

**UNJUSTIFIABLE DISCIPLINE BY A
TRADE UNION**

Guidance

2006

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Introduction

Union members have the right not to be unjustifiably disciplined by their union. This right applies in addition to any other legal right a member disciplined by his union might have. It gives members freedom to make up their own minds whether or not to support industrial action, and provides protection for members who seek to ensure that their union obeys the law.

This document describes what is meant by discipline, when discipline is unjustifiable, and how a complaint of unjustifiable discipline can be made to an employment tribunal.

This document provides general guidance only. Authoritative interpretations of the law can only be given by the courts.

The contents of this document apply equally to men and women. For simplicity, however, the masculine pronoun is used throughout.

Section 1: What is meant by discipline?

An individual has been disciplined by a union where one or more of the following penalties has been imposed on him:

- expulsion from the union or from any branch or section of it; or
- payment of a sum of money (for example, as a fine) to the union, any branch or section of it, or to any other person; or
- treatment of his union subscriptions, or any other payment he has made to the union or any branch or section of it, as unpaid or paid for a different purpose (e.g. to pay a fine); or
- deprivation (even if only temporarily or in limited circumstances) of any benefits, services or facilities which would otherwise be available to him as a member.

An individual will also have been disciplined if:

- another trade union, branch or section, is encouraged or advised not to accept him as a member; or
- he is subjected or any other detriment or disadvantage not listed above.

An individual is treated as having been disciplined by a union not only where the decision to impose the penalty was made or purported to be made under union rules but also where it was made:

- by an official of the union (for example, a member of the executive, a trustee, or an elected shop steward); or
- by a group which includes an official of the union.

Section 2: When is discipline unjustifiable?

Not all union discipline is unjustifiable. What matters is the **conduct** for which the individual is disciplined.

The discipline will be unjustifiable only if the reason, or one of the reasons, for which it is imposed is conduct described in sections A to C below, or something that the union believes to be such conduct.

A - Strike or other industrial action

Discipline will be unjustifiable if it is for:

- failing to take part in or support **any** strike or other industrial action;
- showing opposition to, or lack of support for, **any** strike or other industrial action;
- failing to break, for any purpose connected with a strike or other industrial action, any obligation imposed by a contract of employment or by any other agreement between the individual and the person for whom he works;
- encouraging or assisting another person to honour his contract of employment or other agreement with his employer.

The most common examples of conduct for which individuals are protected against unjustifiable discipline are:

- going to work despite a call to take strike or other industrial action (the individual is protected whether or not there has been a ballot and whatever its outcome);
- crossing a picket line, including one mounted by the individual's own union at his own place of work;
- speaking out against a call to take strike or other industrial action;
- refusing to pay a levy to fund a strike or other industrial action, including one described as compulsory, or imposed under union rules.

B - Assertions

Discipline will be unjustifiable if it is for:

- making an assertion that the union, any of its officials, any trustee, or anyone else representing the union has broken or is proposing to break any requirement imposed, or thought to be imposed, by the union's rules, by any other agreement or by the law;

- encouraging or assisting another person to make, defend or vindicate an assertion of the kind just described;
- consulting or seeking advice or assistance from the Certification Officer;
- consulting or seeking advice or assistance from any other person in connection with a matter which forms, or might form, the subject matter of an assertion of the type described in this section.

The protection for making an assertion about a breach of union rules or of the law applies whether or **not** it has been made in the context of legal proceedings. Individuals will be protected against unjustifiable discipline, therefore, if an assertion is made, for example, during a union meeting or in a letter. Discipline will not be unjustifiable, however, if the assertion was false and the individual making it, or helping another to do so, believed the assertion to be false or otherwise acted in bad faith.

C - Further conduct for which discipline is unjustifiable

The remaining grounds on which union discipline is unjustifiable are:

- refusing to comply with any penalty which has been imposed following disciplinary action which was itself unjustifiable;
- refusing to allow union subscriptions to be paid through the check-off;
- proposing to resign from the union, or joining or refusing to join or resigning from a different union;
- working or proposing to work with people who are not members of the union or who are or are not members of a different union;
- working or proposing to work for an employer who employs (or has employed) people who are not members of the union or who are or are not members of a different union;
- requiring the union to do anything which under employment legislation, it is obliged to do on the request of a member;
- proposing to do any of the things listed in sections A, B or C, or doing anything preparatory or incidental to doing any of those things.

Individuals will, therefore, be protected against further unjustifiable discipline if, for example, they refuse to pay a fine imposed on them for working during a strike. Also, any discipline for proposing, for example, to go to work during a dispute or to give evidence in good faith to help someone else defend an assertion will be unjustifiable.

Conduct which is partly protected and partly unprotected

Disciplinary action may not, however, be unjustifiable if it is for unprotected conduct which formed a part of conduct described above (and which therefore counts as protected). If the union can distinguish between the two parts and show that individuals would be disciplined for the unprotected part whether or not it took place in connection with the protected conduct, then discipline for the unprotected conduct will not be unjustifiable.

For example, a member who made an assertion in good faith that a union had broken its own rules would be protected against unjustifiable discipline, because that is conduct listed above. However, if he made his assertion in a way not permitted by those rules - for example by acting in a disruptive way at a union meeting - and the union could show that individuals who acted in that way were always disciplined, then disciplinary action for disruptiveness would not be unjustifiable.

Disciplinary action for making the assertion itself, however, would be unjustifiable, even if members had previously always been disciplined for making assertions.

Section 3: Making a complaint

How can a complaint be made?

An individual who believes he has been unjustifiably disciplined by a trade union may make a complaint to an employment tribunal. This should be done within three months of the union's disciplinary decision. Tribunals have discretion to extend this period only where:

- they consider it was not reasonably practicable for the complaint to be presented within three months, or
- any delay was due to a reasonable attempt by the individual to appeal against the decision or to have it reconsidered by the union:

An application form IT1, or in Scotland IT1 (Scot), should be used. These, and an explanatory leaflet, *How to apply to an employment tribunal*, can be obtained from Jobcentre Plus offices. The applicant should send the completed form to the appropriate Tribunal Office (the application form tells you which this is).

What happens next?

Conciliation

A copy of the application form is sent to the Advisory, Conciliation and Arbitration Service (ACAS). An Acas conciliator will attempt to assist the parties to reach a voluntary settlement without the need for a tribunal hearing if the parties concerned ask him to do so or if he thinks that there is a reasonable chance of success. Conciliators can also assist, at the request of any of the parties concerned, before a formal complaint has been made to a tribunal.

Tribunal hearing

A union may have procedures for settling complaints made by members. Where such procedures exist, individuals may wish to make use of them, and an employment tribunal can extend the time limit for making an application where such procedures have been used.

Voluntary procedures

If a voluntary settlement is not reached, or the application is not withdrawn, the member's complaint of unjustifiable discipline will be heard by the employment tribunal. The tribunal will then decide whether the disciplinary action has infringed the right of the member not to be unjustifiably disciplined.

If the tribunal finds the complaint of unjustifiable discipline well-founded it will make a declaration to that effect.

This may be sufficient remedy in itself, particularly if the union withdraws the disciplinary action. The individual has the right, however, to make an application for compensation to be paid by the union and/or for an order that

the union pay to him the amount of any fine which he has paid but not had refunded.

An application for compensation or for an order should be made to an Employment tribunal.

The application will only be considered if it is made more than four weeks but less than six months after the date of the tribunal's declaration that disciplinary action was unjustifiable.

How much compensation can be paid?

The tribunal will award whatever compensation it considers just and equitable in all the circumstances. Factors taken into account will include, where appropriate, the individual's duty to reduce any financial loss, and whether or not his conduct contributed to the disciplinary action. The current **maximum** amount of compensation which may be awarded is £65,200. Additionally, the amount of compensation payable will be not less than £6,100 where, on the date that the application was made to the Employment Tribunal, the determination infringing the applicant's right not to be unjustifiably disciplined has not been revoked or where the union has failed to take all the steps necessary for securing the reversal of anything done for the purpose of giving effect to the determination. These figures are revised annually in line with the retail prices index.

Appeals

An appeal can be made to the EAT on any question of law arising from an employment tribunal's decision or the proceedings before it.

What if the discipline in question takes the form of expulsion from the union?

In addition to the right not to be unjustifiably disciplined, individuals have the right not to be excluded or expelled from a union for permitted reasons defined in law, for example on grounds of geographical or occupational limits on recruitment and conduct - but not the conduct described in this document for which discipline would be unjustifiable. An individual who is expelled from the union for any other reason may bring a complaint to an employment tribunal, and may be awarded compensation.

An individual who is expelled from his union for conduct described in this document may therefore have two rights of complaint: one under the law relating to unjustifiable discipline, and one under the law on exclusion or expulsion from a trade union. In this situation, the individual may make two separate complaints to the employment tribunal, but if one of those complaints is declared to be well-founded, he will not be able to proceed with the second.

Further information about the right not to be excluded or expelled from a trade union may be found in the document Union membership: rights of members and non-members.

