

Is an error ‘minor’ or ‘major’: when can the EAT extend the time for appealing under Rule 37(5)?

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[] paragraph number of the Court of Appeal’s judgment in [Melki v Bouygues E and S Contracting UK Ltd \[2025\] EWCA Civ 585](#)

Introduction

The Employment Appeal Tribunal (‘EAT’) has long enforced the time limit for appealing from the Employment Tribunal (‘ET’) strictly. The EAT’s general power to extend the time for appealing is contained in Rule 37(1) of the Employment Appeal Tribunal Rules 1993 (‘Rules’). It is only exercised in rare and exceptional cases, although, following *Ridley & Others v HB Kirtley t/a Queen’s Court Business Centre & Others* [2024] EWCA Civ 884, the discretion may now be more liberally exercised than previously. [See my analysis here](#).

But, from 30 September 2023 (by virtue of the Employment Appeal Tribunal (Amendment) Rules 2023), Rule 37(5) of the Rules provides that

If the appellant makes a minor error in complying with the requirement under rule 3(1) to submit relevant documents to the Appeal Tribunal, and rectifies that error (on a request from the Appeal Tribunal or otherwise), the time prescribed for the institution of an appeal under rule 3 may be extended if it is considered just to do so having regard to all the circumstances, including the manner in which, and the timeliness with which, the error has been rectified and any prejudice to any respondent. [Emphasis added].

But what is a ‘minor error’ in the context of Rule 37(5)? That question has recently been addressed by the Court of Appeal in *Melki v Bouygues E and S Contracting UK Ltd* [2025] EWCA Civ 585.

Brief overview of the facts in *Melki*

Following an unsuccessful ET claim, Mr Melki emailed a Notice of Appeal to the EAT on 22 May 2022; it was deemed to have been received on 23 May 2022. The time for appealing expired on 24 May 2022. Mr Melki's appeal was however defective because he did not include the Grounds of Resistance, which had been attached to the Respondent's ET3, with his Notice of Appeal; at the time this was required by Rule 3(1)(b) of the EAT Rules 1993. Mr Melki provided the missing documents to the EAT on 30 May 2022 (six days late).

EAT judgment

The EAT's Registrar refused to give Mr Melki an extension of time for appealing. Mr Melki appealed that decision, and the matter was re-heard by an EAT Judge. However, the EAT Judge also refused to extend time. Essentially the EAT held that to fall within the definition of 'minor error' in Rule 37(5), the error in question had to be one which was of no real importance to the proper progress of an appeal [31]. The Grounds of Claim and Grounds of Resistance are essential documents as they set out the parties' cases and are likely to be essential in understanding the decision appealed against [34]. While omitting one or more pages of a document might be a minor error, the EAT reasoned that it could not be a minor error to omit the whole of an essential document; without the Grounds of Resistance the EAT could not fully understand the appeal [35-36].

Court of Appeal judgment

The EAT was wrong. The word 'minor' is a comparative adjective and its opposite is 'major'. The question under Rule 37(5) is whether the non-compliance with the requirement to submit relevant documents under Rule 3(1) was '*minor*', rather than whether an appellant's error may be characterised as minor in an abstract sense [50]. The EAT's conclusion that the error in question should have been irrelevant or have no importance to the proper progress of the appeal was a gloss on Rule 37(5) which has no merit. The purpose of Rule 37(5) is to confer a broad discretion on the EAT to extend time with regard to all the circumstances of a case and the scope for the exercise of that discretion would be greatly reduced if the threshold condition is interpreted too narrowly [50]. The EAT's approach to Rule 37(5) was the same as or barely different from the approach to Rule 3(1) before the 2023 amendments and before the judgment in *Ridley* [52]. The Court of Appeal observed that Rule 37(5) has had little if any effect on the mischief it was intended to address because of the EAT's judgment [52]. The mischief in question includes the fact that about a fifth of EAT appeals are submitted in time but with missing documents or missing parts

of documents: a matter which causes a significant administrative burden to the EAT and raises access to justice concerns [50-51].

The Court of Appeal therefore allowed Mr Melki's appeal.

The Court of Appeal declined to give general guidance or examples of what may count as a 'minor' error under Rule 37(5) [55].

The Court also noted that the approach in *Ridley* is harsher than the approach under Rule 37(5) because the test in *Ridley* requires an appellant to give a satisfactory explanation for their mistake, whereas Rule 37(5) does not [56].

Conclusion

The Court of Appeal's judgment means that the EAT is now likely to have a broad discretion to extend time in all cases where an appeal is submitted in time but without all the required documents. Arguably, the test in Rule 37(1) and the guidance in *Ridley* may only be relevant in a comparatively small number of cases, such as where no relevant documents are submitted within the appeal time limit. But whether *Ridley* has been superseded by Rule 37(5) remains to be tested [56].

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