Neutral Citation No: [2025] NICA 2	*Ref:* **KEE12690**
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*Judgment: approved by the court for handing down (subject to editorial corrections)**	*Delivered:* **07/01/2025**

IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

B (TRADING AS C)

v

A

The appellant appeared as a Litigant in Person
Tim Warnock (instructed by the Equality Commission) for the Respondent

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Before: Keegan LCJ, McCloskey LJ and Kinney J

KEEGAN LCJ (*delivering the judgment of the court ex-tempore*)

Anonymity has been applied to this case by the Industrial Tribunal and is continued by this court without opposition given that this matter has not concluded and that the Industrial Tribunal is to rule upon remedy and the anonymity issue in due course.

Introduction

[1] I will provide the ruling of the court, which will be committed to writing after oral delivery today and sent to the appellant and the respondent.

[2] The appellant in this case is a personal litigant who appeals a decision of the Industrial Tribunal (hereinafter referred to as "the Tribunal") which found against him personally as sole director and owner of a restaurant and against the limited company which runs the restaurant at issue. In very brief compass, the facts found by the Tribunal are that the claimant (hereinafter referred to as "the respondent"), was aged 18 years and was working as a part-time waitress or assistant in the appellant's restaurant for a short period in 2022 until this employment ended in November 2022. The period of employment is variously described in the judgment of the Tribunal but seems to have been approximately six months. The decision under appeal from the Tribunal is encompassed in a comprehensive judgment, which is dated 16 April 2024. This was issued to the parties on that date.

[3] In her two applications to the Tribunal the respondent alleged that she had been sexually harassed and sexually discriminated against by the appellant. The Tribunal in the background section of its judgment records that the evidence and submissions for the respondent related solely to allegations of sexual harassment and there were no separate allegations of any other form of sex discrimination. The Tribunal also reflects that there was, as it describes, "an absolute conflict of evidence" in relation to these claims. It said that the appellant denied each and every allegation. There was no contemporaneous corroborative evidence for any of these allegations and so, as the Tribunal put it, the case was, in essence, "one person's evidence against another's evidence, the evidence of the first named respondent against the evidence of the claimant."

[4] In brief, the unanimous decision of the Tribunal was, firstly, that the hearing before it in March 2024 was in respect of liability only as directed at a previous case management preliminary hearing. Secondly, that the respondent was unlawfully harassed on the ground of sex, contrary to the Sex Discrimination (Northern Ireland) Order 1976. That finding was made against the appellant (ie the first and second named respondents to the claim). Thirdly, that a separate hearing would be held in respect of remedy. A remedy hearing did take place on 26 September 2024, from which judgment is awaited.

This appeal

[5] Turning to the appeal itself, the appellant's notice of appeal to this court (on behalf of the first and second named respondent to the claim) is dated and stamped 14 October 2024. It does not appear to have been served on the respondent initially but was subsequently served after direction of this court whereby the Equality Commission who represent the respondent were properly notified. A request was made by this court for a brief position paper from the Equality Commission and that was duly filed.

[6] The aforementioned appeal notice filed by the appellant, who appears in this court as a personal litigant, and did appear in the same way before the Tribunal, bases this appeal on the following purported points of law:

(i) PPS (not to prosecute).

(ii) No evidence.

(iii) No witnesses.

[7] At a case management review before this court, the appellant was afforded the opportunity to present any further argument for this hearing and has done so by way of email of 25 December 2024 and he has attended today and made oral submissions to us. The email the appellant sent is a reiteration of the appellant's

notice of appeal. Attached was a letter from the Public Prosecution Service of 19 February 2024 stating that there would be no criminal prosecution in this case and extracts from the Tribunal judgment highlighting particularly paras 153, 154 and 188. In summary, paras 153 and 154 deal with evidence heard by the Tribunal in relation to the respondent's alleged cannabis use, whether this would have affected her memory and the opinion of a medical professional, Dr Mangan, on that point. Para 188 reiterates the Tribunal's view that it was considering sexual harassment only and not the further claim of sex discrimination given that there was no evidence of the latter claim.

[8] This court has afforded the appellant the opportunity to make oral submissions to us and provided an interpreter to assist, although as the Tribunal noted, the appellant has some English, and he has been able to address us on his core arguments, without any linguistic difficulty.

Relevant legal principles

[9] Turning to the applicable legal principles, two basic issues arise in this case. The first we can deal with in summary form. That relates to the fact that the appeal is, on the face of it, out of time and so we must consider whether to extend time. The second issue engages with the merits of the appeal and is related to how the appeal is formulated and has been progressed before us.

[10] Dealing with the first issue the notice of appeal is approximately four months out of time. This court has the facility to extend time by virtue of Order 59 and Order 3 of the Rules of the Court of Judicature (Northern Ireland) 1980. We are also guided by a longstanding authority of *Davis v Northern Ireland Carriers* [1979] NI 19, in relation to extension of time. The principles were discussed in a more recent case of this court of *Mahmood v Secretary of State for the Home Department* [2023] NICA 4, in an asylum context. Para [10] of that judgment refers to the *Davis* principles which we will not recite, but also refers to the fact that flexibility must be applied to the exercise of this discretion taking into account the context of any case.

[11] In this case the appellant is a personal litigant. It is plain that the respondent suffers no real adverse effect by virtue of the appeal being out of time. But the primary reason why on balance we think time should be extended in this case is the fact that this was a split hearing before the Tribunal and the appellant has satisfied us that there was some confusion in his mind as to when he needed to appeal. That argument does seem to be made out to some extent by the fact that the notice of appeal refers to the decision of 26 September. So, without spending more time on this issue and given that it is not actively contested by the respondent, we think that time should extended for the appeal to be considered by us.

[12] The points of practice that arise in this case will be better suited for examination on another day ie how appeal time limits run when cases are split before the Tribunal between liability and remedy hearings and how the Tribunal

should communicate appeal times to personal litigants when judgments are sent by post. As I have said, those matters are for another day. We therefore extend time for appeal.

[13] This preliminary ruling leads us to consider the appeal we have before us on its merits. The applicable legal principles which we apply are comprehensively set out in a decision of this court of *Donna Nesbitt v The Pallett Centre Ltd* [2019] NICA 67. Specifically, in that decision at para [56] the court starts with this question:

> "[56] What is the correct test to be applied in determining this second ground of appeal? The starting point is the statute which makes provision for appeals from Industrial Tribunals to the Court of Appeal. Article 22 of the Industrial Tribunals (NI) Order 1996 (the "1996 Order") provides:
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> '(1) A party to proceedings before an industrial tribunal who is dissatisfied in point of law with a decision of the tribunal may, according as rules of court may provide, either –
>
> (a) appeal there from the Court of Appeal, or
>
> (b) require the tribunal to state and sign a case for the opinion of the Court of Appeal."

[14] Hence, as the above decision makes clear, the statute is the starting point which clearly refers to the need for a point of law to form the basis of any appeal.

[15] *Mihail v Lloyds Banking Group* [2014] NICA 24 also described the correct approach for the court in an appeal from a Tribunal as follows:

> "This is an appeal from an industrial tribunal with a statutory jurisdiction. On appeal, this court does not conduct a rehearing and, unless the factual findings made by the tribunal are plainly wrong or could not have been reached by any reasonable tribunal, they must be accepted by this court."

[16] A valuable formulation of the governing principles is contained in the judgment of Carswell LCJ in *The Chief Constable of the Royal Ulster Constabulary v Sergeant A* [2000] NICA 29. This decision repeats the point that the Court of Appeal is not conducting a rehearing, as on an appeal it is confined to considering questions of law arising from a case and refers as follows:

> "5. A tribunal is entitled to draw its own inferences and reach its own conclusions, and however profoundly the appellate court may disagree with its view of the facts it will not upset its conclusions unless—
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> (a) there is no or no sufficient evidence to found them, which may occur when the inference or conclusion is based not on any facts but on speculation by the tribunal; or
>
> (b) the primary facts do not justify the inference or conclusion drawn but lead irresistibly to the opposite conclusion, so that the conclusion reached may be regarded as perverse. See *Edwards (Inspector of Taxes) v Bairstow* [1956] AC 14."

Conclusion

[17] Applying the well-known legal principles to this appeal matrix, we determine that the appellant's claims are all manifestly feeble. That is primarily because the Tribunal decided this case on its own facts, hearing and assessing the evidence of both parties. On each and every point the Tribunal found in favour of the respondent, and, in addition, found the appellant not to be credible. This is specifically addressed in various paragraphs of the Tribunal decision, but particularly at para 140.

[18] The Tribunal directed itself properly in law as to how it should assess credibility before it made its findings. The Tribunal's decision and the specific findings at para 193 are to our mind, reasonable findings which were open to it that the sexual harassment was established on the balance of probabilities.

[19] Specifically dealing with the appellant's points raised in writing, augmented today in oral submissions we find as follows.

[20] Firstly, the fact that a criminal prosecution did not proceed against the appellant is not determinative of a civil or industrial claim. The Tribunal was also aware of the fact of non-prosecution and warned the appellant that the fact of no prosecution did not bar the claim of sexual harassment proceeding against him. This is specifically stated at para 29 of the Tribunal's judgment.

[21] There is no requirement in law that the behaviour alleged by the respondent and ultimately established by her be recorded or witnessed. The Tribunal assessed the evidence of each party as to the claims made and decided that the respondent was credible and that the appellant was not. There is no error of law in this approach.

[22] Thirdly, the issue of the claimant's cannabis use was dealt with and determined by the Tribunal on the evidence which included evidence from Dr Mangan. A factual finding was made in relation to this that the cannabis use did not affect memory or undermine the allegations made by the respondent. That finding was plainly open to the Tribunal who heard the evidence in this case. The appellant's new assertion that the respondent "has for drug money she do lies", to quote from his email of 25 December, is made after the event, is simply a bare assertion, is not vouched, and does not, in our view, invalidate the Tribunal's decision in any way.

[23] Finally, in terms of the specific allegations, we are entirely satisfied that the Tribunal dealt with the messages that the appellant has produced to us today of 3 December 2022, variously throughout its judgment but particularly at para 181 and found in favour of the claimant's explanation.

[24] Accordingly, in all of the circumstances, we find that this appeal is entirely without merit. No valid grounds have been provided in the appeal notice or argued by the appellant that can meet the elevated threshold necessary to impugn the factual findings of the Tribunal. Applying the law, the Tribunal, having heard the evidence, reached conclusions that it was entitled to reach upon the evidence which were not perverse. There is no discernible error of law and so this appeal is dismissed.