



ACAS to update Code of Practice on Disciplinary and Grievance Procedures

ACAS has stated that it will amend its Code of Practice on Disciplinary and Grievance Procedures to reflect the Employment Appeal Tribunal's decision in *Toal and another v GB Oils Ltd*.

The dispute in this case centred on whether the employees' choice of companion had to be 'reasonable' or whether it was only the 'request to be accompanied' that had to be reasonable. GB Oils relied on an interpretation of the ACAS Code (paragraph 36) to argue it was not reasonable to have as a companion someone who could be prejudicial to the hearing:

"To exercise the right to be accompanied a worker must first make a reasonable request. What is reasonable will depend on the circumstances of each individual case. However it would not normally be reasonable for workers to insist on being accompanied by a companion whose presence would prejudice the hearing nor would it be reasonable for a worker to ask to be accompanied by a companion from a remote geographical location if someone suitable and willing was available on site."

However, despite the ACAS Code, the EAT ruled that employees had an absolute right to choose their companion for a grievance hearing, limited only by the qualifying criteria set out in section 10(3) of the Employment Relations Act 1999. Therefore, as long as the employee's chosen companion falls into one of the approved categories listed in the Act (trade union officials, certified union representatives or fellow workers), the request will be reasonable.