



Remedy Guide to the JIB Disputes Procedure



Joint Industry Board

INDEX

| | Page |
|---|-------------|
| 1. BACKGROUND | 2 |
| 2. REMEDIES | 2-7 |
| (a) Pay in lieu of notice | 3 |
| (b) Basic award | 3 |
| (c) Compensatory award | 3 |
| i. Loss of earnings | 3 |
| ii. Future loss of earnings | 3 |
| iii. Loss of JIB rights | 4 |
| iv. Mitigation of loss | 4 |
| v. Fairness of the procedure | 4 |
| vi. Breach of the Acas Code | 5 |
| vii. Failure to provide the operative with a statement of main terms and conditions of employment | 5 |
| viii. Contributory factor | 5 |
| ix. Recoupment | 5 |
| x. Deduction of enhanced redundancy pay | 6 |
| 3. FAILURE TO COMPLY WITH JIB DISPUTE COMMITTEE DECISION | 6 |
| (a) Non-compliance with the decision of a Dispute Committee | 6 |
| (b) Additional Award | 6 |

Remedy Guide to the JIB Disputes Procedure

1. BACKGROUND

The JIB's Disputes Procedure is the dispute resolution mechanism for the collective agreement of the electrical contracting industry. This agreement is owned by the JIB's constituent parties, the ECA (representing the employers) and Unite the Union (representing the employees). This document is intended to provide information as a guide only and not a definitive statement.

THIS REMEDY GUIDE ONLY COVERS ISSUES OF REMEDY NECESSARY FOR COMPOSING A SCHEDULE OF LOSS. THIS SCHEDULE OF LOSS MUST BE RECEIVED BY THE JIB AT LEAST 10 DAYS PRIOR TO A DISPUTE COMMITTEE HEARING.

THERE IS A SEPERATE GUIDE BOOKLET WHICH DEALS WITH THE PROCESS AND PROCEDURE OF HOW TO SUBMIT A CLAIM, WHO IS ELIGIBLE, THE TYPES OF CLAIM AND PREPARING FOR A DISPUTE HEARING.

This Guide to the Dispute, Mediation and Conciliation Procedure is available in the Disputes Procedure section of the JIB website or can be requested by calling 01322 661600 or emailing ir@jib.org.uk.

This guide

This guide has been produced to explain how the Remedies in the Disputes Procedure are calculated, what should be submitted and is intended to lead you through the stages of remedy calculation where a case is proceeding to a Dispute Committee Hearing. Unfair dismissal cases will have different calculations of remedy to other grievances (such as unlawful deduction from wages) and so this booklet is divided into two parts: Remedy for Unfair Dismissal Claims and Remedy for Non-Unfair Dismissal Claims.

The guide also details the remit and certain aspects of the procedure and the law but it is not an authoritative statement of the law.

2. REMEDY FOR UNFAIR DISMISSAL CLAIMS

The remedies available to the Dispute Committee mirror those available through the Employment Tribunal.

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

Where a Dispute Committee feels it is reasonably practicable then reinstatement or re-engagement will be awarded.

Reinstatement means that the operative 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 benefits. The Dispute Committee will make the necessary terms of the order which will include taking into account any monies paid by the employer and deduction of money earned in the post dismissal period.

Re-engagement means in practice that the operative would return to work with the company (or subsidiary company) under a new contract of employment. Re-engagement is very rarely awarded.

Should reinstatement or re-engagement not be reasonably practicable the Dispute Committee must consider awarding compensation. The Dispute Committee will set out the amount which may include:

a) Pay in lieu of notice

If the operative has been dismissed without notice then if claimed the Dispute Committee may award contractual notice based upon net pay and subject to mitigation (see below).

b) Basic award

The basic award is generally calculated in the same way as redundancy i.e. based on age and length of service. The basic award will be calculated in line with statute.

The basic award can be reduced if in the view of the Dispute Committee it is just and equitable to do so.

c) Compensatory award

The amount of compensatory award is such amount as the Dispute Committee considers just and equitable in all the circumstances. It will take into account the loss sustained by the operative resulting from the dismissal insofar as that loss is attributable to the actions taken by the company.

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

The compensatory award will include:

i. Loss of earnings

The Dispute Committee may make an award to compensate the operative for any loss of earnings. Where money in lieu of notice has been awarded then compensation for loss of earnings is calculated from the expiration of the notice period 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 operative restarted work.

It can also award loss of earnings to the date the operative will start in a new job.

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 at the summing up stage, the amount awarded by the Dispute Committee will be dependent upon the Dispute Committee's assessment of all factors including knowledge of the local

employment position and the attempts of the operative to gain employment following the dismissal.

iii. Loss of JIB rights

A Dispute Committee can make an award for loss of JIB rights. However such an award will ONLY be made if the operative has failed to find employment or where employment is with a non-JIB company. The reason for this is that an operative has to have two years' continuous service to make a claim to an Employment Tribunal.

An award for loss of JIB rights will not be made if the operative 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 operative has not made sufficient attempts to offset the effect of the dismissal by actively seeking employment, claim Job Seeker's Allowance etc. The amount of the reduction will be in direct proportion to the degree of the failure.

Claims for damages are subject to the rule that operatives must mitigate their losses. This means that the operative must take all reasonable steps to seek other work, sign on as unemployed, etc.

The question of reasonableness will depend on each individual case and will be subject to such factors as local employment, setting up as self-employed etc. This does not mean that the compensatory award will be nullified. For example, by taking a lower paid job, the operative will be able to offset any earnings against what would have been earned had the operative not been Unfairly Dismissed.

The Dispute Committee will require evidence of mitigation as part of the Schedule of Loss and oral evidence in order to ensure that the operative receives a just compensatory award.

v. Fairness of the procedure

In certain circumstances the Dispute Committee is required to have due regard to the likelihood of whether or not the dismissal would have been any different if a fair procedure had been followed. Consequently the Dispute Committee will need to determine if, in its view, the amount of compensation would have been affected. For example if a fair procedure had been followed, then the dismissal may still have taken place but at a later date.

The Dispute Committee will make a percentage assessment as to the likelihood of the compensation being affected and this will be used to reduce the compensation.

vi. Breach of the Acas Code

The Dispute Committee will take into consideration if either party has breached the Acas Code.

Failure on the part of the operative will result in the compensatory award being reduced by up to 25% whilst failure on the part of the company will result in the compensatory award being increased by up to 25% if it is just and equitable.

vii. Failure to provide the operative with a statement of main terms and conditions of employment

Whilst the JIB Agreement forms the individual's contract of employment, a company must provide a statement of main terms and conditions of employment.

A Dispute Committee must award compensation between 2 and 4 weeks' pay to an operative who has made a successful claim in the following types of cases:

- Unfair Dismissal
- Unauthorised deduction of wages and payments
- Redundancy payments

However it is not a freestanding claim and is dependent upon one of the above being successful.

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.

viii. Contributory factor

If a Dispute Committee considers that the operative's conduct contributed in any way to the circumstances which resulted in the dismissal then it may reduce the basic award (except if the Dispute Committee considers the actual reason for dismissal was redundancy) and compensatory award by a percentage commensurate with the blame it feels attributable.

ix. Recoupment

There is no provision under the Disputes Procedure for recoupment as with Employment Tribunal awards. However to ensure there is no advantage to the operative, any money received from the State is deducted from the compensatory award.

The operative will be required to provide a letter from the appropriate Government Department detailing the amount of benefits received from the State for the period claimed.

x. Deduction of enhanced redundancy pay

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

3. REMEDY FOR NON-UNFAIR DISMISSAL CLAIMS

The Schedule of Loss should be a detailed calculation of the difference between the amount which an individual is entitled to under their contract and the JIB Agreement (including the National Working Rules) and the amount which they have actually received.

Claims must be made within three months of the date of which the money due should have been paid, or where it was paid but was an underpayment, from the date of this underpayment.

Claims may cover the period of up to two years from the date at which a claim is submitted if the Claimant can show that the unlawful deductions were a series of deductions. Breaks in this series (when an individual received the correct pay) will only allow an individual to go back as far as this break.

4. FAILURE TO COMPLY WITH JIB DISPUTE COMMITTEE DECISION

a) Non-compliance with the decision of a Dispute Committee

Where a party refuses to comply with the decision of a Dispute Committee this non-compliance (irrespective of the case itself) will be dealt with as a disciplinary matter by the JIB Disciplinary Committee following investigation by the JIB.

b) Additional Award

An Additional Award may be made when a company fails to comply with an order to reinstate or re-engage an operative from an Unfair Dismissal claim.

An Additional Award will not be encountered at an initial Dispute Committee hearing. If the reinstatement or re-engagement order is not complied with then this should be raised with the JIB in the first instance. The Dispute Committee may reconvene (with or without the parties) to consider the reason(s).

The Additional Award follows the definition within the Employment Rights Act 1996 and will be between 26 and 52 weeks' pay.

FOR INFORMATION ON THE JIB DISPUTES PROCESS AND PROCEDURE PLEASE SEE THE 'GUIDE TO THE DISPUTES, MEDIATION AND CONCILIATION PROCEDURE'.

This Guide to the Dispute, Mediation and Conciliation Procedure is available in the Disputes Procedure section of the JIB website or can be requested by calling 01322 661600 or emailing ir@jib.org.uk.

Information on the Appeal Stages of the Procedure will be sent out with the written decision of the Dispute Committee Hearing and as appropriate to the case.



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