EMPLOYMENT APPEAL TRIBUNAL		UKEAT/0176/08/LA
Appellant / Claimant		**Respondent**
Dr R Benveniste	**V**	**Kingston University**

RESPONSE to the 24.04.08 Comments

1. JURISDICTION OF THE EAT TO HEAR MY ENTIRE APPEAL

   The letter of 24.04.08 states that the EAT has jurisdiction to hear appeals on questions of law. The letter also states that it is not the function of the EAT to re-hear the facts of a case. In relation to these comments I wish to draw attention to the fact that I have not asked the EAT to re-hear the evidence. What I have asked the EAT is to address several errors in law made by the ET in the 11.02.08 judgement. In the event the EAT decides that the facts need to be re-heard, I understand that the EAT has the power to order a re-hearing by a Tribunal.

2. My appeal against the 11.02.08 ET judgment falls within the jurisdiction of the EAT insofar as it is **entirely based on questions of law**. These errors are:

   a) The ET failed to address the correct legal or statutory question, misconstruing a law or statute).
   b) The ET reached a decision or conclusion that is not supported or is inconsistent with the evidence.
   c) The ET failed to consider significant evidence that if considered by any reasonable tribunal would have led to a decision significantly different to what the ET reached.
   d) The ET reached a perverse decision that no reasonable Tribunal would have reached on the basis of the evidence before it.
   e) The proceedings and judgement involved several irregularities that include (but are not limited to) the failure to consider most significant evidence that supported my case and misrepresentation of the evidence.

3. In addition to the above errors, I claim that there have been breaches of the Human Rights Act 1998. The thrust of my argument with respect to the breach of the 1998 Act is that I have been denied a fair hearing. The chairmen / judges have not always listened to what I said and did not read what I wrote. They did not even record accurately my arguments in their judgments. Such omissions compromised the prospects of appeals.

4. LENGTH OF MY DOCUMENTS - TOO MUCH DETAIL.

   In the letter of 24.04.08 I was criticised for the length and level of detail of my initial submission with the Notice of Appeal. I have revised my initial submission and I am resubmitting a revised version. I have aimed to make these submissions more succinct, however I am afraid the revised documents are not drastically reduced. That is because my primary concern has been to avoid compromising the clarity of what I am trying to convey. At the same time I have had to adhere to the requirements stated in the Practice Direction (EAT - Procedure) 2004.

5. The document '**Grounds of Appeal**' shows the basis of my appeal. This document is probably longer than similar documents that the EAT is accustomed to receiving. The length however is no reason to reject the appeal as there is no stipulation limiting the length of the notice. I ask the EAT to bear in mind the following reasons why my document is

longer than usual.

6. I am a lay litigant. Although I have read and gained a reasonably good understanding of the relevant law, I have no training on how to write legal documents or how to advocate effectively. I have included a lot of comments in my notice of appeal in order to ensure that my points come across clearly. A lot of what is written in my Notice might be better suited for the Skeleton Arguments. I am reluctant however to condense the Notice of Appeal because I really do not have the training / experience / confidence to make an effective condensed document that I feel can do justice to the merits of my appeal.

   What I have done instead is underline the text in the Grounds of Appeal that describes the relevant points of law. That way a judge can skim through the underlined text if he wishes to concentrate on the points of law.

7. Another reason why my documents are lengthy is because I have complied with the **Practice Direction.** Some of the errors in law raised in my appeal have to do with issues of perversity and the failure to consider significant relevant evidence. Other errors have to do with irregularities in the hearing and judgment.

   The requirements for appeals that involve arguments of perversity are specified in section 2.6 of the PD which stipulates that the *Notice of Appeal should set out the full particulars of the matters relied on.* The requirements for an appeal involving complaints of irregularity are described in section 11.1 of the PD which states that the Appellant should include in the *Notice of Appeal full particulars of each complaint made.*

8. The level of detail I supplied in my submissions to the EAT aimed at satisfying the above requirements. A recurrent criticism in my appeal is the failure of the ET to consider or even mention significant and relevant evidence. In an attempt to comply with the PD, I felt I had to give particulars of this evidence and its relevance. To facilitate cross referencing I presented this material in the **Appendix** using relevant headings and referred to these headings where necessary.

   The fact that there is so much material in the Appendix is a direct consequence of the extent to which the ET failed to consider or even mention evidence supporting my case. This ought to serve as an indication of the severity of the error and irregularity in the ET proceedings and judgment and ought to be taken very seriously by the EAT. Rejecting my appeal just because of the amount of evidence proving this error / irregularity, is inconsistent with the interests of Justice.

9. PROSPECTS OF SUCCESS OF THE APPEAL OF THE UNFAIR DISMISSAL AND VICTIMISATION CLAIMS

   The comments in the 24.04.08 letter aiming to justify that my appeal has no chance of success seem to be based solely on what is written in the judgment. I can see nothing in these comments that addresses or even acknowledges the errors I have described in my appeal. It seems unfair to reject an appeal without considering what it is about, especially since one of the complaints in this appeal is that what is written in the judgment is a far from adequate record of the facts and argument put to the Tribunal.

10. In paragraph 1 of the 24.04.08 letter it is argued that there was plenty of evidence and the hearing took 9 days. It is implied that the ET dealt correctly and fairly with the extensive argument and evidence before it.

    In view of my complaint that **most of the relevant evidence supporting my case was not considered or even mentioned by the Tribunal,** the above argument in paragraph 1

cannot be used as a basis for rejecting my appeal. A rejection based on such an argument would be like relying on the assumption that the ET acted correctly in order to conclude that the ET did not act wrongly.

11. The argument in paragraph 2 of the 24.04.08 letter that '*it is quite hopeless to contend that there was a conspiracy to dismiss the claimant*' is unfounded especially since I contend that there is substantial evidence to support that there was indeed a conspiracy to dismiss me and that most of this evidence was not considered or mentioned. The latter complaint lies in the very heart of my appeal, yet on the face of what is written in the 24.04.08 letter, it does not seem to have been even acknowledged by the EAT.

12. As for the statement '*They* (the Tribunal*) were obviously impressed by some of the witnesses from the University*' is at best an unfounded speculation. In reality there is proof of several instances where the University's witnesses were shown to have lied, contradicted themselves and each other, committed perjury and even falsified a document. Tribunals, serving the interests of Justice, tend to disbelieve witnesses that lie, they do not get favourably *impressed* by them.

13. The argument in paragraph 3 of the 24.04.08 letter that there is no legitimate complaint against the procedures adopted by the University is not accurate. This was discussed in paragraphs 201-213 of my written submissions. The relevant complaint appears in the earlier version of the 'Grounds of Appeal'. It can also be seen in the revised form in paragraphs 39-42. Among other examples I have challenged the impartiality with which the whole disciplinary process was conducted. This point alone is a textbook example of procedural unfairness that has been considered as sufficient grounds to render a dismissal unfair.

14. The statements in paragraph 3 of the 24.04.08 letter regarding the disciplinary meeting fall far short from providing a fair assessment of the circumstances of that meeting, let alone what led to it. That may be due to the fact that the ET failed to describe these circumstances in its judgment with reasonable accuracy.

    More specifically I asked the Respondents to give the following clarification:
    '*What requires clarification is whether according to the university's rules and practice the pattern/place of work such as mine, constitutes grounds for dismissal. As I already explained in my letter of 10/7/04, I believe that an employer is legally bound* ***to clearly communicate what constitutes grounds for dismissal.*** *Such information ought to be widely communicated and be equitably applied to all members of staff.*
    I ask that a ***clear response*** *be given to my request for the clarification described above.* ***My decision will depend on this response. The same applies to my action against the university in order to assert my rights.*** *I expect to receive a clear response to my request for clarification soon after I return from my annual leave on 10 August 2004. If the university states that my refusal to change my established pattern/place of work will constitute grounds for dismissal, then I request that the university also provides an explanation, in writing, as to why this treatment is not afforded to the rest of the University. After all a pattern/place of work such as mine has always been and still is common practice throughout the University.*'

    In response to the invitation to confirm my attendance to a disciplinary meeting on 13.08.04 I replied and referred to the extensive documents and correspondence I had written explaining my position and to the persistent refusal of the Respondents to give me the above clarification. I went on to explain that I would have nothing more to say until I received the clarification I requested.

    The Respondents have never supplied this clarification. They even refused to do so under cross examination during the merits' hearing before the Tribunal.

15. **As for my victimisation claim,** the handling of this claim so far has involved a chain of errors and irregularities that amount to a breach of the Human Rights Act 1998 and make a

mockery of the law on victimisation. These are serious matters that I submit ought to be examined in an appeal.

16. The statement in paragraph 4 of the 24.04.08 letter '*that was a decision the Tribunal was plainly entitled to reach on the evidence before it'* does not apply here because the requirement that a Tribunal ought to give **proper consideration to all the evidence before it**, implied in all adjudications, has not been satisfied by the present ET. No Tribunal *is entitled* to reach any decision that is arrived at by disregarding the evidence supporting the case of one party. Such arbitrariness is in breach of the overriding objective.

17. In making the comparisons between me and the 2 comparators mentioned in paragraph 5 of the 24.04.08 letter, the ET concentrated on the different treatment between my 2 colleagues (D Tsaptsinos and M Joy) and me, with respect to the enforcement of the home working restrictions. The ET found that there were differences between my case and theirs. The ET also admitted that there were similarities in our cases. However, independently of these comments, the relevant point here is that **there is no finding in the ET judgment** that the differences between my colleagues and me amounted to **a justified reason why I was treated less favourably**, which is the precise question the ET ought to have asked themselves. And in any event there is no explanation as to why such a finding is at all reasonable, even if one were to assume that such a finding is somehow implied.

18. The failure of the ET to address this question is significant, particularly so because I explicitly challenged the relevance of the criteria used by the Respondents (in order to waive the home working restrictions for the 2 colleagues but not for me) to the alleged aim of the home working restrictions. I submitted that these criteria were 'designed' to simply differentiate between me and the 2 colleagues and thus provide a cover up for the discriminatory treatment. Other than that the criteria were irrelevant. The ET did not just fail to address this significant point, it did not even mention in the judgment anything about this point and the evidence supporting it.

19. As for the remaining 4 comparators, the Respondents refused to give explanations for the difference in treatment. The criteria 'designed' in order to waive the restrictions for the 2 comparators (Tsaptsinos and Joy), did not necessarily apply to the rest of the comparators. Since there was no explanation for the difference of treatment between me and the remaining 4 comparators, the ET was obliged by law to infer that victimisation took place. The ET did not do so, so it erred in law.

20. These and other important errors in law are discussed in the document 'Grounds of Appeal'.

In conclusion, I ask the EAT to make allowances for the fact that my documents may not be in the form the EAT is accustomed to and concentrate on the Grounds of Appeal which I am confident are valid and are definitely within the jurisdiction of the EAT.

R Benveniste