself that he was obliged to consider the whole course of conduct relied on by C and to ask whether it amounted to a breach of that term, it was clear that he had addressed these matters and reached a clear conclusion on the facts that the constructive dismissal case based on a course of conduct failed. Further, in the light of the EJ’s detailed findings of fact on the actions and omissions relied on by C as comprising the relevant course of conduct it was plain that there was no way C could have established a breach of the implied term.**

HIS HONOUR JUDGE SHANKS:

1. This is an appeal by Mr Saleh against a judgment of Employment Judge S Povey sitting in East London sent out on 4 January 2024 dismissing his claim against Singletrack Systems Ltd for unfair and wrongful (constructive) dismissal. The appeal was allowed to proceed on three grounds by HH Judge Auerbach following a rule 3(10) hearing on 15 January 2025. I was provided with core and supplementary bundles, skeleton arguments and oral submissions from counsel at a remote hearing.

Facts

2. Mr Saleh was employed by Singletrack as a solutions engineer from 23 October 2017 until he resigned on 4 July 2021. Although found not to be “disabled” he is diagnosed with an “autistic spectrum disorder”.

3. The judge found that Singletrack had legitimate concerns about his performance from May 2019 and that one of the reasons for the drop off in his performance was that he was working for another company in his spare time. A performance review which was to take place in March or April 2020 did not take place due to Covid. On 4 May 2020 Mr Saleh was placed on furlough where he remained until 27 July 2020.

4. On his return to work Mr Saleh was put on a performance improvement plan (PIP) and on 3 November 2020 an employee performance record (EPR) meeting was held. His salary was raised by £1,000 to £42,000; it was explained that this had to be seen in the context of six months poor performance, the furlough period, one month mixed performance (first half of PIP) and two months good performance.

5. On 16 September 2020 Mr Saleh had submitted a written grievance running to 24 pages raising issues on the decision to furlough him, the PIP process, the EPR, training and pay, and allegations against three managers, the CEO Stuart Berwick, Chief Technology Officer Paul Dyson and Mr Saleh's line manager Mr Narravula. The grievance was considered by Michael Berman, the chairman of the board, and a report was produced on 4 November 2020. The main complaints were not upheld but a number of recommendations favourable to Mr Saleh were made.

6. Mr Saleh appealed against the grievance outcome. The board appointed Peter Segal, an outside consultant who was known to them and had a small shareholding in the company, as the grievance appeal officer. After meeting Mr Segal by Zoom on 4 March 2021 Mr Saleh raised allegations of bias against him. The final version of Mr Segal's report rejecting the appeal was sent to Mr Saleh on 19 April 2021. He was not happy with Mr Segal's findings and conclusions and he raised issues as to the authenticity of the report and whether Mr Segal was indeed the author. The judge found at para 45 of the judgment that "... Mr Segal was the sole author of the report and that the conclusions he reached were both his own and, importantly, were clearly open to him on the evidence."

7. Before the report had been published the company had by agreement referred Mr Saleh to an occupational health provider called Genius Within who were said to have knowledge and experience of assessing and supporting neuro-diverse adults, in particular those with Asperger's syndrome. The judge found that Mr Saleh continually refused to provide Genius Within with information they requested. This led to Mr Berwick writing to him on 24 June 2021 stating that if he did not provide the requested information to Genius Within by 1 July 2021, they would be asked to undertake their assessment with the information they already had.

8. Mr Saleh resigned on 4 July 2021 for reasons set out in a letter of that date. In due course he brought his claim in the tribunal alleging constructive dismissal based on 14 complaints about

the way he had been treated by his employer set out in the list of issues (starting with the decision to place him on furlough) which he said “fundamentally breached (either individually or cumulatively) the term of mutual trust and confidence implied into his (and every) contract of employment” (see para 11 of judgment). The 14 complaints included at items (viii) and (x) allegations that the grievance and appeal were rejected without proper consideration of the issues raised by him and that the process had been unfair and biased and that Mr Segal had not “authored” the entire grievance appeal report.

9. There was a six day hearing on 17, 18, 19, 20 and 24 October and 20 November 2023 at which Mr Saleh was supported by his father and uncle and Singletrack was represented by Mr Sheppard as on the appeal. EJ Povey heard evidence from Mr Saleh and his uncle and from the three managers at Singletrack as well as the chairman Mr Berman and the grievance appeal officer Mr Segal. The judge considered each of the 14 complaints relied on by Mr Saleh in some detail and concluded at paras 144 and 145 of the judgment:

The reality, however unpalatable it may be to the Claimant, is that there was no plan, there was no deceit, there was no conspiracy. Rather, there were genuine and understandable concerns about his performance and the Respondent sought to manage those in a supportive, effective, reasonable and considered way.

For all the reasons set out above, the Respondent did not breach the Claimant’s contract of employment, whether fundamentally or at all. There was no breach of the implied term of mutual trust and confidence and no breaches of any other term of the Claimant’s employment contract.

It followed inevitably from that conclusion that his claims based on constructive dismissal failed.

First ground of appeal

10. The first ground of appeal is based on EJ Povey’s refusal on the first day of the hearing to order further disclosure of drafts of Mr Segal’s report and covering emails which is said to have been a perverse case management decision and/or one which took into account an irrelevant factor. It is said that such disclosure would have shown, contrary to the findings of the judge, that the company had input and involvement through their solicitor in the contents of the report, that it was not solely authored by Mr Segal and that there was potential collusion between him and the solicitor.

11. The judge’s reasons for refusing the application were recorded in his reconsideration judgment dated 13 February 2023 (see core bundle page 126). He noted that reliance was placed in part on a previous case management order of EJ Massarella and that the basis for the application was set out in detail in a written application. He referred to the extensive material already produced for the hearing, the fact that the claim had started two years before and stated that “... there comes a point where it is in the interests of justice and proportionate to proceed with the final hearing on the basis of the evidence provided to date.” He went on: “That point has been reached in this case. In respect of the specific application Mr Segal is giving evidence and can be asked about any allegation as to his impartiality in respect of the grievance appeal he undertook.”

12. The relevant previous case management order of EJ Massarella was made on 3 October 2023 following a hearing the day before; it is at para 8 on page 80 of the core bundle. EJ Massarella had referred to various versions of the report by Mr Segal already in the bundle, to a particular email and version of the report attached to it which he ordered to be disclosed, and then at para 8 he ordered the respondent to conduct a search for further drafts of the report and covering emails and to disclose them by 9 October 2023 and, if none were found, that their solicitor should produce a short witness statement explaining how the searches were conducted. The email exchanges at pages 97-101 in the supplementary bundle between Mr Saleh and Singletrack’s solicitor from 9-11 October 2023 show that a number of emails were disclosed under EJ

Massarella’s order and that the solicitor briefly described the searches undertaken but did not consider that a witness statement was required in accordance with the order.

13. Mr Ilangaratne’s argument that EJ Povey’s decision on the first day of the FH not to order further disclosure was perverse is based mainly on the contention that this decision involved “overriding” the order of EJ Massarella made two weeks earlier. But, as Mr Sheppard points out, on the face of it EJ Massarella’s order had already been complied with and Mr Saleh was applying for a new order so that there was no question of “overriding” the earlier order. Mr Saleh has not provided this Tribunal with a copy of the written application made to EJ Povey which may have assisted in showing exactly how the application was put. On the basis of the material I have I am not prepared to find that EJ Povey did “override” the previous order.

14. The actual reasons given by EJ Povey for his decision, although brief, make good sense and certainly do not indicate that it was a perverse decision or that he took into account any irrelevant factor. I therefore reject this ground of appeal.

15. I should also say in relation to materiality that I fail to see that there was any reasonable prospect that disclosure of any communications between Mr Segal and the company’s solicitor would have impinged on the judge’s clear findings of fact that he was the sole author of the report, that the conclusions were his own and that they were open to him on the evidence (see paras 46-49 of the judgment).

Second ground of appeal

16. The second ground of appeal arises from the fact that a Slack message exchanged between two employees on 12 June 2020 relating to Mr Saleh which stated “Elliot was your Ophelia” appeared in the “trial bundle” at p1914 with the identities of the sender and recipient redacted and

that when Mr Saleh objected to this in the course of the hearing the judge failed to take any action and proceeded on the basis that there was no evidence as to the identities of sender and recipient.

17. It appears that the redactions had originally been made because the message had been disclosed by Singletrack under a “subject access request”. It appears that such redactions should have been removed to comply properly with the case management orders made by EJ Massarella on 13 September 2023 when he was considering an earlier version of the bundle. I have seen no evidence as to why the version of the message in the trial bundle remained redacted; I suspect the answer is simply that the bundle was long and there was a large amount of preparation to be done.

18. Under paras 6-8 of HH Judge Auerbach’s order following the PH on 15 January 2025, statements about this issue have been provided by Mr Saleh (p151 of the core bundle), Mr Menzies of Singletrack (p160) and the judge (pp274-276). I have considered this material and some contemporaneous notes and my findings are as follows:

- (1) The unredacted Slack messages had been sent by the respondent to Mr Saleh on 27 September 2023.
- (2) At the outset of the hearing on 17 October 2023 Mr Saleh raised concerns that there were excessive redactions to many documents in the bundle but indicated that he had only had an opportunity to check a few.
- (3) It was agreed that he would send details of the “over-redactions” to the respondent by 2pm that day and the respondent would check and review the redactions and that any outstanding issues would be resolved by the judge at 9am on the second day of the hearing.
- (4) At the start of the hearing the following day the parties confirmed that they had agreed the appropriate redactions and on that basis the hearing proceeded.

(5) Mr Saleh was cross-examining Mr Dyson on the afternoon of the third day of the hearing and took him to p1914. When Mr Saleh saw the page he indicated that there appeared to have been an error in that the sender of the message should have been in evidence. He may have referred to EJ Massarella’s previous orders in this context but in any event the judge responded by saying that redaction issues had been addressed and could not be reopened. The respondent’s lawyers did not make any comment.

(6) Mr Dyson was nevertheless asked if he knew who had sent the message and he said “no”.

The respondent’s note is that Mr Saleh specifically asked Mr Dyson if the sender of the message was Dan Escott.

19. The judge considered the “Ophelia” message at paras 84-88 of the judgment in the context of Mr Saleh’s complaint that hurtful comments from colleagues were shared with him and supported by the owners/management of the company. The judge accepted that the comment had been made by another employee and that it was “possibly derogatory and ... hurtful”. But he said that there was no evidence as to who sent the message, who it was sent to or whether it was ever seen or endorsed by management. Further, the judge said that there was no evidence that the message was shared with Mr Saleh himself during his employment and that it was not a matter relied on by him when he resigned.

20. Mr Saleh says that the judge made a perverse case management decision when refusing his application for unredacted copies of the Slack messages (including the “Ophelia” message) to be included in the bundle and that the matter is serious because the sender of the Ophelia message was indeed Dan Escott who was his “second line manager” and a “key player” and this evidence was therefore important in the case.

21. Although I have sympathy with the position of Mr Saleh as a litigant-in-person (albeit supported by his uncle and father) handling a hearing with thousands of pages of documents and

several witnesses I do not consider that the way the judge dealt with this matter can possibly be described as perverse. I do not accept that Mr Saleh made a specific application in relation to the redaction of messages and, more to the point, it was open to the judge in my view to proceed with the case on the basis he did following what had happened in the tribunal on the first and second days of the hearing as I have found at para 18(2)-(4) above.

22. That is sufficient to dispose of this ground of appeal. It is also right to point out that the judge was correct to say that this message cannot have formed any part of the conduct which Mr Saleh could rely on as causing his resignation for the obvious reason that he did not know about it at the time; and I should say I also rather doubt that it has the probative value in relation to the mindset and motivation of the employer which Mr Saleh is suggesting.

Third ground of appeal

23. The third ground of appeal is that EJ Povey erred by looking at each of the complaints made by Mr Saleh individually and deciding whether each of them amounted to a breach of the implied term of trust and confidence rather than considering whether all the employer's actions cumulatively amounted to a breach of that term.

24. It is right to say that EJ Povey does not in the judgment set out the content of the implied term of trust and confidence; nor does he remind himself anywhere that it is necessary to consider whether there has been a course of conduct by the employer comprising several acts and omissions which, when viewed cumulatively, amount to a (repudiatory) breach of that term (or, indeed, that individual acts or omissions relied on do not need to amount, on their own, to any kind of breach of contract).

25. It would have been better if the judge had set those matters out in his judgment and expressed his conclusions accordingly. However, it seems to me plain from the judgment that he

understood the way the case was put by Mr Saleh (see para 11 of the judgment referred to above) and that he rejected the notion that, looking at the whole of their conduct, Singletrack had breached the implied term: that emerges clearly from paras 144 and 145 of the judgment quoted above in my view. Further, I have read the judge’s factual conclusions on each of the complaints in detail: it is clear that on any view his factual conclusions about the complaints overall would nowhere near have justified a finding that the employer had behaved in a way “that was calculated or likely to destroy or seriously damage the essential relationship of trust and confidence between the parties”. The truth of the matter is that Mr Saleh simply lost the case on the facts.

Disposal

26. For those reasons, the appeal is dismissed.