

# FBU IN MAJOR LEGAL VICTORY FOR RDS



The Union has finally won its eight-year legal battle to secure an end to discrimination against firefighters working the retained duty system (RDS), following an Employment Tribunal judgment. The case has major implications for millions of part-time workers who will also benefit from the rights established during 8-years of legal action.

The Croydon Employment Tribunal judgment is reinforced by a landmark legal judgment in the case by the House of Lords on 1 March 2006 in favour of the union. The Employment Tribunal found that firefighters working retained duty were discriminated against when they were denied access to a pension and the same sick pay (pro-rata) as wholetime firefighters.

The judgment today, based on the principles set out by the House of Lords earlier in the case, establishes the right to equal treatment between part-time and full time workers across a whole range of employment issues. Apart from sick pay and pensions it potentially includes training and all other work-related payments, including expenses.

The case centred on the exclusion, before April 2006, of retained firefighters from the Firefighters' Pension Scheme and worse treatment under the sick pay scheme. They claimed they were being treated less favourably because they were part-time workers and that this was unlawful.

## Employers, Government attempt to justify discrimination is dismissed

The attempts by fire service employers and the Secretary of State to justify the discrimination in this case were dismissed. A further claim in relation to increased pay for additional responsibilities has been put on hold for further clarification.

FBU General Secretary Matt Wrack said: "This old-fashioned discrimination deprived thousands of firefighters of a pension and condemned them to worse sick pay. Now retained firefighters, and millions of part-time workers, will no longer have to accept second class employment rights.

"We can't have firefighters at the same incidents, doing the same job, with one group being discriminated against. A firefighter is a

firefighter, we take the same risks at the same incidents and we deserve the same equal treatment.

“The FBU has ended the practice of firefighters who had served their communities for up to 30 years being denied a pension. We are proud we have defeated the strenuous attempts of Government and the employers to justify this appalling behaviour.

“The 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 of all duty systems.

“No one else in the fire service had the guts, the will or the means to do what we have done. In winning we have also established the clear legal rights of part-time workers not to be treated less favourably than full-time workers.

“What we now need is a proper negotiated agreement to set out how we put things right. I would urge the Government and employers to accept this as the right way ahead.”

### NRC: ‘Historic’ result

The FBU’s National Retained Committee (NRC) described the result as “historic” and commended the dedication and determination of a significant number of officials, representatives, activists, members and Thompsons, the FBU’s solicitors. It also thanked in particular Richard Arthur from Thompsons, QC Robin Allen and barrister Martin Seaward whose “steadfast and resolute belief in our case has steered it to this great conclusion.”

The NRC also paid tribute to FBU members from Berkshire and Kent who gave evidence in support of our claim, describing the delivery of their evidence and their performance under very high pressure cross examination as “inspirational” to NRC officials who witnessed the proceedings.

Tam Mitchell, FBU Executive Council member for firefighters working retained duty system said:

“We are delighted we have won after such a long and hard fight for justice. Never mind

what Government and employers say to our faces, they were in court for eight years justifying discrimination against us.

“In many parts of the UK, without retained firefighters there would be no fire service. We are essential to the safety of the communities we serve and often the first and only firefighters at an incident.

“The FBU has had to fight hard to win this victory. The dangers we face at the incidents we work at do not discriminate between duty systems.

“No one we cut out of a car wreck or helped from a fire or flood ever asked if we were retained or wholetime. The only ones to do that have been employers and Government, and now they can stop asking.

“I am proud that I am one of the elected national representatives for firefighters working the retained duty system at this time to see this victory. Over the years many others in stations, brigades, regions and at national level worked to this end and I hope we recognise them as playing a key part in winning this fight.”

### FBU only Union to stand behind RDS members

Harry Cotter, chair of the NRC, said:

“This result has been eagerly awaited by our RDS members for many years. There have been many doubters and those eager to pour scorn and discredit on the FBU. The FBU has been the only union to stand resolutely behind its members and throw the full weight of its resources in supporting them.

“Professional firefighters working the retained duty system have finally been recognised as such. RDS firefighters will no longer be able to be less favourably treated than our wholetime colleagues. Our employers can no longer justify discriminatory practices based on the duty system we work.”

Pete Preston, Secretary of the NRC, added:

“The implications of this victory will impact widely on the service we serve in. All current aspects of less favourable treatment will be

open to challenge, and challenging this on behalf of RDS firefighters will be the FBU, the only trade union that represents all sections of the fire and rescue services regardless of the duty systems worked.

“The pensions case taken on by the FBU on behalf of our RDS members has been watched over in anticipation by many of us who have long felt the injustice of being prevented from contributing to a pension scheme solely on the grounds of the duty system they work.

### Great injustice rectified

“Rectifying this great injustice has taken a great deal of time and a very significant financial investment by the FBU. Our thanks and deep gratitude go to our solicitors Thompsons. Now finally justice has been seen to be done”

Sean Starbuck, national officer responsible for retained members, added:

“This is a tremendous result and I would like to thank everyone involved for their achievements. It has been brought about by the hard work and patience of FBU members and officials.

“This victory is extremely important and shows the Union’s commitment to ensuring that all firefighters regardless of what duty system they work get the full recognition for the job they do and their dedication to the communities they serve.”

### Eight year legal battle

The legal victory for firefighters working the retained duty system follows an 8-year legal battle which started in 2000 when 12,000 cases were lodged at Employment Tribunal. The case was originally lost at tribunal, Employment Appeal Tribunal and Court of Appeal.

The House of Lords made a landmark judgment on 1 March 2006 – by a 3 to 2 majority of Law Lords – which paved the way for RDS firefighters to have access to the current Firefighters Pension Scheme. They have had access to the New Firefighters Pension Scheme since April 2006.

This decision – hailed by legal experts as one of the most important legal decisions for part-time workers – 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.

The case returned to Employment Tribunal in March and November 2007 and again in January 2008. The final tribunal decision was reserved.

The FBU used the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 to argue that retained firefighters, as “part-time” workers, are being discriminated against in relation to their whole-time colleagues.

### FBU argued for same sick pay and pensions rights

The FBU lodged Employment Tribunal claims in 2000 claiming that they should receive the same entitlements to membership of the Firefighters 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.

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.

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 wholetime fire-fighters were employed under the “*same type of contract*”. Employers could

not draw a distinction between the two types of contract and defeat the claim.

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”*.

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.”*

### Reality check

Paul Woolstenholmes, national officer, legal services says:

“The Government and employers spent a lot of time in a kind of legal ‘spot the difference’ game.

“At one point in the case they argued that retained duty system firefighters did little more than attend incidents until wholetimers arrived. They then said all wholetimers issued fire certificates, but retained didn’t.

“For us on the union side, it was as if they were talking about a different fire service, somewhere else – it certainly wasn’t the service we knew that they were talking about.

“It all fell apart for the employers and Government at the tribunal. But our legal team had to fight tooth and nail on every point, almost nothing was conceded by the other side.”

Said Bracknell watch manager Martin Kerby, one of the six RDS claimants from Royal Berkshire:

“I am pleased the Union took up the issue in the first place. It’s been a long time coming but I have now got the rights I always should have had.

“This is a real step forward for firefighters working the retained duty system, and all part-time workers.”

Added Martin, 53, with 32 years service:

“On behalf of all firefighters working the retained duty system I’d like to thank the FBU and Thompsons solicitors for all their hard working in achieving this outcome.

Leslie Chappell, 49, a station manager from Marden, Kent:

“I’m glad that the legal case has come to a satisfactory conclusion not just for RDS firefighters in Kent but across the country.”

Leslie, who also gave evidence to the Croydon Employment Tribunal, added:

“Retained firefighters do the same job as wholetime firefighters. We all show great commitment to the Service and to serving our community in terms of our time, hard work and professionalism. We should get the proper rewards for this. We should get equal treatment.

“This is what we have been fighting for since the Union launched the legal case eight years ago. And this has been finally recognised. It is a very just and proper decision. “

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