



## HR Broadcast – Disciplinary hearings and the right to be accompanied

In a fair disciplinary process workers have a statutory right to be accompanied by a companion where the disciplinary meeting could result in:

- a formal warning being issued; or
- the taking of some other disciplinary action; or
- the confirmation of a warning or some other disciplinary action such as an appeal hearing.

However, a recent case caught my eye and that was in *Gnahoua v Abellio London Ltd* 2017 (16<sup>th</sup> February) where the employer refused the employee's choice of companion for his disciplinary appeal hearing. The result, on the face of it, was somewhat surprising when it came to compensation as the tribunal awarded him only £2. I have therefore looked into this case to understand the reasons behind this.

Quoting from the ACAS Code of Practice on Discipline and Grievance Procedures;

"The chosen companion may be a fellow worker, a trade union representative, or an official employed by a trade union. A trade union representative who is not an employed official must have been certified by their union as being competent to accompany a worker. To exercise the statutory right to be accompanied workers must make a reasonable request. What is reasonable will depend on the circumstances of each individual case. However, it would not normally

be reasonable for workers to insist on being accompanied by a companion whose presence would prejudice the hearing nor would it be reasonable for a worker to ask to be accompanied by a companion from a remote geographical location if someone suitable and willing was available on site.

The companion should be allowed to address the hearing to put and sum up the workers case, respond on behalf of the worker to any views expressed at the meeting and confer with the worker during the hearing.

The companion does not, however, have the right to answer questions on the worker's behalf, address the hearing if the worker does not wish it or prevent the employer from explaining their case.

Please note, an employee does not have the right to be accompanied to a disciplinary investigation meeting although you may wish to take a pragmatic view and allow this.

The Employment Appeal Tribunal has previously ruled that the choice of companion rests firmly with the employee and there is no requirement for the choice to be a reasonable one (providing the employee's choice comes from one of the approved categories). Where the right to be accompanied is breached by the employer, the employee can issue a tribunal claim. The maximum compensation the tribunal can award is two weeks' pay. So how come only a £2 award was made?



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In *Gnahoua v Abellio* the employee, Gnahoua (G), was refused his choice of companion. Briefly, G had been employed by Abellio (A) as a bus driver. In July 2015 CCTV footage indicated that he had been looking at an iPad whilst driving his bus. He had also failed to undertake a visual check of the bus, also as demonstrated by CCTV. He was suspended and subject to disciplinary proceedings.

At the disciplinary hearing G was represented by a Union official. After A dismissed G, G appealed and informed A that he wished to be accompanied at his appeal hearing by two brothers who had formed the PTSC union (of which G had become a member). A said it was happy for someone else from the PTSC union to attend but both brothers were banned from representing its staff at hearings. It was company policy that neither of the two officials from PTSC were allowed to attend disciplinary or grievance hearings; this was because they had been found guilty of threatening behaviour towards members of staff and of dishonesty.

G attended his disciplinary appeal hearing alone and the dismissal decision was upheld. The tribunal later found that A had followed the relevant ACAS Code of Practice and “only sought to interfere with the choice of companion on strong grounds.”. Therefore, it was held that the breach of G’s right to be accompanied was a technicality.

In simple terms, the employer cannot refuse a companion because they do not like that

person, there needs to be some concrete reason for this, such as previous threatening behaviour. Remember if you are going to refuse a companion it is good practice to allow the employee to bring an alternative.