

Dramatic fall in Employment Tribunal cases in UK

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In November 2015, Dick Palmer, the father of three sisters, Lucy, Bethany and Esme Palmer, had to pay the Employment Tribunal (ET) a fee to be able to bring a claim of sexual harassment and unfair dismissal against award-winning chef Ben Cox, co-owner of the Star Inn, in Sancton, North Yorkshire.

Palmer said that the case only went ahead after he agreed to pay a £250 fee. He commented, “The costs just keep going on up and up and, when you think of it all, it would be enough to put most people off, but my daughters were convinced something had to be done and we had to bring this case forward.”

The tribunal found Bethany, 24, and Lucy, 21, were unfairly dismissed and Lucy and Esme, 17, were sexually harassed by Cox. The restaurant was found to have breached working time regulations by denying Lucy and Bethany a rest break.

It is now three years since the introduction of tribunal fees by the Employment Appeal Tribunal Fees Order 2013 under powers conferred by the Tribunals, Courts and Enforcements Act 2007. Fees start at around £160 to issue a “type A” claim (e.g., unlawful deduction of wages or breach of contract). It costs £250 for a “type B” claim (e.g., unfair dismissal, discrimination claims), with a further hearing fee of £230 for Type A claims and £950 for Type B claims.

Since their inception in 1964, Employment Tribunals had been free, with costs met by the government.

At the time of the changes, there were many criticisms of the fees system on the basis that they would restrict the number of people able to afford to take cases forward to tribunal. These warnings have been vindicated.

In the first year following the introduction of fees, the numbers of cases accepted to go to tribunal dropped dramatically, by 77 percent. Cases fell from 187,441

during the period October 2012 to September 2013, to just 43,961 from October 2013 to September 2014.

Employers and government ministers asserted at the time that fees were necessary to prevent vexatious and unfounded claims. Yet there is no evidence to show that the drop in people taking claims forward can be attributed to such claims. Evidence from the Citizens Advice Bureaux (CAB) Scotland and England, the Law Society of Scotland and the universities of Bristol and Strathclyde shows that it is workers with genuine cases who are being prevented from pursuing their claim.

The August 2015 study “Employment Tribunal Fees—effect on clients of the Citizens Advice Bureaux” revealed that the introduction of the fees has been a major determining factor in cases not going forward to tribunal.

Workers who have lost their jobs are often not in any financial position to take cases forward. This is particularly the case for workers moving from one low paid job to another. The CAB study notes that workers who have been advised that their case is strong often will not take it forward for fear of losing the case and then losing the fees they have paid out.

The levels of compensation awarded in most tribunal cases in relation to the fees themselves are also a factor in many cases not being taken out. In disability discrimination, the average award is £7,536, with 18 percent of those awarded compensation receiving less than £3,000 and 29 percent less than £5,000.

In cases of race discrimination, the average award is £4,831 with 28 percent of those awarded compensation receiving less than £3,000 and 46 percent receiving less than £5,000. In the case of sex discrimination, the average award is £5,900, with 22 percent of those awarded receiving less than £3,000 and 39 percent less than £5,000.

The Funding Code, published by the Legal Aid Agency, an executive agency of the Ministry of Justice, advises that a “reasonable person” would not litigate a claim with 50-60 percent prospects, unless the likely damages award was at least four times the likely cost of pursuing the case.

Prior to these changes in legislation, a major problem was that tribunal compensation awards were often not being paid. A 2013 study by the department for Business Innovation and Skills (BIS) found that only 49 percent of tribunal awards were paid in full, with 16 percent paid in part. Thirty-five percent of those winning their case against an employer received no money at all.

Many have found that since the introduction of fees, there has been difficulty in obtaining legal advice from those working on a “no win—no fee” basis. This has led to people pursuing cases that win and then being no better off financially once legal costs were deducted.

In the case of the Palmers, it was clear that without the financial support of their father it is likely they would not have been able to take their case forward to tribunal.

The CAB-led study highlights the fact that many workers feel powerless to do anything to remedy a wrongdoing. Comments like this cited in the report are common: “Well as far as I’m concerned, for me, there is no law or legal system ... as far [sic] it is me getting justice, you know. You’ve got to pay for justice. What sort of justice is that you’ve got to buy it?”

The fact that workers are not able to access justice is leading to a growing number of unlawful employment practices being normalised, and is just one expression of the ferocious attack on working conditions and democratic rights since the financial crash of 2008.

The Unison trade union failed in August last year to challenge the changes to employment tribunals in the Court of Appeal. The court ruled that it could not be inferred that a drop in the number of employment claims was entirely down to potential claimants being unable to afford fees.

Unison is currently challenging the ruling in the Supreme Court.

Unison is opposed to tribunal fees primarily on the basis that they are harmful to its efforts to deepen collaboration with employers and the state. Last September, Mike Kirby, Unison’s Scottish Secretary,

said of the Scottish National Party’s (SNP) plan to end tribunal fees in Scotland, “This announcement goes a long way towards building *more sensible industrial relations* in Scotland and we welcome it” (emphasis added).

The content of these “sensible relations” is outlined in the programme of the devolved SNP administration’s programme for 2015-16, “A Stronger Scotland,” which Unison lauded. It states, “*The Scottish Government’s partnership with the Scottish Trades Union Congress and strong belief in the contribution of the Trade Union movement to fairness and equity at work is also important. We will continue to oppose the legislation being brought forward by the UK Government which threatens to undermine the Unions’ ability to act as partners in economic development*” (emphasis added).

The Labour Party, even prior to Jeremy Corbyn being elected leader, said it would abolish the ET fee-paying system. Yet it is they and the trade unions that are responsible for these and many other attacks being imposed.

Labour under Tony Blair came to power in 1997, after successive Conservative governments had introduced a battery of anti-trade union laws. Over the next 13 years Labour maintained this legislation while in office, with the unions not lifting a finger in opposition. If workers are to fight back against ruthless employers, they cannot depend on the courts for legal redress, or the Labour Party and trade unions that are proven defenders of the capitalist class.



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