

Neutral Citation Number: [2026] EAT 147

Case No: EA-2022-000854-NK

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane
London,
EC4A 1NL

Date: 28 September 2026

Before :

**HIS HONOUR JUDGE JAMES TAYLER
(DEPUTY PRESIDENT)**

Between :

Bilal Miah

Appellant

- and -

London Ambulance Service NHS Trust

Respondent

The **Appellant** in person relied on written representations
Sam Nicholls (instructed by Capsticks Solicitors LLP) for the **Respondent**

Hearing date: 22 September 2026

JUDGMENT

SUMMARY

Practice and Procedure

The claimant was not permitted to raise on appeal an argument that was not advanced in the Employment Tribunal.

HIS HONOUR JUDGE JAMES TAYLER, DEPUTY PRESIDENT:

The issue

1. The main issue in this appeal was whether the claimant could rely on an argument that had not been advanced in the Employment Tribunal.

The judgment appealed

2. The appeal is against a judgment of Employment Judge Youngs, sent to the parties on 25 July 2022. The hearing took place by video from London Central Employment Tribunal on 28 April 2022. The parties are referred to as the claimant and respondent as they were before the Employment Tribunal. The claimant was represented by Ms Jain, a Free Representation Unit representative. The respondent was represented by Mr Nicholls, as it was in the appeal.

The dispute in the Employment Tribunal

3. The claimant worked for the respondent as Emergency Ambulance Crew from 9 January 2017. In December 2019, the claimant's contractual hours were reduced to the equivalent of 18.75 per week on a self-rostering basis and subject to an annualised hours arrangement.

4. So far as is relevant to the appeal, the claimant claimed "disruption payments" for shifts he had worked over the Christmas period in 2021. The Employment Tribunal identified, and agreed with the parties, that the issue for it to determine was:

Does the disruption payment referred to in a bulletin of 2 November 2021 apply to core shifts that are not worked as overtime? If so, it is agreed that the Claimant has suffered an unlawful deduction. If successful, in relation to quantum, is the Claimant entitled to be paid a disruption payment in relation to all three shifts claimed for, or for two shifts only (on the basis that his contract requires him to work at least one of the three shifts in any event), and how much has been deducted from the Claimant's wages? [emphasis added]

5. The background was that a bulletin setting out provisions as to "Winter Additional Payments" was issued on 2 November 2021 ("the bulletin"). The claimant arranged to work shifts on 25, 26 and 27 December 2021 ("the holiday shifts").

6. Initially, the claimant stated that he wanted the holiday shifts to be recorded as overtime. On 24 January 2022, the claimant sent an email asking "if the status of the shifts could be changed to

core shifts”. The change was made because the timesheets had not yet been processed. On 2 February 2022, the claimant was informed that payment of the disruption payment of £1,050 for the holiday shifts was suspended because the holiday shifts had now been recorded as core shifts. They were processed as such. Because the holiday shifts had been processed as core shifts the respondent refused to change them to being recorded as overtime when the claimant asked them to do so.

7. In correspondence the claimant asserted that on a proper construction of the bulletin the disruption payments were due on core shifts (“the construction argument”). It seems likely that the claimant asked for the holiday shifts to be changed from overtime to core shifts because he thought that he would be entitled to the disruption payments based on the construction argument. Alternatively, he contended that the holiday shifts once recorded as overtime should not have been changed to core shifts despite it being done at his request, or that he should have been allowed to convert them back to overtime (“the conversion argument”)

8. At the hearing in the Employment Tribunal the complaint was advanced on the basis that the holiday shifts were core shifts. The claimant’s contention was that core shifts attracted disruption payments if worked on the days referred to in the bulletin. The claimant did not argue that the holiday shifts should have been recorded as overtime despite him having requested that they be recorded as core shifts. The claimant, who was represented by a FRU representative, advanced the construction argument but not the conversion argument.

9. The Employment Tribunal determined the only issue before it; concluding that disruption payments were due only in respect of overtime hours. Accordingly, the complaint failed.

The appeal

10. The claimant submitted an appeal to the EAT. The grounds of appeal were considered by Mrs Justice Eady DBE, President, whose opinion that there were no reasonable grounds for bringing the appeal was set out in a letter pursuant to Rule 3(7) of the **Employment Appeal Tribunal Rules 1993** (as amended) (“**EAT Rules**”), sealed on 20 December 2022.

11. The claimant challenged the opinion of Eady J pursuant to Rule 3(10) **EAT Rules**. The

application was considered at a hearing before His Honour Judge Beard. Submissions were made by Chesca Lord of Counsel, appearing under the Employment Law Appeal Advice Scheme (“ELAAS”), and the claimant. By an Order sealed on 21 July 2023, the appeal was permitted to proceed on two related grounds only. All other grounds were dismissed. The two grounds of appeal were set out in amended grounds of appeal sealed on 11 August 2023. The amended grounds of appeal only raise the conversion argument:

In rejecting the Claimant’s claim for unlawful deductions from wages in relation to disruption payments for shifts worked over Christmas 2021, the Tribunal erred in law in that it:

1. Failed to consider whether the Respondent correctly followed its own policies and procedures in relation to the changing of shifts from overtime to core hours and in relation to the processing of timesheets that contained an error.
2. Further or alternatively, failed to give adequate reasons as to the same.

Can these grounds of appeal be advanced?

12. The **EAT Practice Direction** states at section 8.13:

8.13. Applications to rely on an argument that was not raised before an Employment Tribunal

8.13.1. The EAT generally will not consider an argument that was not advanced before an Employment Tribunal.

8.13.2. You should make an application to raise a new argument in accordance with Section 7 by completing the application form at Annex 2. You should make the application:

- a when you submit the Notice of Appeal
- b when you submit a Respondent’s Answer and any cross-appeal
- c when you reply to a cross-appeal

8.13.3. In the application you should:

- a state the relevant paragraphs of the Notice of Appeal, Respondent’s Answer or cross-appeal in which the new argument is set out
- b state why it is necessary to rely on the new argument
- c explain why you did not raise the new argument in the Employment Tribunal

8.13.4. If you contend that an argument in a Notice of Appeal was not raised in the Employment Tribunal you should say so when, as the EAT may permit or require, you

provide written comments for consideration at a Preliminary Hearing or in your Respondent's Answer.

8.13.5. If you contend that an argument in a Respondent's Answer or cross-appeal was not raised in the Employment Tribunal say so in a letter to the EAT within 28 days of the seal date of the Respondent's Answer or in your Reply to any cross-appeal.

8.13.6. If there is an unresolved dispute about whether an argument was raised in the Employment Tribunal the EAT may ask the Employment Tribunal to comment.

13. The claimant did not make an application to rely on an argument that was not raised before the Employment Tribunal in accordance with Section 8.13 of the EAT Practice Direction.

14. In its response, the respondent contended that the argument raised in the amended grounds of appeal was not advanced in the Employment Tribunal.

15. There is longstanding authority that the EAT will only in exceptional circumstances allow a point to be raised on appeal that was not argued in the Employment Tribunal, particularly if it would open up fresh issues of fact that would require a further hearing; see the helpful summary of the relevant authorities in **CJ v PC** [2024] EAT 182, [2025] I.C.R. 401, paragraphs 41-46.

16. One of the reasons why the EAT is so reluctant to allow points to be raised on appeal that were not argued in the Employment Tribunal is the principle of finality in litigation. The Employment Tribunal provides a venue for parties to resolve their employment disputes. The hearing in the Employment Tribunal is not a starting point but should be the end of the dispute. The EAT is not a venue for parties to have a second go and advance arguments they regret not having made in the Employment Tribunal. An appeal to the EAT lies only where there is an error of law in the judgment of the Employment Tribunal. Save in exceptional circumstances, it cannot be an error of law not to determine a point that was not argued. Raising points that were not argued in the Employment Tribunal in an appeal is likely to increase the disappointment of the unsuccessful party and delay the time when the parties can put the dispute behind them and get on with their lives.

17. Where a representative who did not appear in the Employment Tribunal amends grounds of appeal they should take care to ensure that the points raised in the amended grounds of appeal were argued in the Employment Tribunal; or fully comply with section 8.13 of the **EAT Practice Direction**

if there are genuinely exceptional circumstances that might allow the point to be argued for the first time on appeal.

18. Attempts to argue points that were not raised in the Employment Tribunal is an increasing problem where appellants use generative AI to produce grounds of appeal. Such grounds commonly raise points that were not argued below. Section 8.13, like all of the **EAT Practice Direction**, applies to litigants in person, who retain full personal responsibility for the grounds of appeal they advance, however they are generated: **Hancox v Sutherland and others** [2026] EAT 139.

19. In this appeal the grounds of appeal were not generated by AI but were drafted by an ELAAS representative. A similar responsibility rested on the claimant to ensure that the grounds of appeal did not raise points that were not argued in the Employment Tribunal, or to comply fully with section 8.13 of the **EAT Practice Direction** if there were exceptional circumstances sufficient to allow the point to be argued for the first time on appeal.

20. Many parties gain enormous assistance from pro bono representation at Rule 3(10) Hearings and Preliminary Hearings under the ELAAS scheme. ELAAS representatives often have relatively little time to take instructions. It is the responsibility of the appellant to let the ELAAS Representative know if an argument in a ground of appeal was not raised in the Employment Tribunal and, if so, to comply with section 8.13 of the **EAT Practice Direction** if there are some exceptional circumstances sufficient for the point to be raised on appeal for the first time. If there are no such exceptional circumstances the ground of appeal should not be advanced.

The Appeal Hearing

21. The full hearing has been delayed while the parties made attempts to settle their dispute. Those communications are without prejudice and so are not before me.

22. On 7 September 2026, the claimant sought a postponement of this hearing. The application was refused in a letter sent on behalf of the Registrar on 17 September 2026. The claimant appealed from the Registrar's determination. The appeal from the Registrar's determination was rejected by me in an order sealed on 18 September 2026, to which written reasons are attached.

23. The claimant submitted a skeleton argument on 21 September 2026, which he relies on as his full arguments. Despite the skeleton argument being submitted late, I have considered it as representing the claimant's submissions for this hearing.

Analysis

24. The claimant's skeleton argument seeks to go considerably beyond the grounds of appeal that were permitted to proceed, but does not include an application to amend. The claimant seeks to advance both the construction argument and the conversion argument. The grounds that Judge Beard permitted to proceed only raised the conversion argument. All other grounds, including those raising the construction argument, were dismissed. That dismissal could only be challenged by appeal to the Court of Appeal. Such an appeal would have been hopeless because the dismissal was by consent.

25. Accordingly, the only grounds before me raise the conversion argument. That argument was not advanced in the Employment Tribunal. The issue identified and agreed with the parties in the Employment Tribunal, while the claimant had the benefit of FRU representation, was clear: "Does the disruption payment referred to in a bulletin of 2 November 2021 apply to core shifts that are not worked as overtime?"

26. There are no exceptional circumstances that could allow the claimant to run the conversion argument on appeal having not run it in the Employment Tribunal.

27. In correspondence with the respondent the claimant had initially raised both the construction argument and the conversion argument, but he chose only to run the construction argument at the Employment Tribunal hearing. I do not consider that there is any evidence to suggest that this resulted from his mental health condition.

28. Were the claimant to reopen this matter it could require a further hearing in the Employment Tribunal. The claimant seeks to rely on documents that were not before the Employment Tribunal, some of which postdate the hearing. He has not complied with Section 8.12 of the EAT Practice Direction. It does not appear likely that these documents would assist the claimant should he be permitted to run the conversion argument on appeal, but the request to rely on these documents,

including email correspondence, demonstrates that evidence would have to be heard about them should he now be permitted to raise the conversion argument. The claimant seeks specific disclosure of still further documents which again demonstrates the fact that permitting the conversion argument to be raised on appeal would result in further proceedings, cost and use of the limited resources of the Employment Tribunal.

29. The appeal is dismissed.

Application for a preparation time order

30. On 21 September 2026, the claimant made an application for a preparation time order. The grounds relate primarily to the delay caused by the failed negotiations referred to above. The negotiations were without prejudice and privilege has not been waived by the respondent. There is no valid basis for the making of a preparation time order. The claimant also appears to rely on his arguments in the appeal, which have been unsuccessful and provide no proper basis to make a preparation time order.