EMPLOYMENT TRIBUNALS

Claimant: **Mr S Buparai**
Respondent:
Secretary of State for Justice

FINAL HEARING

Heard at London South: by CVP **On:** **13 and 14 June 2024**

Before: **Employment Judge Truscott KC**
Mr M Taj
Mr T Okitikpi

Appearances:

For the Claimant: **Ms S David barrister**
For the Respondent: **Ms M Tutin barrister**

JUDGMENT

1. The unanimous judgment of the Tribunal is that the claim for a declaration in respect of failure to comply with section 170 of TULCRA 1992 is well founded.
2. The claimant is not entitled to any financial compensation.
3. The claim under section 168 of TULCRA 1992 is dismissed.
4. The claimant did not suffer a detriment on account of being a trade union member.

REASONS

Preliminary

1. The claimant alleges that on 6 July 2023 he requested time off for a Branch Quarterly Meeting ("BQM") for the purpose of carrying out his trade union duties. That request was rejected by Mr Paul Golder, Deputy Governor of Belmarsh, who granted him use of the prison chapel but asked that the BQM was held during the unpaid lunch break.

2. The respondent has accepted that, on this occasion, it did not permit the claimant to take unpaid time off during his working hours for the purpose of taking part in trade union activities by way of the proposed BQM, in breach of section 170 TULRCA. This is the basis for the declaration.

3. The Tribunal heard evidence from the claimant, Mr Paul Golder and Mr F Stuart Head of Employee Relations for the respondent.

4. There was a bundle of documents to which reference will be made where necessary.

Issues

Liability: s.168 TULRCA 1992

1. On 6 July 2023, did the Claimant request time off during working hours for the purpose of carrying out any duties of his, as a POA representative, concerned with:
   (a) Negotiations with the employer related to or connected with matters falling within s.178(2) TULRCA and in respect of which the POA was recognised by HMPPS (the Claimant relies upon the matters set out at paragraphs 13-21 of his witness statement); and/or
   (b) The performance on behalf of HMPPS employees of functions related to or connected with the matters falling within s.178(2) TULRCA and which HMPPS has agreed may be performed by the POA (the Claimant relies upon the matter set out at paragraph 19 of his witness statement).

2. If so, was the (i) amount of, (ii) purposes for which, (ii) occasions on which and (iv) any conditions subject to which time off may be taken reasonable in all the circumstances? The Tribunal should have regard to any relevant provisions of the Acas Code of Practice on time off for trade union duties and activities.

3. If so, did HMPPS refuse to permit any such reasonable request made by the Claimant?

Remedy: ss.168 and/or 170 TULRCA 1992

4. Should the Tribunal exercise its discretion to make an award of compensation in respect of any breach of ss.168 and/or s.170 TULRCA 1992? If so, what sum is just and equitable in all the circumstances, having regard to any default by HMPPS in failing to permit time off to be taken and any loss sustained by the Claimant attributable to his complaints?

5. The Respondent has accepted that on 7 July 2023 it did not permit the Claimant to take (unpaid) time off during his working hours for the purpose of taking part in trade union activities, in breach of s.170 TULRCA 1992. For the avoidance of doubt, its position is that it is not just and equitable for any compensation to be awarded to the Claimant in respect of this error, having regard to the fact the Claimant had no right to be paid for such time off and other factors.

Findings of fact

1. The claimant is the Branch Chair of the Prison Officers' Association ("POA") at HMP Belmarsh, a Category A men's prison in Thamesmead, London. The claimant's

duties as Branch Chair were to oversee committee meetings, be the voice of the POA, chair branch meetings, and be the final point of conduit between branch and national executive committee.

5. The POA is recognised by the respondent, HM Prison and Probation Service ("HMPPS") for collective bargaining in respect of certain terms and conditions and working practices of Prison Officer grades. There is a collective recognition agreement ("CRA") between the National Offender Management Service ("NOMS"), the predecessor of HMPPS, and the POA [148-156].

6. Industrial relations between senior management at HMP Belmarsh and the local POA branch have been strained for a number of years. From around May 2022, the claimant had refused to attend the Senior Management Team ("SMT") and POA monthly meetings (the "SMT monthly meetings") which operated as a forum for discussion of current issues.

7. Facility time to deal with individual matters had been granted by Mr Golder at the request of the POA. For example, he granted, on an average weekly basis, 21.15 hours of facility time to the POA from April to June 2023. The Cabinet Office recommends a maximum of 8 hours of facility time per week [115].

8. On 6 July 2023, the claimant asked Mr Golder for time off for a BQM on 27 July 2023 between 13.30 and 14.30 which was during working hours [59]. The request did not attach an agenda, or explain what would be discussed at the meeting or why it needed to be held at that time. This was consistent with previous requests.

9. Mr Golder did not immediately grant the request, as he had done in the past. He contacted the Employee Relations team and sought their advice as to whether he could refuse the meeting request [146]. He was advised by Andy Hewitt, Senior Employee Relations Manager, that he was under no obligation to provide facility time for the BQM as the meeting was classed as a "trade union activity" under the Cabinet Office guidance and, whilst a meeting room could be provided, the meeting should be held in their own time [145].

10. Mr Golder notified the claimant that he granted the request for a meeting room on 27 July 2023 but following Cabinet Office policy, the meeting should take place over the unpaid lunch break scheduled for 12.30 to 1.30 [59]. Mr Golder also informed the claimant that the SMT monthly meeting had been rearranged for 14.00 on 18 July 2023.

11. The claimant did not make any representations, or bring an appeal or grievance to Mr Golder or any other senior managers. Mr Golder's response was sent by the claimant to all POA members on 1 August 2023 and he stated there would be no meeting. The claimant contacted ACAS.

12. There were no ongoing or prospective negotiations between the POA and HMPPS at a local or national level at the time of the proposed meeting.

Submissions

13. The Tribunal heard oral submissions based on written submissions from the claimant and respondent for which the Tribunal is grateful.

Law

Trade union duties

14. Section168(1)(a)-(b) TULRCA states:

"(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."

15. For the purposes of se ction168 (and section 170) TULRCA, the working hours of an employee are taken to be any time when in accordance with their contract of employment they are required to be at work: section173(1) TULRCA.

16. The request for time off must be reasonable, see section 168(3) TULRCA:

"(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."

17. An employer who permits an employee to take time off for the purpose of carrying out trade union duties (as opposed to trade union activities) is required to pay them for such time, see section 169(1) TULRCA.

18. The duties of a trade union representative must belong to them. Their duties are those conferred upon them by the union, expressly or impliedly. A representative cannot define their duties for themselves or assume an authority which they do not have.

Concerned with negotiations

19. As to section 168(1)(a) TULRCA, the duties must be firstly "concerned with" negotiations with the employer. It is a matter for the Tribunal whether the purported duty is sufficiently proximate to the bargaining table to satisfy the causative test. The statutory definition would appear to include e.g. the actual process of negotiating. It has also been held that active preparations for negotiations in connection with collective bargaining have sufficient proximity so as to fall within the scope of the legislation: **London Ambulance Service v. Charlton** [1992] ICR 773 EAT:

779… Reading the words literally it seems to us that if you are preparing to negotiate, and here we go back to the judgment of Slynn J. in Sood v. G.E.C.

Elliott Process Automation Ltd. [1980] I.C.R. 1 , if you are actively preparing for negotiations in connection with collective bargaining then you are carrying out a duty of an official of a recognised trade union which concerns those negotiations. Provided that there is sufficient nexus between the collective bargaining and the duty involving preparation for that particular issue, it seems to us that the occasion falls within section 27(1)(a) . There is no need for both sides to be present. The recognition of more than one trade union merely increases the possible requests for time off.

20. The EAT went on to say:

"780… In this case, turning to the industrial tribunal's decision, criticism has been made of the drafting of paragraph 9 and as Mr. McMullen has frankly conceded, there seems to be a slight illogicality in the middle of that paragraph. We respectfully agree, but the essence of the decision if one reads it as a whole, is to be found in the last few lines of that paragraph where the decision reads:

"Our view is that if preparatory or co-ordinating meetings are called for the genuine purpose of officials discussing their approach to forthcoming negotiations or their consideration as a co-ordinating body of negotiations which have or will take place in other bodies then time off must be given under section 27(1)."

If one could add to that "in connection with collective bargaining" then we would respectfully agree."

21. The duties must be concerned with one or more items set out at section 178(2) TULRCA, namely:

"(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."

22. It is not enough for the duties to be concerned with an item on the above list; the duties must be concerned with an item in respect of which the union is recognised to carry out collective bargaining with the employer.

Performance of related functions

23. In accordance with section 168(1)(b) TULRCA, the duties must firstly be performed on behalf of employees by the employer. A trade union representative

cannot perform duties for the benefit of the union if they are of no direct concern to their fellow employees.

24. The duties must be related to or connected with a function falling within the matters set out at section 178(2) TULRCA. For example, that could include a representative taking time off to deal with concerns members had about an issue of allocation of duties between groups of workers or to deal in a similar way with concerns that a shift rostering system was not being operated correctly: see Harvey on Industrial Relations and Employment Law at [1953].

25. The function must be one which the employer has agreed to let the union perform on behalf of its employees.

Trade union activities

26. Section 170 TULRCA states:

> "(1) An employer shall permit an employee of his who is a member of an independent trade union recognised by the employer in respect of that description of employee to take time off during his working hours for the purpose of taking part in—
> (a) any activities of the union, and
> (b) any activities in relation to which the employee is acting as a representative of the union.
> (2) The right conferred by subsection (1) does not extend to activities which themselves consist of industrial action, whether or not in contemplation or furtherance of a trade dispute.
> …
> (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."

27. Accordingly, a trade union member may seek time off for "any activities", whether participatory or representative (provided the activities do not consist of industrial action). The Acas Code of Practice on time off for trade union duties and activities (the "Acas Code") gives examples of participatory activities (para. 37), namely:

- "Attending workplace meetings to discuss and vote on the outcome of negotiations with the employer…
- Meeting full time officers to discuss issues relevant to the workplace
- Voting in union elections."

28. The Acas Code also gives examples of representative activities (para. 38), namely:

- "Branch, area or regional meetings of the union where the business of the union is under discussion,
- Meetings of official policy-making bodies such as the executive committee or annual conference

- Meetings with full-time union officials to discuss issues relevant to the workplace."

29. When parties cited supporting case authority, they emphasised that the Tribunal should be aware that section 168(1)(a) and (b) first appeared in virtually its current form in section 27(1)(a)(i) and (ii) of the Employment Protection (Consolidation) Act 1978 as amended by section 14 of the Employment Act 1989. Prior to the 1989 amendment, section 27(1)(a) allowed time off to carry out duties "concerned with industrial relations", a phrase which had a relatively wide ambit. The amended wording now contained in section 168(1)(a) and (b) is more restrictive. Section 168(1)(a) refers to duties "concerned with negotiations with the employer related to or connected with Matters falling within section 178(2) TULCRA and in relation to which the union is recognised.

Remedy

30. Where the Tribunal finds a complaint under sections 168 or 170 TULRCA is well-founded, it shall make a declaration to that effect and may make an award of compensation: section 172(1) TULRCA. The amount of the compensation is 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": section 172(2) TULRCA.

31. In the absence of any financial loss, a Tribunal may still award a "reasonable and proportionate" sum by way of recompense to a union member to make any wrong done to them: **Skiggs v. South West Trains Ltd** [2005] IRLR 459 EAT at para 16. However, compensation for injury to feelings is not available because, unlike in a case of detriment for taking part in trade union activities, a refusal of time off is not a species of discrimination connected to being a trade union member, but rather is a denial of their rights as a union member. A nil award may be appropriate and does not deprive the protection of effect: **Rowe v. London Underground Ltd** UKEAT/0125/16/JOJ, per Eady J at [50], [54]-[56].

DISCUSSION and DECISION

32. The claimant said in evidence that the trigger for seeking a BQM was the need to discuss detached duty.

33. The ET1 at para 12 [19] narrates:
"The purpose of this meeting was to discuss various issues about the prison .including staffing, levels and vacancies, health and safety, workplace bullying, victimisation and harassment, annual fitness test,, update on judicial review, regime,' ,. assaults and injuries at work,' 2023 PSPRB pay award, pensions, .McCloud outcomes, discipline 'matters and the right to . be accompanied, ill health and regrading, and finally the effect that forced detached, duty has on members and the equality impact assessment."

34. In an email dated 19 Feb 2024, the respondent's solicitor asked [39]:
"I would be very grateful if you could provide the following further and better

particulars of your client's claim:
(a) under which provision(s) of s. 168(1) TULRCA the Claimant says the alleged trade union duties fell; and
(b) the basis for which the Claimant says the matters set out at Particulars of Claim, §12 fall within those provision(s)."

35. The claimant replied on 22 March 2024 [41]:
"The Claimant asserts that the purposes of the meeting fall within the above provisions as they are connected with matters that fall within collective bargaining in relation to which the trade union is recognised by the employer and/or functions related to or connected with matters falling within that provision which the employer has agreed may be so performed by the trade union."

36. The respondent answered on 28 March 2024:
"Which items at §12 POC the Claimant says were concerned with negotiations falling within the definition of s. 178(2) TULRCA for which the POA is recognised; and
• By reference to §12 POC, what functions the Claimant performed that were related to /connected with collective bargaining that the Respondent agreed could be performed by the (PSU)?

37. The claimant responded [45] on 15 May 2024:
"We will take further instructions on this and will deal with it in the Claimant's witness statement."

38. The claimant's witness statement sets out detail at paras 12-21. The claimant alleges that the purpose of the BQM was to discuss:

(1) Staffing levels and vacancies;
(2) Health and safety, and workplace bullying and discrimination;
(3) Annual fitness test;
(4) An update on a Judicial Review;
(5) Regime;
(6) 2023 PSPRB pay award;
(7) Disciplinary matters;
(8) Ill health and regrading; and
(9) The effect of forced detached duty on members including an equality impact assessment.

39. The claimant says that members wished to discuss the effect of forced detached duty, which would be passed onto the NEC. However, forced detached duty is not carried out HMP Belmarsh; it offers voluntary detached duty instead. Accordingly, this was not a matter that would be subject to collective bargaining at a local level. There is no documentary evidence that the NEC was seeking to negotiate with HMPPS or even consult their local branches about the practice or requirement at the time.

40. In relation to the other Agenda items finally proposed by the claimant, none of these were sufficiently proximate to collective bargaining with HMPPS, falling within the scope of section 178(2) TULRCA and/or in respect of which the POA was recognised. In particular:

41. Staffing levels and vacancies: the claimant suggests that staffing levels would have been discussed to estimate the 'value' of members which would inform the NEC's negotiating strategy as to pay with HMPPS at the national level. However, the POA is not recognised by HMPPS in respect of the issue of pay [149, para 3.3]. Instead, pay for Prison Officer grades is set via an independent pay review body process, namely the Prison Service Pay Review Body ("PSPRB"). The POA makes representations to the PSPRB regarding what it considers are appropriate levels of pay. Therefore, the POA does not undertake any collective bargaining with HMPPS on the issue of pay nor is it recognised to do so.

42. Health and safety: the claimant suggests that purported member concerns about their health and safety and alleged workplace bullying and discrimination would have been passed onto the NEC which would use the data in pay negotiations and to improve other conditions of employment. The POA is not recognised in respect of pay. The claimant does not identify the particular terms and conditions of employment he alleges the NEC would have sought to improve. At best, the claimant references the NEC's position as to the use of razor blades in prison, an operational matter. However, there is no documentary evidence that the NEC was seeking to negotiate with HMPPS or even consult their local branches about their use at the time. As to the alleged workplace bullying and discrimination, the claimant appears to complain about localised, individual grievances. The CRA makes clear that individual grievances or local disputes are not matters that would be suitable for collective bargaining at a national level [149, para 3.3].

43. Annual fitness test: the claimant suggests the NEC wanted the views of its members as to what, if anything, should replace the now scrapped annual fitness test. As the claimant said, it is no longer a contractual requirement for Prison Officer grades; It has not been a requirement since the pandemic. There is no documentary evidence that the NEC was seeking to negotiate with HMPPS or even consult their local branches about what, if anything, should replace the test at the time. If the annual fitness test was no longer a contractual requirement, it cannot have related to collective bargaining.

44. An update on a Judicial Review: the claimant suggests there would be an update on the use of agency workers during industrial action following the revocation of regulations prohibiting employment businesses from supplying such workers to perform the duties of a striking worker. For all (except for band 2 Operational Support Group ("OSG") workers), there is no question of agency workers being used in any industrial action, because Prison Officers cannot undertake industrial action, under section 127 of the Criminal Justice and Public Order Act 1994. In respect of band 2 OSG workers, a collective agreement was entered into between HMPPS and the POA regarding the use of agency labour in 2015; however, there have been no negotiations on the matter since that date. The use of replacement labour is a matter that relates to of a trade union campaign and is not related to collective bargaining.

45. Regime: the claimant suggests that any delays in regime resulting in additional hours being worked would be discussed and passed onto the NEC. However, there were no prospective or ongoing negotiations in respect of working hours at the national

or local level. There is no evidence that the NEC made any request for reports on unsocial hours prior to 23 May 2024.

46. 2023 PSPRB pay award: As previously stated, the POA is not recognised in respect of issues of pay. Any representations the POA wishes to make on the issue of pay are made directly to the PSPRB. The POA does not undertake any collective bargaining with HMPPS on the issue of pay nor is it recognised to do so.

47. Disciplinary matters: the claimant alleges that cases had arisen where management had purportedly sought to choose the trade union representative for a staff member who had no prior knowledge of casework. There had been instances where the need for an alternate trade union representative had arisen because of the availability of the representative which meant that any rescheduled meetings would take place more than five days after the date originally proposed. HMPPS' policy is that meetings will not be delayed in those circumstances and that reflects paragraph 16 of the Acas Code of Practice on Disciplinary and Grievance Procedures. Again, the claimant appears to be complaining about local individual cases. The CRA states that individual grievances or local disputes are not matters that would be suitable for collective bargaining at a national level [149, para 3.3]. The POA is recognised to bargain in respect of disciplinary procedures; however, there is no documentary evidence that the NEC was seeking to negotiate with HMPPS or even consult their local branches about the disciplinary procedures at the time so as to allow meetings to be rescheduled more than five days after the date originally proposed if the proposed representative was unavailable.

48. Further, this is not a matter which was concerned with the performance of functions on behalf of employees related to collective bargaining under section 168(1)(b) TULRCA. The claimant has not identified any function he was said to be performing which were related to disciplinary matters; rather, he had intended to express an opinion as to the availability of trade union representatives to his members. Furthermore, there is no evidence, nor was it put to Mr Golder or Mr Francis, that HMPPS had agreed that he could express that opinion to his members. Such agreement was unlikely to have been forthcoming given it ran contrary to policy.

49. Ill health: the claimant says that purported issues had arisen in respect of payment estimates or the proportion of compensation being paid in respect of medical inefficiency payments which would be passed onto the NEC. The claimant accepted that medical inefficiency payments are paid under the Civil Service Compensation Scheme ("CSCS"), a statutory scheme set by Parliament. It is therefore not a matter than can be subject to collective bargaining with HMPPS because it is does not determine the CSCS rules. In any event, the claimant appears to reference a practice whereby the People team must approve a payment which exceeds 75% of an employee's 24 month pensionable earnings. That does not amount to a matter which can be subject to collective bargaining, nor does the CRA indicate that the POA has any recognition in this area.

50. It is appropriate to say at this point that the Tribunal did not accept the evidence of the claimant on any material point. The Tribunal found the evidence of Mr Golder and Mr Stuart reliable. The agenda items relied upon may well have arisen at points in the past but did not support a meeting in July 2023. If they were all on the agenda,

the meeting would have taken many more hours than one. The Tribunal considered that the agenda items and supporting evidence were concocted to make the claim against the employer. The Tribunal considers that there was no agenda and that one has only been created by the claimant when tasked with doing so in the ET1, the further particulars and the additions in the witness statement of the claimant.

51. Whilst the claimant indicated that the topics of discussion were noted down on a whiteboard in the office, the Tribunal concluded that there was no particular reason for the branch meeting to be called and the agenda items were simply added from prior agendas to enhance the case for the claimant. It could not realistically be contended that discussion of the complete alleged agenda could have taken place in one hour.

52. The purpose of the meeting, if it had one, was to discuss workplace issues, collect the views of members and feed them back to the NEC. That was an internal union matter, designed to inform national policy-making by the NEC and union campaigns. It was not sufficiently proximate to collective bargaining. The Acas Code provides guidance that regular branch meetings of the type sought are generally regarded as trade union activities (para. 38). This is similarly reflected in the Cabinet Office Facility Time Departmental Guidance (November 2012) [113] and the NOMS Facility Time Instructions PSI 17/2014 (April 2014) [91].

53. The Tribunal noted that there was some suggestion that there was a personal animus between the claimant and Mr Golder but it had no evidence to consider this in any detail.

54. The Tribunal also noted that a continuing dispute between the claimant and the Belmarsh management was in the background to this issue but again did not hear and did not wish to hear detail about this.

55. Negotiations between HMPPS and the POA take place at the national level. The claimant said that negotiations are “always ongoing”; however, he accepted that there is no evidence in the bundle of any active negotiations between HMPPS and the POA, nor of any preparatory steps taken by the National Executive Committee (“NEC”) to plan for negotiations with HMPPS, such as internal union communications, agendas or minutes of meeting. The claimant provided a circular sent by the General Secretary asking for branches to provide reports of unsocial hours worked so the NEC could “devise a strategy” to reduce working hours. That circular was sent on 23 May 2024; there is no evidence of any such circulars having been sent prior to the claimant’s request in July 2023.

56. The date and time requested were reasonable by the claimant.

Issues

57. The request for time off for the BQM was concerned with trade union activities (within the meaning of section 170 TULRCA), not trade union duties (within the meaning of section 168 TULRCA).

58. The purpose of the BQM was not sufficiently proximate to the bargaining table in respect of matters which properly fall within the scope of section 178(2) TULRCA and as to which the POA is recognised.

59. The purpose for which the BQM was sought was not reasonable because the claimant had not demonstrated that the meeting was designed to carry out his duties, as a POA representative, concerned with any of the conditions set out at section 168(1) TULRCA. Therefore, Mr Golder did not breach section 168 TULRCA in asking the claimant to hold the BQM in his own time.

60. The respondent has accepted that, on one occasion, it did not permit the claimant to take unpaid time off during his working hours for the purpose of taking part in trade union activities in respect of the proposed BQM on 27 July 2023, in breach of section 170 TULRCA. Hence the Tribunal has made the declaration sought. However, it is not just and equitable to award any compensation to the claimant for this one-off error. Firstly, the error in not allowing the claimant time off during working hours to participate in trade union activities arose as a result of a genuine misunderstanding as to the legislation; the error was limited and not deliberate. Mr Golder simply followed Mr Hewitt's advice that the meeting was classed as a trade union activity and should be held in the claimant's own time. The advice was partly incorrect in that the Cabinet Office Facility Time Department Guidance Departmental Guidance did not make sufficiently clear that trade union representatives have a statutory right to be granted reasonable unpaid time off to undertake activities during working hours [96].

61. The claimant did not suffer any financial loss attributable to the complaints. He was not entitled to be paid for any time off to participate in trade union activities. In any event, as he was not granted the time off, he likely would have continued to work from 13.30 to 14.30 on 27 July 2023 for which he would have been paid. In other words, he was no worse off financially.

62. The claimant did not suffer a detriment on account of being a trade union member.

63. The claimant has completely exaggerated his reaction to the refusal of the meeting when he set out the alleged impact in his witness statement. He is claiming he is entitled to an award for injury to feelings of £5000, even though there is no basis in law for such a claim. In any event, the degree of the claimant's allegedly hurt feelings is undermined by the fact he did not challenge Mr Golder's refusal by way of an appeal or grievance to a senior manager; rather, he accepted the situation, even if he did not agree with the outcome. Indeed, the evidence about injury to feelings, was supportive of the view that the entire claim was a contrivance. Accordingly, it is not just and equitable for any compensation to be awarded to the claimant. In the circumstances outlined above, a declaration is a sufficient remedy.

64. The Tribunal dismissed the claimant's complaint of failure to permit (paid) time off for the purpose of carrying out trade union duties.

Employment Judge Truscott KC
Dated: 27 June 2024