

GUIDE TO THE JIB RESOLUTION PROCEDURE

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GUIDE TO THE JIB RESOLUTION PROCEDURE

1. INTRODUCTION

This procedure is a free, voluntary, and confidential service to support the resolution of individual and collective issues. It encourages early intervention through conciliation and mediation to support constructive and meaningful solutions. There is also an option of resolving disputes through a formal procedure.

2. SCOPE

This is an inclusive procedure which has no qualifying period and is open to operatives who are:

- directly employed under the terms and conditions of the JIB Agreement.
- JIB registered apprentices

The issues that can be raised through this process are:

- a) **Dismissals** (National Working Rule 19): Dismissals will also include redundancy appeals (see Section 6). Operatives should apply if they are seeking reinstatement of re-engagement.
- b) **Grievances** (National Working Rule 20): This includes unlawful deduction of wages, breaches of the Handbook, individual and collective grievances. Operatives should apply if they are seeking to recover underpayments.

This procedure will not deal with discrimination, blacklisting, harassment, health and safety, whistleblowing, TUPE or Trade Union membership claims (irrespective of whether they are linked to a dismissal or grievance).

This procedure can only be used once a guarantee of normal working has been given. If a dispute is raised the status quo is maintained until a resolution is agreed or the procedure is exhausted.

3. REPRESENTATION

ECA and Unite are the only organisations recognised to represent the relevant parties.

4. RESPONSIBILITIES

It is the responsibility of all parties to remain respectful and courteous throughout the process.

5. CONCILIATION AND MEDIATION

Conciliation and mediation are voluntary, but it is expected that both parties give serious consideration to these options.

a) Conciliation

Conciliation is conducted by an independent, experienced conciliator, and is available and recommended at any stage of a dispute including as an early intervention. A Conciliator is appointed once an issue is raised with the JIB and they will be responsible for consulting and encouraging the parties to consider conciliation.

Conciliation is a proactive process, whereby a conciliator will make recommendations to help resolve the issue. This can be conducted over the phone, by email or using video conferencing.

When the parties agree on an outcome which requires a written agreement this is produced by the conciliator or Acas and provided to the parties to sign and return.

b) Mediation

Experienced mediators are also available to facilitate employers and operatives to explore options for resolution. Mediation is a confidential process where a neutral, non-judgemental independent mediator brings together the parties in dispute in a safe environment to facilitate open and honest dialogue.

Mediation is a more structured process. The mediator will initially contact each party separately by phone to explain the process, answer any questions and support preparation for mediation. The mediator does not share information from these individual meetings with the other party.

On the date of the mediation the mediator meets with the parties separately to prepare them for the joint meeting. At the joint meeting, the mediator does not offer solutions but assists the parties to resolve any outstanding issues together.

The mediator supports the progression of the conversation to constructive resolution where both parties agree an outcome. A mediation agreement is determined by the parties and produced by the mediator or Acas following the meeting for the parties to sign and return.

6. COLLECTIVE GRIEVANCES

For collective grievances, the operative representing the claim is referred to as the Lead Operative. Collective applications can also be completed and submitted by a Unite Official. The JIB application form must be fully completed with the names of all the operatives involved in the dispute.

7. FORMAL PROCEDURE

The following steps set out the formal procedure.

a) Timeframe for applying

A fully completed application form, with accompanying documentation, must be submitted within 3 months of the dismissal or event giving rise to the dispute.

The procedure can only be accessed once the company's internal procedures have been exhausted. If this means that the time limits will not be met, then an application form must be submitted, and the application will be paused to allow the internal process to conclude.

b) Late applications

Only in exceptional circumstances will late applications be considered by a member of the JIB Industrial Relations Team, in consultation with nominated persons from ECA and Unite the Union, and their collective decision is final.

c) Company Response

Upon receipt of the application form, the JIB will immediately send a copy with the accompanying paperwork to the respondent company and, where agreed the ECA's Employee Relations Department with a request to complete a Respondent's Reply Form (RRF).

d) Referral to nominated representatives of the ECA and Unite the Union

Upon receipt of RRF a copy of all documentation will be sent to nominated representatives of the ECA and Unite the Union, who will be members of the National Board, for their joint consideration as to whether the claim should be allowed to proceed. There is no absolute right to a Hearing. Discretion lies solely with them.

If the nominated representatives decide that the case presented does not have a reasonable chance of success, the reasons why the Application was rejected will be conveyed to the parties in writing.

There is a right of appeal. Nominated representatives of the ECA and Unite the Union, who will be members of the National Board but not previously involved in the case, will consider where there are sufficient grounds of appeal to justify a Hearing. For the avoidance of doubt, this is the final stage of the process if the claim is rejected. For redundancy/dismissal claims those with less than two years' service, there is no right to appeal.

e) Setting up mediation and a resolution hearing

Upon receipt of the RRF and with agreement from both parties, a mediation meeting to include the operative, the company and their representative(s) (where applicable) together with a mediator(s) will be organised.

At the same time, the JIB will arrange a provisional date for a resolution hearing which will be set within 4-6 weeks of receipt of the RRF.

Mediation (and conciliation) are available at any stage of the procedure.

f) Resolution hearing

The resolution hearing comprises of two panelists, one from the ECA and one from Unite who are not involved in the dispute. Both members act independently on behalf of the JIB and the industry to ensure that an appropriate decision is made based on the evidence. The role of Chair and Deputy will alternate between the parties. A JIB officer will act as secretary to the hearing and advise on the procedure.

g) Paperwork and preparation for the hearing

The JIB must receive all documentation at least 2 weeks prior to the hearing. Any paperwork or evidence submitted after this date will only be accepted with the consent of the panellists appointed to the resolution hearing. The JIB is responsible for preparing and circulating a complete set of paperwork to the operative, company and their representatives ahead of the hearing.

h) Witnesses and costs

Both parties can submit a list of witnesses and their written statements 2 weeks prior to the hearing. The panellists have responsibility for reviewing and agreeing the witnesses that should attend the hearing. The parties to the dispute are responsible for ensuring that the witnesses they require to support their cases attend the hearing. The JIB does not pay any costs to the parties, their representatives, or their witnesses.

8. THE HEARING

Resolution hearings are held in private, and matters discussed are confidential. The Chair of the hearing will open proceedings by asking for introductions of those present and clarifying roles.

The procedure will then be explained in full. This will include the following:

a) The issues

The Chair will clarify the issues with the parties at the outset. If issues in the application form have been settled the Chair will clarify that they will only hear the outstanding matters.

b) Witness evidence

The operative, the company and their representatives will be present throughout the hearing. Witnesses will attend to provide their evidence.

The Chair will invite the parties to ask questions of the witnesses.

c) Presentation of complaint and reply

The operative(s) and the company (or their representatives) will be asked to present their cases and call upon any witnesses to make statements. The panellists of the hearing can ask questions at any time to clarify points. Both parties will be invited to ask questions at the appropriate time.

d) Summing up

It is optional to provide a summary, but it should be noted that there is no opportunity to question the final statement and no new evidence can be submitted.

e) Conclusion of the hearing

Once the panellists are satisfied that it does not require any further points of clarification, the parties will leave whilst they deliberate.

f) Decision

It is the aim of the hearing to reach a decision on the day. If it is not possible then the parties will be informed of the timescale of the decision. A written decision will follow, usually within 7 days, which will include the outcome, the reasons for the decision, the appeals process and the remedy, if appropriate.

9. OUTCOMES

The panellists will decide on one of the following outcomes:

For dismissal claims:

a) Confirmation of dismissal; or

b) Re-engagement on a specified date, without continuity of employment, which means in practice that the operative would return to work with the company (or subsidiary company) under a new contract of employment; or

c) Reinstatement with continuity of employment without loss of pay, which means that the operative returns to work with full restoration of notice and redundancy rights, plus wages for the period from the dismissal and return to work and any other benefits. The panellists

will consider any monies paid by the employer and deduction of money earned in the post dismissal period; or

- d) **Compensation** may be provided if b and c are not reasonably practicable. This would be wages from the date of the dismissal to the date of the resolution hearing. Redundancy payments if appropriate, pay in lieu of notice and holiday pay due to the operative and not paid should also be made. Any payment(s) previously made to the operative such as those detailed shall be deducted from the final amount.

For grievance claims:

The application form should detail the calculation of the difference between the amount which an individual is entitled under their contract and the National Working Rules and the amount which they have received.

Applications must be made within three months of the date of which the money due should have been paid, or the date of the underpayment.

Where there is a series of deductions, applications can date back two years from the date of the application. Breaks in this series (when an individual received the correct pay) will only allow an individual to go back as far as the break.

10. APPEAL

If the matter is being pursued through the Employment Tribunal, there is no right to appeal. The only grounds of appeal which will be accepted are:

- there was error in the application or interpretation of the JIB Agreement
- the decision was one which could not have been reasonably reached on the evidence before it.

The grounds of appeal should be sent within five working days to the JIB who will ensure the administration is complete and refer the matter to a National Appeals Committee.

a) National Appeals Committee

The appeal is heard by the National Appeals Committee which comprises a representative of ECA, a Unite representative and the Chair of the JIB (or delegate). The hearing takes the format of the resolution hearing as detailed above. This decision is final and binding.

b) Failure to comply

Failure to comply with a decision to re-engage or reinstate will result in the reconstitution of the resolution panel to consider the reasons, with or without the parties in attendance. This could include an additional award of up to 52 weeks' pay if the respondent fails to abide by the resolution panel decision.

11. SUPPORT

For advice and guidance on the process please contact the JIB's Industrial Relations Department, or Unite the Union (email: electricalmechanicalcombine@unitetheunion.org) and ECA, Employee Relations Department (email: employeerelations@eca.co.uk, Tel: 0207 313 4800)

