

IT IS A GRIEVANCE WHETHER YOU LIKE IT OR NOT

We wrote to you not so long ago to alert you about the importance of following your grievance procedure as soon as an employee makes any complaint in writing. The madness continues.

In this month's decision of *Procek v Oakford Farms Limited*, the Employment Appeal Tribunal held that a race discrimination grievance brought by a Polish employee constituted a step 1 grievance under the Statutory Grievance Procedure, even though the employee had specifically stated in his letter that his grievance was an informal grievance and that he would raise a formal grievance under the statutory scheme should the employer fail to resolve it to his satisfaction.

The employer dealt with the grievance in an informal manner and found against the employee. The employee did not raise a formal grievance. Instead, he resigned and claimed race discrimination in the employment tribunals.

The issue to be determined by the tribunals was whether his claim should be heard at all. The law as it currently stands would prevent the employee from lodging his claim with the tribunals if he has not raised a written grievance prior to lodging tribunal proceedings.

The other side of the coin is that when an employer fails to follow the statutory grievance procedure by organising a meeting to hear the grievance or by offering an appeal against its findings, it faces an increase in damages of up to 50%.

Although the EAT decided that the informal grievance did constitute a step 1 grievance, it did retain some grip on its sanity by strongly inviting the tribunal that will hear the case not to increase damages in the circumstances, as it would be unfair to penalise the employer for agreeing to deal with the grievance on an informal basis at the employee's request.

The good news is that this sometimes nonsensical piece of legislation is very likely to be repealed alongside the Statutory Disciplinary Procedure. The bad news is that this is unlikely to happen before April 2009.

In the meantime, you should treat any written complaint by an employee as a statutory grievance and organise the meeting. If in doubt, we recommend that you call us.

For more specific information or to discuss your requirements please call either Amanda Galashan or Julie Calleux at EmployEase on 0845 123 3741, or email us at info@employease.co.uk.

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