Neutral Citation Number: [2026] EAT 148

Case No: EA-2024-001000-DXA

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 8 September 2026

Before :

HIS HONOUR JUDGE AUERBACH

- -

Between :

OLANREWAJU SANNI

Appellant

- and –

(1) REED SPECIALIST RECRUITMENT
(2) FINANCIAL OMBUDSMAN SERVICE

Respondents

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- -

Mr Olanrewaju Sanni the **Appellant,** in person
The 1st and 2nd **Respondents** were neither present nor represented

APPEAL FROM REGISTRAR'S ORDER
Hearing date: 8 September 2026

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JUDGMENT

SUMMARY

PRACTICE AND PROCEDURE – time for appealing

The claimant in the employment tribunal instituted his appeal six days out of time. The Registrar refused to extend time and he appealed. His case that the cumulative effects of mental and physical ill health, memory problems, a housing crisis, family responsibilities, his ongoing enquires of the FAC and the ICO, and/or his responsibilities as a voluntary worker, materially contributed to the explanation for the delay, was found not to be made out.

The reason the appeal was late was because the claimant had, as he had candidly admitted, wrongly assumed that time would not begin to run until he received the tribunal's decision on a reconsideration application. After he received that decision he realised his mistake, but too late. That mistake was not a good excuse, nor was there otherwise any sufficient reason to extend time in this case.

HIS HONOUR JUDGE AUERBACH:

1. The claimant in the employment tribunal seeks to appeal from a decision of the tribunal dismissing his claim following its withdrawal by him. The Registrar determined that his appeal had been instituted out of time and declined to extend time. The claimant appealed from that decision and I have heard his appeal this morning.

2. The claimant has appeared this morning representing himself. The first respondent, Reed, put in a written skeleton argument for this hearing opposing the grant of an extension of time by me, but did not have a representative attend to make oral submissions. The second respondent, the Financial Ombudsman Service, had previously indicated that it would not be putting in a skeleton or making oral submissions, but that its position is that it also opposes the grant of an extension of time and adopts the arguments of the first respondent.

3. The claimant had put in his own written skeleton argument and a further supplemental skeleton argument in response to that of Reed. I had a bundle of documents prepared by the claimant, including medical evidence, on which he relied. The claimant had also emailed copies of EAT rules and various authorities referred to by him and by Reed. At the start of the hearing he drew to my attention that, when he had emailed the EAT his skeleton argument, he had also sent in a chronology and various more recent medical evidence. With the help of the Associate this material was forwarded to me and I reviewed all of it as well. In that material, and at the start of the hearing, the claimant raised the question of adjustments for him in the conduct of this hearing. In particular, he asked to be permitted to stand up or sit down as most convenient and comfortable during the course of the hearing, for me to take matters slowly, allow him breaks when needed, and explain any matters which were not clear to him. I indicated that all of this could and would be accommodated.

4. The claimant addressed me orally for about twenty minutes, reading from some prepared notes and making submissions that covered similar ground to his written skeleton arguments. After a break, he made some further oral submissions covering similar ground and he also answered some questions

from me. I am satisfied that he has had a fair opportunity to present all the material he wanted, in writing, and in his oral arguments. He has, in both his written and oral submissions, expressed himself with clarity and I have understood and considered everything he has written and said.

5. The relevant background can be briefly stated. The tribunal did not make any findings of fact because the claim was withdrawn before the matter came to a full merits hearing. But it is not disputed that the first respondent is an agency that sources and provides candidates for roles with the second respondent. In September 2023, via the first respondent, the claimant applied for a role with the second respondent as a paralegal. There was an initial discussion, during which it was identified that a credit check would be carried out, and reference was made to a County Court judgment against the claimant. Subsequently, the claimant was advised that, because he had a County Court judgment from 27 November 2018 against him, and because it was considered that he could not work in the proposed role for seven years thereafter, matters would be taken no further.

6. Following attempts to pursue the matter internally, and early conciliation, the claimant began his tribunal claim against both respondents on 5 February 2024. He claimed race and disability discrimination and breach of contract, as well as raising other complaints about matters to do with data protection. He identified that he claimed to be disabled by reason of depression, stress, and shoulder, back, ankle, knee and bladder issues, amongst others.

7. The tribunal directed that there be a preliminary case-management hearing on 21 May 2024. Responses were put in by both respondents defending the claims, and both applied for the claims to be struck out, in particular on the basis that they had no reasonable prospect of success.

8. In the period running up to the case-management preliminary hearing the claimant sent in an orthopaedic surgeon report from 2017 and a psychologist's report from 2016. He also wrote various letters and made various submissions, including that Reed should be disbarred from defending, on the basis that they had not put in a response. He was subsequently informed by the tribunal that they had in fact done so. He also applied for deposit orders against both of the respondents and he

submitted an agenda for the forthcoming case management hearing and made a number of other written applications.

9. On 19 May 2024, however, the claimant sent to the tribunal a document headed "Withdrawal of Claim" indicating that he was formally withdrawing his claim. He wrote that this was due to personal health reasons, believing it to be in the best interests of his health and wellbeing. One of the respondents then sought confirmation that the claim would be dismissed upon withdrawal and the tribunal wrote that a dismissal upon withdrawal would follow. The claimant then emailed the tribunal on 7 June to the effect that he had only asked to withdraw his claim, not for it to be dismissed.

10. On 20 June an order of EJ Klimov dismissing the claim upon withdrawal was sent to the parties, and it is against that decision that the claimant seeks to appeal. That same day he wrote to the tribunal requesting a reconsideration and advancing medical grounds, reiterating that he had withdrawn only upon medical grounds. Both respondents opposed the reconsideration application.

11. On 27 June the claimant wrote further letters to the tribunal in support of his reconsideration request, raising medical issues again, enclosing further copies of the reports from 2016 and 2017, and other medical records from 2024, showing in particular that he had written to his GP in May and June 2024 asking the GP to provide reports to support him in the litigation.

12. On 9 July 2024 a decision of Judge Klimov was sent, refusing the application for reconsideration, including the judge stating that he was not persuaded that the medical evidence showed any compelling reason for the earlier judgment to be reconsidered.

13. The claimant correctly accepts that the last day for him to submit a timely appeal against the dismissal upon withdrawal was 1 August 2024. On 6 August 2024 he emailed the EAT a Notice of Appeal in Form 1 with a letter setting out his proposed grounds of appeal. That was emailed after 4pm that day and was therefore deemed received the next day, six days out of time; but, even had it been emailed before 4pm, it would still have been five days out of time. The claimant has always accepted that his appeal was instituted out of time and that he requires an extension of time.

14. In the letter accompanying the Notice of Appeal and setting out his grounds, the claimant acknowledged that his appeal was submitted late. In summary he wrote that this was due to medical issues of stress and depression affecting his ability to manage his legal affairs within the 42-day deadline, to personal circumstances, including "family and housing emergencies", on which he elaborated, and the complexity and urgency of the housing issues in particular. He also wrote:

> **"There was a misunderstanding regarding the exact deadline for submission, and I was only made aware of the deadline discrepancy. I had thought that the deadline was much later, calculating from 9 July 2024 instead of 20 June 2024. This misunderstanding was unintentional, would have been realised much earlier if my focus was not distorted or medical condition exacerbated and I have taken steps to address it."**

15. The claimant went on, in that document, to set out his substantive grounds of appeal.

16. The EAT subsequently notified the claimant that his appeal was out of time but he could apply for an extension of time, which he did on 27 September 2024, attaching further documentation in support. He sent a number of emails that day. In summary he referred to medical grounds of stress and depression, and his housing problems, made a number of extensive submissions about the merits of the underlying appeal and referred to ongoing FCA and ICO investigations.

17. Both respondents opposed an extension of time and there were further lengthy submissions from the claimant in reply, sent on 25 October 2024. On 31 October the claimant followed up with a further submission referring to ongoing communications between him and the FCA about a complaint to them.

18. On 31 March 2025 the Registrar's decision was sent, in which she refused to extend time for reasons that she gave.

19. On 7 April the claimant appealed from that decision and attached with his appeal a supporting statement. He referred to further medical issues, including having been diagnosed with Sjögren's syndrome and a recent referral to a memory clinic and ongoing mobility, physical function issues and physiotherapy. He relied again on not just mental health issues but physical health problems, and his housing difficulties. He referred also to having four children and caregiving responsibilities, being a

litigant in person, problems with obtaining responses to FOI and SAR requests, and having mistakenly believed that time ran from the date of the reconsideration decision.

20. The claimant has supplied further evidence from 2025 showing that he has been receiving physiotherapy for ongoing problems of joint pains, from rheumatology specialists confirming a diagnosis of Sjögren's, which is an autoimmune condition, in 2025, and ongoing treatment for that. He has also provided evidence that at his request he was referred for a neurological assessment in 2025, because of his concerns about his memory. But the medical evidence he has supplied shows that the conclusion of the neurologist was that he did not have a neurological problem and that his memory issues were functional. He has also shown me medical evidence about another discrete physical condition for which he received care and treatment during the course of 2025.

21. The law is well-established and there is no material dispute about it. Under Rule 37 there is a power to extend time in relation to a late appeal such as this one. I have to decide afresh whether or not to grant an extension of time. I am not reviewing the Registrar's reasons for the decision that she took on the information available to her. I am reaching a fresh decision of my own on the basis of everything I have read and the submissions that have also been made orally to me by the claimant this morning. I have taken into account all of the information and evidence he has provided, including all of the medical evidence, what he has written at various stages about why he did not put in his appeal sooner than he did, and what he has said to me about all of that this morning.

22. The leading authority of **United Arab Emirates v Abdelghafar** [1995] ICR 65 (EAT) indicates that in such a case consideration needs to be given to the explanation for the default, whether it provides what may be regarded as a good excuse and whether, even if not, there are other circumstances which indicate that time ought to be extended. The recent Court of Appeal decision in **Ridley v Kirtley** [2024] EWCA Civ 884; [2025] ICR 441 confirms that the **Abdelghafar** approach continues to apply. It observes that that approach is perceived as being strict, but it is not inflexible and it involves the exercise of a discretion in a way which is judicial, even handed, and above all fair.

The claimant has stressed in his submissions, and I agree, that this is a fact-sensitive exercise and whether or not to extend time must be decided in each case having regard to all the particular material facts and circumstances of that case.

23. It is well-established that where a party applies to the employment tribunal for a reconsideration, that does not have the effect of stopping the clock or extending the time limit for an appeal to be lodged from the original decision. The 42-day period in which to appeal begins to run from when the original decision is sent to the parties, regardless of whether there is a reconsideration application to the tribunal as well, and regardless of when the tribunal gives its decision on that application. The authorities also establish that the 42-day time limit applies equally to litigants in person, of whom there are many in the EAT, and it is a particularly generous time limit.

24. The EAT's Practice Direction and other forms and guidance that are readily available on the internet are drafted to be accessible and understandable by litigants in person, and explain with clarity how the time limit operates and that the running of time is not affected by the fact that there is a reconsideration application.

25. The authorities also establish that the EAT must weigh into the balance the interests of finality in litigation; and the fact that the delay in presenting an appeal may not have given rise to a particular forensic difficulty for a respondent in defending the appeal, if called upon to do so, does not mean that time should therefore be extended.

26. **J v K** [2019] EWCA Civ 5; [2019] ICR 815 gives general guidance as to the approach to be taken where an appellant says that the lateness of the appeal was materially affected by some ill-health, whether or not amounting to a disability. Consideration needs to be given to whether, as a matter of fact, it is accepted that they had the relevant health problem relied upon at the time, and, if so, also to whether the evidence shows that this was a material part of the explanation for why the appeal was not put in on time. If satisfied of that, time will usually be extended, although it is not bound to be extended in every case. **J v K** recognises that medical evidence may often be needed in

order to make good such a case, but is not necessarily essential in every case; and there is no rule of law that such an argument cannot succeed, despite the lack of medical evidence.

27. Finally, the authorities indicate that generally the apparent merits of the proposed underlying appeal are not relevant at the stage of deciding whether to grant an extension of time, although they may be in some cases where it is, for example, apparent that the underlying appeal is either patently hopeless or – at the other extreme – appears to be obviously extremely compelling.

28. In this case my focus is on why this appeal was not put in sooner than it was and, in particular, on the period from 20 June 2024, when time began to run, until 1 August, which was the last day for submitting a timely appeal, and then up to 5 August, which, in real time, was the day on which the appeal was submitted, although it was deemed submitted the next day under the EAT's rules.

29. The claimant says that he does not rely on his misunderstanding about when time began to run, or on the impact of ill-health, or on any of the other factors that he has mentioned, alone or in isolation from all of the others. He says that I should consider the cumulative impact and effect of all of these different factors taken together. I have indeed considered the overall picture; but of necessity I need to start by considering what the evidence is in relation to each of these factors in turn.

30. I start with the question of ill-health. I bear in mind, as the claimant has rightly submitted, that the fact that he does not have a contemporaneous report, or even a subsequently-written report specifically addressing the effects of his ill-health relevant to his ability to put in a timely appeal during the relevant time window, that does not mean that his application for an extension of time cannot succeed. I have taken into account what I can learn from the medical evidence that I do have.

31. There is a report from a psychologist, Dr McQuire, from 2016, which on its face was prepared in connection with litigation arising from an accident in 2013 when the claimant tripped over an uneven pavement and fell heavily to the ground. In summary, the author concluded that the claimant did not have PTSD but did have symptoms of anxiety; and recommended a course of cognitive behavioural therapy. There is a 2017 report from an orthopaedic surgeon, Mr Vyas. This report

referred to back and neck problems and to the claimant's symptoms having been aggravated by his working conditions in recent years.

32. The more recent medical evidence from 2025 shows that the claimant has been diagnosed with Sjögren's syndrome, and I accept from what I have read about it in the evidence presented to me that this is a chronic autoimmune disorder. So it is a fair inference that it is something from which the claimant has suffered for many years, going back to the period with which I am concerned, even though it has only been very recently diagnosed. I also accept that the claimant's medical records show that he has a longstanding history of anxiety and depression and in particular has over many years been prescribed, or has otherwise been taking, Fluoxetine. The evidence does *not* show that he has a specific neurological problem affecting his memory, although I accept that the medical records show that he has at various times expressed concerns to his GP about his memory, which indeed led to the recent referral to the neurologist.

33. I accept all of this medical evidence at face value as demonstrating these various health problems over the years, and that the claimant will have been experiencing physical problems as well as anxiety, stress and/or depression during the relevant period; but I have to decide, on the basis of everything that I have read and all the evidence presented to me, whether these mental and/or physical health problems are a material part of the explanation for why he did not put in his appeal in time.

34. The claimant accepts in his submissions that this is not a case where he had either physical difficulties or mental health problems giving rise to functional problems to a degree that he was simply not able, for example, to do research, to write communications with the tribunal or in due course the EAT, or the respondents' representatives, and so forth. The contemporary documentary evidence plainly shows indeed that he was able to do these things. In the period prior to the withdrawal of the claim he was able to initiate his claim following early conciliation, putting in a timely claim form with particulars that were clearly and coherently drafted setting out his case. As I have described, there were thereafter a number of communications from him to the tribunal making

various applications and raising various matters in April and May 2024, all coherently and clearly drafted, as indeed was the notice of withdrawal.

35. There is no particular evidence in the GP records that I have seen, of a significant deterioration in the claimant's mental or physical health during this period, although there are records of him intermittently raising concerns about his memory, including in March 2024, and records of him writing to the GP, and arranging consultations with his GP in May and June 2024, seeking from his GP medical reports to support him in litigation.

36. Immediately following the notification of the dismissal on withdrawal, on the same day the claimant made a coherent application for reconsideration and he wrote further coherent correspondence later in June in support of that application.

37. In referring to all these materials I am not expressing any view on the merits of the claimant's claim, his various applications to the tribunal or his reconsideration application following the dismissal on withdrawal. Rather, the point is that all of this is contemporary evidence that the claimant was able to put together and submit these various materials. I do not know whether he got assistance in the drafting and preparation of these materials from a lawyer, from an AI or from any other source. But, one way or another, he was able to obtain or put together these materials and to put them in, and also to respond during this period in a timely fashion to unfolding developments in the litigation. It is also apparent that, one way or another, the claimant was able to ascertain, immediately following being sent the dismissal upon withdrawal, that he had a right to seek a reconsideration, and he was able to put in a reasoned application for reconsideration.

38. The claimant says that his ability to do those things should not necessarily be equated with an ability to put in a timely appeal or to appreciate the complexities of what was involved specifically in putting in his appeal. But I note that when he did put in his appeal he was evidently able to locate and complete the Form 1 Notice of Appeal and to attach a coherent letter setting out his grounds of appeal. Again, I express no view on the merits, but the point is that the claimant was able to put all

of that together, one way or another, and to submit it to the EAT when he did. It is also noteworthy that, by the time he put in the Notice of Appeal, with the attached letter, he appreciated that he was late. He had therefore been able to find out that the time limit had been running from the original date when the tribunal's original decision was sent. He also submitted, as I have said, candidly, that he had *previously* simply misunderstood the position regarding from when time began to run.

39. It is also noteworthy that the claimant advanced coherent grounds of appeal, and that there was considerable overlap with the grounds on which he had made the reconsideration application. I cannot see that there is anything advanced in his Notice of Appeal that could not have been advanced in a timely Notice of Appeal sent earlier. There is therefore no suggestion in the content of the Notice of Appeal that the delay occurred because he lacked essential information or was waiting for responses to enquiries, before putting in his appeal, and that this was what had led to the delay.

40. Pausing there, all of these aspects of the medical evidence and the other evidence to which I have referred do *not* support a picture in which the claimant's mental and physical ill-health and/or the effects of medication that he was taking in connection with it, or indeed memory problems, or a combination of any such mental or physical problems, were any material part of the explanation for why the appeal was not put in on time or sooner than it in fact was.

41. Rather, the picture emerging from the evidence I have reviewed so far suggests that the claimant did not put in his appeal prior to receipt of the reconsideration decision, or sooner than he did, because he acted on the assumption that, having sought a reconsideration, time was not running against him until he got the decision. But, having received an adverse decision on his reconsideration application, he *then* looked, or looked further, into the matter with a view to preparing and submitting a Notice of Appeal; and at that point he discovered that his assumption had been wrong, and so he addressed the fact that he was out of time in the appeal itself when he submitted it.

42. The claimant, as I have said, urges upon me that this is not the whole picture and that I should look at the cumulative picture, including a number of other factors. In particular, he refers to having

housing problems which he says were severe during the relevant period. He has put in some documentary evidence to show that a problem was identified with a property that he was hoping to buy under a relevant scheme, that indicated that there would be a problem with getting a mortgage on it. He says this gave rise to complex problems that took his time and attention and were of considerable concern, since they related to the housing of himself and his family.

43. The claimant also refers, as I have said, to being the father of four children and his caregiving responsibilities for his family. He refers, and he has provided some evidence of this, to ongoing enquiries and applications that he was making regarding issues with the FCA and the ICO; and he says that he was seeking to get evidence to support his case that the respondents had misrepresented the implications of the County Court judgment in his case. He also refers to doing voluntary work for the CAB during this period and his responsibilities in that regard. He says that all of these matters combined were a drain on his time and resources and a source of further anxiety and stress, and, interacting with his health problems, are part of the overall explanation for why his appeal was late.

44. The claimant has also advanced various arguments about what he says are the merits of his underlying appeal. I have submissions from the respondents that they contend that his underlying appeal is very weak. I have not, for the purposes of what I have to decide, made any assessment or assumptions about the underlying merits of the proposed appeal. I have not assumed against the claimant that his underlying appeal is hopeless, as the respondents argue. Were I to extend time, that would need to be separately considered thereafter under the EAT's Rule 3 procedures in the usual way. Nor, however, have I assumed in the claimant's favour that his underlying appeal is so obviously compelling and strong that that should weigh in his favour on his side of the scales.

45. For reasons I have already given, I do not think that the ongoing communications with the FCA, or regarding the claimant's data subject access requests, have any bearing on why this appeal was late. As I have noted, he was able to put in coherent grounds of appeal when he did and there was no mention of that being an issue at that point. I fully appreciate that the claimant is a litigant in

person. He had concerns about his ongoing housing situation and he had to juggle family responsibilities and his voluntary work. But none of that, in my view on the evidence before me, provides a material part of the explanation for why this appeal was put in late.

46. In my judgment, having considered all of the evidence and material and arguments presented to me, the reason this appeal was put in late is because the claimant for some time mistakenly proceeded on the assumption that, because he had put in a reconsideration application, time to appeal was not running against him until he got the reconsideration decision. After he got that decision and it went against him he then decided to pursue the avenue of an appeal, and, as a result of the steps, or further steps, he took, to find out what he needed to do to appeal, he then discovered that his assumption that time had not been running was wrong. That is information, as I have said, that is readily available and discoverable from a number of sources on the internet, and the claimant evidently had no trouble finding out, and understanding, the position at this point.

47. The question which then arises is why the claimant initially made the mistaken assumption that he did, that time would not be running while his reconsideration application was pending determination. This question is, in my view, not addressed clearly in any of the claimant's written submissions. In his Notice of Appeal he refers to a misunderstanding about this and I accept that he mistakenly thought that time was not running while his reconsideration application was outstanding. But he does not explain in the Notice of Appeal *why* he thought that; and in particular he does not suggest, for example, that he got misleading information or advice from any particular source. He simply says that it was a misunderstanding. Later written communications, in which he refers to this, take the matter no further. For example, his reply to the respondents' submissions, when the matter was under consideration by the Registrar, simply referred to a misunderstanding and his lack of professional legal representation, but did not suggest, for example, that he got incorrect information from any particular source.

48. Similarly, when he sought this hearing the claimant referred again to a misunderstanding,

which I accept was a genuine mistake on his part, but he gave no further information about *how* that misunderstanding came about. Because of this I did ask the claimant about why he thought that time was not running and how it was that he came to realise by the time he put in his Notice of Appeal that he had been mistaken about that. In response the claimant referred again to the various submissions he had made about his health and personal difficulties; and he told me that he could not recall how he had found out specifically that he had got it wrong. He referred to his functional capacity. He told me that he knew that the relevant period was 42 days, but he could not recall why he thought that the 42 day period was not running pending the outcome of his reconsideration application.

49. It seems to me, on all the information and evidence I have, that the claimant was not actively misled or misadvised by any source about this matter. As I have said, the evidence does not persuade me that for any health reason he could not have found out. The evidence shows that he had the capability to research matters, and to get whatever assistance he may have had got in putting together submissions, and that, one way or another, he quickly found out what the position was once he turned his attention to wanting to progress and put in an appeal after the reconsideration decision went against him. On the evidence available to me I have to conclude that, if the claimant had turned his attention to putting in an appeal sooner, he could and would have quickly found out that he needed to do so within 42 days of the original decision and without waiting for the reconsideration outcome; and he would have been perfectly able to have done that during the 42 day period.

50. The claimant urges upon me that he was only in real time five days, formally six days, late, and that neither respondent has asserted any disadvantage in terms of their ability to defend the appeal on its merits. He submits that this must be a common mistake particularly for litigants in person to make. But the law is very clear. As I have said, there are a number of sources of clear guidance, explained in accessible terms for litigants in person, that make very clear, and indeed warn litigants, that the clock does not stop because a reconsideration application has been made. That is the legal position, it is clearly explained, the claimant plainly found it out without any difficulty once he did

turn his attention to putting in an appeal, and could have readily found it out at any time.

51. Standing back, for all of these reasons, having looked at the cumulative picture of the medical evidence, the medical arguments, the arguments relating to the claimant's family, housing and other personal circumstances, and having looked at the whole picture in the round, I am not persuaded that there is anything that amounts to a good excuse for this appeal having been put in late. Nor am I persuaded that there is any other good reason why time should nevertheless be extended in this case. The respondents are entitled to some finality in litigation on their side of the scale.

52. For all of these reasons, taking the decision afresh as I do, I decline to extend time and the appeal is therefore dismissed.