Part Time Workers Settlement – Pay and Conditions

FBU negotiates parity settlement for retained firefighters

After years of concerted effort to achieve equality for firefighters working the retained duty system, the Fire Brigades Union has finished negotiating an agreement to bring parity between wholetime and retained on terms and conditions.

Matt Wrack, FBU general secretary said: "For some three years now the FBU has been seeking the implementation of this successful award. These negotiations have been taking place with the national employers on terms and conditions and the Grey Book. Separate negotiations have been taking place on the changes required to give pensions equality."

Background

The deal follows the landmark House of Lords judgement on 1 March 2006, which found in favour of the FBU. This was referred back to the original employment tribunal with final victory being secured on 5 March 2008.

The Tribunal considered issues remitted from the House of Lords and found as follows:

1. The Tribunal finds and declares that the Claimants were engaged in broadly similar work as their named comparators.
2. The Claimants were treated less favourably than their named comparators in respect of access to pension rights and payment for sickness absence.
3. The Respondent's arguments of justification are dismissed.
4. The Claimant's case for increased pay for additional responsibilities is adjourned for 8 weeks.

There followed protracted negotiations to reach a settlement that implemented the decisions of the Tribunal. That settlement has been reached and was promulgated in NJC Circular 3/2011, which has been distributed to all branches via head office circular 2011HOC0140AD dated 21 March 2011. This bulletin provides guidance to members on the agreement.

What does the ruling and the settlement mean?

In short it means that firefighters who work on the retained duty system must receive the same (pro rata) benefits, terms and conditions as their wholetime colleagues. The updated Grey Book brings that equality in the areas of:

- Sick leave
- Acting-up allowance
- Pay for public holidays
- End of course leave
- Trade union leave
- Overtime
- Spoiled meals allowance
- Removals/lodging allowance
- Recall to duty
- Payment during suspension
- Payment during maternity support leave
- Special leave

Whilst the purpose of the legal claim was solely to achieve parity, in addition to reaching a settlement on national terms and conditions, the FBU has negotiated a compensation payment.

Am I entitled to a compensation payment?

You are entitled to a compensation payment if:

- You were employed by a fire and rescue service (FRS) on a retained contract on 1 July 2010
- You were an FBU claimant in 2001 (we submitted the claims on behalf of all recorded members at the time)

You will not be entitled to a claim if you meet both the criteria below:

1. You were not an FBU claimant in 2001

and

2. You left the service before 30 June 2010

How do I access my compensation?

Fire authorities are using the formula within the settlement to calculate the individual cash settlement sums for each retained firefighter. Fire authorities will then send the data and calculations for each firefighter to Popularis, an independent scrutineer which the FBU has engaged to handle the paperwork and to distribute the information to our members. This has the dual benefit of:

(a) ensuring that the process is processed by one team, which will ensure that it is carried out uniformly

(b) reassuring fire and rescue authorities over data protection issues

In the first instance you will receive a letter from the FBU (via Popularis) which will set out your compensation sum and the calculation used by your employers. You will be asked to sign acceptance of the sum and if you were one of our members in 2001 you will also be asked to sign to agree settlement of your employment tribunal claim. In the event that you believe that the calculation or the data used is incorrect you will be able to contact your employer to query the matter. If the matter is not resolved you can submit a non-standard claim form to Popularis, who will pass it to our lawyers, which **must be accompanied by evidence** that you believe substantiates the claim for more money. If there is not sufficient evidence then the lawyers will advise the member accordingly and will advise the FBU not to continue funding that claim.

If you are a claimant and you do not accept the settlement terms agreed by the FBU then you must indicate that you wish to pursue your claim without further funding or assistance from the FBU on that matter. You should be aware that if the FBU do not hear from you, the lawyers acting for you will reasonably assume that you do not wish to pursue the claim.

All claims will be paid within three months. “Non standard claims” will be assessed by Thompsons solicitors to see if they are valid and suitably evidenced. If Thompsons’ assessment is such that the claim is not sufficiently evidenced, Thompsons will write to you. Where the non-standard claim is valid Thompsons will communicate this to the FRS and seek the correct payment in order to try to avoid unnecessary legal action.

On receipt of the claim from Thompsons on your behalf, the FRS will make their own re-assessment. Where the FRS agrees that their calculation is wrong, the correct sum will be paid within three months. Where the FRS does not agree Thompsons will consider what further action should be taken.

The Grey Book

The new equal terms within the Grey Book apply now. The details of the agreement are contained within NJC Circular 4/2011, which has been distributed to all branches via head office circular 2011HOC0140AD dated 21 March 2011.

What next?

The job does not stop here. Local FBU officials will be working hard to:

- Incorporate the revised Grey Book terms and conditions into local FRS policies
- An end of local practices and terms and conditions which discriminate against retained firefighters.

Nationally the FBU will continue to finalise the arrangements to give RDS firefighters access to the benefits of the Firefighters Pension Scheme.

The FBU has secured this victory for ALL retained firefighters

In bringing this legal action and pursuing it through the employment tribunal, employment appeal tribunal, House of Lords and back to the employment tribunal, the FBU has achieved parity for ALL retained firefighters. Only the FBU has the resources, the commitment and expertise to achieve this success.

We thank all of our 11,000 retained members who registered a claim in 2001 for their resolve and patience during the long haul since this case was first registered. Cases with similar aims were launched by the RFU using the part-time workers regulations and equal pay legislation. Those claims have been held in abeyance by the Tribunal system.

Rather than pursue its own case, the RFU meekly followed in the wake of the FBU. Since the legal success of the FBU and our members, the RFU continue to play the role of passive bystander as the FBU negotiated the changes to the Grey Book and compensation arrangements.

The agreement negotiated by the FBU (in what is known as the "Matthews case"), which will shortly be put to the employment tribunal, makes this clear:

> *"This Agreement is made between the Fire Brigades' Union ("the FBU") on behalf of the Claimants and other employees or former employees of Fire Authorities (but excluding those employees who, as at 30 June 2010, were not then employed by any FRA and who have not presented a claim under the Part-Time Worker (Prevention of Less Favourable Treatment) Regulations 2000 ("the PTWR") as described in Clause 1 and the Local Government Employers ("the Employers") on behalf of the First and Second , and all other Fire and Rescue Services in the United Kingdom.*
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> *On behalf of many thousands of its members the FBU brought claims on behalf of fire-fighters employed on a retained duty system under the PTWR ("the Claims") against both their members' employer Fire Authority ("FRA") and the Secretary of State for Communities and Local Government relating to their members' pension entitlements ("the Pensions Claims") and relating to their members' terms and conditions of employment ("the Terms and Conditions Claims")."*
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> and
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> *"The Respondents confirm that there is no material difference in the terms of this agreement to those being offered to all employed on a retained duty system irrespective of the trade union to which they belong or whether they are union members at all and irrespective of whether or not they have brought claims before the Employment Tribunal."*

It does beg the question: ***why has the RFU wasted RFU members money on lawyers, RFU officials' wages and other costs simply to mimic the FBU?***

What can I expect to receive?

Payments will be made according to your rank/role held on 30 June 2010 and length of service performed in the period 1 July 2000 – 30 June 2010 (this period is known as the "reference period").
Members who are eligible employees will receive a letter detailing the exact amount and its calculation. Payment will only be made where the settlement and the claim sum has been agreed.

Variations in the letters

The data collection provided to Popularis is designed to ensure that each member gets the correct letter. There are a number of variations. There will be a slight variation in the letters received by eligible employees who have been identified as having worked for more than one FRS in a reference period. Additionally there will be a further variation for eligible employees who hold an RDS contract concurrently with more than one FRS.
There may be firefighters at your workplace who are not members of the FBU who receive a different letter to you. This is because although the FBU has negotiated a settlement that covers all eligible employees, these non-FBU personnel will not be assisted by the FBU and will receive letters from their employer or from the RFU. In line with the agreement those colleagues will not receive a more favourable outcome than is received by FBU members.

Key points for you

1. All correspondence in respect of your claim should be made to Popularis using the appropriate forms/online facility. You should not directly contact the FBU, Thompsons, or FBU officials as the matter is a legal one.
2. Popularis will not enter into correspondence or process any correspondence which is not on the appropriate form or generated through the online facility.
3. The forms and letters will be sent to be identified eligible employees at the last address notified to the FBU or the employer.
4. To make the process much easier you will be able to accept on a special website set up for this purpose www.retainedfirefighterclaims.org.uk
5. You should act promptly – do not delay followed the advice/instructions in the correspondence that you receive (or look-up details of your settlement on the website) as soon as possible and do not exceed the time limits afforded to you.
6. In agreeing settlement to the terms and conditions at this time you will not be agree to the terms of settlement regarding access to the pension scheme the arrangements for which are currently being progressed. This is a separate matter being negotiated by the FBU with CLG.
7. Read the information carefully.
8. Check the calculation carefully.
9. If you agree the compensation is correct, sign and return the form as quickly as possible. **The quickest way to “accept” is to do so online.**
10. If you do not agree to the calculation of the compensation please contact your FRS immediately. Any such contact should not delay the return of the appropriate form.
11. If you are a claimant please indicate that you accept this is as settlement of your employment tribunal claim.
12. If you are a claimant and do not agree to the terms of the settlement then please indicate this however you will have to pursue your claim without FBU assistance.
13. **If you do not receive a satisfactory outcome from your FRS within 10 days you MUST complete a non-standard circumstances form and return it WITH YOUR EVIDENCE.**
14. **You will not be chased for the evidence. In all cases where a member submits a non standard claim, the evidence must be provided.**
15. The FBU believes that most members will not be eligible for non-standard compensation. We will only pursue cases where there is sufficient evidence and prospect of succeeding.
16. **If you have a non standard claim you must send it to Thompsons via Popularis as hard copy with the forms signed. They will NOT be accepted if only an electronic non standard claim is submitted.**
17. Some members indicated to Popularis that they wished to accept before they have even seen the compensation offer. If you are one of these members you must still complete the online or hard copy form.

The website

To make the process much easier you will be able to accept on a special website set up for this purpose:

www.retainedfirefighterclaims.org.uk

Pensions:

Pensions is still being sorted. It will be the subject of a separate settlement process.