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Harvey on Industrial Relations and Employment Law

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Bulletin Editor
Ian Smith MA, LLB; Barrister
Emeritus Professor of Employment Law at the Norwich Law School, University of East Anglia.

DIVISION AI CATEGORIES OF WORKER

Partners; position of salaried partners

AI [129]

***Watson v Wallwork Nelson Johnson [2024] EAT 105* (*28 June 2024, unreported*)**

The claimant had worked as a tax specialist for the respondent accountancy partnership for ten years as an employee. As part of succession planning, the partners proposed to elevate him and two others to 'associate partners'. In his case this process became prolonged and 'shambolic'. No overall agreement was ever reached (partly due to a dispute over what his salary would be), but from 2019 his employment contract was ended and his tax status changed to self-employment. Relations deteriorated through COVID and eventually his engagement was ended. He brought proceedings for unfair dismissal and breach of contract. The ET rejected these on the basis that he was a partner, not an employee.

His appeal to the EAT on this status point was dismissed. Citing particularly *Williamson & Soden v Briars* UKEAT/0611/10 (20 May 2011, unreported) (see **AI [129.01]**) Eady P held that the ET had properly understood its function here, namely to weigh the factors pointing towards employment, those pointing towards partnership and those which are neutral. Clearly, the absence of a concluded, written partnership agreement complicated matters, but taken as a whole the ET had permissibly come to the conclusion that the intention of the parties had been to establish a partnership arrangement (both parties being well versed in the law here) and had done enough to do so.

One final point is that the claimant had also brought proceedings for unlawful deductions from wages, as a 'worker', and these had been upheld by

the ET. The respondent did not in fact cross-appeal this and so it stood. The EAT judgment concludes by pointing out that the matter was thus not before it, though obiter it acknowledges that such an employee/worker distinction in a partnership case was at least envisaged in *Bates van Winklehof v Clyde & Co LLP* [2014] UKSC 32, [2014] IRLR 641 (a case on LLPs, see **AI [128.01]**).

Fixed-term employees; successive contracts; employer justification

AI 173]

***Lobo v University College London Hospitals NHS Foundation Trust [2024] EAT 91* (*18 June 2024, unreported*)**

By virtue of reg 8 of the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 SI 2002/2034 **R [1558]** if an employee is kept on successive such contracts they can claim to have become permanent, unless the employer can show justification for keeping them on fixed-term contracts. There has been little case law on this for several years and so this decision of Judge Tayler in the EAT is of interest as a factual example, the basis for which is the simple point that applying the concept of justification is heavily one for the ET – if, as here, it makes careful and detailed findings of fact and also an 'impeccable direction as to the law', it will be difficult to challenge its decision on appeal.

The claimant had been on fixed-term contracts as a locum consultant for over four years. When a substantive consultant post became available she was given preference in being interviewed for it, but she was unsuccessful. She then relied on reg 8 to claim to be permanent anyway. The employer resisted this and the matter went to the ET, which held against her. It held that in reality the posts of substantive consultant and locum consultant are *not* the same, in relation to responsibilities and working practices. The employer had shown that it had no need for a novel post of 'permanent locum consultant', but did need to continue with a simple locum on fixed-term contracts. It had thus established justification under reg 8. The EAT held that this was a proper decision on the facts and dismissed her appeal. One of her arguments was that the ET had missed the point that 'locum' simply means fixed-term and 'substantive ' means permanent, but the EAT held that the differences, as found in some detail by the ET, went beyond that. The judgment contains at [29] the following paragraph that showed sympathy for her (in a case that was arguable both ways) but ultimately the ET's decision was unassailable:

> 'I can readily see that if the term "locum" meant no more than fixed-term and "substantive" meant no more than "permanent"; i.e. the same role but without the time limitation; it might have been difficult for the respondent to justify the decision to maintain the claimant on a fixed-term contract while recruiting to the permanent role. The fact that the same contracts were used for the locum and substantive roles, that the claimant did, in fact, carry out some roles additional to those that would be generally expected of a locum and the context, in which some of the claimant's colleagues did not get on with her, provided support

for the claimant's case. Those factors were analysed by the Employment Tribunal. However, for the reasons I have set out above in some considerable detail, the Employment Tribunal concluded that the substantive role was truly a different role to the locum role that the claimant undertook. While it is hard not to feel some sympathy for the claimant, who had been thought sufficiently able to carry out the locum role for many years, but then was not appointed to the substantive role; and to wonder whether interpersonal relations in the department were at play, I have to remember that I am at one stage removed. The factual decision was for the Employment Tribunal. It is extremely hard for the claimant to challenge that decision, made after detailed consideration of the evidence, unless she can establish an error of law in the analysis of the Employment Tribunal.'

No such error of law had been shown.

DIVISION BI PAY

National Minimum Wage; calculation of the hourly rate; time when travelling

BI [218]

Taylors Services Ltd v Commissioners for HMRC [2024] EAT 102 (26 June 2024, unreported)

The appellant company provided zero hours workers for poultry farms. Although the company had central premises, the system was that the workers were picked up from their homes by the company bus and delivered to the farm needing them, and then taken back home on it at the end of their shift. This could often involve journeys of several hours, at antisocial hours. There was some contractual payment, but it was less than the NMW and, having investigated, HMRC issued an enforcement notice.

The company appealed against this notice, the question being whether this was 'time work' attracting the NMW. The ET held that it was, considering the question as one of principle under the NMW Regulations 2015 SI 2015/621 reg 30 **R [3211]** on the meaning of time work, but without going on to consider reg 34 **R [3215]** specifically on 'Travelling treated as time work'. One background factor was the arduous nature of much of the travelling and another that the travelling was controlled completely by the employer. The ET dismissed the appeal and confirmed the notice.

The company appealed against this to the EAT which allowed its appeal and quashed the notice. The point of law involved (in a case which was considered to be on unusual facts and devoid of any direct authority) was that the ET had erred by not considering regs 30 and 34 *together*. A similar point had arisen in *Royal Mencap Society v Tomlinson-Blake* [2021] UKSC 8, [2021] IRLR 466 on the parallel provisions of regs 30 and 32 concerning sleeping at or near a place of work (see **BI [215]** ff), where it was held that those regulations were indeed to be read together. In spite of arguments trying to distinguish this by HMRC, the EAT held that the same applied in relation to

travelling time, in order to achieve a 'harmonious whole' to the interpretation. The judgment of Judge Stout accepts that these particular arrangements could be onerous but ultimately that could not affect the question of statutory interpretation; neither could the fact that the travelling was completely under the control of the employer. It also accepts that this decision can create an anomaly, namely that if the arrangement was that the workers had to attend the central premises and *then* be bussed to the farm in question, then that travelling time would attract the NMW. However, that was said to be a matter for Parliament.

DIVISION DI UNFAIR DISMISSAL

Redundancy; establishing the pool; consultation

DI [1686.01], DI [1708.01]

***Valimulla v al-Khair Foundation [2023] EAT 131* (*10 October 2023, unreported*)**

There has been important case law in recent years on the logically difficult issue of applying fairness to redundancy dismissals where the dismissed employee found themselves in the notorious 'pool of one'. The temptation may be to conclude quickly that their selection must have been fair (what else could have been done?), but this case before Judge Tucker in the EAT is another showing that such a knee-jerk reaction can give a wrong result.

The claimant was a Majid Liaison Officer operating in the North West. There were three others operating in other parts of the country. During the pandemic he was told that he was to be dismissed for redundancy. On his application for unfair dismissal, the ET held that his redundancy dismissal was fair, accepting the employer's argument that he was in a pool of one, his post being 'unique'.

The EAT allowed his appeal on two grounds:

(1) The ET had not sufficiently considered the fairness of putting him into that pool of one, given the existence of the three other Officers, but had too readily accepted the employer's categorisation of his post as unique. Here, the judgment cites and follows that in *Capita Hartshead Ltd v Byard* [2012] IRLR 814, EAT and the guidance given there, which is considered at **DI [1686.01]**.

(2) The ET had failed to consider at all the lack of consultation. This remains a key element in any redundancy case, including where there is a pool of one, and must take place at a time when it could affect the outcome (including the setting of the pool in a case such as this). Here, the judgment cites and follows that in the more recent case of *Mogane v Bradford Teaching Hospitals NHS Foundation Trust* [2022] EAT 139, [2023] IRLR 44, which is considered at **DI [1708.01]**. This error was sufficient in itself for the EAT to declare the dismissal itself to have been unfair, referring back to the ET other matters concerned primarily with remedy.

DIVISION F TRANSFER OF UNDERTAKINGS

Relevant transfer; economic activity; commissioning

F [28.05]

***Bicknell v NHS Nottingham and Nottinghamshire Integrated Commissioning Board [2024] EAT 103* (*25 June 2024, unreported*)**

The text at **F [28.05]** considers *Nicholls v London Borough of Croydon* [2018] IRLR 988, EAT, the leading case on when the activities of a public authority can and cannot qualify as an 'economic activity' for TUPE purposes. Para **F [28.06]** sets out the factors isolated in Lavender J's judgment. These apply to the public/economic split generally, but the case itself related to the specific question of commissioning activities, in relation to which the judgment states that:

> '(1) the purchasing or commissioning of goods or services cannot in itself constitute an economic activity; but (2) a body which supplies goods or services on a market is carrying on an economic activity, both in supplying those goods or services and in purchasing goods or services for the purpose of that supply.'

This passage lay at the heart of the instant decision by Sheldon J in the EAT.

The claimant was claiming automatically unfair dismissal based on a TUPE transfer between NHS commissioning bodies. Applying the passage, the ET held that there were here no supplies of goods and services and so the case fell within part (1). The claim therefore failed because there was no relevant transfer. On appeal, the claimant argued either that the ET had misunderstood *Nicholls* or, if not, that *Nicholls* should be departed from. Dismissing the appeal the EAT held that the above passage was part of the ratio of *Nicholls* and had been properly applied by the ET, having made proper findings of fact as to the activities of the bodies involved. On the question of the authority of *Nicholls,* the judge states at [64] that he 'entertained doubts' about proposition (1) and whether commissioning by itself cannot be an economic activity, but found that (in relation to both domestic and EU case law on TUPE and competition law) it could not be said that it was manifestly wrong and so (under *British Gas Trading Ltd v Lock (No 2)* [2016] IRLR 316, EAT, see **PI [1432]**) it was to be followed.

Dismissal because of a relevant transfer; unfair dismissal because of the transfer

F [156]

***Drake v Churchill Contract Services Ltd [2024] EAT 88* (*22 May 2024, unreported*)**

TUPE SI 2006/246 reg 7 **R [2296]** makes automatically unfair a dismissal if the reason or principal reason is the transfer. This decision of Judge Auerbach in the EAT adds an important point as to *how* this special protection is to be raised, especially in the case of a litigant in person.

The claimant was a cleaner who had been TUPE transferred to the employment of the respondent. She was told by them that her terms were to change. She did not agree; as a result she was dismissed and re-engaged on the new terms. She brought unfair dismissal proceedings, acting as a LIP. At a case management hearing, the ET characterised her claim as one for ordinary unfair dismissal under the ERA 1996 s 98. This was then the basis for the substantive hearing at which her claim was dismissed.

The EAT upheld her appeal. Of particular importance was the fact that the claimant had stated in her claim form that the transferor had written to her prior to the transfer indicating that the respondent may carry out an organisational review leading to changes in terms or redundancies. She had later sent an email to the tribunal stating that she had received such a letter, and also referred to it in the agenda form for the case management hearing. The judgment holds that this put the tribunal on notice that the claimant could actually be seeking to bring a regulation 7 claim. Bearing in mind that she was a litigant in person, it was incumbent on the tribunal proactively to raise and seek clarification of that at the case management hearing. It had not done so. Moreover, given that the claimant's email which began with a reference to that letter was also before the tribunal at the full merits hearing, it was also incumbent on the tribunal at that full merits hearing proactively to raise the issue for clarification. It was not sufficient for the ET to record the result of the case management hearing.

DIVISION L EQUALITY

Discrimination; comparators; need for true comparison

L [246]

The No 8 Partnership v Simmons [2023] EAT 140, [2024] ICR 380

There have been cases recently reminding us that even when involved in complex aspects of various discrimination claims, if they involve comparators the EqA 2010 s 23 **Q [1476]** imposes an across-the-board requirement that 'there must be no material difference between the circumstances relating to each case'. This decision of Eady P in the EAT emphasises an important procedural aspect of this, namely that if an ET is to accept and apply a particular comparison it must give the parties a proper opportunity to address the question.

In a case concerning a claim for associative disability discrimination, a question of comparators was not raised by the claimant at a preliminary hearing, but the ET went on at the full hearing to construct hypothetical comparators as part of the upholding of the claim, but without hearing the respondent on this. The EAT allowed the respondent's appeal on this point, holding not just that on the facts the comparisons were not made out, but that the ET had erred procedurally:

> 'I would not, however, necessarily consider that to be fatal to the ET's attempt to assess the question of less favourable treatment by constructing hypothetical comparisons. That possibility had been identified

at the earlier case management stage and was plainly a course that it was envisaged might be adopted at the full merits hearing. The difficulty that arises from the ET's judgment is that the hypothetical comparisons that were then used were not first discussed with the parties, who were thus denied the opportunity to address those comparisons either in evidence or submissions. Given that the ET's findings in relation to the two comparators it constructed were material to its reasoning on the section 13 EqA claim, which then fed into the ET's decision on the constructive unfair dismissal claim, this cannot be said to be a merely peripheral matter … More than that, however, as the finding of unlawful discrimination is akin to a finding of reliance upon an improper reason, these were matters upon which the respondent ought to have been given the opportunity to respond … In the circumstances, this gave rise to an unfairness in the procedure adopted by the ET. … As well as being unfair, however, the course adopted by the ET was unwise given that the hypothetical comparators it went on to construct failed (notwithstanding its self-direction as to the correct legal test) to satisfy the need for a like-for-like comparison that section 13 EqA requires (see section 23 EqA).'

DIVISION M TRADE UNIONS

Union discipline; legal representation; common law

M [3418], M [3433]

***Bhogal v National Education Union [2024] EWHC 1295* (*Ch*)**

The claimant had been an active member of the union; a complaint was made against him, which led to his being disciplined by the union on allegations that he had acted in breach of professional and union standards in relation to the complaint, had breached confidentiality and had taken an unacceptable stance in WhatsApp communications. In injunctive proceedings against the union, he sought a declaration that he was entitled to legal representation at the disciplinary hearing. Davis-White HHJ in the Chancery Division held against this claim. The first point was that the union's own rules did not permit it (being confined to accompaniment by a friend or companion). That led to the more important question whether there was a common law right to legal representation, based on natural justice. The case law on this is set out at **M [3418]** which adopts the starting point that there is no inherent right; it depends on the facts of the case. The key case here, set out in the judgment, is *R v Secretary of State for the Home Department ex p Tarrant* [1985] QB 251, [1984] All ER 799, Div Ct (see **M [3433]**) which arose in the context of prison disciplinary proceedings. Stripping it of that context, the judgment in the instant case isolates the principal factors in a case of representation before a disciplinary tribunal of sorts as: (1) the seriousness of the charge and possible penalty, (2) whether difficult points of law are likely to arise, (3) the articulacy of the claimant and ability to present their own case, (4) any procedural difficulties, (5) the need for a speedy resolution of the matter and (6) the need for fairness as between the claimant

and other participants. On the facts here, the judgment found that none of these operated in the claimant's favour. At [94] and [95] the judgment concludes:

> 'Standing back from the detail, the most powerful factor in my judgment is that this is a fairly ordinary disciplinary case. As the cases make clear, a situation where natural justice requires legal representation is far from being the norm in cases of an internal disciplinary dispute procedure. In this respect, and as I have said, the cases are replete with the undesirability of bogging down internal disciplinary procedures with an overly legal complexity …
>
> In conclusion, I do not consider that there is a seriously arguable case with a real prospect of success that natural justice requires Mr Bhogal to be allowed legal representation in this case at the NAC hearing. This is because, although I consider there is (at the least) a serious argument that in certain circumstances natural justice might require an accused member facing disciplinary proceedings to be permitted legal representation, the facts of this case are nowhere near the sort of factual situation where such circumstances might arise. Such circumstances, in the particular context of union membership, are likely to be wholly exceptional.'

While this is primarily concerned with the particular facts, the last sentence does show that in general it will be an uphill battle to establish such a right at common law in TU cases.

Trade union members; miscellaneous rights

M [3801]

Nistor v USDAW [2024] EWHC 1165 (KB), [2024] All ER (D) 94 (May)

The novel point in this High Court action before Bourne J was a claim by union members to sue their union for common law negligence. The failure of this part of the overall claims shows that such an action is very unlikely to succeed.

The claimants worked at TESCO's Lichfield distribution hub. Employees who had transferred to that hub in a reorganisation in 2011 had had extra pay negotiated for them by the union. When the claimants found this out, they objected that the union had not negotiated this for them too and brought legal proceedings against it. (Note: employment law geeks may recognise the background to this from the decision of the Court of Appeal, in a different context, in *USDAW v Tesco Stores* [2022] EWCA Civ 978, [2022] IRLR 844, see **AII [93]**, **AII [410.02]**.) The claimants here sued for breach of fiduciary duty, breach of TULR(C)A 1992 s 20 and professional negligence, all of which failed. However, their first claim was more generally for common law negligence. This too was rejected at [28]–[31] on the following grounds :

> 'I accept [counsel for the union's] submission that any duty of care towards individual union members who might be disadvantaged by a collective agreement would contradict an equivalent duty of care towards members who would be advantaged. It seems to me that in collective bargaining, a trade union should act broadly in the interests of its members as a whole and in accordance with members' wishes as evidenced in any ballot. That is inconsistent with owing a duty of care towards any individual members who might be disadvantaged by a particular agreement.
>
> The claimants referred me to *Langley v GMB & Ors* [2020] EWHC 3619 (QB) [*see* **M [3809]**]. There, a trade union accepted that it owed a duty of care to an individual member when advising and representing him in legal proceedings. That was because it had assumed a degree of responsibility towards him voluntarily by providing those services (see [9] per Stacey J).
>
> That case is of no assistance to me in deciding whether a trade union owes a duty of care to members who may be affected by a collective agreement, which is a wholly different situation.
>
> I am satisfied that the claimants have no real prospect of establishing the existence of the necessary duty of care and therefore that claims in negligence cannot possibly succeed.'

The result was that the court granted the union's applications for a strike out and/or summary judgment, though it stopped short at issuing a civil restraint order on the claimants.

This is clearly important for a union when undertaking bargaining for disparate groups of its members. However, it could also be important for a union if caught up more generally in disagreements between members or groups of members in relation to social or political disputes.

DIVISION PI PRACTICE AND PROCEDURE

The response; extension of time for presenting the response

PI [344]

***Thorney Golf Centre Ltd v Reed [2024] EAT 96* (*19 June 2024, unreported*)**

In allowing an appeal against a refusal by an ET to grant an extension of time for a response under SI 2013/1237 Sch 1 r 20 **R [2777]**, Judge Auerbach in the EAT made the following points about applying that rule:

(1) The late submission of a response, and an application to extend time for it, will inevitably cause some delay, because of the need for that application to be adjudicated on paper or at a hearing. But when deciding whether to extend time for a late response, the starting point, in relation to delay, should be a consideration of the extent of the delay

in putting in the response itself and/or (if done later) in applying for an extension. The more serious the delay which has necessitated the application, the more important it is for the respondent to provide a full and satisfactory explanation for it.

(2) If the late response was not accompanied (or preceded) by a request for an extension of time, the tribunal should also consider the delay in making the application, and why that was not done sooner, including, where the failure to accompany the response with an application for extension has been raised by the administration, how promptly thereafter the request, and associated explanation for the original delay, were put forward.

(3) Once the late response, and application for extension, with an explanation for the original delay, have been provided, and the claimant has had the seven days allowed by rule to register any opposition to the application, the next step should be for a judge to decide that application on paper or, if the judge directs, at a hearing.

(4) In many cases, where this proceeds smoothly, the further time delay inevitably involved in reaching that point, and what has occurred between the time of the application and the time of the decision on it, will not be significant to that decision. But it will not necessarily be irrelevant in every case. There could, for example, be a case where it is said that additional delay has been caused by the unreasonable conduct of a party, or that there has been some specific further development which should have a bearing on the balance of prejudice.

(5) Decisions under rr 19–21 are to be taken by an EJ alone.

Withdrawal; effect of the rule; relationship with issue estoppel

PI [627.02], PI [1007]

Ajaz v Homerton University Hospitals NHS Foundation Trust [2023] EAT 142, [2024] ICR 413

The claimant brought proceedings for whistleblowing detriment based on nine protected disclosures. The proceedings were settled by a COT3 which included a term not to raise any new claims arising from or in relation to the issues/complaints in the proceedings or her employment up to the date of the settlement. The claim was withdrawn and dismissed under SI 2013/1237 Sch 1 r 52 **R [2809]**. Four years later she brought two further detriment claims about detriments which post-dated the COT3 but were based on the same nine disclosures. The EJ struck these claims out on the alternative bases that r 52 gave rise to an issue estoppel and that it would be an abuse of process to permit relitigation.

The claimant appealed but Judge Keith in the EAT dismissed the appeal. In doing so, he held that the EJ had erred in the law but still reached the right conclusion. It was held that r 52 applies in cases narrower than estoppel and

here did not give rise to one. However, the terms of the COT3 were such that, while they would not have prevented any new litigation as such, they did stop this relitigation of the issues in the proceedings, in particular the original nine disclosures. In so holding the EAT cited and relied on *Biktasheva v University of Liverpool* UKEAT/0253/19 (3 November 2020, unreported) (see **PI [627.02]**) and *Virgin Atlantic Airways Ltd v Zodiak Seats UK Ltd* [2013] UKSC 46, [2014] 1 AC 160 (see **PI [1007]**).

Settlement agreements; coverage of future claims

PI [729]

***Clifford v IBM UK Ltd [2024] EAT 90* (*10 June 2024, unreported*)**

There was reported in **Bulletin 547** the decision of the Court of Session in *Bathgate v Technip Singapore PTE Ltd* [2023] CSIH 48, [2024] IRLR 326 overruling the decision of the EAT that a settlement agreement cannot compromise future claims and holding that that is indeed possible if the normal conditions for such an agreement are met. The instant decision of Heather Williams J in the EAT shows the significance of this.

The claimant had become sick in 2008 and had not worked again. The employer proposed to put him onto its Disability Plan. He initially objected to this and raised a grievance. In 2013 the parties reached a settlement agreement which resulted in his going onto that plan at a set income; it was expressed to cover any future claims. He later brought proceedings for disability discrimination based on the fact that the plan income had never been reviewed and/or increased. The ET held that these claims were excluded by the 2013 agreement.

He appealed, arguing initially that the ET should have applied *Bathgate* (EAT) and held that these later proceedings were not barred. However, by the time of the EAT hearing the decision in *Bathgate* (CSIH) had been handed down. In the light of that, the claimant argued that the Court of Session's decision was wrong and should not be followed, or alternatively that it could be distinguished. The EAT held against both submissions and held that the ET had been right to reject the claims.

Reconsideration of judgments; by whom?

PI [1139]

Jarosinski v Nestle UK Ltd [2023] EAT 157, [2024] ICR 357

The simple point made by this case is that where a substantive decision has been taken by a full ET (ie with members), any reconsideration under SI 2013/1237 Sch 1 r 72 must be undertaken by a similarly-constituted tribunal, not by the EJ alone.

The claimant's claims for discrimination, harassment, victimisation and wrongful dismissal were rejected by a full ET. It did uphold his claim of unfair dismissal, but went on to hold that it was all his fault and it refused to make an award. The claimant applied for a reconsideration. This was considered on the papers by the EJ alone and rejected. He appealed against

this and the EAT upheld that appeal. Rule 72(3) states that 'any reconsideration … shall be made by the judge or, as the case may be, the full tribunal which made the original decision'. This is mandatory and had not been observed here. The rationale behind this is expressed at [30] as follows:

> '… the EJ erred in making a decision which should have been taken by the full employment tribunal. I do not accept [counsel for the employer's] argument that this error was immaterial, as the reconsideration application was bound to fail. In summary, it was not only the EJ's views alone on the merits of the reconsideration application which mattered, but those of the full employment tribunal, which had heard all of the evidence in reaching a collective decision. Put another way, ET panel members do not simply rubber stamp an employment judge's decision. The fact that it was open to the EJ to reach the decision she did on the merits of the reconsideration application does not answer or supplant the need for the ET, as a whole, to have had the opportunity to consider the reconsideration application. Even if there was no error in failing to hold a hearing, it was not argued that it would have been perverse for an ET to have done anything other than to refuse the reconsideration application, and I accept [counsel for the claimant's] submission that there remains a possibility that the ET panel members may disagree, or have disagreed, with the EJ's conclusion. It is that important safeguard which was missed, and, as a consequence, I do not accept the argument that to proceed to reach a decision under rule 72(2) was not a material error of law. The EJ's decision is unsafe on this ground alone and must be set aside.'

REFERENCE UPDATE

Bulletin	Case	Reference
545	*Brookes v Leisure Employment Services Ltd*	[2024] ICR 366, EAT
545	*De Bank Haycocks v ADP PRP UK Ltd*	[2024] ICR 432, EAT
549	*Hilton Food Solutions Ltd v Wright*	[2024] IRLR 532, EAT
549	*Scottish Water v Edgar*	[2024] IRLR 537, EAT
549	*Yacht Management Co Ltd v Gordon*	[2024] IRLR 559, EAT
549	*Accatatis v Fortuna Group (London) Ltd*	[2024] IRLR 570, EAT
549	*Goldstein v Herve*	[2024] IRLR 579, EAT

Bulletin	Case	Reference
550	*Mercer v Alternative Fuel Group Ltd*	[2024] IRLR 517, SC
550	*BA plc v de Mello*	[2024] IRLR 543, EAT

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