

# THE FIRE BRIGADES UNION

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## **RETAINED FIREFIGHTERS AND PART-TIME WORKERS: FBU WINS EIGHT-YEAR LEGAL BATTLE FOR PENSIONS AND FOR END TO DISCRIMINATION**

The Fire Brigades Union has finally won its eight-year legal battle to secure an end to discrimination against firefighters working retained duty, 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.

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 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 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."

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

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 the 2007 floods, Buncefield, and Lockerbie, the biggest loss of life in a single terrorist incident in the UK.

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## **PENSIONS BATTLE FOR FIREFIGHTERS WORKING RETAINED DUTY**

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 firefighters working Retained Duty System 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 union was represented by leading employment and pension lawyers Thompsons Solicitors, Robin Allen QC and barrister Martin Seaward.

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 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 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 (as the administrator of the Pension Scheme) but is now the Department for 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’ 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 was 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.*”