

UNITED KINGDOM / JUDGMENT

H Amin v Manchester Airport Group Plc & Anor (PRACTICE AND PROCEDURE) [2026] EAT 63 (19 May 2026)

[2026] EAT 63

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Neutral Citation Number: [2026] EAT 63 Case No: EA-2024-000229-THE EMPLOYMENT APPEAL TRIBUNAL Rolls Building Fetter Lane, London, EC4A 1NL Date: 19 May 2026 Before: JUDGE STOUT ----- Between: MR H AMIN Appellant

- and - (1) MANCHESTER AIRPORT GROUP PLC (2) FRANCESCA ABBOTT Respondent -----
----- The Appellant did not attend nor was
represented Ms Kirsten Barry (instructed by Eversheds Sutherland (International) LLP) for
the Respondent Hearing date: 21 April 2026 -----

JUDGMENT

SUMMARY PRACTICE AND PROCEDURE There was no error of law in the Employment Tribunal's decisions that: (i) the claimant had not paid deposit orders so that his claims must be struck out under rule 39(4) of the Employment Tribunal; (ii) the claimant should not be granted relief from sanctions; and (iii) the preliminary hearing listed to consider those issues should not be postponed. Nor were the judge's decisions vitiated by any appearance of bias towards the claimant's former representative. JUDGE STOUT:

Introduction

1. The appellant was the claimant in the proceedings below and I will refer to him as such. 2. This is an appeal against the reserved judgment and reasons of the Manchester Employment Tribunal (Employment Judge Holmes) sent to the parties on 16 January 2024 following a hearing on 9 January 2024. 3. By that decision, the judge determined that the claimant's claim stood struck out in its entirety for non-payment of deposit orders made by the Tribunal and sent to the parties on 5 May 2023. The claimant's applications for postponement of the 9 January 2024 hearing, and for relief from sanctions, were dismissed. 4. The claimant was not present at the hearing on 9 January 2024, but was represented by Mr Broomhead, who was described on the judgment as a "non-practising solicitor". 5. Permission to appeal to the EAT was refused by HHJ Tayler on the paper sift under rule 3(7) of the EAT Rules. 6. At a rule 3(10) hearing, at which the claimant was represented by Mr Broomhead, permission to appeal was granted by HHJ Auerbach on what are in substance

two grounds as follows: Ground (1) - Relief - This ground was originally labelled ground 7.2.1. It is that the judge erred in law when refusing relief from sanctions by failing to take into account whether the failure by the claimant had taken the form of deliberate and persistent disregard of procedural steps or had made a fair trial impossible; Ground (2) - Bias/unfair hearing – The grounds originally labelled 7.3.1, 7.3.6, 7.3.6.2, 7.3.6.3, 7.3.6.4, 7.3.7 and 7.3.8. The claimant's non-attendance at this hearing 7. The claimant did not attend the hearing before me. This was not unexpected in view of the following history of correspondence. 8. On 26 March 2026 the EAT registrar contacted the claimant to ask for core bundle, which should have been submitted by 24 March 2026. The claimant replied almost immediately to say that his representative Mr Broomhead passed away in December 2025 and he was now "at a loss" as to how to proceed with the appeal. 9. By emails of 26, 27 and 31 March 2026 the respondent's solicitors chased the claimant for compliance with the directions for core bundle and skeleton argument. 10. By email of 31 March 2026 at 14:57 the claimant apologised for the delay in replying, said he had been unwell for "the past several weeks and awaiting further appointments". He said he had not been able to retrieve and files or notes relating to the case and would be asking the EAT for more time to find another representative. A further email of 16:35 gave more details about how he found out about Mr Broomhead's death. 11. By emails of 1 April the EAT informed the claimant how to apply for a postponement of the hearing. 12. By email of 8 April 2026 the claimant stated that he has no representation and is not experienced in dealing with or understanding correspondence relating to the proceedings. Further, his 90-year-old father had a heart attack on 31 March 2026 and has been in hospital since. He and his family "are currently occupied and concerned with this" so he has not been able to give these proceedings any attention. 13. By email of 8 April 2026, the respondent again provided the claimant with information about applying for a postponement. 14. The EAT administration also provided that information again by email of 10 April 2026. 15. Anticipating the claimant's non-attendance, the respondent applied for the hearing to be converted to a hybrid hearing so that Manchester-based counsel could attend remotely. By order of 17 April 2026, I granted that application and indicated that the claimant could attend remotely too if he notified the EAT of his wish to do so. He did not respond to that order. 16. The claimant also wrote a further email on 15 April 2026 in which he reiterated what he had said previously about the death of Mr Broomhead, his difficulty dealing with the appeal, his own ill health and that of his father. 17. The claimant did not attend the final hearing in the EAT before me. We waited 10 minutes after the scheduled start time, but he had not appeared. 18. After hearing brief submissions from the respondent, I decided to proceed with the hearing. I was satisfied that the claimant had been informed on multiple occasions how to apply for a postponement of the hearing, and that he was capable of doing so as he had written many other emails in recent weeks, despite his difficulties. While I am sympathetic to the difficulties that the claimant has experienced, I do not consider that any of them actually prevented him attending this hearing or seeking a postponement if he wished to do so. The appeal can be advanced without Mr Broomhead by reference to the grounds of appeal the claimant drafted and the content of judgment and written reasons under appeal. Neither the claimant's ill

health or that of his father had prevented him communicating with the respondent and the EAT in terms that indicate he is capable of representing himself if need be, at least by video (as offered) if not in person. There has been substantial delay in this matter already. The interests of justice, and the parties, are best served by proceeding. The Employment Tribunal proceedings and the Employment Tribunal's decision 19. The claimant was employed by the respondent from 1993 as an aviation security officer. He has brought a number of claims against his former employer. The present proceedings relate to the termination of his employment on 7 November 2021. The claimant claims that he was unfairly constructively dismissed and brings claims of race and disability discrimination and for notice payment and other payments. 20. Deposit orders were made against him by the Employment Tribunal on 5 May 2023, to be paid by 31 May 2023. The reasons for those orders are not material. 21. The claimant has maintained that he did comply with the conditions for payment and paragraph 7.2.2 of the notice of appeal states that he has "produced copies of the cheques". However, at [4]-[10] of the written reasons for the judgment under appeal the judge recites the chronology of the Employment Tribunals correspondence with the claimant in relation to the non-payment of the deposit. The claimant was directed to produce a witness statement, and any supporting evidence, dealing with his attempt to pay the deposits that had been ordered. The claimant produced an unsigned, undated statement, together a copy of a cheque book stub. The respondent sought to cross-examine him on this evidence and so the preliminary hearing on 9 January 2024 was listed to consider the question of whether the claimant's claims stood struck out or not. In the notice of 31 October 2023 listing the hearing (provided to me by the respondent at this hearing, and referred to at [9] of the judge's written reasons), the claimant was specifically ordered by the Tribunal to attend that hearing "to give evidence and produce the original cheque book with the stub he refers to". 22. According to the judge's written reasons, on 4 January 2024 Mr Broomhead emailed the Tribunal making an application for postponement of the 9 January 2024 hearing on the basis that the claimant was "in Pakistan concerning the health of his father and cannot return to this country to attend the above hearing. He is in Pakistan for the foreseeable future and will not be able to return for some time". The respondent objected to the postponement application. 23. The claimant did not attend the hearing on 9 January 2024, but was represented by Mr Broomhead. At the start of the hearing, Mr Broomhead made an application for the judge to recuse himself on the basis (as recorded in the Employment Tribunal's decision at [16]) that: (i) the judge had shown bias at a previous preliminary hearing by taking account of his own motion whether a fair trial was still possible in deciding whether to strike out other claims; and (ii) the judge had been the subject of a previous complaint by Mr Broomhead, of which the judge stated he was unaware. The judge appears to have expressed the view that these objections provided "no basis for him to recuse himself" and the written reasons record at [16] that "Mr Broomhead did not press the application any further." 24. The written reasons then go on at [17]-[20] as follows:

17. The Employment Judge opened the hearing by then addressing the issue that it was listed to determine, namely whether the claimant's claims stood struck out by reason of his non - payment of the deposits that had been ordered.
18. After some prevarication , and assertion that the claimant had tried to pay the deposits , which was not the issue, Mr Broomhead agreed that the claims indeed did stand struck out by reason of the non - payment of the deposits. The Tribunal was thus able to determine the issue that it was listed to determine.
19. What was to follow, therefore was, in effect (and this could have been better expressed) the claimant's application for relief from sanction.
20. His absence, therefore, particularly as he had been required to attend and give evidence, and to produce the original document relied upon, meant that Mr Broomhead could not proceed, and had to seek a postponement. 25. The written reasons then deal with the parties' submissions on the postponement application ([21]-[30]). Paragraph [30] explains why written reasons were provided rather than an oral judgment:
29. In reply, save that the claimant have given him the date of 1 March 2024 for a possible return to the UK, Mr Broomhead had nothing to add.
30. The parties were given the option of an oral judgment after deliberation during the morning, but Mr Broomhead preferred to receive a reserved judgment, as he was still suffering the effects of his diabetes, and had not had much sleep. Judgment was accordingly reserved. 26. It does not appear from the written reasons that either party made submissions separately on relief from sanctions. 27. The written reasons then go on to set out what rule 30A of the Employment Tribunal Procedure Rules (as they were then in force) and the Employment Tribunal Presidential Guidance state in relation to postponements. 28. At [33]-[35] the judge explained that he was refusing the application for postponement because, in summary, the claimant had not provided an adequate explanation for how he came to be in Pakistan or why he had left it so late to apply for a postponement. 29. The written reasons then conclude as follows:
36. In the absence of the claimant to give evidence about his attempts to pay the deposit, and of even a signed witness statement with adequate details (the draft does not even give the date that he posted the cheque), any application for relief from sanction or reconsideration of the strike out of his claims is doomed to failure, and to the extent that there is such an application before the Tribunal, it is dismissed.
37. Whilst it may be premature, as the respondent has raised the issue of costs, the Employment Judge would observe that had the claimant succeeded in his application for a postponement, it would have been difficult, if not impossible, for him to resist an application for costs. The power to award costs, of course, arises whenever there has been a postponement on the application of a party, for which the threshold conditions of unreasonable conduct or breach of Tribunal orders are not required.

38. Whether the respondents intend to pursue an application is a matter for them, but as the postponement has been refused, the Tribunal would have to apply the tests under the other limbs of rule 76. If any such application is to be pursued, it should be made within 28 days of this judgment being sent to the parties, and, if a summary assessment is sought, a breakdown of the sums claimed should be included. Ground (1) 30. The ground of appeal is that the judge erred in law when refusing relief from sanctions by failing to take into account whether the failure by the claimant had taken the form of deliberate and persistent disregard of procedural steps or had made a fair trial impossible. 31. In her skeleton argument in response to the appeal, Miss Barry refers to the Court of Appeal's decision in *Governing Body of St Alban's Girls School v Neary*

[2009] EWCA Civ 1190 ,

[2010] ICR 473 (*Neary*) in which the Court of Appeal held (see especially [47]-[52]) that Employment Tribunals are not obliged to consider the factors in the Civil Procedure Rules (CPR) when considering whether to grant relief from sanctions, but must take all relevant factors, and no irrelevant factors, into account and exercise judgment fairly, rationally and not capriciously. 32. The respondent also refers to *Thind v Salvesen Logistics Limited*

[2010] All ER (D) (*Thind*) at [14] for what Underhill J (as he then was) said about the approach to be taken to unless orders as follows: "The Tribunal must decide whether it is right in the interests of justice and the overriding objective, to grant relief to the party in default notwithstanding the breach of the unless order. That involves a broad assessment of what is in the interests of justice and the factors which may be material to that assessment will vary considerably according to the circumstances of the case and cannot be neatly categorised. They will include, but may not be limited to, the reason for the default, and in particular whether it is deliberate; the seriousness of the default; the prejudice to the other party; and whether a fair trial remains possible. The fact that an unless order has been made, which of course puts the party in question squarely on notice of the importance of complying with the order and the consequences if he does not do so, will always be an important consideration. ... No one factor is necessarily determinative of the course which the Tribunal should take. Each case will depend on its own facts". 33. The respondent submits that the Tribunal did not err in failing to consider whether the claimant's failure had taken the form of deliberate and persistent disregard of required procedural steps or that it had made a fair trial impossible because these were not matters raised or relief on by Mr Broomhead for the claimant at the hearing and were not relevant given that the claims stood struck out for failure to pay the deposits. Analysis and conclusion 34. I am satisfied that there was no error of law in the Employment Judge's decision in this respect. Although there is very little reasoning in the decision in relation to the issue of whether to grant relief from sanctions, once the decision is studied thoroughly, it is apparent that this is because there was in the end no application for relief from sanctions made, or (at least), none of any substance. 35. The matters that the claimant had raised in correspondence prior to the hearing, and which Mr Broomhead

raised on his behalf at the hearing, were: (i) his argument that he had paid the deposits; and (ii) the application to postpone the hearing. 36. However, as can be seen from [18]-[20] and [36], it had become apparent, and Mr Broomhead had accepted, that the claimant had not in fact paid the deposits so that the claims had to be struck out under rule 39(4) of the Employment Tribunal Rules. If Mr Broomhead had not accepted that, it is plain that would have been the inevitable conclusion because the Employment Tribunal had no record of payment, and the claimant had been specifically ordered to attend so that he could be cross-examined on the contents of his witness statement in which he purported to have paid the deposits, but the claimant had failed to attend, and had failed to produce the original of the cheque book stub as ordered. 37. The judge's written reasons recognise that there could still be an application for relief from the rule 39(4) sanction of automatic strike-out, but it appears from the written reasons that Mr Broomhead acknowledged that, without the claimant present, or having provided more evidence, there was no reasonable basis on which to advance an application for relief from sanctions. All Mr Broomhead did (and probably all he reasonably could have done in the circumstances) was to make an application for postponement. When that was refused, there was no application for relief from sanctions of any substance left to consider. The judge's reasons are adequate in explaining that situation and why accordingly the application for relief from sanctions was formally refused once the postponement application had been refused. 38. In those circumstances, there is no error of law in the judge not having considered the matters identified in Ground 1, and the reasons are adequate. 39. I add that, although the claimant did at paragraph 7.2.2. of the notice of appeal to the EAT seek to resurrect the argument that he had paid the deposits, that was a ground on which permission to appeal was specifically refused by HHJ Auerbach at the rule 3(10) hearing and is not therefore a live issue before me. Ground (2) 40. The claimant argues in his notice of appeal that he did not get a fair hearing because of what he alleges to be Employment Judge Holmes' "animus" towards his representative, Mr Broomhead. In the paragraphs of the notice of appeal in respect of which permission was granted (paragraphs 7.3.1, 7.3.6, 7.3.6.2, 7.3.6.3, 7.3.6.4, 7.3.7 and 7.3.8), the claimant submits that this "animus" is apparent from the written reasons. In particular, he relies at [16] on the judge stating as regards the recusal application, "Mr Broomhead did not press the application any further". The claimant says that Mr Broomhead had made his application and there was no need for this comment. The claimant also complains about [18] of the written reasons, which mentions 'prevarication' by Mr Broomhead. The claimant submits that the Employment Judge put a "negative slant" on everything Mr Broomhead did, including him not wanting a reserved judgment as he was still suffering the effects of a diabetes episode and "had not had much sleep" (which latter point the claimant says was factually incorrect). The claimant also objects to the reference made by judge at [37] and [38] to costs and "advice" to the respondent to make a costs application. 41. I am grateful to the respondent's counsel for her detailed submissions on these points. Analysis and conclusion 42. The question for me is whether the conduct of the judge at the hearing, or his mindset as revealed through the comments in the written reasons, is such as to give rise to a real possibility, in the eye of

the fair-minded and informed observer, that the claimant did not receive a fair hearing. The respondent has referred me to *Porter v Magill*

[2002] 2 AC 357 and *Locabail (UK) Ltd v Bayfield Properties Ltd*

[2000] IRLR 96 . I have also had regard to *In re H (A Child) (Recusal)*

[2023] EWCA Civ 860 ,

[2023] 4 WLR 64 . 43. I do not consider the apparent bias threshold is met. The sentence "Mr Broomhead did not press the application any further" is appropriate, because, as I read [16] of the decision, it is recording what appears to have been in effect a discussion between Mr Broomhead and the judge at the start of the hearing about the application for recusal. The judge sets out how, in response to Mr Broomhead raising the two potential grounds of bias, he provided his immediate comments on the two points raised. This is in line with the usual guidance in the face of such applications, by which the judge is expected to provide disclosure of information that may be relevant (compare *Jones v DAS Legal Expenses Insurance Co Ltd* and *ors*

[2003] EWCA Civ 1071 at [35]), so that the parties may make submissions on it. 44. In this case, accordingly, the judge sought to ascertain which other particular decision of his was being referred to, and which complaint, then provided the information that considering whether a fair trial was still possible was what he believed he was required to do as a matter of law on a strike-out application, and that he was unaware of any complaint that had been made about him. The judge evidently also indicated that he did not consider either of the matters raised required him to recuse himself. If, having been given those comments and views, Mr Broomhead had wanted to "press" the application further by repeating it (taking account of the judge's responses) and seeking a formal ruling on it, he could have done so. Evidently, he did not, hence the sentence at the end of [17] which records the position. The judge recording that Mr Broomhead did not "press" the application does not provide the basis for an allegation of bias. As I read it, it is an unremarkable way of recording what happened at the start of the hearing. 45. As to the remark about "prevarication", I recognise that this has a pejorative meaning, but the judge was evidently seeking to convey that Mr Broomhead sought to argue a point about the claimant having paid the deposit, which he then conceded. While another word such as "discussion" might have been better, given Mr Broomhead's change in position, "prevarication" is not inappropriate. 46. The remainder of the written reasons are also not so negative in tone as to raise any appearance of bias in my judgment. The tone of the written reasons is one that is frequently seen where a party has pursued an argument or case that the judge considers to be clearly unmeritorious. However, the fact that a judge's opinion in this respect becomes apparent as a result of the tone of the judgment is not by itself sufficient to create an appearance of bias, in particular where that view is (as here) one that is reasonable in the circumstances of the case and where there is nothing to suggest that the judge has failed as a result to deal even-handedly with the case. 47. Even if

the judge misrecorded what Mr Broomhead said about needing to go home to sleep, this is only a minor and immaterial factual discrepancy. Recording what Mr Broomhead said about his health does not in my judgment indicate any animus against him but, rather, is merely a record of what happened at the hearing. Recording this information can as readily be seen as helpful to the claimant and indicative of a compassionate approach being taken by the judge. 48. Finally, there is nothing objectionable about the judge's reference to costs. The respondent had raised the possibility of a costs application, so it was appropriate for the judge to refer to it and to give directions for the application and its determination, if it was going to be made. This is relatively standard practice. The written reasons cannot reasonably be read as the judge 'advising' the respondent to pursue a costs application as is alleged. 49. Finally, although I have found each particular point of complain by the claimant not to be well founded, I have also stood back and considered whether, notwithstanding, the sum of the whole is greater than the parts. However, I do not consider it is. The fair-minded and informed observer, reading the written reasons objectively, would not consider there was any possibility that the claimant did not have a fair hearing as a result of anything done, not done or written by the judge. Disposal 50. For these reasons, the appeal is dismissed. BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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Prepared on 22 October 2026 · Esheria