

22.07.08

I have some serious concerns about the hearing of this application. Perhaps the judge will be kind enough to offer some guidance or clarification in relation to the questions below.

Background

A substantial part of my appeal relies on the error in law that the ET made material findings of fact for which there is no evidence, or without considering substantial and relevant evidence that contradicts these findings.

As far as I understood the above error in law is within the jurisdiction of the EAT. The only way one can prove that the evidence contradicts a finding of fact is by pointing to the finding of fact in question and the relevant evidence. However I have been refused permission to appeal (letter 24 April 08 [63]) by the argument " *it is not the function of the EAT to re-hear the facts or to review the Tribunal's decision on those facts.* "

I clarified in my *Response to the 24.04.08 Comments* [123], that what I complain about is entirely within the jurisdiction of the EAT, however in the 19.06.08 reply the EAT again criticises me for complaining about the findings of fact. On that basis I was again denied permission to appeal.

The claim that there is no evidence that supports a given material finding of fact could be properly proven by challenging the other party (or the Tribunal itself) asking them to point to the evidence on which that finding of fact is based. If there is no evidence the point is made. In fact the procedure outlined in PD 11 is far more comprehensive than what I just described.

However at this stage, where I am asking for permission to appeal, I am the only party in this hearing so the only way I can think of proving that there is no evidence that can support a given finding of fact is by presenting the whole evidence and showing that there is nothing in that evidence that supports that finding of fact. However I was warned I could put no evidence, or very little evidence. The letter from the Registrar dated 18.07.08 says " *However it is a supplementary bundle and it is a matter for the Judge to allow her to refer to it.* ". This suggests that the EAT judge may not want to look at evidence.

If I don't present evidence and simply describe a summary of what the relevant evidence is and how it relates to the material findings of fact in dispute, then it will be my word against the belief that the Tribunal acted properly in considering the evidence before them. In the absence of evidence to prove that what I say is indeed correct, I will be at a disadvantage, as the EAT judge will most likely be disposed to believe that Tribunals act properly.

Question 1: Is the description of the jurisdiction of the EAT in the first page of my skeleton argument correct? If it is why have I been denied permission to appeal?

Question 2: How can one go about showing that the error in law described above has been made given the constraints imposed by the EAT?

R Benveniste
(Appellant, Claimant)

The above document was handed to HH Judge McMullen at the start of the EAT hearing on 22.07.08. The purpose of that hearing was to exercise my legal right to contest in a hearing the refusal of the EAT to allow me to appeal against the 11.02.08 decisions of the Employment Tribunal in relation to my unfair dismissal, victimisation and unlawful deduction of wages claims. The response of HH J McMullen to these questions was along the lines:

Answer to Question 1: Judge Elias was correct in stating that the EAT does not review facts. You (Regina Benveniste) are also correct regarding the jurisdiction of the EAT and the need to look at the evidence.

Answer to Question 2: I (Judge McMullen) am not prepared to give you (Regina Benveniste) legal advice on this matter.

At the conclusion of the hearing the judge refused me permission to appeal against the 11.02.08 decisions of the Employment Tribunal stated above.

R Benveniste