

No. 275/24

13th August 2024

Dear Colleagues,

Outstanding Employment Tribunal Claims

Branches will note further to LTB 038/23 that there are approximately 650 outstanding employment tribunal claims from the 2022-23 Royal Mail Industrial dispute. These were consolidated into the Bristol Tribunal Office and are being managed by Unionline in conjunction with the DGS(P) Department.

These claims had been stayed (Postponed) pending the outcome of a case at the UK Supreme Court (Mercer vs Alternative Futures Group) which had implications for these cases as it relates to trade union detriments due to taking part in or organising industrial action.

The question for the Mercer case was whether organising and taking part in strike action counted as a 'trade union activity.' If it did, then employers would not be able to subject workers to a detriment for taking part in or organising strike action.

In the Mercer case, the Supreme Court determined that under UK law, in particular TULRA 1992, organising or taking part in strike action does not constitute trade union activity and therefore so long as employers do not dismiss people, they are able to apply whichever other detriments they wish to. Clearly this is troubling and could have massive implications for workers taking part in lawful industrial action.

However, the Supreme Court also concluded that this piece of UK law was therefore in breach of the UK's commitments under the European Convention on Human Rights in particular Article 11 which states:

Art. 11: (1) ***Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.***

The judgement states:

"If employees can only take strike action by exposing themselves to detrimental treatment, the right (paragraph in bold above) dissolves. Nor is it clear what legitimate aim a complete absence of such protection serves. In the context of the scheme of protection that is available, it is hard to see what pressing social need is served by a general rule that has the effect of excluding protection from sanctions short of dismissal for taking lawful strike action."

The significance of the loophole in UK law cannot be understated and has effectively denied a fair trial for those members claiming a trade union detriment. The CWU has submitted an amendment to the TUC 2024 to raise the status of this and to campaign with the new Labour government to close the loophole.

What this means in practical terms is that:

- 1) Those members who have registered claims for trade union detriment have had that part of their claim struck out by the Bristol Tribunal. (For example, if a member registered a claim for unlawful deduction of wages & trade union detriment – ONLY the trade union detriment part of the claim has been struck out.)
- 2) Members are entitled to join a group claim against the UK government to the European Court of Human Rights (ECHR) based on denial of their rights under Article 11 and Article 6 of ECHR – the right to a fair trial.

All members affected by the ruling will be written to and given the option to opt into the claim (see point 2 above). Of course, there are no guarantees and the process is extremely lengthy. As members will not have to do anything other than opt in and there may be meaningful compensation available, we would advise Branches to encourage members to do so.

Separately, Weightman's solicitors, acting on behalf of Royal Mail, have confirmed that all of the outstanding sick pay claims from the dispute will be paid. Many of these claims had been settled previously but hundreds were still outstanding. We will of course separately verify that members have received all the monies they were owed before any of these cases are withdrawn.

This should end the unacceptable policy of blanket sick pay withdrawal which took place during the dispute. We always argued that this was morally wrong and unlawful and it seems that the employer has belatedly accepted they could not defend these actions. The discredited managerial approach that saw this as an acceptable way to treat employees can have no place in Royal Mail going forward.

This now means that all members who followed CWU advice to register their claims for unlawful deductions of wages (sick pay) with an employment tribunal will have received the money they were owed. We would like to thank Branches for their assistance and hard work on this matter.

There are several other types of claims not currently covered by the above resolution which continue to be represented by the CWU through the tribunal process with the aim of reaching successful conclusion. Further updates will be sent to these individuals on their claims.

Any enquiries in relation to this LTB should be addressed to Rob Wotherspoon, Postal Executive Member at rwotherspoon@cwu.org

Yours sincerely,



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Ray Ellis
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