

Injury to feelings awards available in breach of working time cases

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The Employment Appeal Tribunal has decided that compensation for injury to feelings can in principle be awarded in respect of working time detriment claims.

This type of compensation is available in trade union and whistleblowing detriment cases. The EAT held that working time detriment cases are akin to claims of victimisation under the

Equality Act 2010, so injury to feelings payments should be available in those cases too.

Mr Mansell and his colleagues were firefighters employed by the South Yorkshire Fire & Rescue Service. The Fire Service intended to change the duty system from a 2-2-4 system (two day shifts and two night shifts of around 12 hours each, followed by four days off) to a scheme called "Close Proximity Crewing". Under that scheme, firefighters would work consecutive 24-hour shifts comprised of a 12-hour day shift and 12 hours on-call each night, followed by four days off. On call time had to be spent in or near the fire station.

The firefighters disputed the decision to implement the Close Proximity Crewing system. As a result, they were compulsorily transferred to other fire stations in South Yorkshire. The firefighters brought claims alleging that they had been subjected to detriments because they had refused to comply with a measure imposed by their employer which contravened the Working Time Regulations 1998.

Those claims were successful, and the remaining question was how much those claims were worth.

The firefighters argued that they ought to be entitled to compensation for injury to feelings caused by the detriments to which they were subjected (including interference with care arrangements, loss of free time, leisure time and family time, and disruption to their working patterns and family relationships). The Fire Service resisted on grounds that injury to feelings payments ought not to be available in working time claims.

It is now clear that injury to feelings can be awarded in working time cases in principle. However, the reality is that demonstrating sufficient injury to feelings to justify compensation will likely be quite difficult in cases concerning working time violations.

South Yorkshire Fire & Rescue Service v Mansell and others
UKEAT/0151/17

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