

No. 469/22

29th November 2022

Dear Colleagues,

RMG DISPUTES – CONDUCT CASES TAKEN AGAINST CWU REPS OR MEMBERS AND INTERIM RELIEF

It is evident from the number of suspensions that have occurred in relation to the two disputes, that Royal Mail Group are taking an aggressive stance in pursuing conduct cases against CWU Representatives, picket line supervisors and striking members.

The DGS(P) Department has sought legal advice in order to ascertain what protections may be available through interim relief and unfair dismissal claims should dismissals occur and how to apply. The following provides an illustration of how interim relief can be accessed, the strict timelines involved and how financially it may help Representatives who have been dismissed.

- *Interim relief is a remedy available to employees who claim to have been dismissed for one of a number of inadmissible reasons, which includes dismissals for union membership or activities contrary to section 152 TULR(C)A (e.g. dismissals because of actual or proposed union membership, participation in union activities, or the use of union services). It is an emergency interlocutory procedure designed to ensure the preservation of the status quo pending the hearing of the unfair dismissal complaint.*

The application for interim relief should be referred to on the standard ET1 online or paper-based claim form. A separate application setting out the interim relief sought should be submitted to the ET at the same time that the Form ET1 and Grounds of Complaint are lodged.

- *In order to succeed with an interim relief application the employee must:*
 - *comply with the strict mandatory application procedure under S.161 TULR(C)A (see below); and*
 - *satisfy the tribunal at a special hearing that he or she is “likely to succeed” at the full hearing in showing that the dismissal was for a S.152 reason.*
- *The EAT’s comments on the “likely to succeed” threshold are that “‘likely’ does not mean simply ‘more likely than not’ but connotes a significantly higher degree of likelihood i.e. ‘something nearer to certainty than mere probability’. This is a higher hurdle than proving an unfair dismissal claim. The tribunal will assess the likelihood*

of success on the basis of the limited information before it: this is likely to consist of pleadings, witness statements and any documentary evidence disclosed by the date of the interim relief hearing, which should take place quickly after the lodging of the application.

- *If the employee satisfies a tribunal that they are “likely to succeed” at a full hearing in showing that the dismissal was because of union membership or activity, then interim relief prevents the dismissal from taking full effect before the hearing. The tribunal may:*
 - *Make a reinstatement or re-engagement order pending the full hearing; or*
 - *If the employer does not agree to reinstatement or re-engagement (or the employee reasonably refuses an offer of reinstatement/reengagement), the tribunal may make a continuation of contract order, which will have the effect of keeping the employee suspended on full pay until the full tribunal hearing. Any payments made under a continuation of contract order are not recoverable by the employer in the event of the employee losing his or her unfair dismissal claim at a final hearing.*

IMPORTANT - Time Limits

Time is of the essence in these cases because the employee must present an application for interim relief, together with the claim form claiming automatic unfair dismissal, by the end of seven days immediately following the effective date of termination. Tribunals have no jurisdiction to extend this time limit for any reason.

- ***Note that the employee must also produce (within the seven-day time limit) a certificate in writing from an authorised union official stating;***
 - ***that on the date of the dismissal the employee was or proposed to become a member of the union, and***
 - ***that there appear to be reasonable grounds for supposing that the reason for his dismissal (or, if more than one, the principal reason) was one alleged in the complaint [i.e. he was dismissed because of actual or proposed union membership, participation in union activities, or the use of union services].***

For the purposes of this certification requirement, “an authorised union official” means an official of the union who is ‘authorised by [the union] to act for the purposes of’ section 161 TUR(C)A 1992. The Acting Deputy General Secretary(P) will provide the appropriate certificate to support any members that have a claim for interim relief.

In terms of the involvement of Acas the usual requirement for claimants to have obtained an Acas early conciliation certificate/EC number before lodging a claim does not apply where the employee is also making an application for interim relief (Reg 3(1)(d) Employment Tribunals (Early Conciliation: Exemptions and Rules of Procedure) Regulations 2014). However, practically Acas should be started. Please also note that the Form ET1 must state/confirm that there is an exemption to the usual requirement to providing the Acas Certificate number. There is a specific box on the Form ET1 for the claimant to confirm this.

In terms of the current issues experienced by CWU Reps, interim relief could be a viable option in appropriate cases although the issues will likely revolve around the specific reason for dismissal and whether the prohibited trade union reasons for dismissal under s152 are applicable in each case:

IMPORTANT

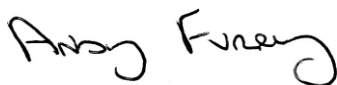
In order to assist Branches and Representatives, please find attached a draft Grounds of Complaint (**Appendix 1**), Interim Relief Application (**Appendix 2**) and CWU certificate containing the prescribed information (**Appendix 3**). **The CWU certificate should be forwarded electronically to hford@cwu.org for Andy Furey to sign on a case by case basis prior to the step below.**

The Grounds of Complaint should be amended for each claimant as necessary and sent with the Form ET1 to the tribunal. Where possible the application for interim relief/CWU certificate should be sent at the same time, but if this is not possible it should be sent immediately after via email to the correct tribunal office together with the CWU IR certificate. It would be a good idea to attach the Form ET1 and Grounds of Complaint to that email so that the tribunal has all documents in one place.

Postal Executive member Steve Halliwell will act as the contact point for Branch enquiries on behalf of the DGS(P) Department and Branches should urgently consider the use of this process where suitable and alongside the usual ET application.

Any enquiries in relation to the content of this LTB should be addressed to the DGS(P) Department.

Yours sincerely,



Andy Furey
Acting Deputy General Secretary (Postal)

Claim No:

IN THE EMPLOYMENT TRIBUNAL

BETWEEN:

[NAME]

Claimant

and

[ROYAL MAIL GROUP LIMITED]

Respondent

Commented [A1]: Amend to name of employer on the member's contract of employment

GROUNDS OF COMPLAINT

Parties

1. I was employed by the Respondent from [DATE] until I was dismissed on [DATE]. I am a subscribing member of the Communication Workers Union (the "CWU").
2. The Respondent is a private limited company (Company No. 04138203), whose registered address is 185 Farringdon Road, London, United Kingdom, EC1A 1AA.

Commented [A2]: Amend if employer in contract is not Royal Mail Group Limited

Claims

3. I bring claims of:
 - (a) Automatic unfair dismissal on grounds related to union membership or activities, contrary to part X Employment Rights Act 1996 ("ERA 1996") and section 152 Trade Union and Labour Relations (Consolidation) Act 1992 ("TULR(C)A 1992");
 - (b) Ordinary unfair dismissal, contrary to part X ERA 1996; and
 - (c) Detriment on grounds related to union membership or activities, contrary to section 146 TULR(C)A 1992.

Application for Interim Relief

4. I contend that I have been automatically unfairly dismissed contrary to part X ERA 1996 and section 152 TULR(C)A. I have brought this claim within seven days of the termination of my employment and I am applying for Interim Relief pursuant to section 161 TULR(C)A 1992.
5. I enclose with my Form ET1 and this Grounds of Complaint:

- (a) My application for Interim Relief; and
- (b) A certificate signed by an authorised official of the CWU containing the prescribed information pursuant to section 161(3) TULR(C)A 1992.

Exemption from early conciliation

6. My claim is brought under Part X of the ERA 1996 and is accompanied by an application under section 161 of the TULR(C)A 1992. I am therefore relying upon the exemption from early conciliation under regulation 3(1)(d) Employment Tribunals (Early Conciliation: Exemptions and Rules of Procedure) Regulations 2014, SI 2014/254.

Background [NOTE – this and the below sections are examples of the kind of information that should be included, but they will need to be amended so that the factual background is correct for each Claimant. Each Claimant needs to set out the type of trade union they have carried out that they say has led to their dismissal eg, activist, branch official, picket supervisor. **DO NOT** just refer to taking strike action.]

7. I was employed by the Respondent from [DATE] as a [JOB TITLE] under a contract of employment dated [DATE].

8. I have been a subscribing member of the CWU since [DATE]. I am a CWU representative [set out your CWU role] [and an authorised picket supervisor].

9. The CWU and the Respondent have recently been engaged in trade disputes relating to, amongst other things, pay and terms and conditions. As part of those trade disputes, members of the CWU and employees of the Respondent have taken part in official industrial action. This includes official industrial action taken on [RELEVANT DATES].

10. On these dates [I was the picket supervisor/activist] on behalf of the CWU. The responsibilities of a picket supervisor are set out in section 220A TULR(C)A 1992. Further guidance on the responsibilities of a picket supervisors is contained within the 2017 Code of Practice on Picketing. I complied with my duties whilst I was the picket supervisor during official industrial action.] AMEND AS APPLICABLE

Commented [A3]: Amend depending on whether the dismissed employee was a picket supervisor or an activist.

Misconduct and Dismissal

11. On [DATE], I was notified by [METHOD AND PERSON] that an investigation of misconduct would commence against me. I was suspended from duty on full pay on [DATE].

12. The allegation[s] of misconduct against me was/were that:

- (a) On [DATE], [DETAILS OF ALLEGED MISCONDUCT AS CONTAINED IN RM CORRESPONDENCE WITH EMPLOYEE];

13. I deny the allegations of misconduct because:

- (a) [DETAILS OF REASONS WHY MISCONDUCT IS DENIED e.g. I was not present on the picket at the time of the alleged misconduct]

- (b) I was not responsible for [details of the alleged misconduct], which was known to the Respondent;
- (c) I am not “vicariously responsible” for the actions of persons unknown]
14. The Respondent did not carry out a sufficient investigation into the allegation(s) against me. In particular:
- (a) [SET OUT DETAILS OF FAILURES BY RM, e.g. The Respondent knew that I was not responsible for the alleged misconduct];
- (b) The Respondent took no steps to identify the individual responsible for the alleged breach of conduct;
- (c) The Respondent did not make further enquiries or follow up on [DETAILS OF OTHER AVENUES OF ENQUIRY MISSED]
- (d) The Respondent did not give me sufficient time to respond to the allegations of misconduct];
15. On [DATE], I attended a disciplinary hearing with [NAME[S] AND ROLE[S]. The disciplinary hearing was conducted unfairly. In particular, the Respondent failed to follow its own disciplinary procedure and the Acas Code of Practice on Disciplinary and Grievance Procedures in the following ways:
- (a) [DETAILS OF PROCEDURAL ERRORS AT MISCONDUCT HEARING, IF APPLICABLE, e.g. I was not allowed to be accompanied by a trade union representative];
- (b) The Respondent failed give appropriate consideration to my representations made during the misconduct hearing]
16. On [DATE], I was informed by [METHOD AND PERSON] of the decision to dismiss me on the grounds of [gross] misconduct and my dismissal took effect on [DATE]. I [was summarily dismissed without any notice pay **OR** was given [NUMBER] weeks' notice **OR** was paid in lieu of notice for a period of [NUMBER] weeks – AMEND AS APPLICABLE].
17. Prior to my dismissal, I had not received any previous formal or informal warnings in relation to my conduct.
18. I have appealed against the decision to dismiss on the following grounds: [SET OUT DETAILS, e.g. in line with the above]. As at the date of presenting this claim, my appeal [remains unheard].

Against this background I therefore claim:

Unfair Dismissal

19. On [DATE] I was dismissed. This is the effective date of termination.
20. I did not commit the alleged misconduct, which was known to the Respondent, and I cannot be held “vicariously responsible” for the actions of persons unknown. [AMEND AS APPROPRIATE] Therefore the Respondent will not be able to

establish that there is a “potentially fair” reason for my dismissal pursuant to section 98 ERA 1996.

21. I contend that the reason or principal reason for my dismissal was that:
- (a) I am a subscribing member of the CWU; and/or
 - (b) I had taken part, or proposed to take part, in the activities of an independent trade union at an appropriate time, namely, [SET OUT THE TRADE UNION ACTIVITIES RELIED ON, e.g. I had acted as a picket supervisor in pursuance of the CWU's statutory duties during the official industrial action occurring on [DATES] and/or I was likely to act as a picket supervisor on future dates [DATES]]
22. Accordingly, my dismissal was contrary to section 152 TULR(C)A 1992 and is automatically unfair.
23. Alternatively, if, which is denied, the reason for my dismissal was a potentially fair reason, the dismissal was unfair contrary to section 98 of the ERA 1996 because:
- (a) [SET OUT ISSUES WITH PROCEDURE OR OTHER FAILING BY RM] The Respondent failed to carry out a fair or thorough investigation;
 - (b) The Respondent treated me differently to other employees

Detriments on grounds related to union membership or activities[SET OUT HERE ANY ACTION TAKEN AGAINST YOU BEFORE YOUR DISMISSAL FOR BEING A UNION MEMBER OR ACTIVIST]

24. I contend that I have been subjected to detriments on grounds related to union membership or activities contrary to section 146 TULR(C)A 1992.
25. I am a subscribing member of the CWU. I took part in official industrial action on [DATES], [including undertaking my duties as a picket supervisor pursuant to the CWU's statutory duties].
26. I have suffered the following detriments:
- (a) On [DATE], I was subjected to a misconduct investigation;
 - (b) On [DATE], I was suspended from duty;
 - (c) [INSERT OTHER DETRIMENTS]
27. I contend that I was subjected to the above detriments for the sole or principal purpose of:
- (a) Penalising me for being a member of the CWU; and/or
 - (b) Preventing or deterring me from taking part in in the activities of the CWU at an appropriate time, or penalising me for doing so, including but not limited to the following activities:
 - (i) Industrial action that occurred **OR** is due to occur on [DATE]; [and]

- (ii) Acting as a picket supervisor in pursuance of the CWU's statutory obligations on those dates [AMEND AS APPROPRIATE]; and/or
 - (iii) [DETAILS (list other activities as appropriate)];
- (c) preventing or deterring me from making use of the CWU's services at an appropriate time, or penalising me for doing so

Remedy

28. I am seeking the following by way of remedy:

- (a) an order for reinstatement or re-engagement and/or
- (b) A Continuation Order, pursuant to sections 163 and 164 TULR(C)A 1992;
- (c) A declaration that I have been automatically unfairly dismissed contrary to section 152 TULR(C)A 1992 or unfairly dismissed under section 98 of the ERA 1996;
- (d) compensation for detriment suffered during employment, including but not limited to an award for injury to feelings;
- (e) compensation for unfair dismissal;
- (f) an uplift due to the Respondent's unreasonable failure to comply with the Acas Code of Practice on Disciplinary and Grievance Procedures of up to 25%.

[Name]

[DATE]

[RELEVANT TRIBUNAL OFFICE]
[ADDRESS]

By email: [Email of tribunal office]

Dear Sir/Madam

URGENT – APPLICATION FOR INTERIM RELIEF

[Name] v [Royal Mail Group Limited]

Submission Reference: [INSERT ET SUBMISSION REFERENCE]

I have submitted the above claim online today.

Pursuant to sections 161(1) TULR(C)A 1992, my Form ET1 and Grounds of Complaint make clear that I consider that I have been automatically unfairly dismissed on grounds related to union membership or activities, contrary to part X Employment Rights Act 1996 (“**ERA 1996**”) and section 152 Trade Union and Labour Relations (Consolidation) Act 1992 (“**TULR(C)A 1992**”).

I am therefore making this application for interim relief against **Royal Mail Group Limited** **[AMEND AS APPROPRIATE]** pursuant to section 161 Trade Union and Labour Relations (Consolidation) Act 1992 (“**TULR(C)A 1992**”), which I am making to the Tribunal before the end of seven days immediately following the effective date of termination pursuant to section 161(2) TULR(C)A 1992.

I therefore request that the Tribunal urgently lists a preliminary hearing to consider my application for Interim Relief.

Pursuant to section 161(3) TULR(C)A 1992, I enclose with this application a certificate in writing signed by an authorised official of the Communication Workers Union (the “**CWU**”) (of which I am a member), confirming that:

- (a) on the date of the dismissal I was a member of the CWU; and
- (b) that there appear to be reasonable grounds for supposing that the reason for my dismissal (or, if more than one, the principal reason) was one alleged in my complaint

Under section 162(1) TULR(C)A 1992, the Tribunal is to determine the application for interim relief as soon as practicable following the receipt of the application and certificate referred to above.

We therefore request that a hearing is listed on the first available date (taking account of the requirement in section 162(2) TULR(C)A 1992 for the Tribunal to give the Respondent seven days’ notice).

For the avoidance of doubt, I do not consider that there are any special circumstances (as envisaged by s. 162(4) TULR(C)A 1992) that would justify the Tribunal exercising its

discretion to postpone the hearing. This is a straightforward case where I have been dismissed contrary to section 152 TULR(C)A 1992.

I am seeking either a re-engagement/re-instatement order or a Continuation Order pursuant to ss. 163 and 164 TULR(C)A 1992, pending the determination of my claim for unfair dismissal.

I enclose with this letter a further copy of my Form ET1 and Grounds of Complaint for east of reference.

Yours faithfully

[Name]

[RELEVANT TRIBUNAL OFFICE]
[ADDRESS]

By email: [Email of tribunal office]

Dear Sir/Madam

[Name] v [Royal Mail Group Limited]
Submission Reference: [INSERT ET SUBMISSION REFERENCE]

Certificate of authorised official of the Communication Workers Union (“CWU”)

I, Andy Furey, Acting Deputy General Secretary, (Postal) of the CWU, confirm, pursuant to section 161(3) Trade Union and Labour Relations (Consolidation) Act 1992 (“**TULR(C)A 1992**”), that:

1. I am an authorised union official of the CWU and I am authorised by the CWU to act for the purposes of section 161 TULR(C)A 1992. I am the most senior CWU officer in the Postal Department. The Postal Department has responsibility for CWU members employed by Royal Mail Group Limited;
2. On the date of [his/her] dismissal, [NAME OF EMPLOYEE] was a member of the CWU; and
3. There appear to be reasonable grounds for supposing that the reason for [NAME OF EMPLOYEE]’s dismissal (or, if more than one, the principal reason) was one alleged in [his/her] Grounds of Complaint, namely that [he/she] was a subscribing member of the CWU and/or [he/she] had taken part, or proposed to take part, in the activities of an independent trade union at an appropriate time.

Yours faithfully

Andy Furey
Acting Deputy General Secretary (Postal), CWU