Britain: Labour government attacks right to fight unfair dismissal and discrimination

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31 July 2001

Britain's Labour government intends to charge workers a "modest" fee for taking up their right to an employment tribunal, which hears claims of unfair dismissal or discrimination at work. The reason for introducing the charge—put at £100 in some press reports—according to Employment Relations Minister Alan Johnson, who is also the former general secretary of the postal workers union, is that too many workers make "spurious claims."

Although the number of cases heard by employment tribunals rocketed from 29,000 in 1987 to 80,000 in 1997, when Labour came to power, leaping to over 130,000 since then, Johnson does not produce any evidence to show that there is widespread abuse.

Indeed, the fact that three out of four cases are presently settled out of court would seem to indicate that most employers prefer to pay up, so tacitly accepting there is a case to answer, rather than risk taking the matter forward at tribunal and losing.

Under the new system, the government says all businesses must introduce grievance and disciplinary procedures—currently companies with less than 20 workers are exempt. Workers would have to exhaust these internal procedures before taking a claim further. Then their case would first be taken to the government's Advisory, Conciliation and Arbitration Service (ACAS), rather than an Employment Appeals Tribunal. The average cost of a tribunal case is £2,500, compared with only £300 for arbitration using ACAS. This is because the Employment Appeals Tribunal is set up like a court (about one fifth of claimants make use of lawyers) but legal representation in cases dealt with by arbitration is rare, and there is no right of appeal against an ACAS decision. The government has also increased the maximum fine for "frivolous and vexatious claims" from £500 to £10,000.

The bosses' organisation, the British Chamber of Commerce, congratulated Employment Relations Minister Johnson, saying the "government has responded to our calls" to bring in changes. In contrast the Industrial Society, a think tank generally sympathetic to Labour, says the changes "will discriminate against low wage earners and ration justice to the better off."

Back in May 2000, the Confederation of British Industry said, "Genuine disputes form the vast majority of applications" to take a claim to a tribunal. Yvonne Bennion, a policy specialist at the Industrial Society and co-author of *Courts or Compromise: Routes to resolving Disputes*, says, "Employees don't resort to legal action lightly, it is often a very traumatic experience".

Bennion's conclusion is supported by figures in the government's own report *Routes to Resolution: Improving dispute resolution in Britain*. It admits there were 2.4 million "serious employment problems that had the possibility of recourse to law between 1992-1997" and up to a quarter ended up in tribunals. The report says employers and employees do not have equal resources to pursue a claim, and workers are far more likely to represent themselves than employers. Legal Aid is not available for such cases. In only three percent of judgements in favour of workers do they get their job back. Where compensation is awarded instead of reinstatement, it only averages £2,744. Seventeen percent of workers "withdraw because of the stress involved, some of whom have very serious complaints."

Despite all these hurdles, only 15 percent of tribunal cases are dismissed in favour of the employers. Where Johnson argues that "spurious claims" are the reason for the increase in tribunal cases, other commentators

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blame it on new legislation, such as the Minimum Wage, the growth of small businesses, where conditions are generally worse, and employees using legal representation based on “no win-no fee”.

However, the increase in tribunal hearings is indicative of much deeper going social processes. The stepping up of exploitation of their workforce by the employers has been paralleled by a decline of union collective bargaining agreements and workers’ increasing disillusions in the ability of their old organisations to protect them. Whereas 83 per cent of workers were covered by collective agreements in the mid 1960s, only 35 per cent are today. Workers have been forced into seeking redress through exercising their individual legal rights rather than pursuing grievances through collective action.

On top of this, the pro-business policies of the Labour Party have worsened the situation facing workers in Britain’s offices, factories and shops.

The consensus between business, the trade unions and the Labour government is summed up in the latest ACAS Annual Report, which says, “The challenge for Great Britain... is to bury the old them and us approach for good.” The tribunal figures, rather than being proof of increasingly harmonious industrial relations, express the reality for millions who face employers all too ready to dismiss them unfairly or engage in discriminatory practices thanks to the absence of any political mechanisms for defending workers’ interests.

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