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**NATIONAL JOINT COUNCIL
FOR LOCAL AUTHORITIES'
FIRE BRIGADES**

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**To: Chief Fire Officers/Firemasters
Chief Executives/Clerks to Fire Authorities
Chairs of Fire Authorities**

Members of the National Joint Council

September 2000

CIRCULAR NJC/4/00

Dear Sir/Madam

NJC Disputes Committee decisions

1. A report of a dispute between the Fire Brigades Union and the London Fire and Civil Defence Authority is **attached as Appendix A.**
2. A report of a dispute between the Fire Brigades Union and the Strathclyde Fire Brigade is **attached as Appendix B.**
3. A report of a preliminary hearing of the Disputes Committee of the NJC in respect of the Fire Brigades Union and the Merseyside Fire and Civil Defence Authority is **attached as Appendix C.**
4. A report of a dispute between the Fire Brigades Union and Merseyside Fire and Civil Defence Authority is attached as **Appendix D.**
5. The Independent Chair, appointed by the NJC, is William Brown, Professor of Industrial Relations at Cambridge University and an ACAS arbitrator.

**Yours faithfully
CHARLES NOLDA
ANDY GILCHRIST
Joint Secretaries**

**Report of a meeting of the NJC Disputes Committee
held in London on 3rd March 2000**

**FIRE BRIGADES UNION and the LONDON FIRE AND CIVIL
DEFENCE AUTHORITY**

Subsistence for Attendance at Brigade HQ

1. The dispute emerged through the local machinery in the LFCDA. It was originally registered by the FBU over the Fire Authority's refusal to pay a full lunch allowance to members of the brigade working away from their normal place of work and consequently incurring additional expenditure in obtaining lunch at brigade headquarters.
2. The point at issue concerned the interpretation of Section VI paragraph 7 of the Grey Book, which covers subsistence allowances.

Background

3. Until 1998 members of the brigade working away from their normal place of work and having to attend headquarters were able to eat in the subsidised staff restaurant and claim a subsistence allowance under paragraph 7(3), which states:

"Where expenditure is incurred in obtaining a meal at an establishment provided by the fire authority reimbursement shall be limited to the actual cost of the meal"
4. In practice, rather than reimbursing the actual cost, it had been agreed locally that £3.00 be paid on each occasion.
5. In November 1998 the brigade closed the restaurant and replaced it with a subsidised kiosk.

The FBU's case

6. The FBU argued that the food provided by the kiosk facility did not constitute a "meal" and accordingly there was entitlement to the full subsistence allowance under paragraph 7(1). Furthermore, the facility itself did not constitute an appropriate venue.

The Fire Authority's Case

7. The Authority argued that usage of the subsidised restaurant had declined significantly as eating habits changed and staff no longer required a three course meal for lunch. A decision had been taken to close the subsidised restaurant because of the resulting high operating costs. However, the Authority felt it had made reasonable alternative arrangements ensuring that a kiosk facility providing a reasonable range of food and refreshments at lunchtime was available to staff attending the headquarters complex, together with the payment of the locally agreed allowance. In response to the FBU's position, the authority had also offered to increase the allowance by 10% to £3.30.

Decision

8. The decision of the Committee was as follows:

“The case before us is whether payment shall be made under Section VI paragraph 7(1) or Section VI paragraph 7(3) of the Grey Book.

The decision has been determined by our judgement concerning the present arrangements.

We find that the facilities for eating currently provided at Brigade Headquarters are not adequate for visitors and that therefore the case falls under Section VI paragraph 7(1).”

**Report of a meeting of the NJC Disputes Committee
held in London on 7th April 2000**

FIRE BRIGADES UNION and the STRATHCLYDE FIRE BRIGADE

Status of Journeys to Work

1. The dispute was registered by the FBU over the Fire Authority's decision that, for the purposes of calculating entitlement to sick pay, a wholetime firefighter injured on a journey to work, and consequently on sick leave, did not sustain that injury while on duty.

Background

2. A wholetime firefighter was injured in a cycling accident while on his way to work and was consequently on sick leave. Under Section IV paragraph 1(1) of the Grey Book a firefighter on sick leave is entitled to a minimum of six months' full pay and six months' half pay but if the sick leave results from an illness or injury sustained on authorised duty then, under paragraph 1(2), the entitlement is a minimum of one years' full pay and six months' half pay.
3. In the event the firefighter was sick for only three months so the disputed interpretation did not affect him directly. However, the dispute had wider implications and continued through the procedure.

The FBU's case

4. The FBU argued that a firefighter injured travelling to and from work should be regarded as on duty for sick pay purposes. In support of their argument they cited Section IV paragraph 2(3) of the Grey Book and Section IX paragraph 13.
5. Section IV paragraph 2(3) covers retained sick pay and the note attached to that section gives fire authorities the discretion (for sick pay purposes) to treat a retained firefighters' journey home from the station following a turn-out or attendance as if it were on duty. (A decision in the Court of Appeal in 1971 had previously determined that a retained firefighter responding to a call is on duty from the time the call is received.) The FBU argued that the provisions should also apply to wholetime personnel.
6. Section IX paragraph 13 covers compensation for death or serious injury on duty and provides a lump sum payment of five times a firefighter's annual pay where a firefighter dies or is totally incapacitated (unable to work again) as a result of an accident on duty. In 1988 the agreement was extended to cover accidents travelling to and from work to extend the circumstances under which a compensation payment could be paid. The FBU argued that therefore such journeys were recognised as being on duty. Furthermore, the Authority would have no way of knowing whether or not the injuries suffered could at a later date result in permanent incapacity.

The Fire Authority's Case

7. The Authority argued that in respect of Section IV paragraph 2(3) authorised duty only applied in cases where members were responding directly and immediately to a fire call.
8. In respect of Section IX paragraph 13 the Authority argued that :
 - this implicitly referred to a compensatory sum being made for death or serious injury whilst on authorised duty;
 - the provision included a journey necessary to enable the firefighter to report for or return after duty, however the pre-requisite in terms of injury was clear, and must result in permanent incapacity to carry on any occupation at time of discharge;
 - conditions relating to the compensatory payment contained in sub-paragraphs (2) and (4) of the section on payment and abatement had no relation to sick pay.
9. In respect of a qualifying injury resulting, at a later date, in permanent incapacity to carry on any occupation the Authority argued that:
 - each case would be considered in line with Section IX paragraph 13(1)(ii);
 - any divergence of opinion on whether or not any injury sustained in such circumstances had later resulted in permanent incapacity were covered within Section IV paragraph 8(i) (independent medical referee procedure).

Decision

10. The decision of the Committee was as follows:

“The NJC Disputes Committee finds that, whilst the interpretation of the Scheme of Conditions of Service (Grey Book) by the Authority in the case of Firefighter Donnelly is correct, a number of inconsistencies were exposed during the hearing.

The Disputes Committee therefore recommends that the NJC considers a paper from the Joint Secretaries which identifies solutions to these anomalies”.

**Report of a preliminary hearing of the NJC Disputes Committee
held in London on 26th April 2000**

**FIRE BRIGADES UNION and the MERSEYSIDE FIRE AND CIVIL
DEFENCE AUTHORITY**

Local Difference of Interpretation over an ACAS Brokered Deal on Annual Leave

1. The preliminary hearing of the NJC Disputes Committee was initiated by the Fire Brigades Union and stemmed from a dispute in Merseyside over the application of an ACAS brokered local agreement on the application of the annual leave provisions in the Grey Book.

Background

2. The Fire Brigades Union in Merseyside was of the view that the Fire Authority was not applying the agreement properly. The Authority did not accept this.
3. The FBU sought to pursue the matter through the NJC disputes procedure. However, the Authority did not believe that the matter was one that could be pursued through the machinery.
4. The FBU invoked the procedure contained in circular NJC/1/89 which makes provision for a preliminary hearing of the Committee in such circumstances.
5. The role of the Committee on this occasion was to make a determination not on the issue in dispute but rather on the question of whether or not the issue was “disputable” through the NJC disputes machinery.

Decision

6. The Committee’s decision was:

“The Committee has determined that the local difference of interpretation over the ACAS brokered deal on annual leave is within the scope of the National Disputes Committee.”

**Report of a meeting of the NJC Disputes Committee
held in London on 27th July 2000**

**FIRE BRIGADES UNION AND THE MERSEYSIDE FIRE AND
CIVIL DEFENCE AUTHORITY**

Local Difference of Interpretation over an ACAS Brokered Deal on Annual Leave

1. The dispute was registered by the FBU over the Authority's application of an ACAS brokered local agreement on the application of the annual leave provisions in the Grey Book.
2. A preliminary hearing of the Disputes Committee to determine whether or not the issue was disputable through the NJC disputes procedure had been held on 26th April 2000. The decision of the Committee was that the issue was disputable through the NJC disputes machinery.

Background

3. The parties to the ACAS brokered agreement reached in 1996 had agreed that:
 - Scale A shift losses for the year 1996 and 1997 should be 15 in each year
 - Maintaining shift losses to Scale A at 15 or any increase would be through the establishment of a Working Party, including representatives of the Authority and FBU to monitor the ridership calculation and the effects on service provision
 - The primary aim of the working party was to produce the necessary ridership figures to sustain or produce an increase on 15 Scale A shifts before August 1997. If the working party was unable to achieve that aim then in the leave year 1998, Scale shift losses will be 14 and will be increased to 15 or more subject to a successful annual review.
4. Annual reviews since the agreement had achieved the following:

1997	15 Scale A
1998	14 Scale A
1999	14 Scale A

The FBU's case

5. The FBU maintained that 16 shift losses to Scale A could be accommodated for the year 2000.
6. They argued that the ACAS collective agreement brokered in 1996 and annual reviews since then had produced ridership figures based on a three yearly average. The primary aim of the exercise was to produce an increase on 15 Scale A shifts subject to a successful annual review. The positive improvement in attendance levels, among other

factors, meant that it would be possible to achieve 15 or more shifts lost to Scale A leave for the year 2000.

7. The FBU contended that the Chief Fire Officer had offered the FBU the implementation of 16 Scale A days but with conditions attached that were outside of the agreement. Accordingly, they believed that the Chief Fire Officer's offer, coupled with the calculations they had produced, proved that the review could support such a change.

The Fire Authority's Case

8. The Authority argued that, as a party to the agreement, the interpretation that it had applied for each annual review is that an annual review be undertaken unilaterally by the Chief Fire Officer, in consultation with the FBU, under which he is to review the ability of the Authority to increase shift losses above 14 in a way which would not result in the need to increase the number of riders required to staff fire fighting appliances, and if it were in his professional opinion possible to do so, then such an increase would be implemented.
9. The Authority was able to propose during negotiations that the number of Scale A leave shift losses could be increased, either incrementally or directly, to 16 subject to:
 - Discontinuation of the voluntary rota scheme*
 - Discontinuation of the annual review of leave arrangements based on the ACAS agreement

* The voluntary rota scheme is a locally agreed scheme devised to encourage personnel to take public holiday leave on public holidays.

The Authority maintained that the discontinuation of the voluntary rota scheme together with the downturn in sickness averages would enable the provision of additional Scale A leave days from 14 to 16.

10. Furthermore, the Authority argued that the FBU's refusal to accept the Authority's proposals, put to them during the annual review, resulted in an unsuccessful review and as such the number of shift losses to Scale A leave remained at 14 for the year 2000.

Decision

11. The decision of the Committee was as follows:

“The Panel registers a failure to agree and therefore the issue proceeds to the next stage of the procedure according to Section X, paragraph (2n) of the Scheme of Conditions of Service (Grey Book). Meanwhile, the panel agrees that the Joint Secretaries and the Independent Chair assist the parties to reach an agreement.”

Conclusion

12. Following on from the decision of the panel, the Joint Secretaries and the Independent Chair met with both parties. The position reached at the conclusion of those discussions is, at the time of writing, still under consideration locally.