UK High Court backs government imposition of fees for workers' claims

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On February 7, the UK High Court dismissed an application for a judicial review by the public sector trade union UNISON against the imposition of fees on workers bringing claims through Employment Tribunals and Employment Appeal Tribunals.

The ruling has far reaching ramifications for millions of workers who now confront punitive financial barriers to accessing justice.

Under legislation introduced by the Conservative/Liberal Democrat government last July (Employment Tribunals and Employment Appeal Tribunal Fees Order 2013) workers are compelled, for the first time in the history of the Tribunal system, to pay upfront to bring a claim against mistreatment by an employer.

The fee regime means a worker must first pay to bring a claim, then again for the claim to go to hearing and a third time in the case of appeal. The claims fall into two categories. Type A claims are considered more simple and cover issues such as breach of contract and unlawful deductions of wages, with an issue fee of £160 and a hearing fee of £230. Type B claims, challenging unfair dismissal or discrimination, attract higher fees, with an issue fee of £250 and hearing fee at £950. Fees to go to the Employment Appeal Tribunal are set at a single rate of £400 for submission of a notice and £1,200 for a hearing.

UNISON challenged the fees-based system on the grounds that the order was unlawful and the fees prohibitive and indirectly discriminatory. The union presented evidence demonstrating the collapse in the number of Tribunal claims since the introduction of charges. Between September 2012 and September 2013 there was a steep decline of 56 percent in all claims. Sex discrimination claims fell by 86 percent and unfair dismissals suffered a decline of 81 percent.

In response, the High Court asserted that it was too early to draw any conclusions from the figures and the judicial review was premature. The matter was deferred to the Lord Chancellor to monitor. On the central issue of compelling workers to pay in order to uphold their statutory rights, the High Court found this to be wholly permissible. Lord Moses stated in the judgement of the Court, "We would underline the obvious: there is no rule that forbids the introduction of a fee based system."

The Court's claim that the fees are not prohibitive and the fee remission scheme ameliorates the impact of charging is spurious. In response to contention that the fees are excessive, Paragraph 42 of the judgement states, "The mere fact that fees impose a burden on families with limited means and that they may have to use hard-earned savings is not enough."

The Court considered a number of notional cases in which issue and hearing fees were capped, but still constituted in different instances up to 57 percent and 93 percent respectively of disposable monthly income.

It stated in Paragraph 40, "We conclude that the combined effect of remissions in the periods before and between the dates when fees must be paid, is that there is sufficient opportunity even for families of modest means, as illustrated in the three notional claimants, to accumulate funds to pay the fees. Proceedings will be expensive but not to the extent that bringing claims will be virtually impossible or excessively difficult."

Another example of the onerous and miserly nature of the fee remission scheme is the restriction on an individual or their partner having savings or investment of £3,000. They will not be eligible and will be required to pay the full cost of the claim, even if they are unemployed or in low paid work.

According to research published by the Trades Union

Congress, 46 percent of UK households will not qualify for a remission and 39 percent of couples with children would be liable for full costs.

The introduction of fees for Tribunal claims comes on top of a raft of other measures introduced by the Conservative/Liberal Democrat coalition, designed to make workers easily expendable, facing the ever present threat of losing their jobs in an effort to drive down pay and conditions and outlaw dissent within the workplace.

· In April 2012 legislation extended the qualification period from one to two years for an employee to be able to bring a claim of unfair dismissal. At a stroke this eliminated some 3 million employees from any protection whatsoever.

· In April 2013 the restructuring and cuts to Legal Aid through the introduction of the Legal Aid, Sentencing and Punishment of Offenders (LAPSO) legislation withdrew funding for all legal assistance in preparing Tribunal claims, except in the case of discrimination. Even this is available to fewer people, as means testing was tightened. In the same month legislation was introduced reducing the minimum period of consultation for collective redundancies, involving 100 workers or more, from 90 to 45 days.

The response of UNISON to the rejection of its legal challenge underscores its inability to wage any genuine opposition. General Secretary Dave Prentis hailed the government announcement, that successful claimants will be generally entitled to reimbursement of their claim fees, as a "significant concession" and a result of the pressure the hearing brought to bear.

The simple truth is the government has made this very limited gesture, safe in the knowledge that the overriding impact of introducing the fees will mean fewer workers will be able to afford to bring claims in future.

Even before the latest changes Tribunal claims against employers had become notoriously hard to win. For example, Tribunal claims for unfair dismissal have only an 8 percent success rate at hearing. Even when a claimant is successful this is no guarantee of receiving the compensation the Tribunal has awarded. A government survey conducted in 2013 prior to the introduction of fees revealed that non-payment of awards by employers for a range of claims is rife. Less than half of successful claimants (49 percent) had been paid in full, while 35 percent had not received any payment and 16 percent had only been partially paid.

UNISON has announced it will pursue its legal challenge to the Court of Appeal. It has made it clear this will be focussed on the disproportionate impact that fees have on women. As women workers are among the lowest paid, they will be most disadvantaged by the introduction of fees, particularly the higher one associated with discrimination cases.

But why should this be to the exclusion of opposing legislation that is universally unjust? This is a cynical attempt to utilise identity politics to wring some minor concessions from the government while the core elements of the fee regime remain intact. The very idea of opposing the legislation from the standpoint of the interests of the working class in general is an alien concept for UNISON.

Since the onset of the economic crisis in 2008 and the imposition of austerity, the trade unions have ensured that the reversal of workers' pay and terms and conditions has proceeded unopposed. UNISON played a central role in sabotaging the opposition to the attacks on public sector pensions and has enabled the government to impose pay freezes and job losses across the board.

This has facilitated the more routine use of Section 188 notices against public sector and National Health Service workers, to impose new contracts with inferior pay and conditions, by threatening redundancy.