



GUIDE
to the
JIB DISCIPLINARY, GRIEVANCE
&
CONCILIATION PROCEDURE

JOINT INDUSTRY BOARD
for the
ELECTRICAL CONTRACTING INDUSTRY

NOTES

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12. APPEALS TO THE JIB INDEPENDENT CHAIRMAN

All appeals against decision of the National Appeals Committee can be referred to the JIB Independent Chairman as spelt out under Rule 68 (c) of the JIB Rules. The JIB Independent Chairman has the authority to examine all matters progressed in this manner.

The decision of the National Appeals Committee will be open to appeal on two grounds.

- 1) The National Appeals Committee was in error in its application or interpretation of the National Agreement, or
- 2) The National Appeals Committee made a decision which no National Appeals Committee could reasonably reach on the evidence before it.

The remedies available to the JIB Independent Chairman are the same as those available to the JIB National Appeals Committee in that decisions can be upheld or varied or a re-hearing can be ordered.

This is the final stage of the JIB machinery.

Committee may decide that the amount of the Award be paid to the Joint Industry Board where it will be held in a Suspense Account until such time as the appeal is finally settled.

9. CONDUCTING THE NATIONAL APPEALS COMMITTEE

The National Appeals Committee is aware of all the submissions made prior to, and during, the original Dispute Committee Hearing. The role of the National Appeals Committee is to examine the **narrow area of appeal only**.

The procedure by which the National Appeals Committee hears the appeal is along the same lines as those of the Dispute Committee Hearings.

10. DECISIONS OF THE NATIONAL APPEALS COMMITTEE

The decisions of the National Appeals Committee are always conveyed in writing and are not given at the time of the actual hearing. Together with the decision of the National Appeals Committee will be a further explanation of the rights of appeal of the Parties to the JIB Independent Chairman.

The National Appeals Committee will give a structured decision which will consist of a heading for the case, a reference to the Disputes Committee Hearing concerned, and the decision reached by the Dispute Committee, the Ground for Appeal, and detailed reasons why the appeal was upheld or rejected.

11. REMEDIES OF THE NATIONAL APPEALS COMMITTEE

The JIB National Appeals Committee has available to it the authority to uphold, vary or overturn a Dispute Committee decision or to order a re-hearing of a case, either on the merits of the case, or Remedy or both.

An appeal against a National Appeals Committee decision must be submitted to the JIB within 28 days of receipt of written confirmation of the decision.

**Guide to the JIB Disciplinary,
Grievance & Conciliation Procedure**

The Need for this Guide

The JIB Disciplinary, Grievance & Conciliation Procedure is the industry machinery which allows members of the Joint Industry Board for the Electrical Contracting Industry, both Employer and Employee, to have Disciplinary and/or Grievance matters heard by their peers.

This guide has been produced to clarify the procedure and how it is enacted by the members. It is not an authoritative statement of the law, but rather seeks to explain how the procedure works and to assist all parties in using it efficiently. This guide also details the remit and certain aspects of the procedure and how it works with the Employment Act 2002 (Dispute Resolution) Regulations 2004.

2) The Dispute Committee's decision was one which no Dispute Committee could reasonably have reached on the evidence before it.

2. Grievances

The Appeal process is the same as (b) above.

All documents relating to appeals are referred for preliminary consideration by the National Appeals Committee which has absolute discretion in deciding whether or not there are sufficient grounds to justify a further hearing. Where the Committee declines to hear the case the Appellant is informed of the reasons why, and advised of the rights of appeal beyond the National Appeals stage.

The National Appeals Committee *will* spell out why the grounds;

1) do not indicate that there is an error in the application or interpretation of the National Agreement in the Dispute Committee

and/or

2) why the decision is consistent with evidence placed before the Dispute Committee.

The National Appeals Committee will give a structured decision which will consist of a heading for the case, a reference to the Dispute Committee Hearing concerned, and the decision reached by the Dispute Committee, the Ground(s) for Appeal, and detailed reasons why the application for a hearing is rejected.

The full decision reached by the National Appeals Committee in rejecting grounds will be given to both parties and the RJIB concerned. In addition, the Parties will be advised of their right of appeal against the decision to the Independent Chairman of the JIB, when the acceptable grounds of appeal will be restated (see (b) above)

If a hearing of the appeal is granted, and the Dispute Committee's original decision involves a payment of any monetary award by the appellant, then the National Appeals

8. APPEALS PROCEDURE

Please read the following carefully in order to establish which route of appeal is open to you and the procedure you need to apply.

1) Unfair Dismissal

(a) Operatives/Apprentices with **more** than twelve months' service.

For these individuals, the JIB Dispute Committee is the final stage of the Disciplinary Procedure and there is **no right of appeal through the JIB**.

In the event that either Party wishes to challenge the decision of the JIB Dispute Committee the Claimant, **if they have not already done so**, must lodge a claim with the Employment Tribunal. Such a claim should already have been lodged within three months of the dismissal but this is extended by three months if a claim is being dealt with by an Industry Machinery. If a claim has already been lodged and held in abeyance pending the conclusion of the JIB procedure, an application must be made for this to be resurrected. Full advice on the Employment Tribunal process can be obtained via ACAS.

(b) Operatives/Apprentices with **less** than twelve months' service.

If either the Claimant, or the Respondent, wishes to challenge the decision of the JIB Dispute Committee, a written notice of appeal must be sent to the JIB. This appeal must be made within 28 days of receipt of the written decision of the Dispute Committee and must contain details of the grounds on which the appeal is based. The only grounds which will be accepted are:-

1) That the Dispute Committee was in error in its application or interpretation of the National Agreement.

and/or

JIB Disciplinary, Grievance & Conciliation Procedure

1. INTRODUCTION

There are two separate categories under which disputes may be resolved:

- **JIB Disciplinary Procedure – Unfair Dismissal claims**
- **JIB Grievance & Conciliation Procedure**

Below you will find a brief explanation of each of the Procedures that will enable the reader to determine under which of the two they should place their complaint.

It should be noted that all JIB employer and employee members (which includes operatives/apprentices even when they have not been graded/registered) who are employed under JIB terms and conditions are entitled to use these procedures.

Before any matter can be brought before a Dispute Committee Hearing, every attempt must have been made by the Claimant and the Respondent to resolve the matter via the Company's internal disciplinary or grievance procedure. Failure to do so may result in the application being rejected, or any award made by a Dispute Committee being increased or decreased between 10% and 50%. Applications must be made within three months of; (a) in the case of unfair dismissal, the date of dismissal, or; (b) in the case of a grievance arising from the application of the JIB National Agreement, within three months of the event.

(a) JIB Disciplinary Procedure – Unfair Dismissal Claims

This procedure deals exclusively with claims of **unfair dismissal**, and can be accessed by a JIB Operative/Apprentice from day one of employment. JIB Operatives/Apprentices with over 12 months' continuous service are also entitled to apply to an Employment Tribunal. In such instances they **must** apply for a JIB Disciplinary Procedure Hearing **and** to the Employment Tribunal, requesting that the Employment Tribunal is held in abeyance whilst the JIB Disciplinary Procedure attempts to resolve the matter. This is known as 'Staying' the claim.

Under the JIB Disciplinary Procedure, there is no absolute right to a hearing. Applications will be put to the Chairman and Deputy Chairman of the appropriate Regional Joint Industry Board along with the Employer's response and any relevant evidence. The Chairman and Deputy Chairman will then consider the claim and decide whether it can proceed to a Dispute Committee Hearing. Discretion lies solely with them. Should they refuse to allow the claim to be pursued via the JIB Disciplinary Procedure, the Operative/Apprentice, subject to relevant service, can still proceed with the application to the Employment Tribunal, which will consider the merits of the case and whether it can be heard. Reasons for the Chairman and Deputy Chairman's decision will be given in writing to the Parties.

(b) JIB Grievance & Conciliation Procedure

Any other grievances specific to the application of the JIB National Agreement must be raised via the JIB Grievance & Conciliation Procedure and all JIB employer and employee members are bound by the procedure.

As with (a) above, there is no automatic right to a hearing, and any application by a JIB Operative/Apprentice along with the Employer's response and any relevant evidence will be sent to the Chairman and Deputy Chairman of the appropriate Regional Joint Industry Board. They will then consider the claim and decide whether the claim should proceed to a Dispute Committee Hearing.

It is important to emphasise that a JIB Dispute Committee is only convened when the facts are in dispute. Complaints that involve a clear breach of the National Agreement are referred through the JIB Membership Disciplinary Procedure.

viii) Contributory Factor

If the Dispute Committee considered that the claimant's conduct contributed in any way to the circumstances which resulted in the dismissal, then it may reduce the Basic Award (except whether the Committee consider the actual reason for dismissal was redundancy) and Compensatory Award by a percentage commensurate with the blame which it feels is attributable. However, pay in lieu of notice cannot be reduced in this way.

ix) Recoupment

There is no provision within the JIBs Disciplinary, Grievance and Conciliation Procedure for recoupment. The JIB deducts any money earned from the Compensatory Award.

x) Deduction of enhanced redundancy pay

The Dispute Committee will deduct any enhanced redundancy payment to the extent that it exceeds the Basic Award.

The compensatory award is subject to the statutory limit prescribed by the Secretary of State.

7. ENFORCEMENT OF AWARDS/DECISIONS

Unfortunately there are rare instances where Respondents do not comply with Dispute Committee decisions. Where the Award involves a monetary payment, JIB Dispute Committee Decisions are enforceable through the County Court and the Claimant, or their representative, should apply for a Summary Judgement.

Separate from the enforcement of the Award, where a Party flatly refuses to comply with the decision of a Dispute Committee this non-compliance (irrespective of the case itself) is dealt with as a disciplinary matter by the JIB Membership Disciplinary Committee.

v) **Fairness of the procedure**

The Dispute Committee is required to consider whether, had the Company followed a fair procedure, the end result would have been any different and, if so, whether the compensation would have been affected. For example, by following a fair procedure the dismissal might still have taken place but at a later date. A percentage assessment will be made by the Dispute Committee as to the likelihood of the compensation being affected and this will be used to reduce the compensation.

vi) **Failure to follow statutory procedures**

The Dispute Committee will consider whether the Company or the Claimant complied with the statutory requirements of the disciplinary and grievance procedures. A failure on the part of the Claimant will result in the Compensatory Award being reduced by between 10 and 50%.

Conversely, a failure by the Company to apply the procedure will result in the Compensatory Award being increased by between 10-50%.

vii) **Failure to provide the Claimant with a statement of main terms and conditions of employment**

If the Dispute Committee find the Claimant to have been Unfairly Dismissed but make no award, they must still consider whether a statement of main terms and conditions had been provided. If it is shown that this was not the case a payment of two weeks' pay will be awarded.

If the Dispute Committee find the Claimant to have been Unfairly Dismissed and award compensation, a failure to provide the statement of main terms and condition will result in the payment due to the Claimant being increased to four weeks' pay.

A week's pay for these purposes is as prescribed by the Secretary of State.

These payments will not be applied if there were extenuating circumstances which would make such a payment unjust or inequitable.

2. REPRESENTATION UNDER THE JIB MACHINERY

All aspects of the JIB National Agreement, including the JIB Disciplinary, Grievance & Conciliation Procedures, are a creation of the constituent Parties: Amicus (the Union) and the Electrical Contractors' Association (ECA). Consequently, they are the **only** organisations recognised to represent the relevant constituents throughout the JIB National Agreement. It is allowed that an individual or a Company, either through not being a member of Amicus or the ECA, or simply through choice, may be represented at a hearing by friends, family or legal bodies; or can put their cases themselves. However, no Trades Union other than Amicus, or Employers' organisation other than the ECA, will be permitted to attend a hearing in a representational position.

3. PROCEDURE PRIOR TO A DISPUTE COMMITTEE HEARING

Upon receipt of an application from a Claimant, the JIB National Officer responsible for the appropriate area shall **immediately** send a copy to the Respondent along with a Respondent's Reply Form, which must be returned within **7 days** together with supporting documentation. If the Company is a member of the ECA then a copy will automatically be sent to the ECA's Employee Relations Department.

The Application and Respondent's Reply forms have been developed to ascertain the facts relating to the claim. They are used by the disputing Parties and the Dispute Committee and should be completed to provide as much detail as possible.

Once the National Officer has received the completed Respondent's Reply Form, copies of all of the correspondence relevant to the dispute are sent to the Regional Board Chairman and Deputy Chairman for them to decide if a Dispute Committee should be set up or for the claim to be rejected.

If a Dispute Committee is permitted then in arranging a date for the hearing the National Officer will, within reason, try to avoid any dates when it would be difficult for the Parties to the dispute and their witnesses to attend. However, in the unlikely event of unreasonable demands or lack of co-operation, a date will be set

on which the Parties will have to attend as best they can. If either Party fails to attend, the Dispute Committee will make a decision in that Party's absence.

At any stage leading up to the hearing, the National Officer may attempt to conciliate between the disputing Parties.

(a) Paperwork and Preparation for the Hearing

All documents that are to be referred to at the hearing should be submitted to the JIB for exchange between the Parties to the dispute well in advance of the actual hearing date. The final date for exchange will be 10 days before the hearing. Any paperwork submitted after this date will only be accepted at the discretion of the Dispute Committee.

(b) Witnesses and Costs

The Parties to the dispute are responsible for ensuring that the witnesses they require to support their cases are in attendance at the hearing.

Because of the accessibility of the procedure and, hopefully, the non-legalistic approach of the Dispute hearings, the question of costs should not arise. Any claims which are made for costs (e.g. to cover legal representation) will therefore be rejected.

4. THE HEARING

(a) The Role of the JIB National Officer

It is the National Officer's role to act as Secretary to the hearing and to advise on the procedure and the application and interpretation of the National Agreement.

They must also ensure that the decision reached by the Dispute Committee is within the National Agreement, and, in cases of Unfair Dismissal, that decisions reached comply with appropriate employment legislation.

i) Loss of earnings

The Dispute Committee will make an award to compensate the Claimant for any loss of earnings. Where money in lieu of notice is also awarded, compensation can only be calculated from the expiration of the period of the notice to a date set by the Dispute Committee. This is normally the date of the hearing or, if this occurred sooner, the date on which the Claimant recommenced work. It can also award loss of earnings, to the date the Claimant will start in a new job.

Where appropriate, JIB Benefits Credits are also awarded as these are deemed part of an Adult Claimant's contractual benefits.

ii) Future loss of earnings

It is permissible to award compensation for future loss of earnings based on net pay. After hearing submissions from the Parties, the amount awarded will be dependant upon the Dispute Committee Members assessment of all factors including knowledge of the local employment position and the attempts of the Claimant to gain employment following the dismissal.

iii) Loss of statutory rights

A Dispute Committee can award an amount for loss of statutory rights. Such a figure will ONLY be awarded when the Claimant has failed to find employment or where the employment gained after dismissal was with a non-JIB Company. The reason for this is that a Claimant has to have one year's continuous service to make a claim for Unfair Dismissal.

An award for loss of statutory rights will not be made if the Claimant gains work with a JIB Member Company as there will be Unfair Dismissal protection from the first day of employment.

iv) Mitigation of loss

The Dispute Committee may reduce the Compensatory Award if it feels that the Claimant has not attempted to offset the effect of the dismissal by actively seeking alternative employment. The amount of the reduction will be in direct proportion to the degree of the failure.

If practicable, a Dispute Committee can award reinstatement or re-engagement. Reinstatement means that the Claimant returns to work with full restoration of notice and redundancy rights, plus wages for the period between the dismissal and return to work and any other relevant benefits. With re-engagement the Claimant would restart with the Company (or subsidiary Company) with a new Contract of Employment. Re-engagement is only rarely awarded.

Should reinstatement/re-engagement not be practicable, the Dispute Committee must award Compensation. The Dispute Committee members will use a check-list to identify the various areas which must be considered. These will include the following:-

a) Pay in lieu of notice

If the Claimant has been dismissed without notice, the Dispute Committee will award contractual notice, based on gross pay subject to the unemployed period.

b) Basic Award

The Basic Award will be calculated in the same way as redundancy pay based on age and length of service.

The Basic Award does not apply to cases where a redundancy payment has already been made by the employer.

If the Dispute Committee considers the conduct of the Claimant prior to the dismissal, or the issuing of notice, was such that it would be just and equitable to reduce the Basic Award they are entitled to do so.

c) Compensatory Award

The amount of compensation is such amount as the Dispute Committee consider just and equitable in all the circumstances, taking account of the loss sustained by the Claimant resulting from the dismissal insofar as that loss is attributable to the action taken by the Respondent.

This will include:-

(b) The Role of the Dispute Committee Members

The Dispute Committee Members must ensure, as far as possible, that all the facts are presented in order that a just and equitable decision can be reached. To assist with this process, they should question the parties if clarity is required.

5. CONDUCTING THE HEARING

The hearing should be conducted in a free and unencumbered manner. To that end, and to establish all the facts are being disclosed, any admissions of breaches of the JIB National Agreement should be treated by the Dispute Committee as confidential and submitted without being prejudicial to either party.

Straightforward breaches of the rules should be dealt with by the JIB Membership Disciplinary Procedure.

The Chairman will normally open the proceedings by introducing himself and the Deputy Chairman together with the Secretary and will then ask everyone present to introduce themselves. Both Parties will be asked to identify the person who will be presenting their case. The procedure will then be explained in full by either the Secretary or the Chairman as follows:-

(a) General

The Claimant, Respondent, their representatives and witnesses will be present throughout the hearing. Should either party wish to put forward confidential information to the Dispute Committee, it will be entirely at the Committee's discretion whether it can be taken into account when coming to their decision.

(b) Presentation of Complaint

The Claimant or their representative will be asked to state the complaint, produce any supporting evidence and call upon any witnesses to make their statements.

When the case for the Claimant has been presented, the Respondent or the Respondent's representative will be invited to

ask questions – through the Committee – about the statements that have been made.

When the Respondent has no further questions, the Dispute Committee may ask questions of the Claimant and the witnesses.

(c) Presentation of Reply

The Respondent or their representative will be asked to reply to the complaint, produce any supporting evidence and call upon any witnesses to make their statement.

Once the Respondent's case has been presented, the Claimant or their representative will be invited to ask questions – through the Committee – about the statements that have been made.

When the Claimant has no further questions, the Disputes Committee may ask questions of the Respondent and witnesses.

(d) Summary

The Claimant or their representative will be invited to make a final statement summarising the submissions made to the Disputes Committee and rebutting any statement or evidence which formed part of the Respondent's case. At this stage no new evidence may be introduced nor may any grounds of the earlier submissions be changed. This final statement may not be questioned by the Respondent.

In cases of Unfair Dismissal it is necessary for the Dispute Committee to draw to the attention of the Parties the remedies that are available, with particular reference to reinstatement and re-engagement.

The claimant must be asked to identify the remedy being sought with full details. In Unfair Dismissal cases the Claimant's Representative will be asked to make submissions about any contributory factor.

The Respondent or their representative will then be invited to make a final statement summarising their own submissions to the Dispute Committee and rebutting any statement or evidence which formed part of the Claimant's case. Again no new

evidence may be introduced, and the final statement may not be questioned by the Claimant. A response to the Remedy sought should be put forward by the Respondent together with the Respondent's view about any contributory factor.

(e) Conclusion

No further discussion will take place unless the Dispute Committee seeks points of clarification from the Claimant, Respondent or their witnesses.

The Secretary will normally be asked by the Chairman to explain the Parties' right of appeal against the Dispute Committee decision, and the parties will then be asked to withdraw whilst the Dispute Committee considers their submissions.

(f) Decision

It is always the aim of a Dispute Committee to reach a decision on the day of the hearing. However, if, because of timing or the complexity of the issues, a Dispute Committee wishes to consider the matter at length, the Parties will be informed that the decision will be forwarded to them by Recorded Delivery.

The decision will be structured in the following manner:-

- 1) Whether the claim fails or succeeds.
- 2) The reasons why that claim fails or succeeds.
If appropriate the decision will show
- 3) The Remedy awarded by the Dispute Committee.
- 4) The reason the Dispute Committee feels the Remedy is appropriate

Throughout the four stages of the decision, reference should be made, where appropriate, to the National Agreement which may be applicable and/or the appropriate employment legislation.

6. REMEDIES

The Dispute Committee must take account of the remedy being sought but can substitute this for one which they consider more appropriate to the merits of the case.