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Harassment Complaints Database: Union Policy

Branches are again reminded of the need to fill in the Harassment Complaints Database (HCD) Forms, as illustrated in LTB 450/04.

Please ensure that all reps have a copy of LTB 450/04 as it contains useful guidance as well as the form itself. Branches may also find LTB 289/04 useful which contains information on the Harassment Helpline and the Harassment Advice Network as well as the HCD. The completion of the HCD forms is part of our agreement with the Equal Opportunities Commission and is, therefore, CWU policy (the full agreement can be found in LTB 292/04).

The Equal Opportunities Commission has raised concerns with us regarding the completion rate, which we need to address, otherwise we will fall foul of the agreement. Therefore, please ensure that any complaint raised with branch reps by members that involves possible harassment should be notified to HQ via these forms.

We appreciate that this will add to an already busy work schedule for those reps that have the responsibility for completing them, but there is no scope for non-compliance. We must accept that this will become an accepted culture in terms of harassment reporting.

The data that will come through to HQ will be vital in enabling us to analyse and identify any obvious patterns where problems exist.

We extend our appreciation to all those branches already complying with the policy and look forward to the co-operation of all branches in this matter.

Any enquiries regarding this paragraph please contact **Michèle Emerson** at CWU HQ.

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Mandatory Equality & Diversity Training

Branch secretaries are requested to ensure that any person in their branch who has CWU rep responsibilities and has not yet completed their mandatory Equality & Diversity training are enrolled in the courses that are planned throughout the regions in the forthcoming months.

All reps must do the training – this includes divisional reps, area reps, unit reps and branch officers. For clarification on dates please contact either your regional secretary.

The training has been running now for over three years and there are still a substantial number of reps who have not completed the training. Your co-operation in this matter is greatly appreciated.

Equal Opportunities Department.

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OUTtalk – Conference 2007 Edition

Attached to this BOB is a copy of the Lesbian, Gay, Bisexual & Transgender Advisory Committee Newsletter OUTtalk.

Copies were handed out to delegates at Annual Conference and further copies have been sent to the contact list.

If anybody wants more hard copies please contact **Fevzi Hussein** on **020 8971 7388** or email **fhussein@cwu.org**

Any enquiries on the above should be addressed to **Michèle Emerson**, Assistant Secretary, quoting **reference No. 1.50.3.2**

HEALTH AND SAFETY

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Serious and Imminent Danger at Work: Harvest Press Limited v McCaffrey [1999] IRLR 778

Masiak v City Restaurants (UK) Limited [1999] IRLR 780

This month we report two decisions of the Employment Appeal Tribunal concerning health and safety dismissals under Section 100 of the Employment Rights Act 1996 (ERA).

There is no qualifying period of service before an employee can bring a health and safety dismissal case, therefore the provisions of Section 100 of the ERA provide important protection for new employees who raise health and safety issues. In these two decisions the EAT rejects the overly restrictive interpretations of Section 100 advanced by the employers in each case.

In the first case Mr McCaffrey was employed as a machine minder. He worked on the night shift with one other person, a Mr Huson. He had worked at the factory for less than three months. Mr McCaffrey complained to his employers about Mr Huson. Mr Huson found out about the complaint because he had been asked to stay behind at the end of the shift to see the manager.

During the night shift Mr Huson became abusive, shouting at Mr McCaffrey and standing over him while he attempted to ring his manager. Mr McCaffrey was scared by this, did not feel safe at work and went home to ring his manager. He also spoke to someone more senior in the company and said he would not return unless he had some assurances about his safety.

The director spoke to Mr Huson and accepted his version of events. He then rang Mr McCaffrey and told him by walking out in the middle of a shift he had resigned and he was sent his P45. Mr McCaffrey pursued an Employment Tribunal claim that he was dismissed for a health and safety reason. This includes the right to leave the workplace where the employee believes there is serious and imminent danger.

The employers argued that the word “danger” is limited to dangers generated by the workplace itself and not dangers caused by co-workers’ behaviour. The Employment Tribunal disagreed and found that Mr McCaffrey had been unfairly dismissed for a health and safety reason.

The EAT upheld the Tribunal’s decision saying

that the words in the statute “are quite general”, and “danger” could cover dangers caused by the behaviour of fellow employees. They gave other examples of where co-workers’ behaviour could give rise to danger.

The case of Masiak concerned Section 100 (1)(e) of the ERA which gives protection where an employee takes steps to protect himself or other persons from serious and imminent danger.

The employers tried to argue that the words “other persons” related only to other employees and not members of the public. Mr Masiak was employed as a chef for just over a month. He left the premises after refusing to cook food (partially defrosted chicken) which he considered was a potential hazard to public health.

The Employment Tribunal rejected his claim, accepting the employer’s argument that members of the public were not covered by the words “other persons”. The EAT disagreed. They looked at the EC Directive and the legislation and decided that neither limited the class of persons at risk of danger to just those employed by the employer. They sent the case back for a rehearing before a different Tribunal.

Both these cases are a welcome addition to the case law by taking a purposive approach to the legislation and giving the employees concerned protection from dismissal for health and safety reasons regardless of their short service.

Dave Joyce

National Health, Safety & Environment Officer

TELECOMS

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BT Wholesale: Horizon Drive Test

Discussions have taken place with management on the current arrangements for the Horizon Drive Test contract and its temporary extension and the use of supplementary agency drivers.

The contract has been temporarily extended and discussions are taking place with a view to BT Wholesale winning a renewed contract. In the interim O2 has agreed an extension without any indication that it is prepared to grant the new contract to BT Wholesale.

Management explained the background to the use of agency drivers which was created by the uncertainty of the future contractual arrangements and the extension of the contract. Management commenced a trial using agency in January in Scotland and extended to the rest of the country in the following month. Data Technologies were engaged to supply agency drivers; these would not be used in other manager areas where two person shift or overtime arrangements would apply. During the course of the trial and based on members’ complaints, the union raised concerns around the suitability and actions of some of the agency drivers; these ranged across a number of issues including

safety. Management supplied the following information:

To the end of April there had been 54 agency driver requests, four of which had proved unsuitable and from May to date there had been 29 agency driver requests of which two were found to be unsuitable. Only a quarter of the hours booked were booked by Data Technologies.

A request was made by the union's executive that redeployees should be used to seek to minimise the use of agency drivers; this was accepted by management and currently there are two C3s employed full time on a 3-month rolling contract Drive Testing for O2 in the West Midlands. There is one redeployee working as a Clerical Administrator in the O2 NMC in Slough on a 6-month rolling contract. There is a further C3 who has worked as a project coordinator on the O2 change out project.

Management stated they expected to continue with this type of working arrangement until the end of the contract; this is driven by O2 having very short timescales

and changing their requirements very quickly. However management gave a commitment that if the contract was won this would lead to requirement for a further 15 direct labour posts.

Brian Healy
Assistant Secretary

EVENTS BULLETIN

Sunday 5 August 2007: Leeds Pride Event. 12.00 Nelson Mendala Gardens and Lower Briggate, Leeds. Major march and rally commencing from Nelson Mendala Square (outside Leeds Civic Hall) and marching through Leeds to end at Lower Briggate. There will be a rally with speakers at midday and the march will include the Pink Bus, fire engine and ambulance. You are invited to bring along any union banners and to join in! When the march ends, there will be stalls and other events. For more information contact cbeastall@tuc.org.uk Yorkshire & the Humber TUC.

Monday 8th October 2007: Eastern Regional Retired Members' Committee Meeting. To be held in Community, Swinton House, 324 Gray's Inn Road, London WC1X 8D at 11am. For more information contact **Nobby Clark** Eastern Region Retired Members Secretary on **07713 155575**.

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If you have anything for the events bulletin page please send your contribution to:

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CWU Communication Department
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Wimbledon SW19 1RX
Tel: **020 8971 7497**
Email: mmurray@cwu.org

Details must arrive nine days before publication and must include a contact phone number, brief summary of the event, email and website address. Listings are free, but inclusion is not guaranteed.