

AIRPORT BRIEFING NOTE FOR OFFICERS



VOLCANIC ASH CRISIS – MEMBERS’ RIGHTS

Many organisations operating at airports across the United Kingdom are telling Unite members that their terms and conditions of employment are being adversely affected as a consequence of the on-going closure of UK airspace.

The purpose of this document is to assist officials in their response to employers as well as advice given to members.

Depending upon the employer, the response to the crisis appears to include one or more of the following:

- Members being sent home from work with no pay
- Members being forced to take annual leave
- Members being sent home and told to make up their shift hours on another day (when work is available).
- Members being told to take unpaid leave.

Members are understandably concerned at this approach and the employers attempt to once again use their pay and conditions as a way of addressing their costs as another crisis faces our industry. Understandably our members fail to see why they should lose pay or be forced to use their leave entitlement due to an event that is no fault of their own.

Contract of Employment

The key issue here is the member’s contract of employment.

In general terms an employer can only send a member home or require him/her to take leave (unpaid or otherwise) in these circumstances if the contract of employment contains a clause entitling them to do so.

Some contracts of employment do contain so called “act of god” clauses. If such a clause entitles the employer to act as they have done, there is little that the member can do legally but remains free to take action, industrially.

Most contracts of employment do not contain such a clause. In these cases, officials should be arguing with employers that they have no right to send a member home and refuse to pay them, when they are willing to work.

Contract Types

Where a member's pay is dependent upon the work that they are actually given by the employer, the employer may have the right to lay that member off for all or part of a working week due to lack of work. In return the member will be entitled to a very small guarantee payment.

Where the member's pay does not depend upon being provided with work by that employer e.g. a member is salaried, the employer has no right to impose a lay off or short time working unless the contract of employment provides that right. This usually means that members in salaried employment are in a stronger position than those effectively working on a piecework.

Holidays

The Working Time Regulations 1998 set out members' basic holiday entitlements.

Under these Regulations an employer can require a member to take holidays at a specific time. However the employer has to give notice to the member.

The Regulations enable the employer to give notice requiring a member to take a certain number of days' leave. The length of notice in question must be twice as many days as the number of days leave to be taken. For example if the employer wants the member to take five days leave, the employer must give the member ten days notice. In other word leave cannot simply be imposed on members without warning.

Providing the contract of employment provides for paid annual leave, employers will not be entitled to impose unpaid leave entitlements upon members.

Legal Remedies

A member who loses shift pay by being sent home in breach of their contract of employment is entitled to claim for unlawful deduction from pay in the usual way. There is of course a three month time limit for making this claim and a requirement to lodge a grievance in advance.

A member forced to take annual leave without notice does not appear to have such an obvious remedy under the Working Time Regulations. Nevertheless any member forced to take annual leave without proper notice should lodge a grievance. We can then look at the possibilities of pursuing a claim through the Employment Tribunal particularly where their leave was imposed on an unpaid basis.

Again there is a three month time limit.

Alternatively, the response is an industrial one in the more traditional sense. It is not acceptable for our members to be paying the price of this crisis and we will defend their interests legally and industrially as appropriate.