Statutory right to be accompanied at grievance or disciplinary meetings

Statutory rights at work

A worker who is invited to attend a disciplinary or grievance hearing has the right, under the Employment Relations Act 1999, section 10, to be accompanied by *“*a trade union official.”

**A recent Employment Appeal Tribunal (EAT) decision, in the case of Toal and another v GB Oils Ltd EAT/0569/13, held that, there is no statutory requirement for an employee's choice of Trade Union Official at a grievance hearing to be reasonable.**

It is important for PCS Representatives to have an awareness of basic statutory rights, and recent case law which supports union rights, to help ensure that these rights are not violated.

The questions in this case were:

* Does the requirement for the request to be reasonable mean that the employer could object to the identity of the Trade Union Official chosen by the worker?
* Has a worker who chooses another Trade Union Official, in response to the employer's objection, waived any breach of the right to be accompanied by the first choice of Trade Union Official?

Key points decided by the EAT include:

* A worker's right to be accompanied at a disciplinary or grievance hearing, under s.10 of the Employment Relations Act 1999, is not subject to the qualification that his or her choice of Representative is reasonable in relation to the identity of the Representative. The only qualification in s.10 in relation to the identity of the Representative is that he or she must fall within certain specified categories - essentially section 10 of the Act specifies a *Trade Union Official.*
* The employees, whose request to be accompanied by a particular individual was refused, did not waive their right under s.10 by later requesting a different representative. Statute and case law make it clear that it is not open to either the employer or the employee to waive a statutory requirement by any express or implied agreement.
* Section 11(3) of the Act provides for compensation of an amount not exceeding two weeks' pay where a tribunal finds that an employer failed to comply with s.10. This is not a penalty or fine, but is to compensate the worker for loss or detriment suffered as a result of the employer's breach. If there was no such loss, a tribunal cannot make a zero award, but the award should be nominal.

When can a worker be accompanied?

The statutory right to be accompanied applies to workers and not just employees. It therefore covers casual, temporary and agency workers too. It applies when:

* A worker is required or invited by his or her employer to attend a disciplinary or grievance hearing, and
* The worker reasonably requests to be accompanied at the hearing.

*Note : statutory right to accompany does not apply to redundancy consultations*

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**Toal & Anor v GB Oils Ltd UKEAT/0569/12/LA**

**Appeal against a ruling which rejected the claimants’ claims that the employer had breached s10 of the ERelA 1999 by not allowing the claimants their preferred person to accompany them at grievance meetings. Appeal allowed and remitted to the ET to determine compensation.**

The two claimants raised grievances and were invited to a grievance meeting. The claimants wished to be accompanied by an elected official of Unite (who satisfied the definition of a person as written in s10(3) of the ERelA 1999) but the respondent refused them to be accompanied by this person. The claimants then chose someone else who did accompany them at the meetings. The claimants claimed at the ET that the employer had breached s10 of the ERelA 1999. The ET dismissed their claims on the basis that, although the respondents were at the time of the refusal in potential breach of a statutory provision and had a claim been brought at that juncture the Tribunal would have found in favour of the claimants, the claimants had waived the potential breach by the respondent when the grievances concluded with their chosen representative and the fact that it was second choice was immaterial. The claimants appealed.

The EAT allowed the appeal. They rejected the argument that s10 implies that the choice of companion to accompany employees to a grievance hearing must be reasonable, but they also ruled that where an employee chooses another companion after the first has been rejected does not mean that the employee has waived their right to be accompanied by their first choice.