

A grievance is a grievance whatever the employee says

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Christina Morton

PROFESSIONAL SUPPORT LAWYER | UK

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A new case on the statutory grievance procedure touches on a practical point that employers often have to contend with – if an employee says that a grievance is only informal (as employees often do), is the employer entitled to rely on that and not treat the grievance as a statutory grievance? The point will remain important until the statutory procedures are abolished next year, because an employer who makes the wrong judgment may have to pay an uplift to compensation of up to 50%, for non-compliance with the statutory grievance procedure.

In the case in question the employee set out his complaint as follows:

“I wish to bring to your attention the following points which I suggest are dealt with in an informal basis within the next 14 days, failing which I will lodge my step 1 FORMAL GRIEVANCE OF RACIAL DISCRIMINATION under The Employment Act 2002 (Dispute Resolution) Regulations 2004 in relation to the worse treatment I have and continue to receive on the grounds of my being of Polish origin.”

The employers argued that this could not be a statutory grievance because the claimant had said explicitly that it was not. The employment judge reluctantly accepted this argument. The EAT, however, took a different view and decided that in spite of what the employee said, he had in fact complied with the very minimal formal requirements of the statutory grievance procedure. The claim (which was of race discrimination) should therefore be allowed to proceed.

The EAT recognised however that there was potential unfairness to the employer, which had understandably taken the employee at his word. The tribunal would, it said, be able to mitigate that unfairness by exercising its discretion not to impose an uplift on any award of compensation, if in all the circumstances, an uplift would not be just and equitable.

[Procek v Oakford Farms Ltd](#)

Authors

Christina Morton

PROFESSIONAL SUPPORT LAWYER | LONDON

Employment

 +44 20 7597 6654

 christina.morton@withersworldwide.com