Case No: 1305973/2020

EMPLOYMENT TRIBUNALS

Claimant: Mr D Morgan

Respondent: Morrison Data Services Ltd

Heard at: Birmingham (by CVP) **On:** 14 and 15 January 2021 and 2 February 2021 in chambers

Before: Employment Judge Miller
Ms S Fritz
Ms J Malatesta

Representation
Claimant: Mr G Pollitt (Counsel)
Respondent: Mr D Wynn (Employment Relations Specialist)

RESERVED JUDGMENT

1. The claimant's complaint under section 168 Trade Union and Labour Relations (Consolidation) Act 1992 that he was entitled to paid time off to attend a two week Health and Safety course is well founded and succeeds.

2. The respondent is ordered to pay the claimant the sum of £1173.43

REASONS

Introduction

3. The claimant is employed by the respondent as a Special Meter Inspector. This means that he reads utility meters. The respondent is a utility data service for the energy and water sectors which, we understand, means that it provides, amongst other things, meter reading services to utility companies.

4. The claimant's claim is that he is an Officer of the GMB union which is an independent Trade Union recognised by the respondent and that in February 2020 he made a request for paid time off to attend training connected with his union duties and that request was refused.

5. The claimant started early conciliation on 23 March 2020 and that was completed on 2 April 2020. He submitted his claim on 27 May 2020.

6. The respondent says that the claimant was not entitled to paid time off because the training was not related to something that was part of the claimant's duties as a Trade Union official.

The hearing

7. The hearing was heard before a full panel and, because of the ongoing Covid-19 pandemic, it was conducted remotely by video using CVP.

8. There was an agreed bundle of documents and some further documents produced by the claimant which we admitted as evidence for reasons given at the time. The respondent also produced additional documents in response to the production of the additional documents by the claimant which were also admitted.

9. The claimant produced a witness statement and gave evidence. Ms Claire Bishop, the respondent's Director of Human Resources, also produced a witness statement and gave evidence. As a result of the late production of email correspondence between the claimant and Mr Stephen Quinlan, the respondent's Head of Health and Safety, Mr Quinlan also produced a witness statement and attended to give evidence on the second day. We record our thanks to the respondent, Mr Wynn and Mr Quinlan for facilitating Mr Quinlan's evidence at such short notice.

The issues

10. The parties agreed at the outset that the issues to be decided in this case were those arising under section 168 of the Trade Union and Labour Relations (Consolidation) Act 1992. Mr Pollitt had produced a list of issues with which Mr Wynn agreed. We reproduce them here:

11. Was the Claimant at the material time an official of an independent trade union recognised by the Respondent?

12. Did the Claimant make a request to take time off during his working hours for the purposes of undergoing training in aspects of industrial relations?

13. If so was the training:

    13.1. relevant to the carrying out the Claimant's trade union duties, and

13.2. approved by the Trades Union Congress or by the independent trade union of which he is an official?

14. Did the Respondent refuse the Claimant's request for time off?

15. If so, was the refusal 'reasonable in all the circumstances' taking into account:

    15.1. The reasons given by the Respondent at the time
    15.2. The amount of time off requested
    15.3. The relevance of the training
    15.4. Having regard to any relevant provisions of a Code of Practice issued by ACAS.

16. If the Claimant's rights were infringed what remedy is he entitled to?

Findings

17. We have only made such findings of fact as are necessary for us to determine the issues in this case. Where a fact is disputed, we have made our decision on the balance of probabilities.

Facts that were agreed or not disputed

18. The claimant is a member of the GMB union. He is also a Work Place Organiser for the GMB. The GMB is an independent Trade Union and it is recognised by the respondent.

19. In February 2020, the claimant made a request to his line manager to be allowed paid time off to attend a two week Health and Safety Training Course. The dates of that course were one week commencing 24 February 2020 and one week commencing 18 May 2020.

20. The claimant's line manager directed the claimant to make his request to HR. On 17 February 2020 the claimant sent an email to Ms Bishop in which he requested "Paid Release in accordance with the Company/Trade Union Facilities Agreement" for "a GMB 10 Day H&S Training Course. Week 1 commencing 24th February 2020 and Week 2 commencing 18th May 2020".

21. Ms Bishop refused the request for paid time off in an email dated 18 February 2020.

Other findings

The claimant's role

22. In addition to the claimant's role of Work Place Organiser (WPO) as recognised by the respondent, the claimant also identified himself as the Chair for Work Place Organisers nationally. The claimant's email signature also included the title of "GMB Health and Safety Representative" and in response to a question from Mr Wynn, the claimant confirmed that he held the role of Health and Safety representative. He also said that he was an elected member of the respondent's National Staff Council (NSC), which comprised of representatives for management and the recognised trade unions, elected by the GMB.

23. It was agreed that the respondent did not recognise the claimant as a health and safety representative – if he held this position it was only from the GMB's perspective. In submissions, Mr Pollitt said that the question is whether the Health and Safety training in question was relevant to the claimant's role as WPO. As this was the basis on which the claimant's case was put, we do not need to consider whether the claimant was a health and safety representative for the Union or what that involved.

24. It was not agreed that the claimant had a position on the NSC. There had been an election and the claimant was elected to a position by the Trade Union members but too many union representatives had been elected. In any event, it was clear from the email trail about this that we saw (and which was admitted late) that in fact the election had not taken place until June 2020. This was after the period in question. It was therefore conceded by the claimant that at the relevant time, being February 2020, the claimant was not elected to the NSC.

25. The only relevant role, therefore, that the claimant had was that of Work Place Organiser. The claimant described his role in his witness statement as including:

    25.1. Representing members at disciplinary, grievance and capability hearings and appeals
    25.2. Substitute with the elected representative to attend the National Staff Council
    25.3. Liaise with Mr Steve Quinlan, the respondent's health and safety manager
    25.4. Conduct Health and Safety audits and report issues to the HSE
    25.5. Receive reports and referrals from members who have an accident at work and take steps to ensure Health and Safety polices and regulations are adhered to.

26. It was agreed that the claimant's WPO role included representing members in hearings and appeals.

27. In respect of substituting for attendance on the respondent's NSC, the claimant said that he attended in February 2019 as a substitute for another member. The respondent said that this was in error – the claimant was not

the right person to substitute for the absent person on that occasion because he did not have the same terms and conditions of employment. Nonetheless, Ms Bishop agreed that there is a right of substitution and it is clear that claimant did attend that meeting as a Trade Union representative. The minutes of the meeting (which were also produced during the hearing) indicate that in the broadest sense health and safety matters are discussed at those meetings.

28. There was an email discussion between the claimant and Mr Quinlan dated 10 April 2019 that the claimant relied on to show that he had health and safety functions and regular discussions with Mr Quinlan about Health and Safety matters. It is not necessary to set out the whole of that email, but Mr Qinlan says

    "I also note and accept that GMB TU Representatives are also Accredited Workplace Health, Safety & Welfare Representatives and this along with their experience would deem them competent in accordance with the Health & Safety at Work Act 1974 and the Management of Health & Safety at Work regulations 1999. With this in mind I look forward to working with you and your colleagues to improve H&S across the business over the next year".

29. In his witness statement, Mr Quinlan said

    "The Claimant stated in his email that all GMB TU Representatives are also accredited Workplace Health, Safety & Welfare Representatives and are classed as competent people in accordance with the Health & Safety legislation. I acknowledged this in my response as I assumed it to be true as it had been stated in a factual manner. As I understood it, Workplace Trade Union Representatives receive some form of training covering many areas of employment law. While I may have acknowledged the Claimant was competent I was not acknowledging how the Claimant is recognised for the purposes of Workplace Health, Safety and Welfare by the Respondent".

30. In cross examination Mr Quinlan also confirmed that he would communicate with the claimant about health and safety matters, although he said that he would encourage employees to raise matters that affect them directly or through the health and safety representative.

31. We find that the claimant did liaise with Mr Quinlan about Health and Safety matters and that this was an accepted part of the claimant's role.

32. In respect of the last two stated roles, we wholly accept the claimant's evidence that it is part of his role as a Trade Union representative to conduct Health and Safety Audits of his own volition and that he would accept reports and referrals from member show have an accident at work. In the tribunal's experience, seeking to ensure that the workplace is safe is an inherent part of the role of a Trade Union representative.

33. We also find that the claimant might substitute as an attendee at the NSC and this could involve discussion of, amongst other things, health and safety matters.

34. We find therefore, that having a good, up to date and working knowledge of Health and Safety law and practice is an inherent part of the claimant's role as a WPO.

The facilities agreements

35. There were, in the bundle, two versions of an Agreement on Trade Union Recognition and Facilities. The first was dated 11 November 1996 and was between AccuRead Ltd, one of the claimant's predecessor employers (the claimant's employment having transferred a number of times), and Unison, GMB/Apex and TGWU unions. The agreement is what it appears to be, an agreement about trade union time off and facilities between the respondent and its recognised trade unions.

36. The second was dated 29 March 2001 and was between AccuRead Ltd and Unison and GMB/Apex only. The respondent disputed that the second agreement was in force. The claimant said that it was provided to him under a subject access request by the respondent. There is some difference between the two agreements aside from the removal of the TGWU. It seems likely to us that the second agreement was a draft that was not agreed but in the event the claimant was prepared to accept for the purposes of the matters to be decided at this hearing that the first Agreement was in force. We therefore refer only to the earlier agreement.

37. The relevant provision of the agreement provide as follows:

"2.3 The Trade Unions listed in 2.1 above will be recognised as being able to represent their members on a full collective and individual basis in respect of the following:-

i) Grievance and Discipline ii) Health and Safety Matters iii) Any statutory rights to consultation iv) Collective bargaining on the contractual terms and conditions relating to the eligible employees in 2.2 above.
v) Consultation on other employee related issues ~ eg. training

2.4 The appointment of trade union representatives is the responsibility of the recognised trade unions. It is in the interests of both AccuRead and the trade unions that sufficient employees are appointed as trade union representatives to ensure that the collective bargaining arrangements can operate affectively. However, AccuRead will wish to satisfy itself that unreasonably large numbers of representatives are not appointed.

2. 5 The trade unions will advise the Human Resources Department of the names of their accredited representatives, the premises at which they have been appointed and the groups of staff they represent. Any changes will be similarly advised. AccuRead will advise the trade unions of the names of the local managers responsible for groups of staff, so that they know who to approach.

2.6 AccuRead and the trade unions will agree the training requirements for representatives who are involved in the work of the agreed joint machinery.

2.7 It is recognised that the trade unions will be responsible for the wider training requirements which their representatives need to develop the skills and knowledge they need to become fully effective.

2.8 Appropriate facilities and time off will be granted for the training needs referred to in paragraphs 2.6 and 2.7.

…

3.1 Subject to operational needs, paid time-off in working hours will be granted to accredited trade union representatives for duties concerned with the conduct of industrial relations within AccuRead; this will not extend to activities associated with or in contemplation of industrial action. Some examples of duties which will be granted paid time off, are given below. although it is recognised that this is not an exhaustive list:
…

3.1.7 Handling AccuRead specific grievances, disciplinary matters and appeals in their capacity as representatives of employees;

3.1.8 Attendance at training courses as referred to in Section 2 above"

38. In our view, these provisions are clear. It is for the union to appoint representatives – and Ms Bishop agreed with this. Paragraphs 2.6 and 2.7 provide for two different sorts of training. 2.6 relates to training on the joint machinery. Mr Morgan thought this related to training on the respondent's machinery, whereas Ms Bishop said it related to the collective consultation and bargaining infrastructure. We prefer Ms Bishop's evidence on this point. It makes sense in the context and both parties have an interest in ensuring all representatives are properly trained in matters of industrial relations.

39. Paragraph 2.7, in our view, refers to training for trade union representatives to ensure that they become fully effective trade union representatives. The identification of such training is the responsibility of the Union and the respondent is not required to consent to it.

40. Paragraph 2.8 provides that appropriate time of will be granted for the training in both 26 and 2.7 and 3.1 and 3.1.8 together provide that PAID time off will be granted to accredited trade union representatives for duties concerned with the conduct of industrial relations within AccuRead. Although this seems slightly circular, in our view this means that paid time off will be granted for attendance at training in 2.6 or for training in 2.7 where that training relates to the conduct of industrial relations. This, of course, will be specific to each circumstance and ties in with the relevant statutory provisions.

The training

41. We find that the claimant attended part 1 of the Health and Safety training course in 2018. Further we find that, on the balance of probabilities, the claimant was paid for that time off. The claimant gave evidence to that effect in his witness statement. The respondent did not provide any evidence one way or the other and, in fact, did not seem to know. We prefer the claimant's evidence on this point.

42. It follows, therefore, that on the balance of probabilities in 2018 the respondent approved the claimant's request for paid time off to attend part 1 of the Health and Safety training course.

43. It is agreed that the claimant made a request to Ms Bishop for paid time off to attend Part 2 of the Health and Safety training course on 17 February 2020.

44. We were not given any information about the content of the course by either party. In his witness statement, Mr Morgan says

    "24. I had attended the GMB accredited course for WPO's / union officials Health and Safety Part 1" sometime between 2013 – 2017. I had received accreditation for part 1, it had been a 10 day course and my attendance had been authorised and I had received paid leave upon the basis that I was undertaking union activities.

    25. Once you have the Part 1 accreditation it does not lapse, but it is preferable that in time you will obtain the Part 2 accreditation. It is expected that WPO's will have relevant knowledge and expertise in H&S matters; if there are members who want advice on any H&S issue in the workplace they would go to the accredited WPO's. I can recall that I myself had an accident at work and as I felt it would not be appropriate to investigate the circumstances myself and so one of the other WPO's did the investigation (Christopher Berry)".

45. Mr Morgan's clear evidence is that this course was necessary to his role as a WPO as it related to Health and Safety matters. It was put to Mr Morgan that while he wanted to complete Part 2, it was not essential to his role. He

had acted as a WPO both before and since the dates of the training that he did not attend. It was therefore not essential for him to attend the training.

46. Mr Morgan said that, having done part 1, it was in fact essential to do part 2. He had been recommended by the union and the college to complete the course.

47. We cannot say whether the course was essential as we have seen no evidence as to what the course contained. However, we do find that, on the basis of the claimant's witness evidence, the course was related to Health and Safety matters. We further find that the course was approved by the Claimant's trade union. The claimant says that he was invited onto the course by the GMB and this was not challenged. The GMB would pay for the course and accommodation.

48. We therefore find that the course was approved by the GMB and was relevant to the claimant's role in the Union.

The reason for the refusal

49. It is agreed that the claimant's request for paid time off to attend part 2 of the Health and safety training course was refused. In her email of 14 February 2020 to Mick Rix, a national officer for GMB, Ms Bishop says:

 "We've received a request from David Morgan for 2 weeks paid leave to attend a H&S Stage 2 course. Given the length of the course, our operational requirements and the ongoing conversations around facilities time, we can't agree paid release on this occasion.

 Of course, if David would like to take annual leave (if available) to cover this, or unpaid leave we could potentially review this as an option. As you know, we've been discussing facilities as a whole and this type of request should be covered by this (alongside understanding how many reps are trained in what area etc). In addition I think we have a reasonably high level of engagement with the H&S NSC of which the GMB has representation.

 Happy to discuss this if you would prefer or if you could let me know that you are comfortable that we confirm this directly with David".

50. There was no reply or further discussion so Ms Bishop wrote directly to the claimant:

 "Given the length of the course and our operational requirements we can't agree paid release on this occasion.

 I have already informed the National officer of this".

51. In her witness statement, Ms Bishop said:

"The Claimant is neither an elected member of the Respondent's National Staff Council or Health & Safety committee and therefore plays no part in the review, facilitation or management of the Company's Health & Safety agenda. This fact had also been made clear to Matthew Roberts (GMB Organiser) in my email correspondence to him on 21st February 2020 [6667]. Any other position that the Claimant may hold with the GMB Union is between the Claimant and the Trade Union. The Respondent recognises the Claimant as a Workplace Trade Union Representative (Organiser) only.
…
As previously mentioned the Claimant is not an elected member of the NSC or form part of the Respondent's Health & Safety Committee. I found the training course not to be within the Claimant's recognised Trade Union duties. I found the Claimant's request for 2 weeks paid time off unreasonable. The Claimant was offered the opportunity to take unpaid leave or to use any accrued annual leave should he wish to attend a nonwork related training course. I believe this was not taken up by the Claimant".

52. The claimant's evidence was that he was on a phased return in February 2020 due to an injury. Ms Bishop confirmed that she did not know this. Ms Bishop also confirmed that she had made no enquires about operational pressures in the claimant's work area at the time the course was planned. She said she expected Mick Rix would come back to her if he was unhappy with the decision.

53. In cross examination she said "In reality it was not just about operational requirements, the reality was around the course not being relevant to the claimant's heath and safety role at that time". Ms Bishop also said that she does speak to her colleague about operational requirements and the short notice was not acceptable either.

54. However, none of this was communicated to the claimant and there was very little detail about either the operational requirements or any conversations Ms Bishop might have had in her witness evidence.

55. In light of this, we do not accept that Ms Bishop refused the claimant's application for operational reasons. She clearly had no knowledge of whether the claimant's absence would cause operational difficulties as she had not checked about him specifically. Further, she was unaware that the claimant was absent from work at least part of the time on a phased return.

56. We find that the reason that Ms Bishop turned down the claimant's request was solely because he was not a member of the NSC or the Health and Safety committee. She clearly did not give any consideration at all to the claimant's role as a WPO.

57. Further, we find that Ms Bishop was aware that the claimant had a role as a WPO and that this role was recognised by the respondent.

58. We note that it was reasonable in principle to distinguish between paid time off and unpaid leave or taking holiday. There is a clear difference between using allocated annual leave or taking unpaid time of which would not incur the respondent in any additional costs and short notice paid time off which is both unforeseen (and unplanned for) and which is likely to incur additional cost. However, in our view these were not actually factors that Ms Bishop fully or properly took into account. The overriding reason for her decision was that she considered that the course was not relevant to the claimant's role.

The law

59. Section 168 of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULR(C)A) says (as far as is relevant):

168 Time off for carrying out trade union duties

(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—
(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
(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 (c)…
(d) …
(e)...
(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—
(a) relevant to the carrying out of such duties as are mentioned in subsection (1), and
(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.

60. The matters referred to in section 178(2) 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.

61. Official is defined in section 119 TULR(C)A as

"official" means—

(a) an officer of the union or of a branch or section of the union, or (b) a person elected or appointed in accordance with the rules of the union to be a representative of its members or of some of them, and includes a person so elected or appointed who is an employee of the same employer as the members or one or more of the members whom he is to represent

62. Section 187(3) TULR(C)A provides that

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.

63. S 5 TULR(C)A provides that an independent trade union is one which

(a) is not under the domination or control of an employer or group of employers or of one or more employers' associations, and
(b) is not liable to interference by an employer or any such group or association (arising out of the provision of financial or material support or by any other means whatsoever) tending towards such control; and references to "independence", in relation to a trade union, shall be construed accordingly.

64. Section 172 TULR(C)A 1992 provides
    Remedies

    (1) Where the tribunal finds a complaint under section 168[, 168A] or 170 is well-founded, it shall make a declaration to that effect and may make an award of compensation to be paid by the employer to the employee.

    (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.

    (3) Where on a complaint under section 169 the tribunal finds that the employer has failed to pay the employee in accordance with that section, it shall order him to pay the amount which it finds to be due.

65. We were also referred to the following cases:

66. In *Wignall v British Gas Corp* [1984] IRLR 493 the Employment Appeal Tribunal confirmed that the test of whether the time off requested is reasonable in all the circumstances (in now section 168(3)) is an objective test. Further, it requires, as the subsection suggests, that the Tribunal considers all the circumstances in deciding what is reasonable.

67. In *Skiggs v South West Trains Ltd* [2005] IRLR 459, the Employment Appeal Tribunal said, in relation to the remedies open to the Tribunal in a claim under section 168 TULR(C)A 1992:

    “In our judgment, tribunals can properly consider whether it is just and equitable to make some reasonable and proportionate award by way of reparation to the individual union official for the wrong done to him by the employer in preventing or impeding his proper union activities on behalf of his members, without infringing the principle that the purpose must be compensation to the individual, not the imposition of any form of fine or collective punishment on the employer. The amount, if any, of such compensation that is to be considered just and equitable in any individual case is something Parliament has deliberately left to the good sense and judgment of the employment tribunal hearing the evidence and taking account of all the circumstances, and we do not think it wise or appropriate to attempt to lay down a priori rules beyond the basic principle we have just sought to outline”.

68. The key disputed issues are whether the training was relevant to the matters listed in section 168(1) and whether the amount of time off which an employee is to be permitted to take under section 168 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.

69. We must therefore consider whether the training course was relevant to one of the matters referred to subsection (1)(a); whether the GMB was recognised in respect of that or those matters and whether the circumstances of the training and the request for time off were objectively reasonable in al the circumstances.

70. Part 2 of the ACAS Code of practice – Time off for trade union activities refers to paid time off for union duties. There is, however, very little in the Code that is relevant to the particular circumstances of this case and we were not referred to any particular provisions.

71. We do note that paragraph 11 of the Code says: “An independent trade union is recognised by an employer when it is recognised to any extent for the purposes of collective bargaining. Where a trade union is not so recognised by an employer, employees have no statutory right to time off to undertake any duties except that of accompanying a worker at a disciplinary or grievance hearing”.

Conclusions

72. It was not disputed that the GMB is an independent Trade Union.

73. It is clear from the terms of the Agreement on Trade Union Recognition and Facilities that the GMB was recognised by the Respondent at the relevant time and, further, it is clear from paragraph 2.3 of the Facilities agreement referred to in paragraph 35 above that the GMB is recognised in respect of Health and Safety matters.

74. It was not controversial that the claimant is a trade union official and we have found that his role as a WPO included matters relating to health and safety.

75. In our judgement, the health and safety matters referred to by the claimant that fell within his role as a WPO are matters falling within section 168(1)(b) in that they relate to the performance of matters falling within subsection (2)(a) of section 178 of TULR(C)A 1992. Health and safety concerns and inspections are obviously an inherent part of the physical environment in which employees work.

76. It follows, therefore, that training on Health and Safety is training relevant to the claimant’s duties in accordance with section 168 (2)(a). We have also found that the training was approved by the GMB in that he was invited on it by them and the GMB is the trade union of which the claimant is an official.

77. In respect of subsection (3) of section 168, in our view it was reasonable to allow the claimant two weeks off over two sperate periods in all the circumstances. The evidence to show that it is not reasonable is held solely by the respondent. They know, or ought to know, how much work pressure the claimant's team would be under, the financial constraints and the availability of cover. The respondent produced no evidence to show that it was not reasonable for the claimant to go on this training. While acknowledging the difference between paid time off, unpaid time off and leave, the reality is that the claimant was not by that stage at work full time in any event. It is clear that the real reason the claimant was refused time off was because Ms Bishop did not consider that the training was relevant to his role and that was set against back drop of ongoing negotiations with the union about facilities and time off.

78. Having found that the training was relevant to the claimant's trade union role, the respondent has offered no convincing reason as to why the claimant's paid absence would cause problems and, for that reason, we conclude that in fact the amount of time off and the circumstances of the course (being over two, separated, weeks) were entirely reasonable for the claimant to take. We rely also, in this respect, on our finding that the claimant was allowed paid time of for part 1 of the course and that part 2 was recommended by the Trade Union.

79. In the absence of any evidence to the contrary, we consider that it was reasonable for the claimant to attend this training in the particular circumstances.

80. For these reasons, the claimant's claim that his employer has failed to permit him time of under section 168 TULR(C)A 1992 is successful.

81. We observe that this decision does not set a precedent that all WPO's working for the respondent will always be entitled to paid time off of two weeks for a health and safety course. What is reasonable depends on all the circumstances and this is likely to change from person to person or even over time.

82. In terms of remedy, we have had regard to the guidance in *Skiggs* above. We have considered other non-pecuniary provisions. There is no suggestion that the claimant has experienced any injury to feelings. Mr Pollitt was of the opinion that an award should be in the region of a few hundreds, to a thousand pounds.

83. In our view, the failure to comply with a statutory requirement is broadly analogous to a failure to provide a statement of main terms of employment under s39 Employment Act 2002. It is an important right that is deserving of serous recognition, but in fact the claimant has experienced no losses. In

that respect, it is not of the character of a protective award which does recognise a period when an employee is without earnings they might otherwise have had.

84. In our judgement, an award of three weeks' pay is appropriate.

85. The claimant's gross pay is £1708 per month so that his gross weekly pay is £391.15.

86. We therefore make an award of £1,173.43.

87. We also make the following declaration: that the claimant's complaint under section 168 Trade Union and Labour Relations (Consolidation) Act 1992 that he was entitled to paid time off to attend a two week Health and Safety course is well founded.

Employment Judge Miller

3 February 2021

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON
9 February 2021

FOR EMPLOYMENT TRIBUNALS