



Jersey Employment Forum:
Jersey Employment Tribunal Costs & Vexatious
Claim Consultation
Unite Submission – June 2010

Introduction

Unite the Union is the UK's largest trade union with 1.5 million members and 4,500 members in Jersey across the private and public sectors. The union's members work in a range of industries including manufacturing, financial services, print, media, construction, transport and local government, food, agriculture, education, health and not for profit sectors.

Firstly it is important to recognise that trade unions have a proven track record in reducing the amount of employment tribunal claims that are needed by solving more problems in the workplace from the outset, through strong collective trade unionism. However in the event of no agreement being reached, if our members need us Unite will not be found wanting. On this point its worth highlighting that trade union members who take their employers to employment tribunals are more likely to be successful and are more likely to win higher levels of compensation than those who take cases without union help.

Therefore Unite is in a unique position to submit a response to the Jersey Employment Forum on the Jersey Employment Tribunal Costs & Vexatious Claims consultation.

Suggested changes to the current procedure

JACS to validate Tribunal applications

Unite do not believe there is any evidence that there has been an 'escalation of vexatious claims to the Tribunal' in Jersey and is therefore somewhat perplexed why a white paper is even been considered.

The latest available Jersey Employment Tribunal Annual Report¹ certainly demonstrates that there has been no 'escalation of vexatious claims to the Tribunal' in the way that has been suggested. The Jersey Employment Tribunal received 164 applications during the period 1st July 2007 to 30th June 2008; this is 66 fewer applications than in the previous year. The spread of applications is not confined to one particular industry but reflects the diversity of Jersey's employment sector. In general, most applications are completed satisfactorily and have the essential content upon which the Chairman will seek to accept the application.

The 164 applications were dealt with in the following manner;-

Rejected		7
Dismissed		5
On going		43
Settled		76
Withdrawn		14
Struck out		2
Found in favour	Applicant	11
	Respondent	6
	Total	164

Therefore Unite urges the Employment Forum not to be swayed by unsubstantiated claims that have been made by employer associations such as the Jersey Hospitality Association.

¹ www.jerseyemploymenttribunal.org/docs/Current%20Annual%20Report.doc

Even if there was evidence of an escalation of vexatious claims to the Tribunal, which as demonstrated there isn't, Unite believes it would be undemocratic for JACS to validate Tribunal applications because it is not their role to do so. It should remain the duty of the Employment Tribunal (with its legally qualified Chairman and Deputy Chair) to determine.

As for the proposal that there may be some benefit in requiring an employee to confirm that they have taken the advice of JACS or another appropriate adviser prior to submitting an application to the Tribunal, Unite has no issue with this suggestion as long as the legal status of this document is such that it cannot be used later in an employment tribunal to the detriment of a workers case against their employer.

A lodging fee

Unite find the suggestion that any amount of money should be required by a worker to log a claim with a tribunal to be inequitable. There must not be any unnecessary barriers to justice within the employment tribunal system, which could potentially prevent workers from pursuing an employment tribunal. A worker should always have the right to log a claim with an employment tribunal free of charge.

Power to award costs for legal representation

Unite does not believe that a tribunal should have the power to award costs to employers because as has already been stated Unite does not see any evidence that there has been an 'escalation of vexatious claims to the Tribunal' in Jersey and therefore the need does not exist.

Conclusion

Unite supports all of the Employment Forums proposals with the one reservation being the proposal that there may be some benefit in requiring an employee to confirm that they have taken the advice of JACS or another

appropriate adviser prior to submitting an application to the Tribunal. Again Unite has no issue with this suggestion as long as the legal status of this document is such that it cannot be used later in an employment tribunal to the detriment of a workers case against their employer.

In addition Unite would like to bring to the Employment Forums attention the recent regulation tightening by the former UK Labour Government of 'no-win, no fee' solicitors behaviour.² For too long many workers who have taken cases to employment tribunal with 'no-win, no-fee' solicitors wrongly assume they are getting legal advice and representation for free, which was not the case.

A lack of regulation meant that workers often signed up to agreements with solicitors; without being given clear information as to the nature of any extra charges that might be incurred, regardless of whether the case was won or lost and exactly how much would be deducted if there was a final award. Nor were they alerting individuals to the existence of alternative sources of legal advice such as trade union legal departments.

It is hoped that the new regulation will force solicitors looking for 'no-win, no-fee' business to demonstrate in a transparent way exactly what options and charges workers are likely to face. Therefore Unite would like the Employment Forum to consider whether this is an issue for Jersey.

For clarifications and more information please contact:

Nick Corbel - Jersey Regional Industrial Organiser – 01534 872584
Unite the Union
66 New Street
St Helier
Jersey
Channel Islands

9th June 2010

² <http://yourdemocracy.newstatesman.com/parliament/damages-based-agreements-regulations-2010/HAN150032279>