

THE FIRE BRIGADES UNION

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RETAINED FIREFIGHTERS: FBU'S SEVEN-YEAR BATTLE FOR PENSIONS AND END OF DISCRIMINATION GOES BACK TO EMPLOYMENT TRIBUNAL

The Fire Brigade Union's seven-year battle to secure an end to discrimination against firefighters working retained duty returns to Croydon Employment Tribunal on Monday 12 November. The move follows a landmark legal judgment by the House of Lords on 1 March 2006 in favour of the union.

FBU General Secretary Matt Wrack said: "This is old-fashioned discrimination deprives thousands of firefighters of a pension and condemns them to worse sick pay when injured. It has no place in the modern fire service and the FBU intends to bring it to an end.

"We can't have firefighters at the same incidents, doing the same job, taking the same risks with one group getting a pension and the other not. The FBU is confident we have a strong legal case and we are determined to win."

The tribunal will consider 12 test cases from a total of 12,000 lodged at tribunal in 2000 on behalf of firefighters working retained duty across the UK. Any judgment applies to all 12,000 FBU members working retained duty in all fire brigades in Scotland, Wales, Northern Ireland and England (London has no firefighters working retained duty).

A briefing paper is attached below

National officials of the union will be available for interview at the tribunal:

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PENSIONS BATTLE FOR FIREFIGHTERS WORKING RETAINED DUTY

The FBU won a major legal victory for firefighters working the Retained Duty System in a test case won at the House of Lords on 1 March 2006. The landmark decision – by a 3 to 2 majority of Law Lords – paved the way for firefighters working Retained Duty System to have access to the current Firefighters Pension Scheme.

The decision – hailed by legal experts as one of the most important legal decisions of 2006 – also opened the door to better sick pay and access to a host of other rights based on the principles of equal treatment with wholetime firefighters.

The case centred on the exclusion of retained firefighters from the Firefighters' Pension Scheme and worse treatment under the sick pay scheme. They claimed they were being treated differently because they are part-time workers and that this was unlawful.

The FBU backed the test case throughout at considerable expense although the employers will now pay most of those costs which run into several hundreds of thousands of pounds. The union was represented by leading employment and pension lawyers Thompsons, Robin Allen QC and barrister Martin Seaward.

The case returns to Employment Tribunal starting on Monday 12 November. The final tribunal decision may take some time to come through.

FBU General Secretary Matt Wrack said: “Retained firefighters will no longer accept second class employment rights. The momentous of the House of Lords paved the way to ending 60 years of discrimination against firefighters working retained duty.

“We are on course to ensuring firefighters working retained duty will no longer serve their communities for years then be left without a pension. Having secured holiday rights, sick pay rights and proper time off, we have now taken a major step to securing access to the current pension scheme, not simply the new one being offered.

“The Fire Brigades Union has fought this case for many years against great odds. Once again we have proved we are the only organisation in the fire service with the will and the means to protect firefighters working retained duty.”

Tam Mitchell, FBU national executive member representing firefighters working RDS said:

“We are going back to Employment Tribunal and we are confident in the strength of our case after the Lord’s judgment. No one else had the guts, the will or the means to do what we have done.

“We were heavily criticised for even taking the legal action by one organisation claiming to represent some firefighters working RDS. We have proved we are the only ones within the fire service who can stand up against discrimination directed against firefighters working retained duty.”

The FBU used the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 to argue that retained fire-fighters, as “part-time” workers, are being discriminated against in relation to their whole-time colleagues. The FBU lodged Employment Tribunal claims in 2000 on behalf of ALL of its retained fire-fighter members claiming that they should receive the same entitlements to membership of the Fire-fighters Pension Scheme, sick pay; and additional pay for additional responsibilities as their whole-time colleagues.

The cases were brought against ALL Fire Service employers of fire-fighters working RDS -who are FBU members - throughout the United Kingdom and what was then the Office of the Deputy Prime Minister (as the administrator of the Pension Scheme) but is now Communities and Local Government.

Twelve “lead” cases were selected from the Royal Berkshire and Kent and Medway Towns Fire Authorities out of a total of 12,000 employment cases lodged. There are approximately 18,000 firefighters working retained duty across the UK.

The claims were rejected at the Employment Tribunal, the Employment Appeal Tribunal and the Court of Appeal. But the House of Lords ruled that retained and whole-time fire-fighters’

contracts were employed under the “*same type of contract*”. Employers could not draw a distinction between the two types of contract and defeat the claim.

The House of Lords ruled the original Employment Tribunal had misapplied the law in determining that the work of retained and whole-time fire-fighters was not “*the same or broadly similar*”. This part of the case is to be referred back to the Employment Tribunal for re-consideration in the light of the House of Lords judgment.

In the leading judgment Law Lord Baroness Hale noted that “*the Tribunal found that ‘at the scene of the fire the actual job function carried out by all attending is effectively the same’. The retained and whole-time firefighters were indistinguishable from one another*”.

She went on to say:” *the fact that the full-timers do some extra tasks would not prevent their work being the same or broadly similar.....weight should be given to the extent to which their work is in fact the same and to the importance of that work to the enterprise as a whole. Otherwise one runs the risk of giving too much weight to differences which are the almost inevitable result of one worker working full-time and another working less than full-time.*”

Lord Hope, in a supporting judgment said that the Tribunal’s analysis “*led them to concentrate on the differences and not to assess the weight that ought to be given to the similarities.*” The Office of the Deputy Prime Minister’s argument that retained firefighters were treated no less favourably on an overall analysis of their terms and conditions was rejected.

What that Judgment Means

The issue of whether the work of the retained and whole-time fire-fighters is the same or broadly similar will now return to the Employment Tribunal. The ET will now have to give greater emphasis to the common central role of fighting fires, and focus on the similarities between the two duty systems as opposed to the differences.

The FBU remains confident, after the House of Lords judgment, that the Tribunal will conclude that the work is the “same or broadly similar”. This means firefighters working RDS will be entitled not to be treated less favourably than whole-timers.

They would then have to be entitled to join the Firefighters Pension Scheme with backdating, to the same pay and other conditions and otherwise equal treatment (for example, comparable training).

Professional firefighters working retained duty are called to their fire station by way of a bleeper known as an alerter. They are typically on call for around 120 hours a week (although technically part-time workers) with the rest of the time going about their other work or business.

Predominantly based outside urban areas and major towns, 60% of the UK land mass is served by firefighters working retained duty. They attend the same major incidents as firefighters working other shift and duty systems eg this year’s floods, Buncefield, and Lockerbie, the biggest loss of life in a single terrorist incident in the UK.