



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr A Cattermole

**Respondent:** SPS Technologies Limited

**Heard at:** Leicester Hearing Centre, 5a New Walk, Leicester, LE1 6TE

**On:** 8, 9 July 2024

10 July 2024 (deliberations – parties did not attend)

**Before:** Employment Judge Adkinson sitting with  
Ms J Barrowclough  
Ms K McLeod

## Appearances

**For the claimant:** Mr J Chegwidden, Counsel

**For the respondent:** Mr J Hurd, Counsel

## JUDGMENT

UPON hearing from Counsel for the Claimant and Counsel for the respondent, the Tribunal's unanimous judgment is the claim fails and so is dismissed.

## REASONS

1. The claimant, Mr Cattermole, alleges that the respondents, SPS Technologies Limited ("SPS"), gave him a 6-month verbal warning for carrying out the activities of UNITE, an independent trade union of which he was convenor. SPS deny this.

### Hearing

2. Mr J Chegwidden, Counsel, represented Mr Cattermole. Mr J Hurd, Counsel, represented SPS. We are grateful to both for their efficient conduct of the case and for their focused, yet thorough and helpful submissions.
3. The hearing was an attended hearing.
4. We heard the following oral evidence:
  - 4.1. For Mr Cattermole, from

- 4.1.1. Mr Cattermole himself who was a UNITE convenor at SPS,
  - 4.1.2. Mr Sandip Singh Rana, employed by SPS and also a UNITE union representative, though he had no involvement in the events relevant to this case,
  - 4.1.3. Mr Lee Purslow, UNITE regional officer who supported Mr Cattermole in his role as convenor,
  - 4.1.4. Mr Sean Smith, employed by SPS and also UNITE union representative, though he had no involvement in the events relevant to this case.
- 4.2. For SPS, from:
- 4.2.1. Mr James Bolton, the then purchasing manager at SPS,
  - 4.2.2. Mr Kevin Waddley, a manufacturing manager at SPS.

We have taken into account their evidence.

- 5. The respondent also relied on the hearsay evidence of Mr Dean Pearsall, operations director. He was overseas. We have taken it into account but also reflected that it has not been tested in cross-examination.
- 6. There was an agreed bundle of documents of 206 pages. As we indicated to the parties, we have taken into account those pages to which the parties have referred us.
- 7. We took mid-morning, lunch and mid-afternoon breaks and other breaks as requested. No party required any other adjustments to be able to take part effectively in the hearing.
- 8. Because the only remedy claimed was a declaration the claim was well-founded and compensation for injury to feelings, we dealt with both liability and remedy at the same time, so we could deal with both in one go, if appropriate.
- 9. Each party made written and oral closing submissions. We have taken them into account in making our decision.
- 10. No party has alleged the hearing was unfair. We are satisfied it was a fair hearing.
- 11. We decided that we would reserve our decision. This is that decision. Our decision is unanimous.

**Law in relation to activities of an independent trade union at an appropriate time**

- 12. It is disputed whether his activities were those of an independent trade union at an appropriate time. If they were not, his claim fails whatever SPS's reason for imposing the disciplinary sanction. We therefore focus on this as the first issue.
- 13. **The Trade Union and Labour Relations (Consolidation) Act 1992 ("TULCRA") section 146** provides:

"146.— Detriment on grounds related to union membership or activities.

“(1) A worker has the right not to [be subjected to any detriment as an individual by any act, or any deliberate failure to act, by his employer if the act or failure takes place for the sole or main purpose of—...

“(b) preventing or deterring him from taking part in the activities of an independent trade union at an appropriate time, or penalising him for doing so,”

14. “Appropriate time” is defined, as far as relevant as follows in **section 146**:

“(2) In subsection (1) “an appropriate time” means — ...

“(b) a time within his working hours at which, in accordance with arrangements agreed with or consent given by his employer, it is permissible for him to take part in the activities of a trade union...”

There is a definition of “working hours” but nothing turns on it for the purposes of this case.

15. It is for the claimant to prove a prima facie case: **Yewdall v secretary of State for Work and Pensions [2005] EWCA Civ 1549 CA**. The law makes it clear that the employer bears the burden of showing the sole or principal reason for any detriment: **section 148(1)**. The parties could not aid us with who bears the burden of showing the activities were those of an independent trade union. There seems no case on the point and the legislation is silent on the issue. It was suggested we approach it as a neutral issue – i.e. no party bears the express burden. We have sought to sought to make positive findings one way or the other and so avoid having to rely on the burden of proof to decide that issue.

16. The law does not define “activities of an independent trade union”. The parties have referred us to a number of cases. We summarise what we saw as the key points here:

16.1. It is a question of fact: **Chant v Aquaboats Limited [1978] ICR 643 EAT; Dixon v West Ella Developments Limited [1978] ICR 856 EAT**.

16.2. The question is to be assessed objectively: **University College, London v Brown [2021] IRLR 200 EAT**.

16.3. It is not trade-union activities that is the focus, but whether they are activities of an independent trade union: In **Dixon**, the Employment Appeal Tribunal said:

“[What] is being looked for are the activities of a trade union. The provision should be applied bearing that in mind.”

In **Dixon**, the Appeal Tribunal drew attention to the help that could be derived from remembering it is activities “at an appropriate time” and that activities can be “fairly varied” and that the words:

“should be reasonably, and not too restrictively, interpreted.”

16.4. We have also considered the list of “union activities” in **IDS Employment Law Handbook, Trade Unions (May 2018), para 12.21** for a list of cases of what in the past has been held to be

union activities and noted that recruitment, distributing union literature, informing members and participation in bargaining, consultation and grievance handling and disputes have been held to be activities in various forums.

**First issues to decide: was Mr Cattermole undertaking activities of an independent trade union?**

17. There is no dispute that:
  - 17.1. SPS subjected Mr Cattermole to a detriment as an individual, or
  - 17.2. UNITE is an independent trade union.
  - 17.3. Mr Cattermole did the activity of printing and distributing about 5-10 copies the AETC memo on SPS's factory floor.
18. Therefore this issue becomes:
  - 18.1. Was Mr Cattermole's printing and distribution of the AETC memo:
    - 18.1.1. An activity of UNITE?
    - 18.1.2. Done at an appropriate time?
19. Only if we answer this in Mr Cattermole's favour do we have to address why SPS issued him with a 6-month verbal warning.

**Facts**

20. We have no reason to believe that any witnesses were seeking to mislead us. We approach their evidence on that basis.
21. We make the following findings of fact on the balance of probabilities.

**About Mr Cattermole**

22. SPS employed Mr Cattermole as a setter. He worked on the factory floor. He was also the convenor for UNITE, an independent trade union.

**Terms of employment**

23. SPS's terms and conditions for all relevant employees to this claim provided that bank and public holidays (other than Christmas, Boxing Day and New Year's Day) were normal working days. If an employee wanted the day as holiday, they had to request it in the usual way.

**About SPS**

24. SPS employs 300 or so people. It manufactures nuts and bolts and the like for the aerospace industry.
25. SPS is a company in the Precision Castparts Corp group. As far as relevant there is 1 other members of the group in the United Kingdom: AETC Limited ("AETC"). SPS is based in north Leicester. AETC is in south Leicester.
26. There is a PCC "code of conduct" common to SPS and AETC, as well as other group companies. In addition there is clearly some other cross-support because Mr Jitesh Randiera, managing director of SPS, had helped managers at AETC draft the memo which this is case is about. However we are satisfied from Mr Bolton's evidence that they are generally run

separately, with their own systems, work patters, ledgers and, significantly, their own terms and conditions of employment.

***About the factory floor***

27. SPS has a factory floor on which there were semi-automatic machines. Mr Cattermole operated one of these machines. Next to Mr Cattermole's machine was a small table on which he could put tools and the like, called a "bird table". Once set into operation, an operator could for example leave the machine for a brief time e.g. to go to the toilet or do a short errand.
28. There is a separate part of the premises where machine work is undertaken, called "Unit 2". Mr Cattermole never worked in Unit 2.
29. There was a computer facility on various terminals around the factory floor and corridors that allowed an operator to log time spent doing various tasks if they were away from their core-work. Thus, in principle if an employee who was a union official needed to do union-related work, they would be expected to go to such a terminal, log in and in the system to enter data that would then record they had started to undertake a union-related task. At the end of the task, they would have to log in again and input data to record they were returning to work.
30. The evidence from most witnesses leads us to conclude it was cumbersome and time consuming to operate. A common thrust of the evidence from both parties was that if e.g. a union-related task was to take less than 15 minutes, the representative should simply go and do it because requiring them to log it would take so long it would introduce inefficiencies. We consider it could be described as implied permission to take a brief time away from work.

***Mr Cattermole's role as convenor***

31. Mr Cattermole was one of 5 or so UNITE workplace representatives. He was the most experienced, and as a result de facto principal representative. If employees had problems and wanted union help, they tended to come to him. Mr Cattermole also communicated about issues to members and non-members. He had a WhatsApp group of which about 75% of UNITE members were signed up to. For the remainder and for non-members, he used the UNITE notice board which was clearly labelled as such and readily accessible to all, and word of mouth.

***UNITE's recognition***

32. UNITE had a recognition and negotiation agreement with SPS. The agreement provided:
  - 32.1. Everyone would seek to maintain good working relationships and to work collaboratively: clauses 1.1 and 1.2.
  - 32.2. As far as possible every effort would be made to settle differences at a local level: clause 1.3.
  - 32.3. Named examples of duties for which the convenor would be allowed time off included meetings with company representatives: clause 5.5.

- 32.4. An unresolved group grievance procedure in clause 6.1.2 and clause 6.3. This provided in the first instance that grievances should normally be considered in the cycle of quarterly joint negotiating committee meetings. However those meetings had not been taking place for whatever reason which would not in any event help us to resolve this case.
- 32.5. The next stage provided for a special meeting within 30 days if it is not resolved at the previous stage: clause 6.3.2.
33. Though we have not been taken to a specific policy, it appeared common ground that if Mr Cattermole as convenor has raised a specific grievance on behalf of the employees, SPS would have had 14 days to respond. We are prepared to accept that as an accurate summary of what would happen in practice.

***Background to the relevant events***

34. On 8 September 2022, HM Queen Elizabeth II died. On Friday 9 September 2022, HM King Charles III declared that the day of the Queen's funeral (Monday 19 September 2022) would be a bank holiday.
35. Both Mr Cattermole and Mr Waddley confirmed some employees were keen monarchists who wanted the day to be able to show their respects (and some were simply keen to take the extra bank holiday as paid day off. Some though were indifferent). Many employees approached Mr Cattermole to ask him what arrangements SPS had made in relation to the extra bank holiday.
36. On Monday 12 September 2022, Mr Cattermole spoke to Mr Pearsall. Mr Pearsall told Mr Cattermole that SPS would not be granting a day's holiday, and it would be a normal workday, and that any staff who wanted time off would have to take a paid or unpaid day's leave. Mr Pearsall's statement explained that SPS was not in a financially sound position to be able to take an extra day's downtime. This has not been challenged, and we accept it as true. Mr Cattermole also says he spoke to Mr D Vickers, then operations manager, about the issue who said he was speaking to Mr Randiera about the issue, and that in his opinion he agreed SPS should close the plant.
37. Mr Waddley confirmed that staff were unhappy about this, and that there were palpable tensions among employees on the factory floor about SPS's position. In addition, SPS's management had made no clear communication about its decision to employees: Both SPS's management and employees appeared to be relying on word-of-mouth.

***AETC's memo***

38. AETC had taken a different decision. They decided staff could either take the bank holiday of the Queen's funeral as an extra day's holiday or work that day and take an extra day's holiday in the fourth quarter of the year.
39. AETC had prepared a memo that set this out. We have referred above to this as the AETC memo.

**Mr Purslow sends a copy of the memo to Mr Cattermole and they discuss it**

40. On 15 September 2022 at 0947, Mr Purslow sent to Mr Cattermole by WhatsApp a copy of the memo as an attachment. His accompanying message read:

“This is what is happening at AETC. Hope this might help if you are still trying to get something for Monday.”

41. Mr Cattermole replied:

“Yes I’ve just forwarded to all members”

42. Mr Cattermole and Mr Purslow spoke by phone immediately after Mr Purslow sent the memo to him.

43. The evidence about the contents of the phone call is unsatisfactory.

43.1. Mr Cattermole was adamant in his evidence that Mr Purslow instructed him to circulate the memo as is to all members. However he did not mention this express instruction from Mr Purslow in either the investigation meeting or in the disciplinary hearing.

43.2. Mr Purslow evidence on the issue changed as he went. In summary, its tenor was that he would not normally instruct a representative how to deal with matters and did not remember telling Mr Cattermole to distribute the memo, until it was pointed out to him that in the appeal hearing he said he had given the instruction to distribute the memo. Then he clung to that statement, saying he must have given the instruction because matters would have been fresher in his mind at that time. The following extracts summarise his evidence that led us to view it this way:

43.2.1. In his evidence-in-chief he said:

“I do not recall saying it specifically, but our decision was that the claimant would share the memo with members; He would get it out to the members in the hope it may assist to persuade the respondents to rethink its stance on time off for the Queens funeral. The claimant was carrying out union activities by doing this.”

43.2.2. In cross-examination, Mr Purslow told us that:

43.2.2.1. The text message about what was happening at AETC was to make Mr Cattermole aware of the memo and for him to either use it when talking to SPS or to send to members.

43.2.2.2. In the phone call Mr Purslow said he told Mr Cattermole he could pass the memo out if he needed to do so, and that he would have no objection.

- 43.2.2.3. When pressed Mr Purslow said he could not remember if he instructed Mr Cattermole to distribute the memo to members. He told the Tribunal he was sure Mr Cattermole would pass it on if he saw fit and gave him permission to do so.
    - 43.2.2.4. Mr Purslow told us he does not dictate to representatives what to do and that it was up to Mr Cattermole to decide what to do.
    - 43.2.2.5. Only when it was pointed out that in the appeal interview that Mr Purslow had said he did give the instruction, he changed his position to tell us he must have given the instruction because when he was in the interview matters were fresher in his mind.
44. Based on the evidence we have, we find as a fact that Mr Purslow, and so UNITE, did not instruct Mr Cattermole to distribute the memo to members. The decision to distribute it was Mr Cattermole's alone, albeit Mr Purslow did not object if that is what Mr Cattermole chose to do. Our reasons are:
  - 44.1. We cannot accept Mr Cattermole's assertions he was instructed by Mr Purslow to do it. If that were the case we expect he would have mentioned it in the investigation and disciplinary interview, particularly because he was clear he felt he was being targeted for union activities. It is a clear and obvious relevant factor or "defence" to say his regional officer instructed him to do it.
  - 44.2. We cannot accept Mr Purslow's evidence he instructed Mr Cattermole to distribute it. He only asserted that positively he must have instructed Mr Cattermole to distribute it when his memory was refreshed about what he said in the appeal. This is an inference ("must have"), and is contradicted by:
    - 44.2.1. His evidence-in-chief that he has no specific recollection of saying he instructed Mr Cattermole to distribute it.
    - 44.2.2. His own evidence that he does not dictate to representatives what to do.
    - 44.2.3. He passed it on and in essence left it for Mr Cattermole to decide what to do with it.
    - 44.2.4. The WhatsApp message contains no such instruction, but rather tallies more with leaving it to Mr Cattermole to decide what to do.
  - 44.3. The difficulty for Mr Cattermole is that he has called Mr Purslow as a witness of truth. To accept Mr Cattermole's version requires us to reject a significant part of Mr Purslow's version of events (at least to the point where he changed his mind), which is contrary to his case.



44.4. We recognise this was a long time ago and memories fade. However we would expect some sort of clarity from Mr Purslow about whether he gave an instruction because this arose in unusual circumstances.

44.5. Finally we feel Mr Cattermole's own pleaded case undermines his position. In paragraph 12(a) of his grounds of complaint Mr Cattermole does not expressly say he was instructed to distribute the memo, rather:

"The claimant contends the AETC communication was provided to him by UNITE with direction he **may** [our emphasis] want to bring this to the attention of UNITE members."

45. Mr Cattermole has contended this factual issue of whether there was an instruction is a "red herring". If so we are surprised he called evidence about it and appeared to rely on the instruction being from UNITE to justify the activity. The fact he seeks to disown its relevance perhaps sheds light on the difficulty the evidence on the issue now raises for his case. In any event, we disagree. Evidence about whether he was acting under instructions from UNITE is relevant to the question of whether he was undertaking activities of UNITE. He has made it an issue. It affects how we assess the matter overall. In this case it confirms that UNITE through Mr Purslow did not instruct him to distribute the memo: The decision was left to him and so was his and his alone.

***Mr Cattermole prints out the memo and distributes copies***

46. He decided not to take the memo first to management to raise with them that UNITE were aware of the disparity in treatment within the PCC group, though later he did take it to Mr Pearsall, who had seen it already. He also decided not to seek to negotiate or petition managers. Instead he decided to distribute it to members at once.

47. Because it was on WhatsApp and he did not know how to print from WhatsApp, he asked Mr Waddley for help. He did not discuss the memo with Mr Waddley at this time. Over the space of about 5 or so minutes he printed 5 or so copies and distributed a few, keeping a few on his bird table. There were more about the site (Mr Waddley said it was like "confetti") but we are satisfied Mr Cattermole did not print them. Based on our findings of fact about time away from work for union activities, we find as a fact that this time was itself impliedly authorised and did not require him to either record the time or to seek prior authorisation.

48. The copies that Mr Cattermole distributed did not have on them any indication that they were distributed by him or UNITE or that he had done so on behalf of the union – they were the memo itself plain, as-was, without any context or annotation or explanation on or accompanying it.

***Why Mr Cattermole distributed printed copies***

49. Mr Cattermole said his aims were to promote recruitment to UNITE, to make employees aware of the situation and to distribute information to them. He also agreed his aim was to persuade SPS to grant Monday as a holiday.

50. Mr Cattermole could have distributed the memo by forwarding it to his WhatsApp union group and putting printed copies on the notice board. He did not do so. While we accept there was not really time or need to put into a pamphlet or letter, he could have quickly added a text message in WhatsApp group explaining why he was distributing it and/or what he (and by extension, UNITE) was doing about the issue. On the printed copy, a quick typed or handwritten note would have sufficed to add context and would take minimal time.
51. Mr Cattermole told us he did not send it to the WhatsApp group because he forgot about its existence and did not put it on the noticeboard because he felt no-one would read it.
52. We reject this explanation of why did not use these methods. We reject also that his reason for distributing the memo were to promote recruitment to UNITE, to make employees aware of the situation and to distribute information to them . We find as a fact he distributed it to agitate fellow employees as a ploy to pressure management to grant the Monday as holiday. Our reasons are as follows:
- 52.1. We find it wholly implausible and unbelievable that he forgot there was a WhatsApp group. He confirmed it was a main method of communication. He had to access the app to access the memo and read Mr Purslow's message. He read it in the app. All the reminders were there. We cannot accept he would suddenly and temporarily forget about the group at this critical time.
- 52.2. It is also implausible that his first reaction would be to speak to Mr Waddley to ask how to print the memo but not discuss the memo with him, even though he was a manager. If he wanted to negotiate and represent, this would have been an obvious first step.
- 52.3. We cannot accept his reason for not putting it on the noticeboard. This is another main method of communication. It is clear from the photos supplied the noticeboard is for UNITE's communications. It would have made it clear the communication were from UNITE.
- 52.4. Moreover, a memo without reference to purpose for distribution or source with SPS, or reference to UNITE itself does cannot reasonably be said to be doing anything towards promoting the aims that Mr Cattermole said he had. No person seeing the memo would know it had been distributed by Mr Cattermole, yet alone on UNITE's behalf. No person seeing it would reasonably understand it showed that UNITE was representing employees' interests in securing the holiday to SPS's management. Mr Cattermole said that people seeing it might well decide they wanted to join the union for representation so it could represent their interests. There is a chance they would. However realistically that would be a coincidence if it occurred because it makes no reference to UNITE.

- 52.5. We cannot see how distributing the memo on the factory floor unannotated would have helped to resolve the issue about holiday. Mr Waddley confirmed that before it happened, the lack of a day's holiday had been raised already, and the situation on the factory floor was tense already because of this issue.
- 52.6. He did not instigate any sort of grievance or negotiation. We accept that there were no quarterly meetings and the formal grievance procedure would not resolve the matter before the Monday. However the recognition agreement to which UNITE were signed up clearly contains the spirit of negotiation to resolve difficulties.
- 52.7. We consider it obvious that distributing a memo that showed that employees at another local company within the group were getting an extra day's holiday would agitate employees at SPS.
- 52.8. In our view the above leads to only one realistic interpretation of events, which is the printing and distribution was done with the purpose of agitation.
53. The respondent has highlighted the inefficiency of Mr Cattermole's method of communication. Mr Cattermole says it is another "red herring". We agree that efficiency itself is not a relevant factor. However the apparent disjunct between what Mr Cattermole says he was out to achieve and what his distribution could achieve, the usual methods of communication available to him that he did not use, the lack of context to the memo, the lack of reference to UNITE on the memo and his lack of attempt to start a negotiation or grievance are relevant to assessing the real purpose for which he undertook for doing what he did.

### ***The consequences***

54. The respondent started disciplinary proceedings against Mr Cattermole. The outcome was a verbal warning for 6 months. There is a dispute about the process, its adequacy and whether the respondent has shown the warning was not for a proscribed reason.
55. We have considered the interviews, statements and minutes of the meetings and outcomes to see what light they shed on whether Mr Cattermole was undertaking activities of UNITE. Where they help us on that issue we have referred to them above. Otherwise they do not help, and we have put them to one side at this stage.

### **Conclusions**

#### ***Were Mr Cattermole's activities in question done at an appropriate time?***

56. Yes. The answer in our view is clear and simple. The facts show he would have had what we described above as implied permission.

#### ***Were Mr Cattermole's activities an activity of UNITE?***

57. No. Our reasons are as follows:
- 57.1. We have identified above a list of things that in previous cases could be activities of an independent trade union. We readily

accept that recruitment, making employees aware of a situation and representing members in negotiation about holiday are activities of an independent trade union.

- 57.2. However we conclude that Mr Cattermole's agitation of the workforce by distributing this memo plain and as-was is not to be treated as an activity of UNITE. Our reasons are as follows:
- 57.2.1. The thrust of the relationship is co-operation and resolution of grievances by negotiation. Agitation of the workforce is the antithesis of that.
  - 57.2.2. The activity was not pursuant to an instruction from UNITE either via Mr Purslow or otherwise. While not determinative this undermines what was a significant part of Mr Cattermole's case.
  - 57.2.3. It was common ground that union activities included things like negotiation on terms, holiday, group grievances and the like. We agree. However we cannot see agitation of employees as part of those activities. As the lay members pointed out, they are achieved by negotiations, raising grievances etc. This does not begin to further those steps.
  - 57.2.4. The activity has no link to UNITE beyond he is a convenor of UNITE. The memo was not distributed with any message on behalf of UNITE and with anything connecting it to UNITE. The plain and obvious UNITE-linked distribution channels – WhatsApp and noticeboard – were consciously not used. In our view this leads us to conclude Mr Cattermole was not acting as UNITE convenor but on a frolic of his own – because he consciously did not link UNITE to his actions.
  - 57.2.5. More simply, the lay members – drawing on their experience of many workplaces – and the Employment Judge all agree that agitating the workforce to achieve an outcome relating to leave is not reasonably described as a union activity. At the heart of union activities seems to be representation and negotiation to secure the best outcome for their member or members (as may be). We accept that on occasions actions must be escalated. Agitation before negotiation does not do that.

## Conclusions

58. Mr Cattermole was not undertaking activities of UNITE. It is a mere coincidence he happens to be a member of UNITE. The claim therefore must fail because he is not within **section 146(1)(b)** of **TULCRA**. Issues about the sole or principal reason for SPS giving him a 6-month verbal written warning are irrelevant and do not arise.

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Employment Judge Adkinson

Date: 10 July 2024

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

**Notes**

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