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EMPLOYMENT TRIBUNALS

Claimant		***Respondent(s)***
Mr G Bennett	**AND**	London Borough of Camden

Heard at: London Central **On**: 20 to 22 June 2017

Before: Employment Judge Gordon
Mr P Secher
Mrs E Ali

Representation

For the Claimant: Mr Darryl Hutcheon (counsel)
For the Respondent: Mr Suraj B Sudra (counsel)

Reasons provided following request pursuant to Rule 62(3) of the Employment Tribunal Rules of Procedure 2013.

REASONS

1. This is a claim made in an ET1 form on 10 February 2017, in which the Claimant complained that the Respondent had failed to permit him to take paid time off as a trade union official, and as a safety representative appointed by his trade union, so that he could attend a TUC health and safety training course.

2. The complaint was made under section 168(4) of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRA) and under regulation 11 of the Safety Representatives and Safety Committees Regulations 1977 (Safety Reps Regs). Under those provisions the Tribunal has jurisdiction to deal with such a complaint.

3. There was a Preliminary Hearing held for the purposes of Case Management on 21 April 2017 by Employment Judge Tayler. It was attended by a solicitor for the Claimant and by Mr Sudra for the Respondent. The issues in the case were identified. The identified issues

were firstly, whether the Claimant in his capacity as a safety representative was refused paid time off that was necessary for the purposes of training that was reasonable in all the circumstances [Regulation 4(2)(b) of the Safety Reps Regs]. Secondly, whether the Claimant in his capacity as an official of an independent trade union recognised by his employer was refused such time off as was reasonable in all the circumstances to undergo training relevant to the performance of his functions on behalf of employees and approved by the TUC or by the independent trade union of which he is an official. The third issue identified at the Case Management hearing related to remedy. It was not in issue that the Claimant was a trade union official for the GMB, a union recognised by the Respondent.

4. At the hearing before us, three other issues were identified. We heard evidence relevant to these issues and the parties were given an opportunity to make submissions on them. The first was whether the Claimant was safety representative only for his own department - that is Camden Accessible Travel Solutions known as (CATS) - or whether he was also a safety representative for the Camden Borough Council branch of the GMB. This was obviously important because the latter role is much wider than the former. This affects the question of whether it was reasonable for him to attend the course and whether the course was relevant to his duties and functions. The second additional issue was whether to come within section 168(2) of TULRA, training had to be "in aspects of industrial relations" – a phrase used in that section. The third issue was whether, in order to comply with its statutory obligations, the employer needs actively to find a way in which a person in the Claimant's position can attend training which is reasonable for him to attend.

5. We heard the evidence and submissions over two days starting 20 June 2017 and then gave our decision with oral reasons on day 3.

6. We heard from the following witnesses:-

   Grant Bennett (the Claimant).

   Dennis McNulty, the London Borough of Camden branch secretary for the GMB.

   Josephine Allman, of the Respondent's Supporting Communities Department. She managed the CATS department so was effectively head of that department. She was the person who made the decision to refuse paid time off for the training which was requested by the Claimant.

   Rhys Makinson, the Director of Housing Support Services who dealt with a grievance raised by the Claimant about the decision made by Ms Allman.

7. We received a bundle of documents which was in three parts. During the hearing an exhibit was handed up which we marked C1. We had written submissions from both counsel and we saw a schedule of loss prepared on the Claimant's behalf.

8. Not only are the statutory tests under the two provisions with which we are concerned different, but also the Codes of Practice which apply are different. The Code of Practice which applies to TULRA was in the bundle starting at page 67 and that which applied to the Safety Reps Regs were within the Health and Safety Executive's Code of Practice on page 115 between paragraphs 31 and 36.

Background Facts

9. We shall recite the background facts of the case and then deal with the issues.

10. The Claimant started employment with the London Borough of Camden on 10 January 2002. From 2005, he worked as a non-vocational bus driver. Mainly this work was driving people with dementia to and from the day centres.

11. In 2009, he was appointed by his union the GMB which a recognised union within the London Borough of Camden, as health and safety representative for the department in which he worked that is CATS.

12. We should say that there are two unions in the council, the largest union is UNISON - GMB had fewer members.

13. In November 2013, the Claimant completed a Level 2 TUC Health and Safety course accredited by NOCN over five days under a paid leave arrangement.

14. In early 2015 the Claimant was appointed by his union as health and safety branch officer for the Camden branch. That was a branch which covered all employees who are members of the GMB within the Council of the London Borough of Camden.

15. On 28 June 2016, he emailed his head of department Ms Allman and copied this email to his union. In the email he requested paid time off to attend a Level 3 TUC Occupational Health and Safety course. This was the next level up from the course which he did in November 2013. He said that in order to attend the course, he would need paid time off for one day a week for 36 weeks. The idea at that time was that he would physically attend the course by attending classes. He offered further information about the course should Ms Allman need it.

16. Not having heard in response, and because the course was soon to start, the Claimant chased up this request on 5 September 2016. On the same day in an email Ms Allman dealt with the request by refusing it. In the email she explained her reasons for refusing it and offered some alternative suggestions which might be considered.

17. Although the Claimant did consider those suggestions with his union, he emailed back on 6 September 2016 stating that he was therefore a formal disagreement with the Council about this matter. He described it as "another example of you directly blocking me within my role", this being a reference to his health and safety role.

18. After the refusal from Ms Allman, in October 2016 the Claimant lodged a grievance with the Respondent about the decision. This did not reach the person who was going to deal with it, that is Mr Makinson, until 21 November 2016. Seven days later on 28 November 2016 he rejected the grievance.

19. Meanwhile, the Claimant did in fact commence the course. He had discovered an online version of the course and enrolled for that instead of the class based course. We do not know exactly when he discovered the existence of the online course, but it is not necessary for our decision to resolve that particular matter.

20. Then on 30 November 2016, the Claimant asked ACAS to conciliate a potential claim in the Employment Tribunal. Clearly he was contemplating these proceedings soon after the grievance was rejected. Nearly two months later on 11 January 2017, ACAS issued a certificate and soon after that the claim before us was made.

Was Claimant GMB safety representative for CATS or the Council as a whole?

21. The relevance of this question appears from the Safety Reps Regs. This claim is brought under Regulation 11:-

> **11 Provisions as to [employment tribunals]**
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> (1) A safety representative may, in accordance with the jurisdiction conferred on [employment tribunals] by paragraph 16(2) of Schedule 1 to the Trade Union and Labour Relations Act 1974, present a complaint to an [employment tribunal] that--
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> (a) the employer has failed to permit him to take time off in accordance with Regulation 4(2) of these Regulations; or
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> (b) the employer has failed to pay him in accordance with Regulation 4(2) of and the Schedule to these Regulations.

22. That refers back to Regulation 4(2), which must be considered in the light of the whole of Regulation 4, which provides:-

> **4 Functions of safety representatives**
>
> (1) In addition to his function under section 2(4) of the 1974 Act to represent the employees in consultations with the employer under section 2(6) of the 1974 Act (which requires every employer to consult safety representatives with a view to the making and maintenance of arrangements which will enable him and his

employees to cooperate effectively in promoting and developing measures to ensure the health and safety at work of the employees and in checking the effectiveness of such measures), each safety representative shall have the following functions:--

(a) to investigate potential hazards and dangerous occurrences at the workplace (whether or not they are drawn to his attention by the employees he represents) and to examine the causes of accidents at the workplace;

(b) to investigate complaints by any employee he represents relating to that employee's health, safety or welfare at work;

(c) to make representations to the employer on matters arising out of sub-paragraphs (a) and (b) above;

(d) to make representations to the employer on general matters affecting the health, safety or welfare at work of the employees at the workplace;

(e) to carry out inspections in accordance with Regulations 5, 6 and 7 below;

(f) to represent the employees he was appointed to represent in consultations at the workplace with inspectors of the Health and Safety Executive[, the Office for Nuclear Regulation] and of any other enforcing authority;

[(g) to receive information--

(i) in relation to premises which are, or are on, a relevant nuclear site, from inspectors under paragraph 23 of Schedule 8 to the Energy Act 2013;

(ii) otherwise, from inspectors in accordance with section 28(8) of the 1974 Act;]

(h) to attend meetings of safety committees where he attends in his capacity as a safety representative in connection with any of the above functions;

but, without prejudice to sections 7 and 8 of the 1974 Act [or sections 102 and 103 of the Energy Act 2013], no function given to a safety representative by this paragraph shall be construed as imposing any duty on him.

(2) An employer shall permit a safety representative to take such time off with pay during the employee's working hours as shall be necessary for the purposes of--

(a) performing his functions under section 2(4) of the 1974 Act and paragraph (1)(a) to (h) above;

(b) undergoing such training in aspects of those functions as may be reasonable in all the circumstances having regard to any relevant provisions of a code of practice relating to time off for training approved for the time being by [the Health and Safety Executive] under section 16 of the 1974 Act.

In this paragraph "with pay" means with pay in accordance with [Schedule 2] to these Regulations.

23. In a nutshell these provisions require the employer to permit time off with pay as shall be necessary for reasonable training in aspects of the safety representative's functions. Whether this has been contravened requires an understanding of what those functions are.

24. It is said on behalf of the Respondent that the Claimant was only a GMB safety representative for CATS. On his behalf it is said he was GMB safety representative for the London Borough of Camden, Council wide. Which is correct will define the Claimant's functions as safety representative. It is clearly a question of fact for us to decide, and it involves looking at how a safety representative is appointed under the Safety Reps Regs and seeing whether the Claimant was appointed for the Council wide role in accordance with them.

25. We start with Regulation 2 which is the interpretation regulation. That states:-

> "safety representative" means a person appointed under Regulation 3(1) of these Regulations to be a safety representative;

26. Regulation 3(1) says:

> **3 Appointment of safety representatives**
> (1) For the purposes of section 2(4) of the 1974 Act, a recognised trade union may appoint safety representatives from amongst the employees in all cases where one or more employees are employed by an employer by whom it is recognised ....

27. The reference to the 1974 Act is to the Health and Safety at Work etc Act of 1974. Section 2 of that Act lists the general duties of employers to their employees in the context of health, safety and welfare at work of its employees. Section 2(4) of the 1974 Act permits regulations to be made by the Secretary of State for the appointment in prescribed cases by recognised trade unions of safety representatives from amongst the employees and that those representatives shall represent the employees in consultations with the employers under section 2(6) and shall have such other functions as may be prescribed. The Safety Reps Regs were made under that authority.

28. Section 2(6) then provides that it is the duty of every employer to consult with any such representatives with a view to the making and maintenance of arrangements which will enable him and his employees to co-operate effectively in promoting in developing measures to ensure the health and safety at work of the employees, and in checking the effectiveness of such measures.

29. The appointment of a representative under Regulation 3(1) of the Safety Reps Regs therefore triggers these employer duties set out in the 1974 Act.

30. Then Regulation 3(2) says:

> (2) Where the employer has been notified in writing by or on behalf of a trade union of the names of the persons appointed as safety representatives under this Regulation and the group or groups of employees they represent, each such safety representative shall have the functions set out in Regulation 4 below.

31. As can be seen from Regulation 4(2) considered below, the right to paid time off is so that the representative can perform those functions, and be trained in aspects of those functions as may be reasonable. In the context of this claim, the right to paid time off only arises if the representative has the statutory functions set out in Regulation 4, and he would only have those statutory functions if appointed under Regulation 3(1), and where that appointment has been notified to the employer under Regulation 3(2).

32. The appointment of a safety representative is therefore formal, and requires the steps in Regulation 3(1) and 3(2) to take place.

33. Did those steps take place so that the Claimant became the GMB safety representative covering Council wide activities? The Claimant tells us and we accept, that in or around early 2015 he was appointed by the GMB as the health and safety branch officer responsible for the GMB's Camden branch. This is the branch that covers GMB members employed by the London Borough of Camden Council for its Council wide activities. This appointment followed an election to that position within the branch.

34. The only written notification about this appointment in the bundle is on page 204(ii). The question arises whether this is sufficient as a notification by the union. The difficulty is that it was an internal email written by the Claimant himself and sent in his capacity as an employee and not on behalf of the union. We note that he did hold the position of Branch President but this was later, in December 2015. He was not Branch President when the email was sent.

35. However, both Claimant and Mr McNulty gave evidence that there was formal written communication notifying the Council of his appointment. We accept this evidence. Neither witness was referring here to the email on page 204(ii).

36. Whilst we know therefore that there was a formal written confirmation of the Claimant's appointment by the union with respect to Council wide activities which is not in the bundle, without having seen the document we might still be in some doubt about whether it was effective under Regulation 3(2). It might for example have merely been a notification that somebody in the union had been appointed to deal with health and safety matters but not to the extent of a formal safety representative.

37. But we think the Claimant's appointment must have been a formal one under Regulation 3(1), and that the notification was, on the balance of probabilities, sufficient under Regulation 3(2), because the Claimant requested that he be permitted to attend council wide health and safety

meetings not just those for his own department. This request of his was followed up by Mr McNulty, for example on 5 July 2016 [page 208(iv)] which would be consistent with his being the council wide safety representative for GMB. Also there was no other GMB council wide safety representative.

38. Accordingly, we find under this issue that the Claimant was not only safety representative for those GMB members who worked in the CATS department but also for all GMB members working for the council.

Meaning of "aspects of industrial relations" in section 168(2) of TULRA

39. We turn now to this issue. To understand this, it is necessary to go through this section as was done helpfully before us in submissions by Mr Hutcheon.

40. Section 168 is as follows:-

> **168 Time off for carrying out trade union duties**
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> (1) An employer shall permit an employee of his who is an official of an independent trade union recognised by the employer to take time off during his working hours for the purpose of carrying out any duties of his, as such an official, concerned with--
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> (a) negotiations with the employer related to or connected with matters falling within section 178(2) (collective bargaining) in relation to which the trade union is recognised by the employer, or
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> (b) the performance on behalf of employees of the employer of functions related to or connected with matters falling within that provision which the employer has agreed may be so performed by the trade union[, or
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> (c) receipt of information from the employer and consultation by the employer under section 188 (redundancies) or under the] [Transfer of Undertakings (Protection of Employment) Regulations 2006][, or
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> (d) negotiations with a view to entering into an agreement under regulation 9 of the Transfer of Undertakings (Protection of Employment) Regulations 2006 that applies to employees of the employer, or
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> (e) the performance on behalf of employees of the employer of functions related to or connected with the making of an agreement under that regulation].
>
> (2) He shall also permit such an employee to take time off during his working hours for the purpose of undergoing training in aspects of industrial relations--
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> (a) relevant to the carrying out of such duties as are mentioned in subsection (1), and
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> (b) approved by the Trades Union Congress or by the independent trade union of which he is an official.

(3) The amount of time off which an employee is to be permitted to take under this section and the purposes for which, the occasions on which and any conditions subject to which time off may be so taken are those that are reasonable in all the circumstances having regard to any relevant provisions of a Code of Practice issued by ACAS.

(4) An employee may present a complaint to an [employment tribunal] that his employer has failed to permit him to take time off as required by this section.

41. Under 168(2) the employer shall permit such an employee to take time off during his working hours for the purpose of undergoing training in aspects of industrial relations relevant to duties set out at subsection (1) and approved by the TUC. Two of the duties set out in subsection (1) refer to section 178(2) of the Act. These are the ones in paragraphs (a) and (b).

42. Looking at Section 178(2) of the Act, it lists the things that can form part of a collective agreement and which would therefore result from collective bargaining between employer's associations and trade unions:-

178 Collective agreements and collective bargaining

(1) In this Act "collective agreement" means any agreement or arrangement made by or on behalf of one or more trade unions and one or more employers or employers' associations and relating to one or more of the matters specified below; and "collective bargaining" means negotiations relating to or connected with one or more of those matters.

(2) The matters referred to above are--

(a) terms and conditions of employment, or the physical conditions in which any workers are required to work;

(b) engagement or non-engagement, or termination or suspension of employment or the duties of employment, of one or more workers;

(c) allocation of work or the duties of employment between workers or groups of workers;

(d) matters of discipline;

(e) a worker's membership or non-membership of a trade union;

(f) facilities for officials of trade unions; and

(g) machinery for negotiation or consultation, and other procedures, relating to any of the above matters, including the recognition by employers or employers' associations of the right of a trade union to represent workers in such negotiation or consultation or in the carrying out of such procedures.

(3) In this Act "recognition", in relation to a trade union, means the recognition of the union by an employer, or two or more associated employers, to any extent, for the purpose of collective bargaining; and "recognised" and other related expressions shall be construed accordingly.

43. The first of those is the terms and conditions of employment or the physical conditions in which the workers are required to work. We agree with Mr Hutcheon that the physical conditions in which any workers are required to work clearly involve questions of health and safety. We think it is expressed very widely and could encompass many aspects of health and safety.

44. Going back to Section 168, it means that a trade union official under the Act would have duties and should be given time off to do those duties and should be trained for the duties. The duties being under paragraph (a) negotiations related to or connected with matters which include the physical conditions in which any worker is required to work and under paragraph (b) duties concerned with the situation where a trade union is responsible for performing obligations under collective agreements in that respect.

45. It appears to us that the aim of section 168(2) is that the trade union official is to be trained on the functions in 168(1) in so far as reasonable during the employer's time.

46. It would be strange therefore if the words "aspects of industrial relations" in section 168(2) were restrictive in any way. If they were restrictive in any way, they could easily thwart the aim of 168(2) that we have stated above. If for example, the training was limited to industrial relations matters, this would seem to exclude training on health and safety matters, or training on matters of discipline. As we have said health and safety matters would be within the collective bargaining agreement upon which the trade union official would have to negotiate as set out in section 178(2)(d). Disciplinary matters could well be within a collective bargaining agreement as well.

47. We think it is very unlikely that the legislature having set out those duties and given a list of things that could be included in a collective bargaining agreement and requiring employers to permit training for those things, intended to restrict such training to aspects of industrial relations.

48. We take into account here that the 1992 Act was a consolidating Act and the meaning of the words "industrial relations" are not defined in the Act. We think it is quite probable that they have altered their meaning over the years as the law in this area has progressed.

49. We think therefore, since it is possible to read the words "in aspects of industrial relations" either restrictively or liberally, that we should read them liberally and not treat them as restricting the type of training in any way.

50. In the light of that conclusion, we think that what has happened here is that the Parliamentary draughtsman has added those words simply as a grammatical link between the first few words in 168(2) and subparagraphs (a) and (b), and that the legislature did not intend the words to restrict the type of training that an employer would be obliged to permit a trade union official to undergo during paid time.

Should the employer promote training for the trade union official or safety representative?

51. This is the question whether the employer has a legal obligation (as opposed to it being good management practice) actively to find a way in which an employer could attend, or a way in which it would be reasonable for an employee to attend, a training course which was relevant to the employee's trade union or safety representative duties.

52. We believe that the answer to this question will help us to understand the employer's duties under TULRA and under the Safety Reps Regs. It particularly seems relevant to the question of what time off was necessary to attend such reasonable training under regulation 4(2) of the Safety Reps Regs.

53. The need to answer this question arises in this particular case because here the Respondent did nothing to deal with the Claimant's request for paid time off for training until close to the start of the course. Then it rejected the Claimant's request. As we have found later, there was a solution to the time and cost problem thrown up by the Claimant's proposal which would have been identified had the Respondent actively investigated the available options. Because the Respondent did nothing until the last minute this solution was not known to it until later.

54. In dealing with this issue we note the words 'permit' is used in the employer's statutory obligation to give paid time off for training, both under TULRA and under the Safety Reps Regs. We note also that the Codes of Practice under both provisions envisages that the initiative for suggesting training for the employee would come from the union. Beyond that, the question is whether the employer should go further and try to find a way in which the employee would be able to attend the course which was least damaging to the employer's operations.

55. It is clearly good management practice to do that but the question is whether there is a legal obligation to do so. The Codes of Practice do not help in answering this question. We have to decide where the dividing line lies between mere good management practice and a legal obligation under the Act and under the Regulations.

56. We note that other aspects of law in this area do sometimes require discussions between employer and employee, for example in cases of retirement and flexible working. The fact that such discussions are not expressly required in the statutory provisions applying here tends to suggest there is no legal requirement to conduct them. Also the use of the word 'permit' in the statutory provisions tends to suggest the employer can take merely a passive role, and there is no duty on the employer to investigate other ways of satisfying the training need of a trade union official or safety representative under these statutory provisions.

57. Our answer to this question is therefore that an employer is entitled simply to look at the proposal put forward by the union on behalf of the employee or by the employee him or herself, and accept it or reject it as it is.

Would the course have been relevant to the Claimant's duties?

58. We turn now to this question which needs to answered both for the TULRA provisions in section 168(2) and also for the Safety Reps Regs in regulation 4(2)(b). It is put slightly differently in the two provisions. In section 168(2) the training needs to be "relevant to the carrying out of" (the duties), whereas under regulation 4(2)(b) the training would need to be "training in aspects of" (the functions). We have already decided that the Claimant had Council wide functions as a safety representative, and his functions were not limited to the CATS department.

59. We do not have a syllabus for the class based course that the Claimant wished to attend, but he told us in evidence and we accept, that the syllabus which is in the bundle on page 221 which is for the online course, was the same as the syllabus for the class based course.

60. Looking at this syllabus, we can see it is divided into three core units and five study skills units. The first core unit covered occupational health, safety and welfare and environmental problems at work. This clearly would be relevant to a trade union official's function under TULRA in collective bargaining and union performance of functions under such agreements, in connection with the physical conditions in which workers were required to work. It would also clearly be relevant to the functions of a safety representative under the Safety Reps Regs.

61. The second core unit focusing on union and management organisations covering the union role at local, national and international level in safety management and in occupational health and safety services would also be relevant to the functions under TULRA and under the Safety Reps Regs.

62. Also we think the third core unit covering the criminal and civil occupational health and safety structure would be relevant to those functions.

63. We are satisfied therefore that the course was relevant to the carrying out of the Claimant's duties mentioned in 168(1) of TULRA, and therefore that the training was within section 168(2). Further, we find that the course would have provided the Claimant with training "in aspects of (his) functions" as a safety representative under Regulation 4(2) of the Safety Reps Regs.

Whether time off should have been given under TULRA

64. We concentrate here on TULRA, because it seems to us that the tests under TULRA and under the Safety Reps Regs to determine whether paid time off should have been given are different.

65. Under TULRA the test is what paid time off it would be reasonable in all the circumstances to give the employee to undergo the training.

66. This must be an objective test, so we must take into account all the circumstances even if a circumstance was not known to the Claimant or Respondent. This is important because one of the things that was not known to either of them when the request was made was that there was an online course as well as the class based course. When the Respondent decided to refuse the request, it still did not know that there was an online version of the course. Consistent with the objective test, we approach the question of reasonableness on the basis that the online course was available.

67. As for the nature of the course and the length of time since any previous training, we consider that the training would have been of value to him and useful to him in his duties under TULRA. However good the last training was, people do need to attend courses of this type after a period of time to top-up their training, and in the area of health and safety they need to keep up with changes in law and practice. It was about three years since the Claimant's last training and we think it was reasonable and appropriate to attend further training after that length of time.

68. On the question of the costs of attending the course, it was said (and we accept) that the CATS department is a trading organisation and had its own budget and it was difficult to accommodate the Claimant's request within the budget. The cost of his attendance was going to be £3,000 (mainly on replacing him on the days that he would not be able to work as a driver) and that this used up most if not all the department's training budget. However, we think that the relevance of this issue is considerably diminished by the fact that the Claimant had a borough wide responsibility. This means that we are really looking at the borough wide finances and not the finances available to the CATS department.

69. In addition to the financial issues raised by the Respondent, there was the question of operational inconvenience and the question of consistency in drivers, which was said to be better for the service users, that is the people who were being driven in the buses. We do not think these are really very significant factors. We heard and accept that the CATS department was continuously replacing drivers from time to time as they were off sick, on leave, or unable to attend or drive for one reason or another, and there would be other drivers who would take their place. On the question of consistency, we do not think that it would really be likely to be to the detriment of the service users to have a different driver than they had on other occasions.

70. We think that one of the factors considered in the decision to refuse the Claimant paid time off for training was that the GMB union had fewer members than Unison, the other recognised union. Whilst we do take the different member levels into account, we cannot see that it can be given a

very great significance bearing in mind the legal obligations arose from the recognition of the union and GMB was a recognised union.

71. Overall therefore our view is that it would have been reasonable for the Claimant to attend the class based course and take off the 36 days as paid leave over the period of that course.

72. Had the Respondent engaged in discussions with the Claimant about his request, the fact that there was an online course available would have emerged, and again we find that it would have been reasonable for the Respondent to have given the Claimant paid time off to attend that online course.

73. In saying this we have noted paragraph 27 of the Code of Practice which says that online courses are best as an additional learning tool rather than the replacement for class based courses. We think however, that online courses have become much more sophisticated and valuable than they used to be. The comments in paragraph 27 are now some years old. We do of course take these comments into account, but we regard the online course which was available to the Claimant would not only have been relevant to his functions but a valuable resource for him to undertake.

74. Accordingly we do find that the Respondent failed to permit the Claimant to take time off to undergo training, contrary to section 168(2) of TULRA.

The question of necessity

75. Turning to the Safety Reps Regs, the test we need to apply is different. The test in regulation 4(2) is whether Respondent should have permitted paid time off as being necessary for the purpose of the Claimant's reasonable training.

76. We have already found that the training was in aspects of the Claimant's functions as a safety representative. We also find that would have been reasonable for the Claimant to have attended that training within the meaning of this in regulation 4(2). Our reasons for this finding are the same as the reasons we have given for our finding under TULRA above that it would have been reasonable for the Claimant to have been given paid time off to attend the training.

77. But now we have to decide under the Safety Reps Regs whether it was necessary for the Claimant to be given paid time off to attend that training. We have had some difficulty applying the "necessary" test to the facts of the case, whilst at the same time achieving consistency between the result under the Safety Reps Regs and under TULRA, and achieving the obvious purpose of the regulations (that safety representatives are reasonably trained during the employer's time to carry out their functions).

78. Here the Respondent's refusal of paid time off has come to the Tribunal, and the Tribunal must decide under regulation 11(1) whether the

Respondent "has failed to permit" the Claimant "to take time off in accordance with Regulation 4(2)". In applying the necessary test we need to identify (a) what paid time off was not permitted and (b) the training for which that paid time off was required. We are sure that the paid time off that was not permitted was the 36 days that was requested by the Claimant. And that the training for which that paid time off was required was the class based course, and not the online course.

79. We say this because of our funding that the Respondent had no legal obligation to deal with the request in such a collaborative or active way to try to find a different, perhaps more acceptable, solution to training that the Claimant wished to attend. Instead, the Respondent was legally entitled to deal with the request as it stood and either permit the Claimant paid time off as requested or refuse it.

80. Regulation 4(2) requires that the paid time off was necessary to attend the training. We consider that the test of what was necessary is objective in the same way as the test for reasonableness was objective under section 168(3) of TULRA. We must have regard therefore to the existence of the online version of the course despite the Respondent being unaware of its existence when it refused the Claimant's request for paid time off.

81. Since the Claimant did in fact enrol for the online course, we know how much time he has needed to do it. He actually took five days leave, and spent a further ten days of his own time to do it. This is a total of 15 days. If the Respondent had permitted the Claimant to undergo the online course the number of days we would have needed to take off could well have been less than 15 since there was some scope for doing some online work during a usual working day. It would certainly have been much less than the 36 days off work which he was asking for.

82. Therefore we say that it was not necessary for the Claimant to do the class based course; he could have done the online course instead. As we have said above, the online course would have been relevant to his functions and would have been a valuable resource. On our finding it would also have been sufficient training. So it was not necessary for him to take 36 days off to undergo reasonable training; if he had done the online course he would only have needed to take 15 days off at the most.

83. In our view therefore the claim under the Safety Reps Regs fails.

84. So the Claimant succeeds under TULRA but not under the Safety Reps Regs.

Remedies

85. What remedy should we award the Claimant? Firstly, we shall declare under section 172(1) of TULRA, that his complaint under section 168 is well-founded.

86. Then we may make an award of compensation to be paid by the Respondent to the Claimant. In that respect, section 172(2) provides:-

> (2) The amount of the compensation shall be such as the tribunal considers just and equitable in all the circumstances having regard to the employer's default in failing to permit time off to be taken by the employee and to any loss sustained by the employee which is attributable to the matters complained of.

87. The wording there means that we can take into account all the circumstances but we must take into account those two things specifically mentioned: the employer's default in failing to permit time off to be taken, and the employee's loss caused by the matters complained of. Also any award we make must be just and equitable in all the circumstances.

88. We do think it right to make a monetary award, but what we are not going to do is to award the whole 36 days which was claimed as saved by the Respondent's refusal to permit the Claimant to attend the course during paid time. We do not think it would be just and equitable to make that award because realistically, it was the online course and not the class based course that the Claimant would have attended had the Respondent been minded to give him time off for the training.

89. Instead, we are going to look at compensating the Claimant for the time that he has spent on doing the online course.

90. He has taken five days off work in order to do the online course; and there were ten extra days of his own time that he applied to the online course. A total of 15 days.

91. A claim is made for time that the Claimant spent in enforcing his rights. We think we should award this and that a fair time to allow is three days. We are not saying that this is in any way like an award of costs, instead it reflects the time and trouble that he has had to apply to enforce his rights. The award that we can make is described in wide terms as that which is just and equitable and there is no reason why the Claimant's award should be diminished by not allowing him compensation under that head.

92. The total of those days at the net daily rate of £79.70 which is an unchallenged figure comes to £1,434.60.

93. We are also asked to make another award as being a general amount which is just and equitable to reflect what happened in this case.

94. We will be making another award of that nature. We wish to show our disapproval of the way the Respondent handled the Claimant's request for paid time off for training. It was not good management practice to fail to deal with the request or to discuss it with the Claimant and then to refuse it so close to the beginning of the course. We also disapprove of the way in which the grievance was dealt with. There was no attempt to review the

decision about time off to attend the course, despite the fact that it would have been an ideal opportunity to do so.

95. We also take into account the way the Claimant approached the matter. We do not think he did all that he could or should have done. Having made his request for paid time off he did not chase it up until the last minute. If he had chased it up earlier some negotiations could have been entered into. For example he did not ask for a meeting with the head of department to discuss the issue and explain his position. Nor did he propose any other arrangement which might have been more acceptable to the department in the light of the department's obvious tight budget.

96. In all the circumstances therefore, taking everything into account, we think its fair to top up the amount that we have already calculated to £2,500 and we will make an award of reimbursement of the Tribunal fee of £390.

Employment Judge Gordon

24 July 2017