

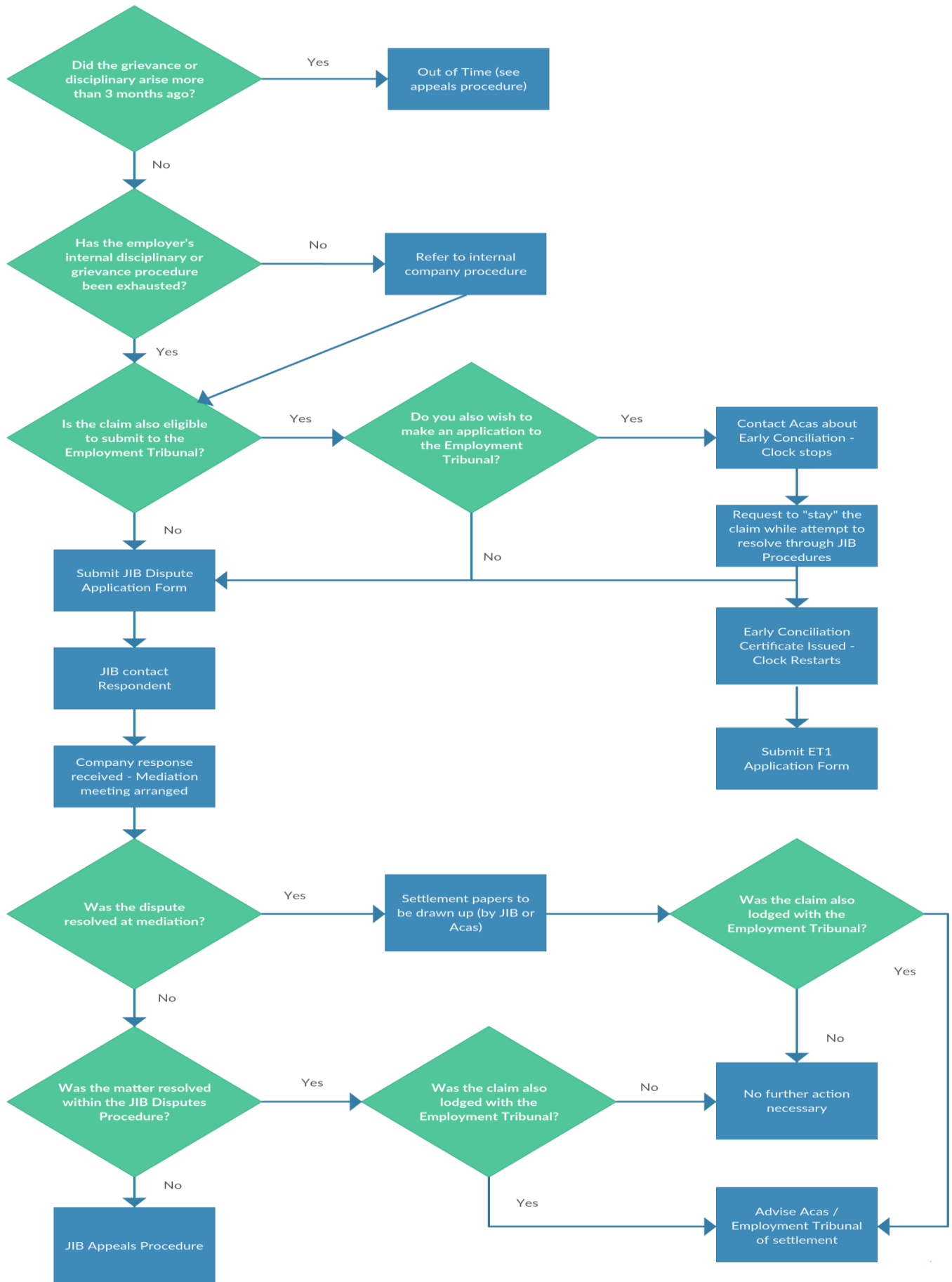


Guide to the Disputes, Mediation and Conciliation Procedure

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Joint Industry Board



Guide to the JIB Disciplinary, Dismissal and Grievance Procedure (“the Disputes Procedure”)

1. BACKGROUND

The JIB’s Disputes Procedure is the dispute resolution mechanism for the collective agreement of the electrical contracting industry. It is a free service for anybody eligible with the aim of providing a fast and effective dispute resolution procedure. It does not take away the right of an individual to make a claim to an Employment Tribunal.

This Guide is not an authoritative statement of the law.

Who can use the Disputes Procedure?

The Disputes Procedure is open to individuals who are:

- i. Directly-employed under the terms and conditions of the JIB Agreement and operatives whose employer has chosen to opt-in to JIB agreements e.g. datacomms, highway lighting etc;
- ii. JIB registered apprentices irrespective of whether or not they are engaged by JIB members.

For ease of reference the term operative is used throughout. For the avoidance of doubt, the term operative includes apprentices.

Disputes for individuals may arise under the Disputes Procedure via two paths:

- **Disciplinary and Dismissal Procedure (National Working Rule 19); and**
- **Grievance Procedure (National Working Rule 20)**

Before lodging a claim attempts must have been made to resolve the matter within the company’s internal procedures. Failure to do so may result in any award made being increased or decreased by up to 25% in line with the Acas Code.

Regional Officers pursuing a claim under Rule 17 must complete a separate form for which a specific Guidance Booklet has been produced. This is available on the JIB website.

NB the Disputes Procedure for individuals will only deal with grievances and ordinary Unfair Dismissal cases i.e. conduct, capability, redundancy, some other substantial reason and constructive dismissal as well as other types of claims such as unlawful deductions from wages etc

The Disputes Procedure will not deal with discrimination, blacklisting, health and safety, TUPE or trade union membership claims (irrespective of whether or not these are linked to disciplinary, dismissal or grievances). Such claims must proceed directly to an Employment Tribunal.

2. REPRESENTATION UNDER THE JIB MACHINERY

All aspects of the JIB Agreement, including the Disputes Procedure, are a creation of the constituent parties, the ECA and Unite the Union. Consequently they are the **only** organisations recognised to represent the relevant constituents throughout the JIB Agreement.

It is permitted that an individual or a company may be represented by friends, family or legal bodies, or can put their cases themselves. However, no trade union other than Unite or employers’ association other than the ECA will be permitted to act as representative. Where the party is represented, correspondence will be sent by the JIB to both the party and their representative.

3. PROCEDURE

a) Pre-claim Mediation and Acas Early Conciliation

The JIB offers a pre-claim mediation service if the parties wish to seek resolution of an issue prior to formally lodging a claim. It will still be the operative's responsibility to ensure that a claim is also lodged through the JIB and/or the Employment Tribunal.

Prior to an Employment Tribunal application, a Claimant must notify Acas for Early Conciliation. A claim to the Early Conciliation procedure will "stop the clock" for a period of 4 weeks in order that the claim be conciliated (with a possible 2 week extension). It is at this stage a Claimant should notify Acas that the claim is being processed through the JIB Dispute Procedures. Claimants are advised to speak to the JIB or Acas if this applies.

Failure to notify Acas may result in the claim being deemed out of time through either or both of the procedures.

b) Lodging a claim and Out of Time claims

The operative must submit a claim on a JIB Application Form (AF) (available on the JIB website). The AF **must** be lodged with the JIB within 3 months (3 months less 1 day) of the dismissal or event giving rise to the claim or this will be out of time (unless affected by Acas Early Conciliation).

Unless exceptional circumstances prevail, claims out of time will not be accepted. If the claim is out of time then the JIB will write to both the operative and representative for them to submit reasons as to why the claim was not presented in time.

The paperwork – including the operative's reasons for not presenting the claim in time – will then be sent to the company for its response. If the Chairman and Deputy Chairman do not allow the claim to be accepted out of time then there will be no further right of appeal as the operative will have already had the opportunity to explain why the claim was presented out of time.

c) Seeking Response

If the company is a member of the ECA the JIB will automatically send a copy to the ECA's Employee Relations Department.

Upon receipt of the company's response, copy will be sent to the Chairman and Deputy Chairman of the National Disputes Panel for their views as to whether or not the claim should be allowed to proceed. Discretion lies solely with them.

d) Referral of the paperwork to the Chairman and Deputy Chairman of the National Disputes Panel

If the Chairman and Deputy Chairman refuse to allow the case to proceed to a full hearing then:

- (a) for an operative with 2 or more complete years' of service, there will be one right of appeal to the National Appeals Committee. For the avoidance of doubt, this will be the final stage of the procedure.
- (b) for an operative with less than 2 years' service there is no right of appeal.

The National Appeals Committee can either uphold the Chairman and Deputy Chairman's decision or allow the case to proceed to a Dispute Committee hearing, and will set out its decision in writing.

e) Setting up a Mediation Meeting and a Dispute Committee Hearing

Once the company has returned the RRF the parties will be invited to a mediation meeting which will include the operative, the company and the parties' representative(s) (where applicable) together with a representative(s) from the JIB. Such a meeting is not compulsory but in practice, almost every case involves this informal meeting to try and resolve the issue.

At the same time the JIB will arrange a provisional date for a Dispute Committee hearing which will be set within 12 weeks of receipt of the RRF pending the joint decision of the Chairman and Deputy Chairman of the National Disputes Panel. This is a non-prejudicial part of the process and enables a date to be firmly fixed in the unlikely event that the case is not resolved by mediation.

The JIB may attempt to mediate or conciliate the issues at any stage.

f) Paperwork and Preparation for the Hearing

Any documentation that will be referred to at the Dispute Committee hearing **MUST** be received by the JIB by no later than 10 working days prior to the hearing. Any paperwork submitted after this date will only be accepted with the consent of the Dispute Committee. The JIB will prepare the bundle of documentation to refer to within the Dispute Committee hearing.

This **MUST** include a Schedule of Loss. Failure to provide this may result in either a delay in decision being issued, date of the hearing or compensation being awarded based on the evidence available at the hearing. Please see the Guide to Remedies which will detail what should be included within a Schedule of Loss.

THERE IS A SEPARATE GUIDE FOR CALCULATING REMEDY AND DRAFTING A SCHEDULE OF LOSS.

This Guide to Remedies is available on the Dispute Procedure pages of the JIB website or can be requested by calling 01322 661600 or emailing ir@jib.org.uk

g) Constitution of the Dispute Committee

The Dispute Committee comprises of two members of the National Disputes Panel – one from the ECA and one from Unite – who are both unconnected with the dispute. Both members act independently on behalf of the JIB and the industry and are there to ensure that a just decision is made based upon the evidence. The Dispute Committee members will decide before the hearing which of them will act as Chairman and which one will be Deputy Chairman.

h) 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. The JIB does not pay costs to the parties, their representatives or their witnesses.

The Dispute Committee does not have the authority to award costs against the parties (for example where either of the parties or representatives has behaved in an unreasonable manner). The Chairman and Deputy Chairman can, however, refuse to hear a claim.

4. THE HEARING

a) The role of the JIB Officer

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

b) Conducting the hearing

Dispute Committee hearings are held in private. Whilst hearings are less formal than an Employment Tribunal, they are properly structured. The Dispute Committee members must ensure, as far as possible, all the facts are presented in order that a just and equitable decision is reached.

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

The Chairman of the Dispute Committee will open proceedings by asking for introductions of those present and clarifying who is presenting the case for each party.

The procedure will then be explained in full by either the Chairman or the Secretary. This will include the following:

i. The issues

The Chairman or the Secretary will clarify the issues with the parties at the outset. It is extremely important at this stage to ensure that only the relevant matters are considered. Claims included in the AF may have been settled. Therefore the Dispute Committee will only be looking at the outstanding issues.

ii. General

The operative, company, their representatives and witnesses will be present throughout the hearing. Witnesses are not required to either swear an oath or make an affirmation.

Anybody present can question a witness. However any question must come through the Chairman to ensure that the Dispute Committee hearing is conducted in a proper fashion.

Should either party wish to put forward confidential information, produce further evidence which not submitted prior to the hearing or raise any other matters it will be for the Dispute Committee to decide at their discretion whether or not this is taken into consideration.

iii. Presentation of complaint and reply

The operative or their representative will be asked to state the case, call upon any witnesses to make statements and to refer to supporting evidence within the common bundle.

When the case for the operative has been presented the company or their representative will be invited to ask questions of the operative and witnesses and refer to evidence within the bundle. The Dispute Committee can ask questions at any time to clarify points.

Following completion of the operative's case the role is reversed. The company or their representative will be asked to reply to the complaint and similarly call upon any witnesses to make statements and to refer to supporting evidence within the common bundle.

Once the case for the company has been presented the operative or their representative will be invited to ask questions of the company and witnesses and refer to evidence within the bundle.

The Dispute Committee may again ask questions for clarity.

iv. Summing up

Once questioning has been completed either parties, or their representatives, can give a summary of their cases and rebut any statement or evidence which formed part of the other

party's case. No new evidence may be introduced nor any grounds of the earlier submissions changed. This final statement cannot be questioned by the other party.

There is no requirement to sum up.

The Dispute Committee or the Secretary must ask the operative or their representative to identify the remedy being sought and this will, in most instances, be the Schedule of Loss. Questions may be asked to clarify the issues on the schedule.

Parties should see the **Guide to Remedies** for further information.

v. Conclusion of the hearing

Once both parties have summed up and the Dispute Committee is satisfied that it does not require any further points of clarification, the parties will leave whilst the Dispute Committee deliberates.

vi. Decision

It is always the aim of the Dispute Committee to reach a decision on the day of the hearing. However if, because of timing or the complexity of the issue, the Dispute Committee cannot reach a decision on the day, then the parties will be informed that the decision will be sent to them and where applicable, their representative.

A summary written decision will be sent to the parties' and their representatives which will state in whose favour the Dispute Committee found. A full written decision modelled upon the Employment Tribunal decisions will follow. It will state:

- Whether the claim fails or succeeds and
- The reasons why

If appropriate, the decision will also show

- Whether a remedy is awarded and, where it is awarded,
- The reason(s) why the remedy awarded is appropriate.

Throughout the decision the Dispute Committee may make reference, where appropriate, to the JIB Agreement and/or the appropriate employment legislation.

Any correspondence, including decisions etc, may be used at an Employment Tribunal Hearing.



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