

EMPLOYMENT APPEAL TRIBUNAL
58 VICTORIA EMBANKMENT, LONDON EC4Y 0DS

At the Tribunal
On 6 August 2007

Before

HIS HONOUR JUDGE McMULLEN QC

(SITTING ALONE)

UKEATPA/0281/07/CEA

MR E MUSCHETT

APPELLANT

LONDON BOROUGH OF HOUNSLOW

RESPONDENT

UKEATPA/0285/07/RN

MR M D KHAN

APPELLANT

LONDON PROBATION SERVICE

RESPONDENT

UKEATPA/0400/07MAA

MISS J I OGBUNEKE

APPELLANT

MINSTER LODGE & OTHERS

RESPONDENT

UKEATPA/1870/06/DM

TALLINGTON LAKES LTD

APPELLANT

1) MR M REILLY 2) MRS J LYLES

RESPONDENT

Transcript of Proceedings

JUDGMENT

APPEALS FROM REGISTRAR'S ORDERS

APPEARANCES

UKEATPA/0281/07/CEA

For the Appellant

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(The Appellant in Person)

For the Respondent

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UKEATPA/0285/07/RN

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For the Respondent

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(Representative)

For the Respondent

MISS J I OGBUNEKE
(The Appellant in Person)
With the assistance of an Interpreter
MS S PATEL
(Representative)

UKEATPA/1870/06/DM

For the Appellant

No appearance or representation by
or on behalf of the Appellant

For the Respondents

No appearance or representation by
or on behalf of the Respondents

SUMMARY

Practice and procedure

Time for appealing

On hearing live evidence on appeals from decisions of the Registrar refusing extensions of time to lodge Notices of Appeal, three were dismissed and one was allowed in exceptional circumstances. These included the fact that an appeal of sorts was put in in time, the Claimant's native Ibo (Igbo) language, difficulties in seeking legal advice, the earlier Employment Tribunal history and that it could not be said the substantive appeal had no merit.

The EAT's practice in such cases was explained.

HIS HONOUR JUDGE McMULLEN QC

1. These are four Appeals from decisions of the Registrar not to allow the registration of a Notice of Appeal sought to be lodged by each Appellant. I have taken all four together since they raise common issues of law. Although all the Appellants appear without professional representation, the Respondents in two cases are represented by Counsel, and I decided to hear those cases first. This allowed all other parties to consider those submissions and to add to or comment upon them as they saw fit. I will refer to the parties as Claimants and Respondents.

2. In each case the Appellant seeks to appeal against an Employment Tribunal judgment and the Registrar decided that the Notice of Appeal is out of time and time should not be extended. The appeal is against the failure to exercise discretion to extend time, it being accepted in each case that the appeal was out of time

The legislation

3. The relevant provisions of the legislation are not in doubt. The Employment Appeal Tribunal Rules, the Practice Direction 2004 and the Practice Statement 2005 require a Notice of Appeal and all supporting documents as prescribed to be lodged within 42 days of the date the judgment of the Employment Tribunal is sent to the parties. The 2004 Practice Direction indicates what documents must be included in order for the Notice of Appeal to be validly lodged. The 2005 Practice Statement makes clear that these are prescriptive provisions and expressly says there is no special treatment for litigants in persons. All are expected to understand the requirements of the Practice Direction and of the booklet, sent by the Employment Tribunal with each judgment, entitled 'The Judgment'.

4. The leading authorities are cited in each case by the Registrar and the legal principles emerge from them. They are **Kanapathiar v London Borough of Harrow** [2003] IRLR 571, **United Arab Emirates v Abdelghafar** [1995] IRLR 243, **Aziz v Bethnal Green City Challenge Company Ltd** [2001] IRLR 111, **Woodward v Abbey National Plc** [2005] IRLR 782, and **Steeds v Peverel Management Services Ltd** [2001] EWCA CIV 419 paragraphs 38-40 as applied to an employment tribunal case in **Chohan v Derby Law Centre** [2004] IRLR 365.

5. In short those principles are as follow and I accept in part the approach of Mr Moretto of Counsel in his written skeleton argument:

- (i) The interests of the parties and the public are in certainty and finality of legal proceedings and thus make the Court's response more strict about time limits on appeal than at first instance.
- (ii) An extension of time is an indulgence requested from the Court. The EAT must be satisfied that there is a full honest and acceptable explanation of the reasons for the delay (**United Arab Emirates** at paragraphs 25 and 28).
- (iii) The 42 day time limit will only be relaxed in rare and exceptional cases for there is no excuse even in the case of an unrepresented party for ignorance of the time limits (**ibid** at paragraph 27).
- (iv) The EAT will have regard to the length of delay and be astute to any evidence of procedural abuse or intentional default (**ibid** at paragraph 29).

- (v) It has often been emphasised that compliance with the time limit is of the essence (**Woodward** at paragraphs 3 and 4).
- (vi) An excuse may not be sufficient unless it explains why a Notice of Appeal was not lodged through the entirety of the period. This means that an analytic (approach should be taken to different parts of the period. Since the test is not “not reasonably practicable” as it is for many employment protection rights at first instance, it is not fatal to an appeal that the Appellant was able during part of the period to comply. To take examples given in argument: a Claimant receives the Judgment and resolves to appeal in week 1 but suffers a stroke and is physically unable to lodge an appeal in time. A sympathetic approach would be forthcoming for the second segment, of course, but also for the first as it would not be just to debar someone for not acting immediately on receipt of a Judgment. A less sympathetic approach to the first segment might be taken if the stroke occurred in week 6. All would depend on the facts adduced in explanation for not acting during that time.
- (vii) In short as Mummery LJ said in United Arab Emirates at paragraph 38 the three questions are:
- “1. What is the explanation for the delay?
 2. Does it provide a good excuse for the default?
 3. Are there circumstances which justify the Tribunal taking the exceptional step
- (viii) In Tribunals at first instance, the fault of a legal adviser to enter proceedings in time should not be visited upon the Claimant for otherwise there would be a windfall

(see Steeds v Peverel). While this rule does not apply directly in the EAT, it is a factor which when combined with others might contribute to the exercise of discretion.

- (ix) The Practice Statement makes clear that all documents should be produced as required by the Rules and the Practice Direction and that this applies also to litigants in person. Pill LJ in *Dunham v Hull and East Riding Overseas Plastic Surgery* (A2/2006/0214) stated

“the duty of complying with time limits is upon the parties and their advisers. If a party chooses ... to leave it very late, it is the responsibility of the party to ensure that the relevant document is served within the time limit It is not the duty of a member of staff of the Employment Appeal Tribunal to advise litigants as to procedures to be followed.”

6. The practice adopted in the EAT is that the Registrar decides whether an appeal is in time. She has discretion under Rule 35(5) to dispense with any aspect of the Rules relating to documents, and under Rule 37(1) to hear and grant an extension of time for doing any act. An appeal lies under Rule 21 from a judgment of the Registrar not to register an appeal. In effect, it is a fresh hearing before a judge. Sometimes there is live evidence, for instance when a party wants to explain facts and it is only fair that he or she do so on oath and the other side be offered the opportunity to cross-examine.. Today I have heard live evidence in the three cases where the parties turned up

7. An appeal against my judgment may be made to the Court of Appeal but permission must be sought either from me on the day or from the Court of Appeal within 21 days.

8. I will now take the facts of each of the cases and give my judgment upon them.

Muschett v London Borough of Hounslow

Introduction

9. The Appeal itself is by the Claimant in those proceedings against a judgment of an Employment Tribunal sitting at London South, Chairman Ms C Taylor, registered with reasons on 8 January 2007. The Claimant was assisted by a lay representative and today represents himself. The Respondent was represented there and here by Mr Williams of Counsel. The Claimant claims sex discrimination, race discrimination and breach of contract. The Respondent denied the claims. The Tribunal rejected the case. The Chairman also refused an Application for Review as it had no prospect of success.

Notice of Appeal

10. The chronology of this case is as follows. The Notice of Appeal was 3 days out of time by virtue of Rule 3, because the Claimant in this case failed to put in the judgment of the Employment Tribunal which was registered on 14 December 2006. The reasons were included; these were registered on 8 January 2007. In between there was an Application for a Review. Thus the deadline for a Notice of Appeal expired on 19 February 2007.

11. The Application for Review was made on 17 January 2007 and was refused on 5 February 2007, the Claimant receiving it on 6 February. On 15 February 2007 the Appeal was lodged. It simply said as grounds: “*BIAS, in the interests of justice*”. The Notice of Appeal did not include the judgment, nor was there an explanation about this omission. The Claimant wrote on 20 February, in a letter received at the Employment Appeal Tribunal on

22 February 2007, seeking an extension of time based upon what he described as an omission and overlooking the inclusion of the judgment as it was misplaced. He said “*I had believed that the written reasons had contained the particulars*”.

12. The evidence of the Claimant upon which he was cross-examined today, was that he had had help from a practising lawyer in the preparation of a different appeal **Muschett v Parkwood Healthcare** UKEAT/0105/07. He had also had assistance here. He asserted in his application to the Registrar in a letter lodged on 24 April 2007 that this was his first Appeal. He denied that he was making the point that this was his first appeal for, as he knew, the EAT was in possession of a different Appeal which had been advanced by him in a different case. He was not being economical with the truth. He contended that as insurance companies give a cooling-off period so should the EAT. He had no difficulty reading the documents or understanding what the Practice Directions said. He complained that the Employment Tribunal took time to get back to him. I should exercise discretion in his favour as all that was missing was the written judgment.

13. On behalf of the Respondent, Mr Williams contends that Mr Muschett fully knew about procedures in the EAT for he had been the subject of a judgment of His Honour Judge Burke QC on 18 June 2007 in **Muschett v Parkwood Healthcare** UKEAT/0105/07, which relates to a previous period of his employment. It is plain that this claim had been properly registered for it was originally rejected by His Honour Judge Clark on the sift but went to a full hearing before Judge Burke. This simply indicates that the Claimant had sufficient understanding of the EAT.

14. That case was about whether or not a claim for sex discrimination had been made; and the appeal against the Tribunal's finding against the Claimant was dismissed. It is contended that in the light of his history, the Claimant was duplicitous in his letter to the Registrar asserting that this was his first appeal.

15. When reference was made to the Claimant's resort to the CAB, it was contended that even if the CAB is a skilled adviser, that erroneous advice does not assist the Claimant, nor does the period of time when the matter was under review, since there was a period of 14 days after the review judgment became extant when the Claimant could make his appeal and he did not.

16. Mr Williams accepted that the reference in **Woodward** to an excuse for the *entirety* of the period has to be read so that the EAT should take a view as to each segmented part of the period where some event occurs.

Discussion and conclusions

17. I reject the arguments of the Claimant and have decided that this appeal should be dismissed, upholding as I do those of Mr Williams.

18. In my judgment Mr Muschett has not given me a frank and truthful explanation of the reasons for the way in which he failed to comply with the Order. I do not accept that he simply misplaced the judgment. I agree that one can read the reasons of the Employment Tribunal and understand what the judgment would be. But the judgment is a formal document. It is the executive part of the Tribunal proceedings, which is acted upon and is enforced: and is a

necessary component of any appeal to the EAT. I do not accept that the Claimant understood that this was not absolutely necessary.

19. The Claimant's approach to the other proceedings in which he was engaged does cause me to have a different view of him as a litigant in person, and indeed to know that he was experienced in these proceedings.

20. I am not prepared to exercise discretion to grant an extension of time for this appeal to be brought out of time. In particular, the period of time when the matter was under review is not an excuse anyway; the parties are advised in the booklet called 'The Judgment' and by the judgment of Mummery LJ not to hold up matters while a review by the Employment Tribunal is being sought. In any case, when a review has been sought or is under way the EAT will stay a valid appeal, usually until that review has been completed. Taking an analytic approach to each of these periods, even if the Claimant was correct to hold off his Notice of Appeal until after the outcome of the review was known, he still had a fortnight when he did not submit the full material and when he did it was short of the critical document. For those reasons, he is not entitled to the exercise of discretion and it will be refused.

Khan v London Probation Service

Introduction

21. The appeal is by the Claimant in those proceedings against a reserved judgment of an Employment Tribunal sitting over 6 days at Ashford, Kent, Chairman Mr M G Kurrein, registered with reasons on 2 August 2006. The Claimant was represented there by solicitor and counsel and today represents himself. The Respondent was represented there and here by Mr

Robert Moretto of Counsel. The Claimant claimed unfair dismissal and race discrimination. The Respondent contended it dismissed the Claimant fairly and did not discriminate against him unlawfully. The Tribunal rejected the Claimant's case.

Notice of Appeal

22. The facts relating to the Notice of Appeal are these. On 6 September 2005 the Claimant was dismissed. The hearing of his claim was June 2006, and the judgment was sent to the parties on 2 August 2006. Thus the deadline for filing a Notice of Appeal expired on 13 September 2006. A Notice of Appeal was filed on 19 February 2007, 159 days out of time. The Registrar called for submissions and rejected the application for extension of time.

23. The evidence of the Claimant today, upon which he was cross-examined, was that he acknowledged he had been represented by counsel and solicitors at the time. Solicitors sent the judgment to him but he did not discuss it with his solicitor for he was shocked. He did, however, ask how he came to lose the case but could not get in touch with the solicitor. He had suffered from a medical condition and was on very heavy medication. He was going through a lot of treatment and his mental health was shattered. He had never asserted that he was a litigant in person. He did not dismiss his lawyers and was not in dispute with them. He told them he wanted to put in an appeal, but he wanted to discuss it with them and go to an appeal. He knew the appeal was late and that he had to show genuine and honest reasons for it.

24. He also provided new material today which was seen by the Respondent for the first time. It included a letter from his General Practitioner, Dr Sellappah, which indicates that the

Claimant had been receiving treatment for depression for the last two years. This is dated 15 June 2007.

25. Following a break to allow consideration of this and other new material, the Claimant accepted that there was still no definitive material of a professional nature indicating the kind of treatment he was under during the 42 day period when the judgment had been sent to him. He explained he had a series of problems with his family life, he did not have an assessment by a psychologist in August 2006, and his treatment was ongoing all of the time. He had one medical certificate indicating inability to work and refrained from work for two weeks. He acknowledged that after time had expired and during the time he was receiving treatment – that is January 2007 – he was well enough to attend the Employment Tribunal hearing of a colleague because he *wanted* to be there. He was not always in a depressed state but he was on tablets. This colleague had also given him support in his case. That colleague was represented by the same solicitor who had represented him with different counsel at his hearing but he was unable to talk to her even for one minute about his own appeal.

26. On that material, the Claimant submitted that he was in crisis and going in and out of hospital. His whole life had been destroyed and he was going for treatment two or three times a week. The solicitors had not acted as they should have.

27. On behalf of the Respondent, Mr Moretto contended in light of the authorities above that the submissions made by Mr Williams in the previous appeal were correct and were to be followed. The test was strict. The crucial role here is that of the solicitors whose involvement had been brought into issue today for the first time. It was shrouded in mystery since there was no evidence as to what the discussions were and what the solicitors were said to be doing. In any event, there was no explanation as to why the Claimant could not put in an appeal himself

and it was inconsistent with the medical condition which was reported in the documents such as they are. There is no explanation as to why he could not have given instructions to his solicitors so that they could have held the position until he was free of medication and able to deal with the matter himself or give proper instructions; nor was there any actual evidence as to what was the Claimant's health in the six weeks following the judgment. The latest medical report is doubtful and inconsistent, and indicates so many mistakes as to throw it into doubt. Finally, it is appropriate to consider the overall merits of the case: this approach is that of Sir Christopher Staughton in Aziz. I agree, with respect, that it is from time to time appropriate to consider the merits at least to decide whether life should be given to an otherwise hopeless case.

Discussion and conclusions

28. I reject the arguments and the evidence of the Claimant, and prefer the arguments of the Respondent and will not allow the appeal.

29. The first thing to notice is that there is no account of the period immediately following 2 June 2006. The evidence which the Claimant produced to the Registrar all pre-dates this and therefore cannot assist him. One document which does post-date this is a medical certificate signed on 5 April 2007. This is an important document. It is made on the same date as the application to the Registrar putting the medical evidence before her, lodged on 10 April, by hand at the EAT. This document is an ordinary medical certificate but it covers only two weeks, from 1 – 14 February 2007, and it recalls an examination of the Claimant on 7 February 2007. This is what is relied upon as the basis for there being no Notice of Appeal submitted by the Claimant. The diagnosis is anxiety-depression and of viral infection. In my judgment, it does not prove that, for on a day when the Claimant was directed to refrain from work he had

written the Notice of Appeal and the Application acknowledging that it was out of time. Both occurred on 14 February, when the doctor described him as ‘unfit to work’. I also have my doubts about the latest letter, seeing as I do the many mistakes there are in it, and also making a comparison of the way the doctor records the date on this form as quite different from the three occasions when he records the date on the actual medical certificates.

30. Finally, such evidence as was adduced by the Claimant pre-dating the giving of the judgment is all in favour of his being well. The treating consulting psychiatrist indicates that although the Claimant found the court case upsetting he denied suicidal thoughts and noted coherent and prompt recollections of the details of the court case. The medical position up to the date of the judgment, therefore, was that he was not so unwell as to cause an inability to lodge a Notice of Appeal.

31. Thus during the whole of the six week period I find that there was not a genuine reason which excused him from failing to put in a Notice of Appeal. To the extent that he seeks to blame his solicitor, I would have listened more sympathetically to that material had there been either a reflection of that earlier in the case fully advanced by him or evidence put forward by him. I have also made due allowances for what I accept to be, over time, a history of depression and mental instability but cannot find in that any evidence of its effect upon him so as to disable him from making an appeal within the relevant period. Nor indeed, when he was sufficiently able to assist his friend in an Employment Tribunal in January, was it followed immediately by a Notice of Appeal. Nor was it followed by seeking advice from the solicitor. Thus I do not accept that there was a genuine excuse for there not lodging a Notice of Appeal in time.

Ogbuneke v Minster Lodge & Others

Introduction

32. The Appeal is by the Claimant in those proceedings against a judgment of an Employment Tribunal Chairman, Mr D Kearsley, sitting alone at Birmingham, registered with brief reasons on 20 December 2006.

33. The Claimant claimed race discrimination. The Respondent denied the claim. The Claimant is represented by her mother Dr Johnson-Ogbuneke, who is a consultant surgeon, and the Claimant's evidence was given in Ibo through an interpreter, for whose services I am grateful. The Respondent was represented by its officer Dr Patel.

34. The Tribunal decided to strike out the Claimant's claim for failure to comply with its Orders. The orders had been given at a case management and discussion, which the Claimant did not attend despite notice.

Notice of Appeal

35. The chronology is that the time begins to run from 3 January 2007, so that a Notice of Appeal had to be filed by 14 February 2007. The Claimant sent a letter on 12 January saying she wished to appeal against the judgment, and gave a number of reasons, including reasons why she was unable to comply with the previous directions. There is reference to attending at

Coventry Law Centre to seek help. The Registrar decided that the claim was made 34 days out of time for it was not properly instituted with all the relevant documents until 20 March 2007.

36. I heard evidence from the Claimant and her mother. Both of them were cross-examined by Dr Patel. The evidence was that they had gone to the Law Centre and then been referred back to the Citizens Advice Bureau and then back to the Law Centre.

37. The document which the EAT had sent to the Claimant indicated that the proper form had not been used, and attention was drawn on 17 January 2007 to both the Practice Direction and to the requirements for other documents to be filed. A potential Notice of Appeal was dated 8 March 2007 but this was again rejected, leaving it until 20 March before proper implementation had been achieved.

38. It was contended by both of the witnesses that it was difficult to get a barrister who understood Ibo and that steps had been taken to obtain alternative advice. The Claimant herself said that she needed to have advice from her mother, because the Claimant could not understand the terms which were being used as her English is very poor. She could not get legal assistance. She consulted both the CAB and the Law Centre. She could not understand what was going on. The Law Centre did not really assist her but her mother did. Even her mother needed a lawyer. The Claimant did not understand what it was the Employment Appeal Tribunal needed. Her case was originally that the letter *was* an appeal, but given the history of the Employment Tribunal proceedings where there was dissatisfaction at the way in which the issues had been identified, it was felt necessary for them both to obtain proper legal advice before replying to the Employment Appeal Tribunal. They went to Coventry Law Centre on 12 February but no lawyer could see them then. An appointment was made shortly thereafter. During the intervening period the Claimant's mother was in the United States at a professional

conference. When an appointment had been made to see the relevant solicitor copies were taken of the documents.

The Respondent's case

39. On behalf of the Respondent it is contended that there is no exceptional reason arising from this evidence. It is not clear why no advice was sought from any other source but that reliance was placed on the Law Centre. As to the merits, again applying Sir Christopher Staughton's approach, this had none for it was itself about action taken because the Claimant failed to meet deadlines.

Discussion and conclusions

40. I uphold the evidence and the arguments of the Claimant and will allow the appeal.

41. Approaching the periods of time analytically, nothing is wrong between 3 and 12 January 2007 when the letter was produced, and steps were being taken to lodge a Notice of Appeal. The Employment Appeal Tribunal very properly wrote to the Claimant on 17 January drawing attention to the defects in the documentation. At that stage, one would have expected a prompt response but this is an exceptional case. The Claimant I find was wholly inexperienced in dealing with such complicated matters as an appeal to the Employment Appeal Tribunal and even in respect of the proceedings before the Employment Tribunal it was appropriate for her to rely upon her mother. Her mother, too, took the entirely appropriate step of seeking legal advice. Given that the Employment Appeal Tribunal had rejected the letter as being in the wrong form and that other documents were required, and upon the procedural history of this matter before the Employment Tribunal, it was quite right that both the Claimant and her

mother should take legal advice. She cannot be criticised for going back to the Law Centre for by that time the Law Centre was able to deal with them, having originally indicated that it was under too much pressure prior to the hearing at the Employment Tribunal. They attended within the deadline. At that stage, had the Law Centre handed the papers to an experienced employment lawyer, there would have been time to realise that the appeal was going to be out of time unless something were done within the next two days: nothing was done but to fix a later appointment. **Steeds v Peverel** assists by way of analogy in this case. The previous periods during which an appeal could have been lodged are all excused, respectively, by the fact that an appeal of sorts was put in, by waiting for an appointment with the Law Centre and by having an appointment within the deadline. I find the effective reason the Notice of Appeal was not put in was because the law centre did not take that step when it should. I accept the Claimant has a genuine excuse for not making the claim in time, and I do not visit the failure by the law centre to do that on the Claimant. That is because I accept that the law centre worker did not understand the nature of the problem as it was presented to her, both for reasons connected with the Claimant's language of Ibo and with having to understand the procedural history of this case; she may have lost sight of the immediate problem – having to lodge a Notice of Appeal. I cannot say the substantive case has no merit.

42. Thus I will exercise my discretion and extend time so as to validate the Notice of Appeal which was duly instituted on 20 March 2007 and I will give further directions at the end of this judgment as to how that case will proceed.

Tallington Lakes Ltd v 1) Mr M Reilly 2) Mrs J Lyles

Introduction

43. The appeal is by the Third Respondent in those proceedings against a judgment of an Employment Tribunal sitting at Leicester, Chairman Mr J C Goodchild, registered with reasons on 8 May 2006.

44. The Claimants represented themselves and they have decided not to attend today in the light of the threats made of further proceedings by the Respondent if it were unsuccessful. The Respondent did not attend but has sent a letter in the hand of Mr Neil Morgan, its leading light, who was originally named as the Second Respondent.

45. The Claimants claimed unfair dismissal. The Respondent on paper resisted the claims. The Employment Tribunal decided in favour of the Claimants and awarded them £2,030 each. It recorded its poor opinion of the Respondent in the litigation. He did not comply with orders or turn up. The Respondent had lodged a Notice of Appeal on one matter but this had been thrown out by the Employment Appeal Tribunal. As a matter of record, the Respondent had raised a different Notice of Appeal which was heard by His Honour Judge Pugsley. Mr Morgan appeared at that hearing. The judge dismissed the appeal, and formed the same poor opinion of the conduct and expressions of the Respondent, this time informed by having seen him in action. The Respondent's unbending approach to these legal proceedings can be found in this statement made in his appeal in this court:

“In summary, the situation is nothing less than an appalling disgrace and it is totally contrary to any notion of truth, equity or justice.

We refuse to permit lies, bullshit and manipulated bureaucracy to triumph over fact and truth.”

Notice of Appeal

46. The Notice of Appeal was lodged 225 days out of time. What the Registrar found was this.

“It is not an acceptable reason for delay that the appellant claims that time should extend indefinitely because of not receiving the Written Reasons. By Rule 61(2)(a) of the Employment Tribunals Rules 2004 a document is deemed served by post on the day on which it would be delivered in the ordinary course of post to the address specified in the claim or response (Rule 61(4)(h)(i)). The appellant’s representative did not attend the hearing on the 23rd March but was aware of the adverse decision. The Written Reasons were sent on the 8th May 2006. Throughout the whole of this time the appellant was conducting litigation in the EAT which finally terminated on the 10th November 2006. It is not accepted that the appellant remained in ignorance of the need to obtain the written reasons, if it had not received them, and to enter an appeal immediately. Nor is it accepted that the Employment Tribunal deliberately did not send the Written Reasons to the appellant. Despite the fact that it would be expedient for both appeals to be combined, the appellant took no steps other than allegedly sending one email, after the dispatch of the written reasons, on the 31st August. The fact that the case had terminated in an adverse decision to the appellant was mentioned in the Judgment of His Honour Judge Pugsley. An appeal was not lodged until two months after the previous appeal had terminated and appears to be a response to proceedings for enforcement. No explanation has been made as to why even though the written reasons were received within the currency of the first appeal, an appeal was not filed. The appellant was in possession of the Practice Direction and had access to the Rules of the Court and other advice if it chose. It is not accepted either that a member of the EAT staff recommended a complaint be made to an MP instead of filing an appeal, whether out of time or not, or that the appellant, as an experienced appellant, needed to rely on the advice of the Ombudsman to file an appeal. Even though ‘the appellant received the written reasons on the 11th September, it still did not file an appeal expeditiously or within 42 days after that event. In any event it is the responsibility of the appellant to file his appeal in time and court staff are under no duty to advise him:

...

Six weeks is a generous amount of time in which to appeal and the appellant took no steps in this matter for a considerable time.”

The Respondent’s case

47. Amongst other rather unpromising submissions made by Mr Morgan are that the Tribunal Service is a bent organisation, and that the Employment Tribunal and the Employment Appeal Tribunal are self-fulfilling bureaucratic farces.

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48. I am sorry to say that his letter of 23 April 2007 does not advance my understanding of the legal issues involved in his application to lodge a Notice of Appeal so long out of time. On the contrary, the letter sent by the Claimants contended this is simply a delaying tactic to avoid making payment to them and that this application has only been caused by the execution of a distraint warrant against Mr Morgan.

49. In my judgment the Respondent is simply presenting a rant. He did not turn up at the Employment Tribunal proceedings. He has failed to turn up here to argue the point which he makes. He has not produced grounds which satisfy the authorities which I have cited above, and I see no reason to disagree with the careful exposition of the law and the facts given by the Registrar.

Result

50. All appeals against the Registrar's Orders are dismissed save for **Ogbuneke v Minster Lodge & Others** which is in time and I direct to a hearing.