EMPLOYMENT TRIBUNALS

Claimant: Mr J P Morley

Respondent: AB-Inbev UK Limited

HELD AT: Manchester **ON:** 21 February 2017
24 February 2017
(in Chambers)

BEFORE: Employment Judge Robinson
Mrs L Garcia
Mr P Stowe

REPRESENTATION:

Claimant: In person
Respondent: Mr D Northall, Counsel

JUDGMENT

The judgment of the Tribunal is that:

1. The claimant's claim under section 168 of the Trade Union and Labour Relations (Consolidation) Act, and regulation 4 of the Safety Representatives and Safety Committees Regulations 1977 fail and are dismissed.

2. The respondent did not fail to permit the claimant to take time off as required under those sections and regulations, therefore the claimant's claim is dismissed.

REASONS

1. The issues dealt with in the Judgment above were the only issues before us.

2. The relevant facts are these. The claimant works at the Samlesbury Brewery of the respondent company as a brewing operator. He is a senior trade union representative who is active in supporting his members on site with regard to many issues, but in particular he often represents them in relation to both disciplinary and grievance hearings. Mr Morley takes his trade union role seriously and is a popular choice by the members of his union to represent them when there are issues between those members and the respondent.

3. The respondent is a large international company with worldwide interests which operates at a number of sites in the UK.

4. There are approximately 250 people on site. Out of those employees approximately 150 are GMB members and around 40 Unite members. Mr Morley is a GMB union appointed representative. The claimant is both a convener at the site and union secretary and is a member of the European Workers Council for the company.

5. The claimant believes that he has been refused reasonable time off work on a number of occasions by the company, and he brings this claim before the Tribunal having issued the proceedings on 18 August 2016. His application for time off to carry out a TUC Diploma course in equalities was emailed to Gill McCormick on 17 February 2016. Gill McCormick is a People Manager with the respondent.

6. We were referred to a previous application by the claimant to the Tribunal in 2015 when he brought a similar complaint on the basis that at that point he had been refused reasonable time off for training in relation to his trade union duties. That application was dismissed by a previous and differently constituted Tribunal.

7. The course that Mr Morley wanted to sign up to was an online course which required him to study for seven hours per week for 36 weeks. The period of study would have been for 250 hours in total.

8. The claimant's claim to the Tribunal includes this paragraph:-

> "I believe that my initial request of seven hours per week for 36 weeks was reasonable under the circumstances. This claim is under section 168 of the Trade Union and Labour Relations (Consolidation) Act 1992 and the Safety Representative and Safety Committee Regulations 1977."

9. On 4 May 2016 the TUC wrote to the claimant confirming that he had been accepted on the course. He commenced studying in mid May but had to give that up because of lack of time available to him to continue the course.

10. The claimant's application dated 17 February 2016 was made in good time. Initially Mr Morley thought the course started on 25 April but as we understand it he actually started the course in mid May.

11. The claimant confirmed to his employer that he had given more than two months' notice so that the company could plan and organise for his absences; that the course was online and flexible and could therefore fit round production; and that he could study whilst he was on shift if and when production allowed. He also said that he could study on rest days when the company credited him for the hours.

12. The claimant confirmed that he was fully flexible in terms of when the company would like him to study and he was willing to look at whatever suited the department. He confirmed that on blue shift (his shift) the company was now fully manned following the recruitment of another individual called Marco.

13. The claimant felt that the course was a way of developing skills and knowledge for him. He felt that the course would allow him to fulfil a couple of the corporate principles, namely "to grow at a pace of my talent" and to help my superiors "as they are judged by the quality of the team". He then set out in detail the course content and he informed his employers that he felt that going on the course would be of great value in aiding the company to meet the requirements under the Equality Act 2010. He suggested, vaguely, that there was an overlap

between his position of shop steward and safety representative, because he felt that "many equality issues are related to health and safety". He then asked if his paid release was going to be facilitated.

14. The contents of the course are important and we set them out in full below:

13.1 Equality issues at work – this module focuses on three main topics: different equalities themes, union and workplace policies and practices and using trade union values to build the case for equality. This module will help you to understand:

13.1.1 The workplace in equality terms;

13.1.2 Different equality themes and protected characteristics;

13.1.3 Union and workplace equalities and practices;

13.1.4 Trade union principles of equality.

13.2 Equality and the law – this module focuses on two main topics: UK Equality Legislation and UK Institutions and Procedures for Equality. This module will help you to understand:-

13.2.1 The context for legislation on equality;

13.2.2 Current UK Equality Law;

13.2.3 Equality legislation and how it impacts on the workplace;

13.2.4 UK institutions that deal with equality;

13.2.5 Procedures that can be used in equality cases.

13.3 Working for equality – this module focuses on three main topics: equality theory and practice. The module will help you to understand:-

13.3.1 Differences in the theory and practice of equality;

13.3.2 Development of equality policies;

13.3.3 The use and value of equality tools;

13.3.4 Union structures and strategies in working for equality;

13.3.5 The equality bargaining and campaigning agenda.

13.4 Study skills units – the study skills units comprise of communication and study skills:-

13.4.1 Read and respond to written materials;

13.4.2 Produce written materials;

13.4.3 Prepare and make representation to a group;

13.4.4 Take part in discussions and work collectively.

13.5 Legal skills:-

13.5.1 Legal reasoning in case law;

13.5.2 Locating and using legal resources;

13.5.3 Using the law in negotiating;

13.5.4 Employment Tribunal preparation.

13.6 Information Community Technology:-

13.6.1 Prepare and input data;

13.6.2 Display and present information;

13.6.3 Present data;

13.6.4 Use database, word processing and spreadsheet applications.

13.7 Research project:-

13.7.1 Project planning;

13.7.2 Research skills;

13.7.3 Presenting the project.

15. The course content did not include any health and safety issues, although the claimant argued before us that equal treatment of employees generally is a health and safety issue.

16. We found that there was no health and safety content per se in the course.

17. We also noted and accepted that the GMB is a large trade union with full-time officials available to give advice to Mr Morley when he needed it to better support his members. Salaried Regional Officers and Unionline, a law firm operated by the GMB and the CWU, were available to give advice to both the full-time officials and to the likes of Mr Morley. The GMB also retain solicitors in order for them to deal with cases that are more detailed and/or which go to Tribunal.

18. On 23 March 2016 Ms McCormick confirmed that the two of them had met on 14 March to discuss the request, she set out the details of the request in that letter and confirmed that the request was refused.

19. Again it is worth setting out the reasons given at the time for the refusal, and they were:-

18.1 The request was not reasonable generally.

18.2 In coming to their decision the management had decided that the request was not reasonable, both for individual reasons and overall.

18.3 The amount of time request was excessive and not reasonable.

18.4 There were operational issues and difficulties in accommodating the request, which Mr Morley accepted at the meeting.

18.5 The company did not want the claimant to study whilst on shift given the requirement for skilled cover in the production process.

18.6 There were potential cost implications for the company in accommodating such a request.

18.7 Considering the contents of the course, management were not satisfied that the course was relevant to the trade union role that Mr Morley carried out as a trade union representative.

18.8 As the course did not require attendance at any specific time because it was online the claimant could do it in his own time.

18.9 Support of the employees of the company who were members of the GMB was available from sources other than Mr Morley, in particular from the full-time trade union representatives and also from the union's lawyers.

20. Ms McCormick also confirmed that the course was not relevant to health and safety issues despite the claimant being a safety representative.

21. The letter refusing the claimant's request, however, did go on to say that the company was committed to facilitating appropriate and reasonable paid time off work for union representatives to undertake the relevant training and they were happy, therefore, to explore with Mr Morley any other reasonable options that he may have. By 14 April 2016 the claimant had been accepted on the course by the TUC. On 17 April 2016 the claimant wrote to Ms McCormick amending his request in order "to attempt to improve industrial relations and engagement at Samlesbury". In that letter he contends that due to his academic ability and speedy workmanship he would be able to achieve the required workload in six hours per week and that he could reduce his request for time off from 252 hours to 216 hours for the entire course, and if there was any extra time needed he would undertake that in his own time.

22. The claimant also refuted the respondent's point that there was no health and safety content in the course by saying that:

> "Equality issues overlap with health and safety as any form of any discrimination can have negative impacts of [sic] people's health and in fact safety at work."

23. On 10 May 2016 the claimant's amended request is refused, and the reasons for refusal are that:-

22.1 The amount of time requested of 212 hours is still excessive and not reasonable and the company notes that although the claimant has reduced his request by one hour per week that still meant that six hours per week every week was paid release over a 36 week period.

22.2 The company repeat that there are material operational issues and difficulties in accommodating the request, which again the claimant had recognised previously.

22.3 That the company would not agree to an arrangement for the claimant to study while at work on shift.

22.4 That the course is not relevant to his trade union activities or reasonably necessary for him to carry out his trade union duties.

22.5 They confirm again that the course is fully flexible and does not require attendance at any specific time.

22.6 Again they reiterate that the GMB, senior union support and legal support can deal with the issues for the workforce.

24. On receipt of that refusal the claimant raised a grievance which was dealt with by the company.

25. As the grievance process was moving forward Mr Morley informed the respondent on 13 June 2016 that he had dropped out of the course as he was not able to study in his own time. He blamed the company for that.

26. The grievance hearing took place on 20 June 2016 before Aoife O'Riordan who is the Logistics Manager. During that meting Mr Morley was able to put his argument forward, confirming that he had reduced his request from 256 hours over the 36 week period to 216 hours for the year.

27. The thrust of the claimant's argument before Ms O'Riordan was that he could not consider alternatives to the course because he felt that training is a trade union official's duty and that he was entitled to reasonable time off and that he should not have to do any of the training in his own time.

28. The meeting was reconvened on 6 July 2016 where the claimant was told by Ms O'Riordan that his request was not reasonable and the grievance was rejected. The outcome of the grievance was sent to the claimant in writing on 11 July 2016. The reasons for Ms O'Riordan's decision were very much in line with the company's position previously when Ms McCormick had refused the claimant's request. However, there were various questions that the claimant raised at the time, over and above the simple issue of time off for union activities, which both Mr Morley and the full-time official at the site for the GMB, Shaun Buckley, had raised with Ms O'Riordan.

29. Those questions relate to Mr Morley's impression that he was constantly being refused time off. Ms O'Riordan said she had investigated those concerns and felt that it was untrue. She provided the evidence for the claimant which included the five requests in 2015, with three refusals and two requests granted. She went on to say that she had investigated the matter with both line managers of the claimant and they had confirmed to her that the claimant had had time off granted in order to attend disciplinaries, grievances, monthly union meetings, wage negotiations and union administration. It was also confirmed that he was given flexibility to swap shifts to allow attendance at meetings.

30. The claimant was an active union representative and Ms McCormick confirmed, and this is not in dispute, that Mr Morley attends all negotiation, consultation and monthly union meetings, and other union representatives do not, and at the vast majority of the disciplinary and grievance hearings on site it was Mr Morley who represented his members. Ms McCormick estimated that the claimant attended 70% of the disciplinary and grievance hearings on site in the past year.

31. Ms McCormick also confirmed in her evidence to us that the claimant had had absence from work granted for 80 hours' training in September 2010; 80 hours' training in September 2011; and 80 hours' training in January 2012.

32. The next question put to Ms O'Riordan was why the company were putting obstructions in the claimant's way with regard to his training. The suggestion was that he was dealt with differently from other representatives.

33. Ms O'Riordan said that she did not perceive that there were obstructions and she pointed out that the claimant had been offered 60 hours for an Employment Law course in 2015 and that he had been given the go-ahead at that time to attend a three day bullying and harassment course. The claimant did not go because the course did not run.

34. The third question that was asked by Mr Morley and Mr Buckley was: what do the company see as reasonable time off work? Ms O'Riordan explained that it was difficult to be precise as each request needed to be considered on its own merits.

35. In giving her reasons for the decision Ms O'Riordan dealt with all the issues that the claimant had raised, including the extra issue which was that the request spanned two holiday years. Ms O'Riordan did not think that made the request any more reasonable just because of that.

36. Ms O'Riordan referred to the content of the course and confirmed that she was not satisfied that the extent of time off requested for the courses was reasonably necessary for the claimant to carry out his trade union duties, "in view of the extent of your experience and the other training you have undertaken".

37. Ms O'Riordan referred, as Ms McCormick had, to the course being fully flexible and therefore did not require attendance at any specific times, and that the claimant could study in his own time. It was also confirmed that support on the equality issues was available from the full-time trade union officials, the GMB generally and there was legal support.

38. Ms O'Riordan went on to confirm that she believed that the claimant had an understanding of the subject matter in the course and therefore fundamentally, "the amount of time off is not reasonable".

39. What Ms O'Riordan did do, however, was offer to the claimant 48 hours of paid time to support the claimant in taking up that course or another course in equalities.

40. The claimant was informed that he could appeal her decision.

41. The claimant appealed and the appeal was dealt with by Chris I'Anson who was the Brewery Manager.

42. In his appeal letter the claimant pointed out that Ms O'Riordan "seems to be holding the view that because the course is an e-learning course that I should be studying it in my own time. The ACAS Code clearly states that time needs to be given during normal working hours for union representatives to take advantage of e-learning where it is available".

43. The claimant accepted that Ms O'Riordan had offered him 48 hours towards an equality course. He did not think that that was a gesture of goodwill as Ms O'Riordan had suggested. He stated that in his attempt to resolve the issue he would accept five hours a week paid time and two hours a week unpaid for 36 weeks in order to carry out the next available TUC Diploma in Equalities.

44. The claimant confirmed that he would take that time off at a time suitable to the company and felt that it could easily be facilitated as shown by the fact that he received 112 hours' worth of brewing operator training in four weeks.

45. The grievance appeal proceeded on 8 August 2016 with the claimant in attendance with Mr Mark Best as his trade union representative. The claimant was afforded every opportunity to explain his position.

46. It was Mr I'Anson's view that the company could not facilitate a release and during the course of that meeting various options were "batted around". The time requested to be off was still a considerable amount of time, in the region of 250 hours, and Mr I'Anson felt that the time off requested was disproportionate to his contractual attending hours. Mr I'Anson refused the appeal on the basis that no new evidence had been brought to his attention. He accepted that some of the training on equality might assist the claimant in his trade union role, but that with regard to that the claimant could receive adequate training on those issues without requiring somewhere in the region of 216 hours away from work.

47. Ms O'Riordan had suggested to the claimant that the respondent was not obliged to pay the claimant for union activities outside working hours.

48. Mr I'Anson clarified this by pointing out that the company's position was that the claimant was entitled to reasonable time off to undertake trade union duties during working hours and the right to be paid time off did not extend to the period when the claimant attended the site voluntarily outside working hours to represent a trade union member at meetings, and the claimant did that on a number of occasions. He quashed the view the claimant was now entertaining that the respondent felt that the trade union training should be done outside work in their own time. Mr I'Anson said that was entirely incorrect and that the respondent was committed to supporting trade union representatives and allowing reasonable paid time off to carry out their duties and undergo training during work time.

49. Mr Northall on behalf of the respondent sought to persuade us that we should accept paragraphs 28 and 45 of the previous judgment promulgated on 7 December 2015 at pages 388 and 393 of the bundle. We were a little hesitant to accept those findings as we felt that we should deal with the facts and issues as they presented themselves at the time the request was made. In any event Ms McCormick gave evidence, which we accepted, that it was hard to cover the work of the brew house operatives; that the claimant is responsible for the day-to-day operation in the brew house area; and that the team comprised eight employees on each shift who were

expected to cover the functions of brew house, fermentation, centrifuge, maturation and filtration.

50. When cross examined on the point Ms McCormick said she was giving the official number of a particular team but accepted that people were seconded to the team and agency workers did do some work as well to help out.

51. What was, however, not contested by the claimant was that on Mr Morley's shift Mr Morley and two other employees were trained to work in the brew house. That meant that it could be difficult for Mr Morley to be released, especially as he was a busy trade union representative.

52. Mr Morley cross examined Ms McCormick on that issue, suggesting to her that when she said the claimant attended 70% of disciplinary and grievance hearings that was a criticism of him.

53. We accepted Ms McCormick's position that that was not a criticism, merely the context behind the request. She did not think that the claimant represented too many workers. She accepted that if individual employees selected the claimant to represent them then she was happy to accept that that was the case. She also accepted that when representing employees it depended on the nature of the hearing as to whether knowledge of equality issues was necessary.

54. Those are the facts.

Relevant Law

55. Two cases were produced to us: the cases of **Ministry of Defence v Crook and Irving IRLR 1982 EAT** and **Menzies v Smith & McLaurin Limited IRLR 1980 EAT.**

56. Section 168 of the Trade Union and Labour Relations (Consolidation) Act 1992 provides that:

> "(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) Receipt of information from the employer and consultation by the employer under section 188 (redundancies) or under the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE"); or

(d) Negotiations with a view to entering into an agreement under regulation 9 of the TUPE regulations that applies to employees of the employer; or

(e) The performance on behalf of employees of the employer of functions related to or connected with the making of an agreement under that regulation."

(2) He shall also permit such an employee to take time off during his working hours for the purpose of undergoing training in aspects of industrial relations –

(a) Relevant to the carrying out of such duties as are mentioned in subsection (1); and

(b) Approved by the Trade Union Congress ("TUC") 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 condition 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 the 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."

57. In short, subsections (1)(a) and (b) relate to duties connected with collective bargaining.

58. Regulation 4 of the Safety Representatives and Safety Committees Regulations (1977) ("SRSC") provide as follows:

"(1) In addition to his function under section 2(4) of the 1974 Act to represent the employees in consultations with the employer under section 2(6) of the 1974 Act (which requires every employer to consult safety representatives with a view to the making and maintenance of arrangements which will enable him and his employee to cooperate effectively in promoting and developing measures to ensure the health and safety at work of employees and in checking the effectiveness of such measures) each safety representative shall have the following functions:-

(a) To investigate potential hazards and dangerous occurrences in the workplace;

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

(c) To make representations to the employer on matters arising out of the above two subsections;

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

(e) To carry out inspections in accordance with the regulations;

(f) To represent the employees he was appointed to represent in consultation at the workplace with inspectors of the HSE and any other enforcing authority;

(g) To receive information from inspectors regarding nuclear sites, from inspectors in accordance with section 28(8) of the 1874 Act;

(h) To attend meetings of safety committees.

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

(a) Performing his functions under the above Act and the above sections;

(b) Undergoing such training in aspects of those functions as may be reasonable in all the circumstances having regard to any relevant provisions of the Code of Practice relating to time off for training approved for the time being by the Health and Safety Executive."

59. With regard to the Health and Safety Commission Code of Practice (1978) the following provision is applicable to this case:-

"(3) As soon as possible after their appointment safety representatives should be permitted time off with pay to attend basic training facilities approved by the TUC or by the independent union or unions which appointed the safety representative. Further training, similarly approved, should be undertaken where the safety representative has special responsibilities or which such training is necessary to meet changes in circumstances or relevant legislation."

60. Paragraph 12 of the Code of Practice relating to time off for trade union duties provides that:

"Subject to the recognition or other agreement trade union representatives should be allowed to take reasonable time off for duties concerned with negotiations or where their employer has agreed for duties concerned with other functions related to or connected with the subject of collective bargaining."

61. Paragraph 21 provides:-

"Employees who are union representatives of an independent trade union recognised by their employer are to be permitted reasonable time off during working hours to undergo training in aspects of industrial relations relevant to

the carrying out of their trade union duties. These duties must be concerned with:-

(a) Negotiations with the employer about matters which fall within section 178(2) TULRCA and for which the union is recognised to any extent for the purposes of collective bargaining by the employer; or

(b) Any other function on behalf of employees of the employer which are related to the matters falling within section 178(2) TULRCA and which the employer has agreed the union may perform; and

(c) Matters associated with information and consultation concerning collective redundancy and the transfer of undertakings in the negotiations of an agreement under regulation 9 of the TUPE Regulations."

62. Paragraph 24 of the same Code reads:-

"Training should be in aspects of employment relations relevant to the duties of the union representative. There is no one recommended syllabus for training as a union representative's duties will vary according to –

(a) The collective bargaining arrangements at the place of work, particularly the scope of the recognition or other agreement;

(b) The structure of the union;

(c) The role of the union representative;

(d) The handling of proposed collective redundancies or the transfer of undertakings."

63. Paragraph 26 of the Code provides:

"Union representatives are more likely to carry out their duties effectively if they possess skills and knowledge relevant to their duties. In particular employers should be prepared to consider releasing union representatives for initial training in basic representational skills as soon as possible after their election or appointment bearing in mind that suitable courses may be infrequent. Reasonable time off could also be considered, for example:-

(a) For training courses;

(b) For further training, particularly where the union representative has special responsibilities;

(c) For training courses to familiarise or update union representatives;

(d) For training where there are proposals to change the structure;

(e) For training where legal change may affect the conduct of employment relations;

(f) For training where a union representative undertakes the role of accompanying employees in grievance and disciplinary hearings."

64. Paragraph 42 of the Code provides:-

"The amount and frequency of time off should be reasonable in all the circumstances. Although the statutory provisions apply to all employers without exception as to size and type of business or service, trade unions should be aware of the wide variety of difficulties and operational requirements to be taken into account when seeking or agreeing arrangements for time off, for example:-

(a) The size of the organisation and the number of workers;

(b) The production process;

(c) The need to maintain a service to the public;

(d) The need for safety and security at all times."

65. Paragraph 55 of the Code provides:

"Employers need to consider each application for time off on its merits; they should also consider the reasonableness of the request in relation to agreed time off already taken or in prospect."

66. The corollary of paragraph 42 should also be taken into account.

67. Paragraph 43 provides:-

"Employers in turn should have in mind the difficulties for trade union representatives and members ensuring effective representation and communication with, for example:-

(a) Shift workers;

(b) Part-time workers;

(c) Home workers;

(d) Tele-workers or workers not working in a fixed location;

(e) Those employed at disbursed locations.

(f) Workers with particular domestic commitments including those on leave for reasons of maternity, paternity or care responsibilities; and

(g) Workers with special needs such as disabilities or language requirements."

68. Section 168 in effect gives a right to an employee who is an official of an independent trade union to take paid time off to attend training. This is not an absolute right and the request for training must be for training relating to industrial

relations relating to collective bargaining and TUPE as set out in subsections (1)(a)-(e) of section 168.

69. Collective agreements and collective bargaining are defined in section 178 of the same Act, and collective bargaining means negotiations relating to the terms and conditions of employment or the physical conditions in which the workers are required to work, engagement or non engagement or termination or suspension of employment or the duties of employment of one or more workers, allocation of work or the duties of employment between workers or group of workers, matters of discipline, a worker's membership of non membership of a trade union, facilities for officials of trade unions and also machinery for negotiations or consultation or other procedures relating to any of the matters referred to above, including the recognition of employers or employers' associations of the right of a trade union to represent workers in such negotiations or consultation or in the carrying out of such procedures.

70. In the Act "recognition" means in relation to trade union 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.

71. The training must be specific to the employee making the claimed duties. The training must be approved by the trade union and the TUC and the request must be for time off during working hours and must be reasonable in all the circumstances. The purpose for which time off is to be taken must be reasonable in all the circumstances also.

72. The occasions on which time off is taken must be reasonable, as must be the conditions subject to which time off may be taken.

73. In short, as Mr Northall helpfully set out in his written submissions to us, it is for the claimant to satisfy the Tribunal that the request for training is relevant to duties listed in section 168(1), that it is relevant to his duties and it is reasonable in all the circumstances.

74. The principle we took from the case of **Menzies v Smith and McLaurin Limited** is that the EAT concluded in that case that the specification of topics contained in the syllabus (of that particular course) that was presented to the respondent indicated that the nature of the course was not one which was directly related to the carrying out of the appellant's duties as a trade union official in the respondent's employment. The topics described were too wide and general and in the respondent was well entitled to take the view that attendance at a course of this nature had no relevance to the duties of the appellant as a trade union official with them.

75. From the case **of Ministry of Defence v Crook and Irving** as mentioned above we took a number of principles. Firstly that the details of the training course should be seen by the employer. There was no issue here on that point. In deciding whether the time off requested to be taken was reasonable in all the circumstances or not the respondent needs to know what is contained in the course syllabus.

76. The respondent is not entitled to decide for itself what is or is not related to or connected with the collective bargaining matters in section 178(2). The relevance of the course must be assessed objectively on the basis of the whole of the evidence.

77. However, it is the evidence available to the employer at the time of the employee's request that is important when deciding how much time off was reasonable.

78. In coming to its conclusion the respondent must balance the union official's duties towards his or her members against a duty he owes to his employer and the needs of the business.

79. Paragraph 51 of the Code requires the union representative to minimise business disruption by being prepared to be as flexible as possible in seeking time off in circumstances where the immediate or unexpected need of the business make it difficult for colleagues or managers to provide cover for them in their absence. Equally, however, employers should recognise the mutual obligation to allow union representatives to undertake their duties.

80. This clearly indicates that there has to be a balancing act between the requirements of the union employee and the business, The EAT in the **Ministry of Defence** case above adopted a broader test of reasonableness namely that we must not apply our own standards of reasonableness. It requires us to ask the question given the circumstances whether the refusal of time off fell within the range of reasonable responses of any reasonable employer, and suggests that we need to look at the request for time off from the employer's point of view.

Application of Law to Facts

81. Applying that law to the facts of the case we first dealt with an issue which was put to us at the outset of the hearing. The claimant had been provided late in the day with a list of union duties he had attended from 13 August 2015 to 31 January 2017.

82. The claimant was surprised by this list and wanted an adjournment to consider it.

83. We refused that application for a number of reasons. Firstly we gave the claimant time to read that list whilst we read the statements. Secondly it did not and was never going to materially affect our judgment in this case. Thirdly, if the claimant had wished he could have cross examined the respondent's witnesses in relation to the list if he disagreed with any of the times that the respondent had said that he was either on or off shift.

Conclusion

84. With regard to the decision we can say straightaway that the claimant's claims fail. The respondent's decision not to allow the claimant to attend the course was not only within the band of reasonable responses test set out in the Ministry of Defence v Crook and Irving case, but if we were allowed to we would also say, having heard all the circumstances of this case, that the respondent's refusal of time off was reasonable in all the circumstances of the case substituting our view for the

respondent's view. We set out below why we so concluded and where necessary we have included further facts for ease of presentation.

85. We first considered the issue with regard to regulation 4 of the Safety Representative and Safety Committee Regulations 1977. We compared the contents of the course to the functions of the safety representative set out in regulation 4 and noted how specific the regulation was in paragraphs (1)(a)-(h). The course that the claimant wished to attend dealt with equality in the workplace and how the equality law in the United Kingdom had an impact in the workplace. The claimant was vague with regard to how that had any relevance to his position as a health and safety representative. We accepted that the respondent was within its right to note that a safety representatives requirement to investigate potential hazards and dangerous occurrences in the workplace under the Regulations was not something that was dealt with or taught on the course that the claimant wanted to attend.

86. The requirement of regulation 4 is all about practical functions that a safety representative carries out. Studying different equality themes, protected characteristics, and the trade union principles of equality and current UK equality law would not have assisted the claimant in carrying out that pragmatic health and safety function. The claimant suggested that all equality issues have some relevance to health and safety in that breach of those equality principles in the workplace can cause stress to the employee. This was such a nebulous connection between the course and the claimant's function as a safety representative that it was reasonable in all the circumstances for the respondent to conclude that the course was not related to the claimant's functional duties as a health and safety representative. Attendance on the course would not have assisted the claimant in carrying out the categories listed in regulation 4(1) and the functions defined therein.

87. Consequently that claim is dismissed.

88. We then turned to the issues under section 168 of the Trade Union and Labour Relations (Consolidation) Act ("TULRCA") and noted that the training set out in the course was very specifically to do with equality issues. None of the modules were concerned with the duties set out in section 168 of TULRCA or indeed the collective agreement and collective bargaining requirements in section 178(2).

89. The claimant was a very experienced representative for his members but he did not set out for us how the training or any of the modules in the course would polish his ability to carry out his trade union duties, or indeed execute them in a better way or at all. The claimant gave us no evidence as to how the course would specifically enhance his ability to represent the members. However, in a more general way we accepted that going on the course would help the claimant understand some of the problems his members might face.

90. Overall however we found that the rarefied nature of the course would not have assisted the claimant in carrying out his duties. Consequently it was reasonable for the respondent to reject the claimant's request to go on the course, especially as the respondent was aware that the GMB employed full-time officers in-house, and its officers had the ability to call on legal advice in a number of different ways.

91. With regard to the issue of time off during working hours, the claimant felt that he could undertake some of the training outside working hours. The previous

Tribunal found that "the respondent could not reasonably be expected to have to allow the claimant to study whilst on shift". With respect we agree entirely with that judgment. Whilst working on shift the claimant needed to concentrate on the job in hand. The respondent would not know, if they allowed the claimant to study whilst on shift, whether it would cause logistical difficulties on the shop floor or not. And, with regard to who at any given time was doing the processing work that the claimant should have been doing, what proportion of time was being spent doing work for the company in the brewing process, and what time was being spent studying.

92. Finally we turn to the issue of whether the amount of time off requested was reasonable or not. The claimant was asking for a considerable period of time off work. Initially he asked for 252 hours of work which was then reduced on a second application to 216 hours.

93. The claimant accepted that the course could be done outside working hours, and indeed started the course outside working hours. The respondent could not be expected to pay the claimant for coursework whilst he was at home or not on shift. The request under section 168 must be for time off during working hours.

94. We also considered the nature of the course and recognised that there were other trade union officials who could deal with the matters that the claimant was seeking training for. For example, if the claimant represented a member at a hearing and an equality or discrimination issue arose during that meeting there was nothing to stop the claimant asking for a short adjournment to take advice from the full-time representatives, or indeed the legal advisers of the Union. Indeed the evidence we heard from the management was that the claimant would be afforded that time.

95. The claimant also did not give us evidence as to a specific time of the day or even a day of the week when he needed to carry out work on the course. Planning cover for the claimant, therefore, would have been very difficult and would have had to have been dealt with on an ad hoc basis. That in itself was unreasonable of the claimant to expect. We are talking here about a skilled operative in a small team and any absence by the claimant would have to be covered with skilled labour.

96. We noted that overtime was voluntary and therefore there was no contractual right for the respondent to force other employees to cover, by way of overtime, the time used by the claimant for studying.

97. The claimant also had had a considerable amount off for training in the past and perhaps more importantly was the union official of choice for many of the union members who faced disciplinary and grievance issues and required the attendance of a union official at meetings. Applying the ACAS Code generally we felt that providing cover for the claimant was particularly difficult because he was skilled in all five stages of the production process.

98. We also noted that the modules in the course had no direct or immediate application to the duties in section 168 of TULRCA or 178(2) of TULRCA. The course was a specialised course and not a general course training a union official in the core skills of representation. The claimant already had those core skills. The course taught the theory of equality law rather than practical applications on a day-to-day basis.

99. Consequently, looking at all the circumstances of the case and looking at the situation from the respondent's point of view we found that the request of the claimant was an unreasonable request and it was reasonable for that request to be refused.

100. However, echoing what the previous Employment Tribunal found, if we could balance all the factors in this case and substitute our views, we were all of the view that the amount of time requested was not reasonable.

101. The claimant has various obstacles which he needs to negotiate in relation to section 168 and unfortunately he has not negotiated those obstacles and fails in his claim.

102. For the avoidance of doubt and for completeness we cannot say what this employer at that particular time ought reasonably to have offered to the claimant as a reasonable time from work. We say this because the claimant in his submissions to us suggested that one of his reasons for bringing these proceedings is to establish what is a reasonable time an employer should permit an employee to take under section 168.

103. Unfortunately we cannot be so prescriptive in our judgment and can only make a decision on the evidence presented to us at any particular moment in time.

104. All the claimant's claims fail.

19-04-17

Employment Judge Robinson

RESERVED JUDGMENT AND REASONS SENT TO THE PARTIES ON

20 April 2017

FOR THE TRIBUNAL OFFICE