



PUMP COURT
CHAMBERS

Adjourning Tribunal Proceedings

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Overview

- Adjourning tribunal proceedings
- Kaler v Insights ESC Ltd [2024] EAT 195 (12 December 2024)
- Expert medical evidence
- Issues arising when employment continues during litigation

32.— Postponements

- (1) An application by a party for a postponement must be received by the Tribunal as soon as possible after the need for a postponement becomes known.
- (2) In the circumstances listed in paragraph (3) the Tribunal may only order a postponement where—
 - (a) all other parties consent, and—
 - (i) it is practicable and appropriate for the purposes of giving the parties the opportunity to resolve their disputes by agreement, or
 - (ii) it is otherwise in accordance with the overriding objective,
 - (b) the application was necessitated by an act or omission of another party or the Tribunal, or
 - (c) there are exceptional circumstances.

(3) The circumstances are—

- (a) a party makes an application for a postponement less than 7 days before the date on which the hearing begins, or
- (b) the Tribunal has ordered two or more postponements in the same proceedings on the application of the same party and that party makes an application for a further postponement.

(4) In this rule—

- (a) "postponement" means a postponement of a hearing including any adjournment which causes the hearing to be held or continued at a later date;
- (b) "exceptional circumstances" may include ill health relating to an existing long term health condition or disability.

Send to other parties

- A combination of [rules 31](#) and [90](#) requires that an application for postponement or adjournment, if it is to be made in writing, be made to the tribunal and copied to the other party, along with notification to the other party of how to object.
- Whether represented or not.

Less than 7 days before hearing

Where an application for a postponement is presented less than seven days before the date of the hearing or made at the hearing itself, the tribunal may only grant it where:

- all other parties consent and it is practicable and appropriate for the purpose of giving the parties the opportunity to resolve their disputes by agreement, or is otherwise in accordance with the overriding objective
- the application was necessitated by an act or omission of another party or the tribunal; or
- there are exceptional circumstances. According to [rule 32\(4\)\(b\)](#), ‘exceptional circumstances’ may include ill health relating to an existing long-term health condition or disability.

Morton v Eastleigh Citizens' Advice Bureau 2020 EWCA Civ 638

- the Court of Appeal observed that what was then rule 30A of the Tribunal Rules 2013 (now rule 32 of the Tribunal Rules 2024) was 'clearly' intended to discourage late adjournments

- Tribunals are able to award costs in respect of a postponed or adjourned hearing under rule 74(3).
- The power is discretionary and tribunals can be expected to be more willing to exercise it where the application has been made at the last minute without good excuse — see, for example, *Jones v Standard Life Employee Services Ltd EATS 0034/13*, where the EAT approved a tribunal's decision to award the costs of a Monday hearing when the claimant only put in his application for postponement at 16:55 on the previous Friday.
- Rule 74(2)(c) provides that where a party is granted a late postponement (i.e. on an application made less than seven days before the hearing), tribunals are obliged to consider imposing a costs order or a preparation time order against that party.

Multiple applications

- No maximum number of applications.
- But if 2+ applications already granted, rule 32(2) and (3)(b) provides that a further postponement may only be granted if
 - all other parties consent and it is practicable and appropriate for the purpose of giving the parties the opportunity to resolve their disputes by agreement, or is otherwise in accordance with the overriding objective
 - the application was necessitated by an act or omission of another party or the tribunal; or
 - there are exceptional circumstances. According to rule 32(4)(b), ‘exceptional circumstances’ may include ill health relating to an existing long-term health condition or disability.

- No prescriptive approach to the content of an application for postponement or adjournment.
- In the absence of specific rules on content, general considerations of procedural fairness and common-sense case management apply. Although parties are not specifically required by the Tribunal Rules themselves to give any particular information, it is in their interests to set out the reasons why the postponement or adjournment ought to be granted, since the judge or tribunal is under no statutory duty to hold a hearing or make any enquiries before deciding the application.

Presidential Guidance

- Make the application in writing
- Notify all other parties that any objections should be sent to the ET as soon as possible
- State the reason for the application
- Explain why it is in the overriding objective
- Or won't be considered unless there are exceptional circumstances (E&W)
- decision is at the discretion of the judge

- Article 6 of the European Convention on Human Rights
- principles of fairness in litigation is that every party should be permitted to present his or her case fully and openly
- essential to enable a party to put his or her case fully or securing representation where a representative has become unavailable at the last minute.

Non Attendance of a Party

- Where a party does not attend and is not represented at a hearing, the tribunal may dismiss the claim or proceed without the party, but must consider any information which is available to it, after any enquiries that may be practicable, about the reasons for the party's absence — rule 47.
- The onus is on the tribunal to undertake some — albeit limited — investigation of why a party has not attended on the day of the hearing. If the tribunal discovers that the reason is a good one, then it must at least consider adjourning the proceedings.

Reasons

- the parties will be entitled to reasons for an order postponing or adjourning a hearing
- The duty to give reasons only relates to the tribunal's decisions on 'disputed' issues
- where reasons have been given orally, the judge must announce that written reasons will not be provided unless they are asked for by any party at the hearing itself or by a written request presented by any party within 14 days of the sending of the written record

III Health / Medical reasons

- Article 6 of the European Convention on Human Rights (ECHR).
- *Teinaz v London Borough of Wandsworth 2002*
ICR 1471, CA
- *Andreou v Lord Chancellor's Department 2002*
IRLR 728, CA

- [Phelan v Richardson Rogers Ltd and anor 2021 ICR 1164, EAT](#), His Honour Judge Auerbach reviewed the Court of Appeal case law and identified some ‘important guiding principles’ regarding postponement applications on medical grounds. He noted that where a party seeks to postpone a hearing on medical grounds, his or her right to a fair trial is engaged (at least where the outcome of the hearing may determine the complaint).
- In such a situation, proper weight must be given to the serious implications for that party of refusing a postponement.

- In *Ameyaw v PricewaterhouseCoopers Services Ltd EAT 0291/19*, the claimant, A, had contracted laryngitis and lost her voice during the hearing. She sought an adjournment on medical grounds but there had been two prior postponements of hearings in the relevant proceedings on A's application and the tribunal concluded that there were no 'exceptional circumstances' as required under what is now rule 32(2)(c) Tribunal Rules 2024 (then rule 30A(3)(c) Tribunal Rules 2013).
- The medical evidence recommended that A should rest her voice for a period exceeding the remaining time available for completion of the hearing. It did not state that she was unfit to attend the hearing or that her ability to present her case was otherwise impaired on medical grounds.
- The EAT held that it was not open to tribunals to sidestep the specific requirements of rule 32 and impose a different and more general test.

- *Kaler v Insights ESC Ltd 2024 EAT 195*, the EAT (Judge Auerbach) held that an employment tribunal was entitled to refuse a litigant in person's application to postpone the merits hearing of her claim midway through, despite her later providing medical evidence from her GP which indicated that she had experienced a panic attack caused by the pressures of the hearing, combined with her autism, and would need two weeks to recover.

- Parties Factual background to the case at first instance & what claims C brought against her employer in the ET
- What was decided by the ET at first instance?
- On what grounds did C appeal?
- Was she successful on appeal? Spoiler: No!
- Postponement application mid-way through the FMH
- Tips / learning outcomes

Litigation during ongoing employment

- Disabled employee in litigation or seeking settlement agreement, note the possible tax exemption of a Disability Compensation Payment. Section 406 of Income Tax (Earnings and Pensions) Act 2003 (“ITEPA”).