PTA Template 269L1 - OCT16 - EAT

IN THE COURT OF APPEAL, CIVIL DIVISION

REF: **CA-2024-002586**

Mr T –v– Royal Bank of Scotland CA-2024-002586

ORDER made by the Rt. Hon. Lady Justice Elisabeth Laing

On consideration of the appellant's notice and accompanying documents, but without an oral hearing, in respect of applications to rely on fresh evidence, for an anonymity order and for permission to appeal against:

i) an Order of the Employment Appeal Tribunal under rule 3(7ZA) or
ii) a direction by the Employment Appeal Tribunal under rule 3(10) that no further action shall be taken on the notice of appeal, and applications (a) for an anonymity order and (b) to rely on fresh evidence

Decision: applications for permission to appeal and to rely on fresh evidence refused.

Application for an anonymity order granted: such order to be made in the terms set out in paragraph 27 of the reasons below.

Permission to appeal:	☐ **Granted** ☒ **Refused**
OR	
The test for the grant of permission to appeal is satisfied.	☐
The notice under rule 3(7ZA) or (as the case may be) the direction under rule 3(10) shall be of no effect. The appeal shall proceed in the Employment Appeal Tribunal as if the notice or direction had not been given or made.	

Reasons

Introduction

1. The Appellant ('A') brought a claim in the Employment Tribunal ('the ET') in December 2013 for unfair dismissal and disability discrimination. The ET struck out A's claim because A had a long history of not complying with orders, even when the ET had made 'unless' orders.

2. In January 2018 A appealed successfully to the Employment Appeal Tribunal ('the EAT') against the order striking out his claim ('appeal 1'). The EAT remitted to A's claim to the ET.

3. The ET held a preliminary hearing on 5 June 2018. A was represented by a solicitor. The ET made some directions. It ordered that A comply with them by 26 June 2018. Further orders were made.

4. In January 2019, the ET listed a preliminary hearing for 4 February 2019 at which it proposed to consider whether to strike out the claim on five grounds. They are listed in paragraph 1 of the reasons for the ET's judgment sent to the parties on 25 April 2019 in which the ET gave its reasons for deciding to strike out the claim ('decision 1').

5. In its reasons, the ET described the history of the claim in detail. In June 2018 a final hearing had been listed (for the fifth time) between 18 and 26 February 2019 for 7 days, which was the earliest available date for such a long hearing. The ET summarised the events between the June 2018 preliminary hearing and the preliminary hearing in February 2019 in paragraphs 24-115 of its reasons.

6. The ET set out the law in an annex to its reasons and then applied the law to the facts. The scope of the claim was 'manifestly unclear'. A proposed to make many new claims. A's failure to comply with the order of 5 June 2018 had caused 'significant unfairness, disruption and prejudice' to the Respondent ('R'). Almost 6 years after A's dismissal, R did not have clear details of the case it had to meet, due to A's default. A postponement of the final hearing was 'inevitable'.

7. If the case were to go ahead, and A were to comply with the relevant order, R would have to be asking its witnesses, for the first time, about the details of the disadvantage suffered by A and about alleged protected acts. The ET did not consider that a fair trial was still possible. The year since the hearing in the

EAT had shown that far from wanting to proceed with his case, A had 'sought to obfuscate and delay'. The single clearest example was A's 'misleading application to [the ET] on 23 November 2018, on the Friday afternoon before a preliminary hearing' which had been listed to keep the case on track for the final hearing listed in February 2019, and his failure to produce medical evidence in compliance with an order of the ET. The ET explained why it was a misleading application in paragraph 22. A had had 'more than a fair opportunity to make his case' which he had 'not taken'.

8. A appealed to the EAT against decision 1 ('appeal 2').

9. On 16 August 2021, A emailed the ET asking the Employment Judge who had made decision 1 ('the EJ') to recuse herself on the grounds of bias. The EJ replied. She declined to decide that application in a letter dated 1 March 2022 ('decision 2'). The EJ referred to appeal 2 which was still outstanding and said that as far as she knew, the EAT had not decided appeal 2. She said that as A did not currently have a claim which was proceeding in the ET, there was no need for her to consider whether or not to recuse herself. If appeal 2 succeeded, the EAT would consider whether the claim should be remitted to the EJ or to another employment judge.

10. In a preliminary hearing in appeal 2, a judge of the EAT on 12 August 2021 held that A's ground of appeal alleging bias against the EJ was not reasonably arguable. He permitted the appeal to go ahead on other grounds ('decision 3').

11. A then appealed to the EAT against decision 2 ('appeal 3'). On 2 February 2023 Lord Stuart in decision 4 ordered, under rule 3(7) of the Employment Appeal Tribunal Rules of Procedure ('the Rules'), that no further action be taken on appeal 3 on the ground appeal 3 did not raise an arguable point of law. He said that the EJ had not made a decision which could be the subject of an appeal as it was not a decision on A's application for recusal. She had simply explained that while A's appeal to the EAT was pending she could not make a decision in his case. A case could not be pending before the ET and the EAT at the same time.

12. A applied for a review of decision 4. In decision 5 dated 11 April 2023 the Registrar of the EAT held that A's application for a review of decision 4 should be treated as an application for a hearing under rule 3(10) of the Rules. She refused the application for a review. A appealed to a judge of the EAT against decision 5.

13. In an order sealed on 7 June 2023 ('decision 6'), a judge of the EAT dismissed A's appeal against decision 5. She said that the points which A wanted to make could be made at hearing under rule 3(10). She considered that decision 5 was correct, in any event.

14. On 11 September 2023, after a hearing, the EAT allowed A's appeal against decision 1 ('decision 7'). In paragraph 85 of its judgment, the EAT said this about A's complaint of bias:

> *'The particular decision that was the subject of this appeal will not fall to be remade, as such. The claimant's grounds, or proposed grounds, alleging bias were considered earlier, found not to be arguable and did not proceed to a full appeal hearing. It would be neither necessary nor appropriate for me to given any direction restricting which judiciary may deal with the matter going forward'.*

15. There was a hearing in appeal 3 under rule 3(10) on 13 November 2024. A judge of the EAT decided that although Lord Stuart might have overlooked the ability of the ET to consider applications while an appeal to the EAT was pending, there were no reasonable grounds for allowing appeal 3 to proceed, for 2 reasons ('decision 8').

    (1) The question of bias had already been considered by the EAT in decision 3 (see paragraph 10, above). A had argued at the rule 3(10) hearing that he had not put forward all his relevant arguments on that occasion. The judge of the EAT considered that any application to the EJ for her to recuse herself on the grounds of bias would be contrary to the rule in *Henderson v Henderson* and would be an abuse of process. I see from A's documents that he is familiar with the rule in *Henderson v Henderson* and I will not therefore explain it further here.

    (2) In any event, the appeal would not serve any useful purpose, as the EJ had now retired. Two other EJs had been involved in managing A's claim since its remittal to the ET after the success of appeal 2. A could make 'another' application under rule 50 to the ET if he chose, and the EJ would not deal with it.

16. A has not appealed against decision 6 . He appeals against decision 8 on 6 grounds. As, in decision 8, the EAT dismissed A's appeal against decision 2, decision 2 is also relevant to A's grounds of appeal to this court.

    (1) The ET had jurisdiction to consider an application for recusal so that A could apply for an anonymity order even if an appeal to the EAT was live. The EAT's first group of reasons for dismissing appeal 3

was wrong.

(2) The ET's 'written reasons were tainted with bias from start to finish'. Very serious findings were made against A. Decision 1 was a nullity because of that bias. The ET's findings could be used against A. The bias ground should have been re-opened.

(3) The EAT must be held to account for the serious failings which seriously prejudiced A at the preliminary hearing on 12 August 2021. The judge of the EAT who dismissed the bias argument in decision 3 was wrong.

(4) The EAT (or perhaps the ET in decision 2) misdirected itself about the correct test under articles 6 and 8 of the European Convention on Human Rights ('the ECHR').

(5) A questions the status of decision 4. If, as A contends, it was a 'decision', it was amenable to a review under rule 33(1) of the Rules.

(6) The EAT failed to consider the public interest issues raised by appeal 3.

17. I have read A's skeleton argument, which he submitted late, and incomplete, on 5 August 2025. I have also read R's response to the application for permission to appeal.

18. I have also read A's application to adduce fresh evidence sealed on 11 April 2025. This evidence is said to pass the test in *Ladd v Marshall* [1954] 1 WLR 1489 and to show 'the high integrity (and moral standards)' of A. This evidence is said to cast doubt on the ET's findings in decision 1. A claims that he has only recently found this evidence.

Discussion

19. A's appeal to the EAT against decision 1 succeeded. Decision 1 therefore has no continuing effect on A's claim in the ET. Decision 2 was not a decision to refuse A's application to the EJ for her to recuse herself. Instead, the EJ decided not to consider the application for recusal while appeal 2 was pending. Whether or not she could in theory have considered that application is now academic. Her decision not to consider the application for her to recuse herself had no practical effect on A's claim in the ET while appeal 2 was pending. Now that appeal 2 has succeeded, and the EJ has retired, it can have no effect whatsoever on A's claim in the ET either. That claim, on the information I have, appears to be continuing under the management of employment judges who are not (and cannot be) the EJ who made decision 1, since she has retired.

20. In that situation, as the EAT rightly held in decision 8, this appeal has no useful purpose. It is wholly academic. It would be a waste of the resources of this court for it to proceed, even if any of the grounds of appeal was arguable.

21. None of the 6 grounds of appeal is arguable with a realistic prospect of success. The EJ did not refuse A's application to recuse herself. She did not deal with it, because, in the light of appeal 2, she did not know either whether appeal 2 would succeed, or whether, if it did, the EAT would remit A's claim to her or to another employment judge. A did not suggest when he applied for the EJ that he wished to apply for an anonymity order, and the EJ would unarguably have been entitled as a matter of case management to refuse any applications by A until she knew whether or not appeal 2 had succeeded, and, therefore, whether the claim in the ET was to proceed.

22. A is clearly discontented with decision 1. There is no further remedy which the EAT or this court can give him in relation to decision 1, however. He appealed successfully against decision 1 on a point of law, decision 1 was set aside, and his claim was remitted to the ET.

23. A specific aspect of his discontent with decision 1 is that he considers that the EJ showed bias against him in decision 1. There is no remedy which the EAT or the ET can give him in relation to that complaint, either, because the EAT, which considered it at a preliminary hearing in the context of appeal 2, held in decision 3 that it was not arguable. A does not appear to have appealed against decision 3. A cannot revive that complaint now in a separate appeal to this court, as the EAT rightly held in decision 8.

24. A has not appealed against decision 5, so his complaints about that decision and about decision 4 are irrelevant to this appeal.

25. A has given no details of grounds (4) or (6). A has not therefore shown that either ground is arguable with a realistic prospect of success, and I cannot, therefore, consider them further.

26. A's application to rely on further evidence is relevant, if at all, to his complaints about the substance of decision 1. Neither that evidence, nor those complaints are arguably relevant to the limited issues on this appeal. The EAT has already allowed A's appeal against decision 1, and that is the only available remedy for those complaints, if there is any substance in them.

27. A says that the EAT made an anonymity order in his favour on 28 July 2023 and the ET on 8 August 2024. He claims to be vulnerable, to be ill and relies on various rights under the ECHR. He says that R did not object to either order. I do not have the orders, and do not know why they were made. I will maintain

them for the purposes of considering these applications only. I will therefore make an order in these terms: 'The name of the Appellant shall appear as 'Mr T' and any material from which he may be identified should be omitted from any document (including skeleton arguments) which may become available to the public.

Information for or directions to the parties

Court of Appeal Mediation Scheme (CAMS)

Where permission has been granted or the application adjourned:

a) Does the case fall within the Automatic Referral Scheme (see below)? Yes/No (delete as appropriate)

Automatic Referral Scheme categories:

- All cases involving a litigant in person (other than immigration and family appeals)
- Personal injury and clinical negligence cases;
- All other professional negligence cases;
- Small contract cases below £500,000 in judgment (or claim) value, but not where principal issue is non-contractual;
- Boundary disputes;
- Inheritance disputes.
- EAT Appeals
- Residential landlord and tenant appeals

b) If yes, is there any reason not to refer to CAMS mediation under the Automatic Referral Scheme? Yes/No (delete as appropriate)

c) If yes, please give reason:

d) Cases outside the Automatic Referral Scheme: Do you wish to make a recommendation for mediation? Yes/No (delete as appropriate)

Signed: BY THE COURT
Date: 6 August 2025

Note:

(1) Rule 52.6(1) provides that permission to appeal may be given only where –
   a) the Court considers that the appeal would have a real prospect of success; or
   b) there is some other compelling reason why the appeal should be heard.

(2) Where permission to appeal has been refused on the papers, that decision is final and cannot be further reviewed or appealed. See rule 52.5 and section 54(4) of the Access to Justice Act 1999.

(3) Where permission to appeal has been granted you must serve the proposed bundle index on every respondent within 14 days of the date of the Listing Window Notification letter and seek to agree the bundle within 49 days of the date of the Listing Window Notification letter (see paragraph 21 of CPR PD 52C).

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