



In The Supreme Court of Bermuda

APPELLATE JURISDICTION (ON APPEAL FROM THE EMPLOYMENT AND LABOUR RELATIONS TRIBUNAL)

2026 No 14 App

BETWEEN: **EMPRESS SOMERSALL** **APPELLANT**

- AND -

ST REGIS BERMUDA RESORT **RESPONDENT**

Application for an extension of time in which to appeal under section 44 of the Employment Act 2000

Appearances

Ms Empress Somersall in person

Ryan Taylor of Appleby (Bermuda) Limited for Respondent

Date of hearing: **18 August 2026**

Date of Ruling: **27 August 2026**

Martin J in Chambers

RULING

Introduction and background summary

1. This is an application for an extension of time in which to appeal a decision of an Employment and Labour Relations Tribunal dated 26 January 2026. The Tribunal decided to uphold the termination of the Appellant's employment for cause arising out of (i) persistent lateness and (ii) taking items belonging to the Respondent from the premises without

permission (i.e. the theft of soda). For ease of understanding I will refer to the Appellant in this Ruling as Ms Somersall.

2. Ms Somersall received the decision of the Tribunal on 29 January 2026, and the time limited for appealing against the Tribunal's decision on a point of law under section 44O of the Employment and Labour Relations Act 2000 expired 21 days later, i.e. on 16 February 2026.
3. At the Tribunal hearing the Ms Somersall had been represented by her mother, Ms Wanda Booth. On 10 February 2026 Ms Booth wrote to the chair of the Tribunal on behalf of Ms Somersall asking for the notes of evidence and record of proceedings of the Tribunal held on 12 January 2026. Attached to the email was a detailed written request, explaining that in order to prepare her appeal, Ms Somersall needed the notes of hearing and record of proceedings, and identifying a number of specific concerns. In that letter, Ms Booth noted that the deadline for filing the appeal was 16 February 2026 and asked for a response as a matter of urgency.
4. Ms Booth did not receive a reply to that request. A Notice of Appeal was not filed by 16 February 2026. Instead, on 24 February 2026, Ms Booth wrote a second email addressed to Ms Gabrielle Cann (the Director of Labour) and Mr Ed Ball Jr (the chair of the Employment and Labour Relations Tribunal) requesting a rehearing of the Tribunal proceedings before a different panel based on what she referred to as a significant procedural flaw.
5. The essence of the flaw alleged by Ms Booth was that the Tribunal proceeded despite the fact that the Appellant's primary evidence packet had been misplaced by the Tribunal, and although counsel for the Respondent at the hearing provided copies of some emails, this was not the complete package of materials that had been submitted. Ms Booth alleged that this caused the Appellant prejudice because Ms Booth says she was not able to refer to some of the materials during the hearing. Ms Booth stated that the subsequent discovery of the information packets after the hearing confirmed the procedural flaw lay with the Tribunal's administrative team not Ms Somersall. Ms Booth stated that Ms Somersall should not be forced to incur the delay and cost of an appeal to the Supreme Court on a point of law to rectify the error of the Tribunal.
6. On 6 March 2026, Mr Ball replied acknowledging the 24 February 2026 email, and indicated to Ms Booth that the Tribunal does not have the statutory authority to conduct a rehearing and that the only available avenue was to appeal on a point of law.
7. On 23 March 2026, Ms Booth issued a Notice of Appeal setting out the grounds of the proposed appeal and seeking an extension of time within its grounds. Initially this matter came before the court on 6 July 2026 to hear the application for an extension of time on an *ex parte* basis. Ms Booth appeared on behalf of Ms Somersall on that occasion and Ms Somersall did not herself attend. However, it was apparent that the application for an extension of time was not supported by an affidavit or affirmation that adequately explained the reasons for the delay¹, and the Respondent had not been served with the application.

¹ Ms Somersall had initially sworn an affidavit in support of her appeal dated 23 March 2026 which explained the that the reasons for the delay were (i) she had asked for a rehearing (ii) she needed the notes of evidence to prepare the appeal and (iii) she needed time to understand the appeal process. The court was not satisfied that

8. The court therefore directed that Ms Somersall submit evidence in support of the application more fully explaining the reasons for the delay and the basis on which the court should exercise its discretion in her favour. The court indicated that the application had to be served upon the Respondent in accordance with the ordinary rules because it was an application that had to be made *inter partes*. The court also indicated that while the Tribunal was able to allow her to represent Ms Somersall in those proceedings, and the court would allow her to assist her as a MacKenzie friend in the application, that assistance would not extend to allowing Ms Booth to act as her advocate or to conduct the appeal.

The application for an extension of time within which to appeal

9. Ms Somersall filed and served an affidavit dated 20 July 2026 setting out the further reasons why she had not met the 21-day deadline for filing her appeal on a point of law, and the matter duly came back before the court for hearing on an *inter partes* basis on 18 August 2026.
10. In her second affidavit, Ms Somersall gave three reasons. First, Ms Somersall said she had not ignored the deadline, but the delay had been incurred because she genuinely wanted to get the record and to determine whether the Tribunal had jurisdiction to rehear the matter. Second, Ms Somersall said that she relied upon Ms Booth to the legal research and preparation, and as her mother is in full-time employment in the hospitality industry, Ms Booth was not able to prepare the necessary documents. Third, Ms Somersall says that considerable time was required to understand the appeal procedure and to identify the relevant points of law and prepare the necessary court documents.
11. In her oral presentation, Mr Somersall repeated those points and, to her very great credit, Ms Somersall also added candidly that she knew about the 21-day appeal deadline but had relied upon Ms Booth to prepare the documents.
12. On behalf of the Respondent, Mr Taylor directed the court's attention to a number of cases which address the factors which are relevant in the exercise of the court's discretion to extend the time in which to appeal against a Tribunal decision under section 44O of the Employment and Labour Relations Act 2000. These included **M-L v P**² in which Wade-Miller J held that the principal considerations on an application for an extension of time in which to appeal are (i) the length and reason for the delay (ii) the prejudice to the Respondent if the extension is granted and (iii) the prospects of success on the appeal.
13. Mr Taylor submitted that the court must address each of these considerations and urged that if the court was not satisfied on the first limb (i.e. the reason for the delay and its length) the court should not proceed to consider the other factors. This is a point to which I shall return.

The length and reason for delay

14. Mr Taylor relied upon **Barton v Wright Hassall LLP**³ for the proposition that in the absence of exceptional circumstances, it is not a justifiable excuse for a party (whether represented by

this material gave an explanation that was to justify the grant of an extension of time but gave her an opportunity to expand on those reasons.

² [2016] SC (Bda) 12 Div.

³ [2018] UKSC 12 at [18].

counsel or not) to rely upon unfamiliarity with the rules of procedure to justify a failure to comply with the time limits for filing the appeal. The case is an authoritative expression of the general principle that a litigant in person is not entitled to any greater indulgence than a party who is represented by counsel.

15. Mr Taylor pointed out that in the body of the Tribunal's decision Ms Somersall was informed of the time limit, and in Ms Booth's letter of 10 February 2026 she acknowledged that the time limit for filing an appeal was 16 February 2026, and Ms Somersall herself accepted in her affidavit and the presentation of her argument that she knew the deadline was 16 February 2026.
16. Mr Taylor submitted that the reason given for seeking a rehearing instead of filing an appeal was to save time and costs, which is not a reason which justifies the grant of an extension of time. He relied on the statement of principle in **Rehman v T Class Security Ltd**⁴ on this point.

"The fact that the Appellant sought the review of the Employment Tribunal's decision before the time expired for the filing of a notice of appeal and the fact that the Appellant sought the judge's notes have nothing whatever to do with the need to appeal on time."

17. It was also submitted that the affidavit evidence does not adequately justify the delay. Mr Taylor submitted that the basic reason offered was that Ms Somersall relied upon Ms Booth to prepare the appeal on her behalf, and Ms Booth was too busy to complete the preparation until 23 March 2026, some 5 weeks or so after the deadline had expired. Mr Taylor relied upon **Green v Mears Ltd**⁵ for the proposition that personal difficulties in complying with the statutory deadline alone do not justify the court granting an extension of time. Even if the court were to consider that the request for a rehearing was justified, Mr Taylor submitted that once Ms Booth had been informed (again) that the only course was to file an appeal on 9 March 2026, Ms Booth did not file the appeal promptly but took a further two weeks to file the appeal.
18. Mr Taylor also pointed to the subsequent delays caused by the failure to serve the application on the Respondent, and thus the application did not in fact come on for hearing until 6 months after the deadline had expired.
19. Mr Taylor submitted that the court did not need to proceed further because the reasons for the delay were insufficient in law to justify the court in granting an extension of time. However, he made a number of alternative submissions as to the exercise of the court's discretion.

Automatic prejudice

20. Mr Taylor submitted that it is well established that a failure to comply with a deadline for launching an appeal causes prejudice to the successful party on the principle that there must be an end to litigation, and the Legislature has enshrined that policy in a statutory time limit.

⁴ [2015] EWCA 981 at [33] per Vos LJ.

⁵ [2019] ICR 177 at 787H per Underhill LJ.

He relied upon **Antoine Holder v Hazel Holder**⁶ as an example of the application of that principle in the local courts.

No substantive ground of appeal on a point of law

21. Mr Taylor also submitted that the points raised by the Notice of Appeal are in reality an impermissible attempt to re-open the evidential assessment of the facts and do not raise an arguable point of law. He referred to grounds 1-3 which expressly refer to the Tribunal's alleged failure to apply the correct burden of proof and indicated that the Tribunal's decision expressly referred to the application of the burden of proof on the employer to justify its decision to terminate for cause based on the facts as alleged. He referred to **VIP Auto Service Ltd v Warner**⁷ in support of the proposition that the Tribunal is the final arbiter of fact.
22. In relation to grounds 4-6, which raise issues as to the procedural unfairness and misapplication of the law and perversity, Mr Taylor made the following points.
23. In relation to ground 4, the fact that the Tribunal bundle was not provided before the hearing and Ms Somersall (acting by Ms Booth) did not have access to the Respondent's evidence, it was submitted that on the facts, there was no procedural unfairness that affected Ms Booth's presentation of the case.
24. Mr Taylor submitted that ground 5 raises an issue as to the application of the correct legal test, but the notice of appeal fails to identify the correct test or how it is alleged the Tribunal failed to apply it. Mr Taylor submitted that it is self evident from the Tribunal's decision that the correct legal test has been applied by the Tribunal so no arguable issue of law arises.
25. Finally, Mr Taylor submitted that the ground of appeal asserting that the Tribunal's decision was perverse is unsustainable, bearing in mind the facts, and the high burden of showing that no reasonable tribunal could have reached the decision the Tribunal reached in this case. Mr Taylor added that the last ground of appeal involves an assertion that the Tribunal failed to address allegations of discrimination and unequal treatment under the Human Rights Act 1981, which fall outside the Tribunal's jurisdiction.

The court's approach to granting an extension of time in which to appeal

26. The court accepts and adopts the basic formulation of the test to be applied on an application for an extension of time in which to appeal which is set out by Wade Miller J in **M-L v P** (cited above) that before acceding to an application for an extension of time in which to appeal the court must be satisfied (i) that there is a good reason for the delay and that the delay has not been excessive (ii) the court must evaluate the degree of prejudice to the Respondent by granting the extension and (iii) the court must be satisfied that the grounds of appeal have a realistic prospect of success. To these elements the court would add (a) that the applicant must usually establish on evidence that the appellant was acting reasonably in allowing the delay to occur (b) whether the Tribunal or the other party caused or contributed to the delay and (c) whether in the broadest sense it would be unfair to the appellant not to allow the appeal to be determined⁸.

⁶ [2015] CA (Bda) 19 Civ at [10] per Baker P.

⁷ [2018] SC (Bda) 48 civ.

⁸ See **AOOT Kalmneft v Glencore International** [2002] 1 Lloyds Rep 128.

27. As noted above, Mr Taylor submitted that the court should not proceed to consider the application unless the appellant has satisfied the court that there is a good reason for the delay and that the delay has not been excessive.
28. Ms Somersall relied upon Kawaley CJ's judgment in **Stewart v Fairmont Hamilton**⁹ for the proposition that where an appellant has a meritorious appeal and the delay in filing the appeal has been explained, and the delay is not excessive, the fundamental right of access to the court must trump procedural formalities.
29. Kawaley CJ's summary of the approach suggests that the merits assessment is the primary consideration for the court on an application for an extension of time in which to appeal, and the compliance with procedural time limits as being secondary and provided there has been an explanation for the delay, even if only marginally satisfactory, then the court should grant the extension of time in which to appeal. It is to be noted that **Stewart** case was also an application for an extension of time from a decision of an Employment Tribunal (now called an Employment and Labour Relations Tribunal). It follows that the **Stewart** decision represents the approach that a court of co-ordinate jurisdiction should generally follow and apply (as a matter of judicial comity), unless there is some distinguishing feature on the facts or other good reason not to do so¹⁰. No such distinguishing feature or reason arises in this case. Kawaley CJ's general approach in **Stewart** also seems to have been taken by the Bermuda Court of Appeal in **Trew v White and HSBC Bank Bermuda Limited**¹¹, albeit against a more complicated background where the facts were unclear.
30. Thus, in applying the principles summarised above, the court does not agree with Mr Taylor's submission that the court must first be satisfied as to the validity of the excuse for the delay before considering the other factors. In the court's view, the test is not quite so rigid, and provided there is a satisfactory explanation which the court can weigh against the other factors, such as contribution to the delay by the other party or substantial prejudice, the court should give primacy to the merits assessment of the grounds of appeal put forward in deciding whether the court should extend time for the filing of the appeal.
31. The court will of course assess all of the circumstances and decide what weight to put on the reason for the delay and the potential prejudice, applying the touchstone that an appeal that has apparent merit should not be shut out merely because of a short delay, provided there is a sufficient explanation for the delay, and there are no considerations which would make it unjust to allow the appeal to proceed. Therefore, the court will consider the merits of the grounds of appeal first before considering the other factors and giving the appropriate weight to those factors in exercising its powers to extend time

Merits assessment

32. In making its assessment of the merits for the purposes of granting an extension of time, the court is of course not conducting a detailed assessment of the ultimate merits or coming to any conclusions, but is simply ascertaining at a high level that there is a ground of appeal that

⁹ [2013] SC (Bda) 51 App at paragraph 5.

¹⁰ **Willers v Joyce (No 2)** [2016] UKSC 22 at [9] PC.

¹¹ [2025] CA (Bda) 23 civ at paragraph 28.

is sufficiently arguable such as to have a realistic prospect of success. In an appeal from a decision made by an Employment and Labour Relations Tribunal, the appeal is limited to points of law, not challenges to findings of fact. The court's high-level review is therefore confined to the merits of the grounds of appeal which raise arguable points of law, not criticisms of the assessment of the facts made by the Tribunal¹².

33. In this case all the grounds of appeal advanced save one are, for the reasons given by Mr Taylor, when properly analysed, an attempt to reargue the factual merits of the case on appeal. This is impermissible for the reason just stated.
34. By way of brief summary, Ground 1 accepts that the Tribunal correctly identified the legal test but then seeks to criticise the Tribunal's evaluation of the factual evidence that Ms Somersall had acted dishonestly. Ground 2 is obviously a criticism of the evaluation of the factual evidence by the Tribunal. Ground 3 asserts that the Tribunal failed to evaluate inconsistencies in the evidence, which is a matter of fact. Ground 5 is entitled "The failure to apply the correct legal test", but the grounds advanced simply criticise the Tribunal's assessment of the facts as to whether the Respondent conducted a reasonable investigation or had a genuine belief on reasonable grounds in order to make the decision to terminate the appellant's employment. These are also matters of fact. Ground 6 asserts that the decision was perverse, namely a decision to which no reasonable tribunal could reach but only asserts the criticism that the Tribunal preferred the evidence of the Respondent's witnesses, which is a matter of fact. Ground 7 asserts that the Tribunal failed to consider discrimination and unequal treatment but then seeks to criticise the Tribunal's assessment of the facts. Moreover, claims of discrimination and unequal treatment fall within the jurisdiction of the Human Rights Commission under the Human Rights Act 1981, not the Employment and Labour Relations Tribunal.
35. The sole ground that could potentially give rise to a legal issue reviewable on appeal is contained in Ground 4 (at paragraphs 21 and 22). These paragraphs assert that the Tribunal did not give Ms Somersall a fair hearing because Ms Somersall's package of material was misplaced by the administrative staff, and Ms Booth had to rely on copies of documents which were provided by the Respondent's attorneys. This is said to have deprived Ms Somersall a fair opportunity to present her case.
36. However, assuming the premise of the ground of appeal is correct, the principal finding of the Tribunal in reaching the decision that the Respondent had proved to its satisfaction that it had proper grounds for the dismissal for cause was the conduct admitted by Ms Somersall that she had taken the sodas without permission and had therefore admitted the theft. The Tribunal's conclusion finding on that issue had nothing to do with any documentary evidence or material contained in Ms Somersall's packet of materials. It is therefore impossible to see how this Ground of Appeal could have any realistic prospect of success.
37. It is also right to note that Ground 4 contains other points, but these are also criticisms of the Tribunal's failure to address the conduct of the disciplinary process, which are not explained, but which do not impinge on the Tribunal's primary decision that the admitted facts were that

¹² **VIP Auto Service Ltd v Warner** [2018] SC (Bda) 48 civ; **Trott & Duncan v Valerie Young** [2026] Sc (Bda) 25 app.

Ms Somersall had stolen the sodas from her employer, which the Tribunal found was a sufficient reason to justify the Respondent's decision to terminate her employment.

38. As a result, the court does not consider that any of the Grounds of Appeal are properly arguable as points of law which have any realistic prospect of success, and therefore the appeal cannot be considered a 'meritorious' appeal even when viewed at a very high level.

Other factors

39. While the delay in filing the Notice of Appeal was not excessive, it was well outside the period allowed by the statute. The court accepts that as a starting point the statutory time limit is one that must be respected. The Legislature has expressed that policy that appeals from the Employment and Labour Relations Tribunal are to be conducted with expedition to enable parties to know where they stand and not to allow employment disputes to be drawn out.
40. In this case, the Tribunal's decision made it clear that there was a right of appeal on a point of law which had to be exercised within 21 days¹³. Ms Booth's letter of 10 February 2026 acknowledged that deadline six days before the deadline expired¹⁴. The point raised in Ms Booth's email of 24 February 2026¹⁵ (which was written without the benefit of any additional materials provided from the Tribunal) expressly set out the point of procedural unfairness that represented the only potential point of law in the ultimate grounds of appeal. There is therefore no reason why the point could not have been raised in a Notice of Appeal before the 21-day appeal deadline expired. The only explanation for the delay was the fact that Ms Booth was unable to turn her attention to the matter due to other pressures of work.
41. Applying the principles in the cases referred to by Mr Taylor (summarised above), the case law makes it clear that making a procedural error is not ordinarily a sufficient reason to extend the time for filing an appeal, and in this respect a litigant in person is to be treated no differently from a party who is represented by counsel, for obvious policy reasons of equal treatment of litigants before the court. The case law also makes it clear that delays caused by the pressure of work does not provide a sufficient excuse for failing to meet a statutory appeal deadline.
42. In this case there is no evidence of any cause or contribution to the delay by the Tribunal or the Respondent, even allowing for the delay in response from Mr Ball until 6 March 2026¹⁶. The deadline had expired on 16 February 2026.
43. Although Ms Booth expressed the reason for the request for a rehearing as being to save time and costs, it is clear from the Employment and Labour Relations Act 2000 that the only recourse is an appeal to the court on a point of law, and no provision is made for a rehearing by a Tribunal. The lack of legal training or qualification of Ms Somersall or Ms Booth is not a justification for Ms Somersall failing to follow the correct appeal procedure. On the contrary, Ms Booth acknowledged she knew the right of appeal was limited to 21 days and this was clearly understood in her letter of 10 February 2026. Ms Somersall confirmed her

¹³ Paragraph 52 of the Tribunal's decision.

¹⁴ Hearing Bundle pages 15-7.

¹⁵ Hearing Bundle pages 18-9.

¹⁶ Hearing Bundle page 20.

understanding of the 21-day time limit in her oral presentation. Therefore Ms Booth (as her daughter's representative) cannot claim to have acted reasonably in allowing the time limit to expire before filing the Notice of Appeal.

44. Therefore, there is no good reason offered to justify the failure to file the Notice of Appeal on time, and the court does not regard the explanation given as being even 'marginally satisfactory', to use the expression of Kawaley CJ in **Stewart v Fairmont Hamilton** referred to above.
45. In those circumstances, even though the Respondent is a large and well-resourced party, there is legal prejudice to the Respondent in having to face an unmeritorious appeal after the statutory deadline based on plainly unsatisfactory reasons, and to which delay the Respondent did not contribute. The courts have long recognised that material prejudice to a respondent lies in an appellant's delay in prosecuting an appeal within the statutory time frame without proper justification¹⁷.

Conclusion

46. For the reasons given the court has concluded that (i) the Notice of Appeal does not disclose a point of law which has any reasonable prospect of success when viewed even from a high level (ii) the reasons for the delay and failure to file the Notice of Appeal within the statutory time period are not sufficient or even marginally satisfactory and (iii) the prospect of the Respondent being required to meet an unmeritorious appeal out of time represents meaningful prejudice.
47. Accordingly, taking all these factors into account, the court is not prepared to grant an extension of time in which to appeal, and Ms Somersall's application is hereby dismissed with costs.

Dated this 27th day of August 2026



THE HON. MR. JUSTICE ANDREW MARTIN
PUISNE JUDGE OF THE SUPREME COURT

¹⁷ **Holder v Holder** [2015] CA (Bda) 19 civ.; **Ratnam v Cumarasamy** [1965] 1 WLR 6 PC.