Pecyn Dogfennau Cyhoeddus

Pwyllgor Cyflogaeth ac Apeliadau

Man Cyfarfod
Ystafell Bwyllgor A - Neuadd y Sir, Llandrindod, Powys

Dyddiad y Cyfarfod
Dydd Gwener, 4 Rhagfyr 2015

Amser y Cyfarfod
10.00 am

Neuadd Y Sir
Llandrindod
Powys
LD1 5LG

I gael rhagor o wybodaeth cysylltwch â
Stephen Boyd
01597 826374
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27/11/2015

AGENDA

1.	**ETHOL CADEIRYDD**	**EAC20- 2015**

Ethol Cadeirydd am weddill y flwyddyn bwrdeistrefol.

2.	**YMDDIHEURIADAU**	**EAC21- 2015**

Derbyn ymddiheuriadau am absenoldeb.

3.	**COFNODION**	**EAC22- 2015**

Awdurdodi'r Cadeirydd i lofnodi cofnodion y cyfarfod diwethaf a gynhaliwyd ar 9 Hydref 2015 fel cofnod cywir.
(Tudalennau 3 - 4)

4.	**DATGANIADAU O DDIDDORDEB**	**EAC23- 2015**

Derbyn unrhyw ddatganiadau o ddiddordeb.

5.	**MAINT Y PWYLLGOR**	**EAC24- 2015**

Trafod maint y Pwyllgor.

6.	**EFFEITHIOLRWYDD TREFNIADAU GWEITHIO RHAN AMSER**	**EAC25- 2015**

Ystyried effeithiolrwydd trefniadau gweithio rhan amser y Cyngor.

7.	**DIWEDDARIAD AR GYFRAITH CYFLOGAETH**	**EAC26- 2015**

Derbyn diweddariad ar gyfraith cyflogaeth.
(Tudalennau 5 - 6)

MINUTES OF A MEETING OF THE EMPLOYMENT AND APPEALS COMMITTEE HELD AT COUNTY HALL, LLANDRINDOD WELLS ON FRIDAY 9TH OCTOBER 2015

PRESENT:

County Councillors PJ Ashton, DC Jones, JR Jones, PJ Medlicott, JG Morris, KM Roberts-Jones, KF Tampin, AG Thomas and J.M. Williams

Solicitor to the Council and the Account Manager (People)

Apologies for absence were received from County Councillors A Holloway, PE Lewis, RH Mills and JG Shearer.

1.	**ELECTION OF CHAIR**	**EAC11 – 2015**

RESOLVED that County Councillor John Morris be elected Chair for the ensuing year.

2.	**ELECTION OF VICE CHAIR**	**EAC12 – 2015**

RESOLVED that County Councillor Michael Williams be elected Vice Chair for the ensuing year.

3.	**MINUTES**	**EAC13 – 2015**

The Chair was authorised to sign the minutes of the meeting held on 27th February 2015 as a correct record.

4.	**DECLARATIONS OF INTEREST**	**EAC14 – 2015**

There were no declarations of interest reported.

5.	**EMPLOYMENT APPEALS UPDATES**	**EAC15 – 2015**

Members gave feedback on their recent experiences of taking part in appeals panels. Amongst the points raised were

- Investigating officers need to sign and date reports.
- Investigating officers need to interview appellants.
- Contact with appellants should be formal.
- Staff need training on the Code of Conduct.
- HR staff dealing with appeals need to work in areas where confidential information cannot be overheard.
- Need for clarity on whether appellants can be consulted by a solicitor.
- Suspended staff need to be kept updated on the progress of their cases.
- Members who have sat on appeals hearings should be invited to the Employment Tribunal if the case is referred there.

The Account Manager thanked Members for their feedback and agreed to implement their suggestions where possible.

6.	UPDATE ON CASE LOAD	EAC16 – 2015

Details of the current case load, which broke down the number of cases per department and the types of cases, were circulated. The Committee was pleased to note that the number of cases which went to appeal had been greatly reduced. There had been 186 cases in the current year, 117 of which had been closed. The figures included one case that HR had been asked to undertake for Powys Teaching Health Board.

24 of the cases related to sickness absence. Members were advised that the current average sickness rate was 7.6 days per member of staff against the Council's target of 8 days. The aim was to reduce this to 6.5 days. The Account Manager was asked to show the figures as a percentage of staff in the directorates concerned.

He also agreed to make available the costs of those staff suspended on full pay. He confirmed that the cases of suspended staff was reviewed on a monthly basis.

7.	EMPLOYMENT LAW UPDATE	EAC17 – 2015

The Solicitor to the Council briefed the Committee on a number of examples of recent employment case law. One of the cases highlighted was the ruling by the European Court of Justice that travel time for mobile workers with no mobile to their first appointment of the day, and from their last appointment, is 'working time'.

8.	POLICY REVIEW UPDATE AND TIMETABLE	EAC18 – 2015

The Account Manager explained that the existing policies were being reviewed with a view to streamlining and standardising them. He was asked to check the process for signing policies off. The Accounts Manager agreed to speak to the Schools Service about inviting a member of the Governors' Consultative Body to the Employment Policy Forum.

9.	HR SERVICE OBJECTIVES	EAC19 – 2015

The Account Manager outlined the objectives for the Human Resources team for the period to 2018.

It was agreed that there would be a training session on disciplinary policy arranged for the next meeting.

J.G. MORRIS
Chair

New Case Law Update for Employment Committee Meeting 4th November 2015

MBNA Limited v Jones UKEAT/0120/15- Disparate treatment of employees who were not in "truly parallel circumstances"

Mr Jones was employed by MBNA Limited from February 2006 until December 2013. In November 2013, MBNA held an event at Chester Racecourse and confirmed to staff that it was a work event, and that normal standards of behaviour and conduct would apply. Any misbehaviour would be subject to MBNA's procedures and guidelines.

Mr Jones attended the event along with another employee, Mr Battersby, and Mr Battersby's sister. Both Mr Jones and Mr Battersby drank alcohol before, and during, the event. At one stage in the evening, Mr Jones had his arm around Mr Battersby's sister which seemingly led Mr Battersby to knee Mr Jones in the leg. Mr Jones retaliated by punching Mr Battersby in the face.

Mr Jones subsequently left the event and went to a club. While at the club, Mr Battersby waited outside and sent Mr Jones seven texts threatening him with physical violence. In fact, Mr Battersby did not carry out his threats and there was no further incident between Mr Jones and Mr Battersby.

After an investigation and disciplinary hearings, Mr Jones was dismissed. MBNA accepted that Mr Battersby kneed him, but said that this was not done with any force or aggression. It was not "substantive provocation" for Mr Jones punching him. Mr Battersby, on the other hand, was given a final written warning for sending text messages of an "extremely violent" nature but he was not dismissed on the basis that MBNA found that they were made as an immediate response to Mr Jones punching him.

Mr Jones brought a claim for unfair dismissal.

The tribunal found that the decision to dismiss Mr Jones but not Mr Battersby was unreasonable and that the "defence of provocation" was applied differently to the two men during their disciplinary hearings. This particular disparity was also unreasonable, so for both those reasons the Tribunal Mr Jones's dismissal was unfair. The employer appealed.

In the 1981 case of *Hadjioannou v Coral Casinos Ltd [1981] IRLR 352*, the EAT had given guidance on consistency, stating that an employer's previous decisions not to dismiss employees for the same misconduct will only make a dismissal unfair in two types of case:

- Where the employer has previously treated similar behaviour less seriously, often referred to as condonation, so that:
    - employees have been led to believe that certain categories of conduct will be overlooked or will not lead to dismissal; or

    - it can be inferred that the employer's asserted reason for dismissal in this case is not the real reason.

- Where employees in "truly parallel circumstances" arising from the same incident are treated differently.

The EAT in **MBNA Limited v Jones** clarified that the relevant question is still whether the employer has acted reasonably towards the employee who has been dismissed, regardless of what sanction has been applied to the other. Disparity of treatment will occasionally be relevant to reasonableness, but the circumstances need to be "truly parallel". With respect to provocation, the EAT said that there is no such "defence" and that provocation would only be a mitigating factor, to be weighed by the employer.