Courts back access to law

Miranda Grell rejoices in a Supreme Court judgement that has backed workers' rights over an authoritarian Government and ruled Employment Tribunal fees unlawful.

On 26th July the UK Supreme Court – the UK's highest court – ruled that the Employment Tribunal fees regime introduced by the former Coalition Government was unlawful.

In 2013, Chris Grayling, then Lord Chancellor, had amended the Tribunal, Courts and Enforcement Act 2007 and inserted an Order introducing fees for Employment Tribunal hearings.

The Government's argument for doing so was three-fold.

- First, in its view, fees would help "transfer some of the cost burden from general taxpayers to those that used the system, or caused the system to be used".
- Second, a price mechanism would "incentivise earlier settlements".
- Third, fees would "disincentivise unreasonable behavior, such as pursuing weak or vexatious claims".

Two categories of fees were introduced: Type A and Type B. Type A claims were considered to be simple employment cases that would not require much work and could be resolved at a short hearing. More complex employment cases such as those involving unfair dismissal, equal pay or discrimination claims were placed in the Type B category.

To bring a Type A claim cost £390: £160 to lodge the case in court and £230 for the hearing. To bring a Type B claim cost £1,200: £250 to lodge the case in court and £950 for the hearing. If a person lost their case in the Employment Tribunal and wanted to appeal to the Employment Appeals Tribunal (the next highest court), they would be required to pay a fee of £1,600: £400 to lodge the appeal and £1,200 for the hearing.

The introduction of these fees had a devastating effect on the number of people lodging a claim. The Government's January 2017 official review of the introduction of the fees found that applications to the Employment Tribunal had fallen by nearly 70% in the four years since the fees were introduced. The Government was forced to admit that the overall scale of the fall was "troubling".

Those of us working on the ground in Law Centres such as Hackney Community Law Centre didn't need a government report to tell us that the introduction of ET fees was "troubling". We had already seen the consequences for ourselves because week after week low paid cleaners, supermarket workers, bin men, teaching assistants and an array of workers on zero hours contracts would visit the Law Centre.

They would share with us the most appalling stories of being dismissed unfairly, not being paid wages owed, being discriminated against or subjected to harrowing levels of bullying and harassment by their employers.

The first thing we asked them was how long they had worked for their employer. In 2012, the Coalition Government had changed the law to ensure that only people who had worked for an organisation for two continuous years could qualify as an "employee" and bring a claim such as unfair dismissal.

In the rare event that the person had indeed worked continuously for their employer for more than two years, we then had to inform them how much bringing a case in the Employment Tribunal would cost. There was no way that the people who visited our Law Centre could afford to pay over £1,000 to try and force their employer to pay them £200 in unpaid wages.

UNISON commenced court proceedings against the introduction of the fees in the High Court shortly after their introduction in 2013 and again in 2014. The challenges were unsuccessful. UNISON then appealed to the Court of Appeal in 2015, but was again unsuccessful.

However, in July 2017 UNISON appealed again and the highest court in the land saw sense and handed down a judgment that gave hope not just to workers, employees and trade unionists across the land but also to everyone who cares about the health of our democracy and the rule of law.

In short, the Supreme Court's judgment was that ET fees were unlawful because of their (negative) effects on access to justice and because the Order made by Chris Grayling in 2013 frustrated primary legislation enacted by Parliament to underpin workplace rights.

The judgment also gave the Government a stern masterclass on the importance of this country's democratic and legal history and traditions. At paragraphs 66 and 68 of the judgment, their Lordships wrote:

"the constitutional right of access to the courts is inherent in the rule of law… At the heart of the concept of the rule of law is the idea that society is governed by law. Parliament exists primarily in order to make laws for society in this country. Democratic procedures exist primarily in order to ensure that the Parliament which makes those laws includes Members of Parliament who are chosen by the people of this country and are accountable to them. Courts exist in order to ensure that the laws made by Parliament, and the common law created by the courts themselves, are applied and enforced. That role includes ensuring that the executive branch of government carries out its functions in accordance with the law. In order for the courts to perform that role, people must in principle have unimpeded access to them. Without such access, laws are liable to become a dead letter, the work done by Parliament may be

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rendered nugatory, and the democratic election of Members of Parliament may become a meaningless charade".

I wholeheartedly agree with the Supreme Court but also welcome the judgment for three main other reasons.

First, this is a major victory for workers after four years of unfairness and workplace misery. At paragraph 7 of the judgment, it is fascinating to see the Supreme Court recognise and acknowledge the "imbalance of economic power" that exists between workers and employers.

Second, the judgment is a sharp rebuke to those who support the "user must pay" principle behind ET fees. In the Supreme Court's own words, "courts do not merely provide a public service like any other. Access to the courts is not, therefore, of value only to the particular individuals involved."

The same argument can be made against commercialisation of the NHS or exorbitant and unjust university tuition fees. It is refreshing to have such a traditional and conservative body such as the Supreme Court challenge growing neoliberal and rightwing orthodoxy that essential public services and institutions are of no benefit to wider society.

Third, the judgment reconfirms the importance of our trade unions and why, in the "modern" 21st century, they are still needed – now more than ever. Without UNISON bringing this case, thousands of low paid workers would have continued to be exploited and stand no chance of seeking legal redress and justice in the Employment Tribunal.

At the time of writing, following the judgment, all ET fee claims have been halted while the courts await the Government's next move. Those who paid the ET fees at any time in the last four years can apply to be reimbursed.

Well done again to UNISON and everyone else involved in bringing about this wonderful legal victory! Hasta la victoria siempre!

Reverse austerity!

Matt Willgress, National Organiser, Labour Assembly Against Austerity, welcomes labour movement opposition to austerity and calls for us to mount a visible joint campaign against it.

A recent poll commissioned by the TUC showed that one in eight workers in this country are skipping meals to make ends meet. Forty-four per cent – almost half – are worried about meeting basic household expenses, such as food, transport and energy. This is the effect of seven years of Tory austerity – millions of working families are on a financial cliff edge.

In the year ahead, this insecurity looks likely to get much worse, with the Chamber of Commerce among those downgrading their growth forecasts for Britain in the years ahead. A cost-of living crisis is rapidly approaching, as while pay packets are getting smaller, prices and bills keep rising.

While the future is looking bleak for millions of people, the millionaire Tory Chancellor Philip Hammond feels comfortable boasting about how he and Tory MPs have never had more money in the bank, while cutting the pay of nurses, teachers and police officers.

What more evidence do we need that this Tory Government is completely divorced from the reality of the majority of people's lives?

September's TUC Congress unanimously agreed that rather than more of the same failed Tory austerity we need Government policy and action to address the fundamental problems in our economy including lack of investment, endemic short-termism in business, inequality and stagnating pay.

Echoing Labour's Manifesto *For the Many not the Few,* the TUC passed a motion calling for an active industrial strategy and alternative economic policy, including:

- investment in infrastructure, equipment, services, skills and innovation;
- positive procurement to support manufacturing and services and promote sustainable environment;
- corporate governance reform to end the endemic short-termism in business;
- support for strong trade unions and collective bargaining.

Delegates at Congress this year were clear that this could be won through a Jeremy Corbyn-led Government and that unions can be a central part to harnessing the energy that was built up by Labour's election campaign to bring the Tories down.

Labour Conference also looks set to articulate positive policies around a progressive alternative to austerity based on investment not cuts.

Following TUC Congress and Labour Conference, the Labour Assembly Against Austerity will be bringing together all wings of the movement on 28th October to discuss our next steps in campaigning against austerity and popularising our alternative – join us there.

Labour Assembly Against Austerity National Conference
Saturday, 28th October, from 10am
Student Central (formerly ULU), London WC1
Speakers include
Diane Abbott MP, Richard Burgon MP,
Cat Smith MP, Jon Trickett MP, Chris Williamson MP,
Lucy Anderson MEP
For tickets and more information, go to:
http://bit.ly/LAAA2017