

To download this document in pdf format please click here:

The JIB's Role In Mediation, Conciliation and Disputes

Introduction

When the JIB was set up in 1968, one of its principal objectives was to provide a forum by which it would adjudicate upon all kinds of disputes arising from the employment of labour within the Industry. This included a right to appeal by either party internally and ultimately to an independent adjudicator.

The JIB is focussed as an independent industrial relations body operating on behalf of the Industry. Its Disciplinary, Dismissal and Grievance Procedures (collectively known as the Disputes Procedures) are set out within the JIB National Working Rules 19 and 20.

However, Dispute Committee hearings and subsequent appeals procedures should be the last resort. It is normally preferable to resolve matters to mutual satisfaction if possible. Disputes within the workplace take up management time and therefore costs and can sour working relationships. Sometimes the unlikeliest matter escalates and causes bitterness. By the time some disputes reach the JIB Disputes Procedure, Parties can become entrenched in their own views and the scale of perspective may be lost. The independence of the JIB, where the JIB takes a constructive and impartial approach, makes mediation and conciliation a vital service for its members.

What Is The JIB Disputes Procedure?

There are two categories under which disputes may be resolved. These are Unfair Dismissal claims and Grievance claims.

(i) Unfair Dismissal Claims

The JIB was, and remains, the only body which has held a Dismissal Procedures Agreement as catered for under Section 110 of the Employment Rights Act 1996 (through its forerunner under section 65 of the Employment Protection (Consolidation) Act 1978). This meant that any member of the Union who was working for an ECA member company under the terms of the JIB National Working Rules with a minimum of 26 weeks' continuous service **had** to have their claim heard by the JIB and not by an Industrial (now Employment) Tribunal. The final stage of appeal was to an ACAS Independent Arbitrator. This unique facility was granted by the Secretary of State for Employment in 1979.

However, when the Human Rights Act 1998 came into being, the JIB held discussions with the DTI over a period of 4 years to make the JIB's procedures compliant at a time when the Government was championing alternative dispute resolution procedures. As discussions were not ultimately successful the JIB revoked this Order through Parliament.

Rather than lose this area of expertise however, the JIB, under its procedures, will still hear "normal" Unfair Dismissal claims eg Redundancy, Conduct, Capability, Some Other Substantial Reason or Constructive Dismissal but will not hear cases outside of the norm eg Sex, Race, Age Discrimination, Victimisation, Harassment, etc. Such cases must proceed directly to an Employment Tribunal. To this end 'normal' Unfair Dismissal

claims are still included within the JIB Dispute Procedures.

Again, uniquely, under the terms of the JIB Agreement individuals have employment rights including the right to claim Unfair Dismissal **from their first day of employment**. However the right to a hearing is not automatic and a Dispute Committee can only be authorised by the Chairman and Deputy Chairman of the appropriate Regional Board. The JIB also needs to be convinced that the internal procedures have been exhausted. In instances where an operative has less than 12 months' service then, should a Dispute Committee be sanctioned, the Parties then have further rights to appeal to the National Appeals Committee and ultimately to the JIB Independent Chairman.

If an individual has the requisite service to make a claim to an Employment Tribunal (ie 12 months' continuous service) then s/he can make a claim and have it "stayed" ie held in abeyance until the outcome of the JIB hearing. If the matter is resolved to both Parties' satisfaction then the Tribunal claim must be withdrawn.

For operatives with over 12 months' service then, if the individual is not satisfied with the outcome then s/he can reactivate the claim following the JIB hearing. It should be noted that if an individual makes a claim to an Employment Tribunal then there is no further hearing past a Dispute Committee hearing.

(ii) Grievance Claims

The JIB also hears grievances arising out of the application of the JIB National Working Rules. Such claims include matters such as Wages, Travelling Time and Travel Allowance, Lodging Allowance, Holiday Pay etc. In addition the JIB will deal with claims for Notice Pay, Redundancy Pay etc. (usually these arise whilst included within an Unfair Dismissal claim but they are on occasion raised in their own right).

Again, there is no automatic right to a hearing and the authority for this lies with the Chairman and Deputy Chairman of the appropriate Regional Board.

The JIB will also need to be satisfied that the Company's internal procedures have been exhausted. Similarly, as above, should a Dispute Committee be sanctioned then the Parties will then have further rights to appeal to the National Appeals Committee and ultimately to the JIB Independent Chairman provided that the claim has not been lodged with an Employment Tribunal. If it has been lodged with an Employment Tribunal then, as with the Unfair Dismissal procedure, there will only be one hearing.

a Whilst technically, of course, individuals have the right to pursue these claims directly to an Employment Tribunal, in practice these types of claim are normally referred to and resolved within the JIB procedures. Whilst it increases the burden on the Disputes Procedure, it decreases the burden on the Employment Tribunal system. It is therefore saving on the taxpayer if the JIB resolves the matter within its own machinery. The JIB procedures are also less formal than the Employment Tribunal procedures and the Parties normally feel more comfortable dealing with cases on this basis rather than the more legalistic approach under the Employment Tribunal machinery.

Under both the Unfair Dismissal and Grievance procedures the JIB is obliged to have due regard to the appropriate employment legislation and remedy because any JIB Dispute Committee decision may be cited as evidence at a subsequent Employment Tribunal hearing and the reasons for the decision must fully be explained. The remedy will also be clearly set out. If this includes a financial award then the amounts will be clearly explained and calculated. Failure to do so may result in the Employment Tribunal disregarding or varying the JIB decision. To date no JIB Dispute Committee Decisions have been overturned by an Employment Tribunal.

A decision of a JIB Dispute Committee resulting in a financial award is enforceable through the County Court although again, it is extremely rare that this happens due to the honouring of and the integrity of the JIB's procedures.

How Does The JIB Disputes Procedure Operate?

The JIB's Disputes Procedure can be accessed once an individual has attempted to exhaust the Company's internal procedures. The procedures have been written in line with the ACAS Code of Practice Disciplinary and Grievance Procedures which came into effect April 2009.

If the matter cannot be resolved internally then the individual can make an application by completing a JIB Claim Form. If the individual is a member of Unite the Union then s/he should contact their local Regional Officer. The local office of the Union is available from here:

<http://www.unitetheunion.com/Default.aspx?page=53>

Upon receipt of the Claim Form the JIB will send a copy to the Company for its response. If the Company is a member of the ECA then a copy will be sent automatically to its Employee Relations Department.

Upon receipt of Company's response the relevant JIB National Officer will send a copy of the paperwork to the Chairman and Deputy Chairman of the appropriate Regional Joint Industry Board (RJIB) for their authority to set up a Dispute Committee hearing. If authority is given then the JIB will set a hearing date. The JIB will also set up an informal meeting with the Parties agreement to try and resolve the matter. These meetings are very successful with 80-90% of cases being resolved.

If necessary a JIB Dispute Committee will hear and make a ruling on the case. The date for such a hearing will be within 12 weeks of receipt of the Company's response.

As stated above there are slightly different rules where an individual has the right to make a claim to an Employment Tribunal.

The JIB National Officer will use this 12 week period to try and resolve the matter without the need for a formal hearing by way of mediation or conciliation.

The Claim Form for an Unfair Dismissal can be downloaded here:

JIB 521

The Claim Form to raise a Grievance can be downloaded here:

JIB 520

The Response Form for an Unfair Dismissal can be downloaded here:

JIB 523

The Response Form for a Grievance can be downloaded here:

JIB 522

The accompanying Guide to the Dispute Procedures can be downloaded here:

What Is Mediation/Conciliation?

Mediation is the process whereby the JIB will seek to resolve a dispute with the employer and the employee with, if appropriate, the involvement of their respective representatives. The JIB's role is very proactive. It differs slightly from ACAS in that its primary role is mediation rather than conciliation.

Generally speaking, conciliation is whereby cases are discussed and settlements reached by telephone. This is particularly useful where cases are fairly straightforward or where, for example, the amounts being claimed are fairly low and, perhaps for economic reasons including management time, a settlement suits the needs of the business.

Due to the complexities of legislation and the nature of cases brought into the Disputes Procedure this is actually becoming rarer.

The JIB prefers the mediatory route. Meetings are arranged and conducted at a suitable convenient location eg the Company's office or a hotel and discussed in an informal manner with everybody present.

There are many reasons for this. For example it makes the process more personal and it is easier to conduct the fact finding exercise in order to gauge the merits of the case. The Parties are actively involved in person rather than solely through representatives.

Additionally it is easier to gain momentum and ask questions as issues arise which, by playing Devil's Advocate, can get to the heart of the issues.

The aim of mediation is to compromise and reach a settlement which both Parties are happy with – it is not a case of one side winning and the other losing.

The JIB National Officers are experienced in both mediation and conciliation and take a proactive role in attempting to resolve disputes due to their experience of employment legislation (particularly where Unfair Dismissals are concerned) and the JIB National Working Rules.

Mediation and conciliation are most effective where the employee is represented by the Union and the employer is represented by the ECA. However, this is not compulsory and if one side is not represented, the JIB, in any event, takes a neutral role and there is no pressure to accept any offer.

How Does It Operate?

Mediation/conciliation is voluntary and is entirely dependent upon the willingness of the Parties to enter discussions. The JIB National Officer does not make a decision or make a judgement but is there to assist the Parties to reach a settlement. There is no pressure on either side to settle a case and there is no financial incentive for the JIB or the National Officer if cases are settled. It exists as a service to the Industry. Either Party can withdraw from the proceedings at any time (however, this has never been known to happen due to the respectful willingness of the Parties to appreciate the other side's case.)

The procedure, which has been in operation for over 25 years, involves the JIB National Officer chairing the meeting with the Parties present. The case is fully discussed in a flexible and informal manner and the facts are established. Following this the JIB National Officer discusses the case with each Party separately and, through these discussions, tries to reach a settlement.

It should be noted that not all settlements are financial; indeed represented individuals have withdrawn cases following mediation meetings.

Sometimes settlements involve matters such as the provision of a reference which are outside the remit of a Dispute Committee or an Employment Tribunal.

Who Can Use The Procedures?

The Mediation, Conciliation and Disputes Procedures are open to any directly-employed JIB graded operative working under the terms and conditions of the JIB National Working Rules for a JIB member company.

The procedures are also open to registered apprentices. This includes apprentices working for non-JIB companies as this is covered under the JIB training agreements.

The procedures are also available for the resolution of collective disputes. This usually applies on larger sites where there are potential site wide implications. The JIB will, however, only become directly involved once a guarantee of normal working has been given.

Pre-Claim Mediation

The JIB may also be called upon to mediate on claims as a pre-emptive measure ie prior to the case being placed into the JIB Disputes Procedure but this is entirely dependent upon the nature of the case. In line with the ACAS Code of Practice the JIB also offers Pre-claim mediation. Again this is covered within National Working Rules 19 and 20. In essence however it is still the operative's responsibility to lodge their claim with the JIB and/or the Employment Tribunal.

What Types of Cases Will The JIB Mediate Upon?

As stated above the types of case the JIB will mediate upon are "normal" Unfair Dismissal claims eg Redundancy, Conduct, Capability, Some Other Substantial Reason or Constructive Dismissal but will NOT hear cases outside of the norm eg Sex, Race, Age Discrimination, Victimisation, Harassment, etc. The JIB will also mediate upon grievances arising out of the application of the JIB National Working Rules for example as Wages, Travelling Time and Travel Allowance, Lodging Allowance, Holiday Pay etc. In addition the JIB will deal with claims for Notice Pay, Redundancy Pay etc. and any other matter by agreement.

What Does It Cost?

The JIB provides this service free of charge to its employer, employee, apprentices and non-members engaging apprentices as a benefit to the Industry.

If any other body or person wishes to use this facility then this can be arranged if both Parties are in agreement. A fee may be charged for the use of this facility.

Other Mediation Services

The JIB also provides internal as well as external mediation services. We have a team of mediation experts who can assist with mediation services outside of the JIB Agreement. The JIB makes a charge for this service and further details are available from the JIB. Organisations interested in this service should initially contact Sheik Khan, Senior National Officer, at the JIB.

Can A Claim Be Taken To An Employment Tribunal?

If mediation/conciliation is unsuccessful and a claim has been lodged at an Employment Tribunal then the claim can still be pursued at a JIB Dispute Committee.

If the individual is unhappy with the outcome of a JIB Dispute Committee decision then they still have the right to pursue the claim at the Employment Tribunal.

If the claim has not been lodged with an Employment Tribunal because the operative does not have the requisite service for unfair dismissal then the decision can be appealed initially to the National Appeals Committee and ultimately to the JIB Independent Chairman. If the claim has not been lodged with an Employment Tribunal but is eligible then there is no further right to appeal.

How Successful Is Mediation/Conciliation?

The JIB has an enviable record of success with its mediation and conciliation procedures.

Since 1990 its record of resolving disputes placed into its procedures has been consistently between 80 and 90%.

These figures do not include the many cases which are resolved either directly by the Parties or concluded through the JIB's offices without the need to place them into the JIB procedures by way of settlement agreements.

How Are Claims Settled?

If a settlement is reached that involves a financial payment then this is concluded by way of the JIB drawing up Settlement Papers with the JIB brokering the settlement. The contents of the settlement are confidential.

If the individual wishes to withdraw the case then s/he would either write to withdraw the case or the JIB will write and confirm this to the Parties, dependent upon what is agreed at the mediation meeting.

Further Information

Once the internal procedures have been completed or the individual has raised the matter internally and no reply has been received then should an individual wish to pursue a claim through the JIB procedures, the appropriate Claim Form should be downloaded (see above) and completed as the initial step.

For further information about the procedures please contact the JIB Industrial Relations Department on 020 8302 0031 and ask to speak to one of the National Officers.

If any Students, Researchers or other interested Parties wish to discuss these matters then please feel free to contact us.

[To download this document in pdf format please [click here:](#)] for website only