Making a CLAIM

Industrial Tribunals were first created in 1973 and over the years their jurisdiction and corresponding workload has mushroomed so that today there are many different types of claims that can be brought before Tribunals. The most common being claims for unfair dismissal.

Industrial Tribunals have always tried very hard to be accessible to anyone who feels that they have a genuine grievance, the service is absolutely free and indeed claimants and witnesses can recover expense for travelling to and attending at Tribunal hearings. Although it is becoming increasingly common for one or either parties to be represented either by a lawyer or some other skilled representative there is absolutely no requirement for this to happen – there are very few procedural formalities to be followed and it is the duty of the Tribunal staff and of the Tribunal chairman to guide unrepresented parties through the procedure both before and during the hearing.

Tribunals also try to avoid becoming unnecessarily legalistic despite the horrendously complex nature of modern employment law. To ensure that common sense continues to be applied in addition to a legally qualified Chairman the Tribunal consists of two other lay members, one of whom is nominated by the TUC and the other by the CBI. The lay members usually have extensive industrial experience and they have an equal say to that of the Chairman.

Although there have been recent plans to reduce the use and significance of lay members, and indeed some types of hearing are usually conducted by a Chairman sitting alone, all who have experience of using Industrial Tribunals have little doubt that the existence of lay members maintains a modern and practical approach to the application of employment law.

Tribunals endeavour to maintain a balance between the right of a manager to run his business as he thinks he should with the right of an employee not to suffer the catastrophe of dismissal without good and proper cause.

Currently an employee must have two years continuous employment before he can claim for unfair dismissal although there are a few exceptions to this rule. Many people believe that this qualifying period is unnecessarily long and indeed the Court of Appeal has recently concluded that such a long qualifying period discriminates against women who, statistically, can be shown not to remain in fixed employment for as long as men. It is highly probable that a change of government would lead to a reduction in this qualifying period perhaps to one of six months.

A protected employee has the basic right not to be unfairly dismissed. It is for the employer to show that the dismissal was for a potentially fair reason the most common of which are conduct, capability or redundancy. In addition the Tribunal then has to be satisfied that the employer behaved reasonably in using that reason as a reason for dismissal.

An employee cannot therefore be dismissed simply at his employer's whim. The employer must show either that the employee has behaved improperly, cannot do his job either because of illness or insufficient skill or that the employer no longer requires somebody to do that job.

Whether an employer has behaved reasonably is very much a matter within the discretion of the Tribunal. If the employee has been dismissed for misconduct Tribunals will normally want to make sure that before coming to that conclusion the employer had pursued all proper enquiries, including most importantly a detailed discussion with the employee involved at which the employee is made aware of the allegation being made against him, knows the nature of the evidence available to his employer and is given a full and proper opportunity to tender his own explanation. Only then should a reasonable employer arrive at a decision as to whether or not the employee has been guilty of misconduct and as to whether to dismiss that employee.

Provided the Tribunal is satisfied that the employer had a genuine belief in misconduct based upon reasonable grounds, all reasonable investigations having been pursued, it is not for the Tribunal to substitute its own view as to the employee's guilt. Equally a Tribunal cannot substitute its own view that dismissal was too severe. It is enough for the employer to show that dismissal was within a band of reasonable sanctions.

If the employee is dismissed because he does not possess the necessary aptitude or skill the employee should normally be told where he is going wrong, should be warned that his job is at risk and should be given a reasonable opportunity to improve before finally being dismissed. Often more than one warning and subsequent review will be expected.

If an employee is unable to do his job because he is ill an employer will be expected to find out as much as he can about the expected length of absence, should consult with the employee about the problem and consider what alternative courses of action may be available. He should only then dismiss if he can show that the total anticipated period of absence will cause serious problems that cannot be resolved in any other way.

If an employer wants to reduce his work force and make somebody redundant he must use reasonable and objective criteria to enable him to choose who to make redundant. He must then consult with the employees concerned and receive and consider their views. Once again he must consider whether there are other means available to avoid a compulsory redundancy and only then will he be regarded as being in a position to fairly arrive at a decision that somebody should be dismissed.

The fundamental premise is that you have a right to express your view about whether you should lose your job. Do not forget that as from the April 1 all UK BIGGA members can take advantage of the new service available to allow you legal representation to enable those views to be forcefully and effectively expressed (see the article on Page 10 of last month's edition).

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