

BAJ NEWS

BAJ wins damages for over 130 journalists

£500,000 FROM MGN

NUJ LIES

IF anyone doubts that the NUJ is a lying and pathetic union, just consider what its National Officer for National Newspapers Barry Fitzpatrick said about BAJ at the Racing Post tribunal case.

His witness statement on behalf of 4 NUJ claimants said: "It is the NUJ's very firm view that the BAJ is not representative of journalists at MGN and is, in effect, controlled by management."

Steve Turner said: "A 'controlled' union would hardly sue MGN. In fact, BAJ has been involved in 7 court cases against MGN in the past 18 months."

"Fitzpatrick's smear is outrageous. The extremist-dominated NUJ just lies compulsively."

BAJ has won compensation totalling about £500,000 from MGN for more than 130 journalists on the Racing Post and associated titles.

The out-of-court settlement was reached on the steps of the Employment Tribunal at Stratford East London, on June 2, over MGN's breach of laws governing the transfer of companies.

MGN failed to inform or consult BAJ before the Racing Post and associated titles were transferred to a new employer on May 29 last year.

All journalists in the BAJ Bargaining Unit will each receive 6.5 weeks' pay, free of tax. Payments range from about

£3,000 to £5,000.

Barrister Naomi Ling handled the case for BAJ. She said the deal is a good one as there would have been a significant risk of obtaining less money if the case had gone ahead in the tribunal.

The Company did not tell BAJ about the transfer of staff to a dormant Trinity Mirror subsidiary, Centurycomm Limited, until the day the deed was done.

Under the Transfer of Undertakings (Protection of Employment) Regulations (TUPE), MGN was obliged to inform and consult BAJ long enough before the transfer to enable talks to take place.

As a result of the arbitrary transfer of staff to Centurycomm Limited and then selling it on to another company,

MGN and Trinity Mirror deprived the journalists of TUPE protection of pensions, terms and conditions and early retirement benefits.

Centurycomm Limited was sold to FL Partners in the Republic of Ireland on October 1 last year.

Recognised

MGN agreed in 2003 to recognise BAJ at the Racing Post and associated titles although BAJ had only two members among the journalists and the NUJ had about 50 members.

MGN Management preferred to work with the BAJ because we were already representing more than 500 journalists on the Daily Mirror, Sunday Mirror and The People. The NUJ tried to get our recognition agreement declared a sham, but lost cases in the Central Arbitration

Committee, the High Court and the Court of Appeal.

However, the NUJ was successful in pressurising the racing journalists against joining BAJ and, at the time of the sale only three of them were BAJ members.

So when FL Partners took over, BAJ relinquished its recognition. The rationale for recognition – that the racing titles belonged to MGN – no longer existed.

Steve Turner said: "As the recognised union when MGN broke the law, only BAJ could bring the TUPE claim against MGN. So we shouldered the cost and effort of the action."

"The BAJ NEC and I are delighted to have achieved a great victory for the racing journalists."

● A guide to the TUPE Regulations is printed on the centre pages.



BAJ IS ON DR WHO!

SUNDAY Mirror reporter Vivienne Rook flashes her BAJ UK Press Card (right) in an effort to save the world.

The make-believe character is seen in the BBC's Dr Who, showing her photo card to get into 10 Downing Street.

Rook wants to warn the PM's wife that he is an evil Time Lord hellbent on destruction.

Sadly, she is bumped off before Dr Who (above) can triumph over evil.

In real life, our photo UK Press Card admits members into various dos arranged at the PM's residence with only the risk of being bored to death!



Tony to stand for NEC

SPORTSWRITER Tony Stenson who was BAJ's first FOC at the Daily Mirror is standing to fill a vacancy on the National Executive Committee.

It arises from the resignation of James Hole who had served on the NEC from the very first day of the union.

Tony worked at the Mirror for 28 years until taking voluntary redundancy in 2003. He now works at Express Newspapers.

He belongs to the Sports Writers Association, the Football Writers Association, the Association of Golf Writers and is a Director of Combe Wood Golf Club, Kingston, Surrey.

The period of office is until the biennial conference in October 2009.

Members can nominate colleagues or themselves. Candidates must have been journalists for at least five years.

Send nominations to BAJ, 89 Fleet Street, London EC4Y 1DII. If there are two or more candidates, an election will be held. Closing date: July 14.

James, former FOC of MGN's Publicity Chapel and, until his recent early retirement, employed at the Department for International Development, was one of three people who inaugurated BAJ on 20 May, 1992.

Steve Turner said: "James gave great service to the union. He will be badly missed by the NEC and me."

The NEC will ask the next conference to make James a Member of Honour.

Please use the enclosed form to sign up a member

THE *Transfer of Undertakings (Protection of Employment) Regulations 1981* ("the old Regulations") were intended to protect employees' rights when a business is transferred from one owner to another. They were designed to give effect to EC Council Directive 77/187.

Following the introduction of further Directives it became necessary to add the new provisions to UK Law. That was one of the main reasons for the introduction of the *Transfer of Undertakings (Protection of Employment) Regulations 2006* ("the Regulations").

The main difference between the new Regulations and the previous Regulations is the introduction of an additional concept - a 'service provision change'. This is dealt with below.

As under the old Regulations, the new Regulations govern a situation, where one employer (the seller/transferor) proposes to transfer his business or part of it to another employer (the buyer/transferee).

Consultation

The employer of all employees affected by a transfer, whether he is the seller or the buyer, must inform and consult with the recognised union or staff representatives of their respective employees affected by the transfer.

The obligation to inform requires specific details to be provided to employee representatives before the transfer takes place. This is so as to enable consultation to take place if necessary. The required information is:

- The fact that the transfer is to take place.
- The approximate date of the transfer.
- The reasons for the transfer.
- The "legal, social and economic" implications of the transfer for the affected employees.
- The measures which the employer envisages taking in relation to the employees connected with the transfer. If no measures are envisaged, employees must be informed of this.
- If the informing employer is the seller, the measures which the buyer envisages taking in relation to the affected employees in connection with the transfer. The buyer must provide this information to the seller in time for him to comply with this requirement.

The obligation to consult arises only when the employer proposes "taking measures" in relation to affected employees, but requires consultation to occur "with a view to seeking employees' agreement". It should be noted that this does not mean that the employee's agreement is required or that consultation will result in a change in the outcome.

If there is a failure to inform or consult with employees in the manner set out above, then a complaint may be made by the trade union or staff representatives to an employment tribunal. It is normally necessary to present such a complaint within 3 months but that time limit can be extended.

The potential sanction for failure to inform and consult, is a declaration from an employment tribunal and an award of up to 13 weeks' pay for every affected employee.

Contract of Employment Rights

When a transfer takes place, the contracts of employment must be transferred automatically from the seller

Complete Guide to 'slave' rights

WORKERS are sold like slaves when companies change hands, but the law does safeguard employment rights quite a bit. Barrister Saul Margo explains:



to the buyer and employees' terms and conditions must be guaranteed.

If an employee's employment is not transferred or is terminated by either the seller or the buyer for a reason connected with the transfer, the employee is entitled to bring a claim in the tribunal. His/her dismissal will be regarded as automatically unfair entitling them to compensation, unless the employer can establish an 'economic, technical or organisational' reason for the dismissal.

However, such a reason will very often amount to a redundancy situation in which case employees would be entitled to full consultation and compensation.

Service Provision Changes

The introduction of the concept of a 'service provision change' is an attempt to clarify situations involving the reassignment of services.

A 'service provision change' could occur in a number of ways. For example, such a change would take place if an employer decided that they wanted the picture editing currently done in-house to be done by a different company. This is commonly called 'outsourcing'. Alternatively they might decide that they want work that had been outsourced to be brought in-house or that they wanted to change the contractor that they were using for picture editing.

In any of these situations the Regulations say that a transfer has taken place. The effect of this is that the company who takes on the provision of, in our example, picture editing, takes on the contracts of employees already doing that work. This means that if picture editing is outsourced from a London paper to Leeds, the company in Leeds assumes responsibility for the contracts of the London based employees. The employees have their employment transferred to Leeds.

The situation becomes more complicated if the employees do not want to leave or if there is not sufficient work in Leeds for the transferred employees to be employed.

Regulations 4(7) and 4(8) govern what happens in this situation. In short, if an employee objects to the change of employment, then there will be no transfer. It is important to stress that technically that does not mean that the employee is redundant, his/her employment just ends without a dismissal taking place and he/she gets no compensation.

It thus tends to be inadvisable for an employee to object to the transfer by invoking the Regulations because it risks their employment simply being terminated.

Most contracts of employment will contain a 'mobility clause' which prevents an employer from reassigning an employee to a different location. In this circumstance, their employment would technically transfer, in our example, to Leeds, but the employee would, in all probability, be dismissed on grounds of redundancy. Technically the new employer would be liable for any redundancy payment, but in reality the new and old employer would often reach some agreement regarding such payments.

Collective Agreements

Regulation 5 has the general effect of protecting the continuity of collective agreements following a transfer. Therefore, the general rule is that following a transfer the collective agreement will operate as if it had been made between the buyer and the recognised trade union.

Trade Union Recognition

Regulation 6 preserves trade union recognition following a transfer. The effect is that a trade union recognised by the seller before the transfer will be deemed to be recognised by the buyer following the transfer.

Share Sales

As stated, the Regulations are designed to protect the employees contracts when there has been a change in the identity of their employer. For this reason, the Regulations do not apply to share sales because in those circumstances there is no change in the identity of the employer - just in the identity of the underlying share holders. The terms and conditions of an employee's contract remain the same.

Pensions

As a general rule the Regulations do not provide for the transfer of rights relating to occupational pension schemes.

However, any provisions of such a scheme which do not relate to 'benefits for old age, invalidity or survivors' will pass to the transferee under the Regulations. The question of what it means for a benefit to relate to 'old age', for example, still needs to be clarified by the courts. However, there has been a case in which it has been held that early retirement benefits triggered by redundancy were not 'old age' benefits and therefore liability in relation to them passed to the buyer.

Despite the exclusion relating to occupational pensions that exists under the Regulations, employees are given some extra protection by the Pensions Act 2004, in effect since 6 April 2005. Under the Regulations the buyer is required to offer employees transferred to it a minimum level pension provision if they had access to an occupational pension scheme (with an employer contribution to it) immediately prior to the transfer. It will be up to the buyer whether to offer defined benefit (often a 'final salary' scheme) or a money purchase (defined contribution) pension provision. If the buyer opts for money purchase benefits, it must match the employee contribution up to 6%.

Unlike provisions of the TUPE Regulations, the employee and the buyer are able to agree to opt out of the obligations under the Pension Act 2004.

Coulson rid

EDITOR Andy Coulson did not send a get-well card when his sportswriter Matt Driscoll, 40, became ill with stress.

Coulson, then Editor of the News of the World, just sent an email to his Deputy Editor saying: "Want him out as quickly and cheaply as possible."

The Editor's unsympathetic email was revealed at the Employment Tribunal in Stratford, East London.

Coulson resigned from the paper in January 2007 when his royal correspondent Clive Goodman was caught bugging the mobiles of members of the Royal Household. Goodman was subsequently jailed.

Coulson is now Director of Communications for the Conservative Party.

The tribunal is hearing BAJ member Matt's claims for unfair dismissal and disability discrimination.

The tribunal was told that Coulson's "get him out" email and bombarded Matt with phone calls, emails and recorded letters to his



Newell: Doing well now and

son orders: Get of sick writer

home between July 19 and August 7, 2006.

The newspaper demanded that Matt go to its Wapping office to see the Company Doctor, Andrew Deuchar. He declined to do so because he was not unwell.

HR then said the Company Occupational Health Manager Ann Carville would visit him at home. Matt declined this as well, saying he was happy with his GP's support. Ms Carville called anyway.

This all happened despite the fact that Matt's GP had told him to distance himself from his newspaper office because his stress was work-related.

Easily led

When Matt declined to see the Company Doctor, he said he was willing to see an independent doctor. Dr Deuchar then arranged for Matt to see a specialist, but he emailed HR to say: "I would caution that the psych may be as easily led as the GP."

Matt's barrister, Matthew Sheridan, asked Kutner about his email to Coulson over Matt's illness: "You were updating Mr Coulson on how his plan to remove Mr Driscoll quickly and cheaply was going?"

Kutner replied: "That may be what Mr

Coulson wanted, but that wasn't happening."

Matt was dismissed in April last year while still off sick.

Matt told the Tribunal that Coulson took against him when he became Editor.

Just before Coulson was appointed, Matt was told by his Sports Editor, Mike Dunn, that he was being promoted to Chief Sports Writer, but Coulson blocked it.

Matt told the Tribunal that three unwarranted disciplinary charges were brought against him to try to pressure him into resigning.

Two of the charges concerned complaints from football clubs and the third alleged that Matt was being unco-operative with Sports Desk executives.

Matt refuted the complaints from the clubs which did not result in legal proceedings or any apologies being printed in the News of the World. He also refuted the charge of being unco-operative.

The tribunal heard that at the second disciplinary hearing Steve Turner, who represented Matt, pointed out that the paper was required by law to be even-handed over its treatment of staff.

So he asked for details of complaints

from any football clubs, players or agents during the nine years that Matt was employed on the paper and details of any other sportswriters who were subjected to disciplinary action. The request was ignored.

Matt told the tribunal that it was the stress of the unreasonable disciplinary proceedings that made him unwell. His illness was prolonged by the harassment to which he was subjected.

Concerned

Matt's father Robert Driscoll told the tribunal that he wrote to the newspaper to say that his son's GP was concerned to hear of the incessant bombardment of letters, phone calls and emails from the News of the World straight after his son's illness was diagnosed – plus a call in person at his home.

Robert said the GP considered that his son's illness was due to the immense stress he had been put under by his employers in recent months.

Kuttner told the tribunal: "Mr Driscoll's father was completely distorting reality. We were trying to help."

Kutner claimed Matt was only subjected to disciplinary charges because of unsatisfactory work. He said Matt was dismissed because he could not say when he would be well enough to return to work and the paper needed to replace him.

Steve Turner told the Tribunal that he had been involved in three similar cases to Matt's at the News of the World which had each taken the same path.

The journalist was unreasonably subjected to disciplinary proceedings, realised that the newspaper felt his face did not fit any more and was trying to drive him out.

The journalist therefore asked if a severance package was available to resolve the matter. It was what the newspaper wanted, said Turner.

The hearing was adjourned until September 4.

Regular Freelances DO have rights

A MEMBER wrote two highly regarded columns for a national magazine on a freelance basis for nearly 20 years. Then he was terminated without a penny in compensation.

It happened after a new Editor was appointed to the magazine. The new Editor imagined that a freelance could be discarded at any time regardless of his length of service.

In fact, the Editor told General Secretary Steve Turner as much when Turner rang him to talk about compensation. The Editor said our member was self-employed and wasn't entitled to anything.

The Editor was wrong. A freelance doing a regular assignment is legally entitled to reasonable notice of cessation of that arrangement.

Our member was obviously due some notice money, but the question was how much? Such cases are usually settled out of court and consequently the law books contain no guidance on what may be reasonable terms.

Staff journalists on the magazine often have contractual notice of three months. At the same time, the maximum statutory notice is 12 weeks after 12 or more years' service.

BAJ's lawyers decided to claim 12 weeks' money, totalling £4,800. A letter before action was sent to the magazine asking for this amount.

In response, the Company offered him £1,000 as a "goodwill gesture." Our member had no trouble declining the Company's generosity.

When BAJ issued proceedings, the Company's lawyers obviously got involved. They knew the law was on our member's side and quickly settled the claim in full without wasting any more of anyone's time.

Steve Turner said: "The Editor not only tried to short-change our member, he didn't even send him a letter of thanks for his many years of superb service."



sing with his race spoils.

STRUGGLING IN THE RAIN - BUT TERRY MAKES IT

BAJ's running maestro Terry Newell had a tough time during his 28th consecutive London marathon and took 8hrs 16 mins to complete it.

Several days later, he became unwell and was taken to hospital by ambulance.

He was found to have suffered a small heart attack, possibly during the race. He may have to have heart surgery.

Undaunted, Terry is determined to run next year's London marathon (his daughter is determined he won't!)

There are now only 23 runners who have finished every race – including Terry.

Terry penned the following account of the race:

OHL to be in England when April is there to do the Flora London Marathon in

lacerating wind and Arctic showers. Those African stick men shifted like the wind and put in a 2 hour 5 minute effort, leaving the also-rans like me struggling. Our lot included the girl on stilts, the oldest man, and the wonderful array of fun runners decked out for charity.

The start at Blackheath was cold enough, but it got colder and wetter on the way into the City. For the first time, I didn't dump the black bin bag. Tower Bridge is always a joy. Along that white line in the middle of the road in broad daylight for the 28th time without being chased by the Old Bill to take a breath test. Yipppee!

Coming off Tower Bridge, sploshy rain chilled to the bone. A kind lady, with her

daughter, offered me her brolly. She was going home to her flat in Limehouse, just down the road a bit. The brolly kept the rain off and was a good windshield in between the showers.

Slight trouble on some stairs early in March forced a reduced pace which was not enough to keep the body heat up.

Hours – and frozen aches – later, Big Ben was a great sight, but the time on his face was depressing.

Trudging into The Mall and up to the finish was hardest of all.

My impression of Gene Kelly doing his Singing in the Rain didn't quite come off.

The brolly was keeping the rain off, but there was no spring to do the heel-clicking bit.

Freelance forum



By Jane Furnival

KILL fees are the thin end of the wedge. Now, some editors starve journalists to death by not paying even 50% for commissioned work, if it is unused.

"I spent a week doing a piece for the Sunday Express and it didn't appear," laments a member. "I'll be lucky if I can wrangle £150 out of them as the Express doesn't do kill fees."

"Prima has recently reduced the number of words per page from 600 to 500 and correspondingly reduced the fee," writes another member. "In fact, it's harder to write fewer words encapsulating the same amount of info in a suitably entertaining form."

"The Standard tends to sit on commissioned features for a long time (in one case, for five months!) and payment is not forthcoming until publication," comments a member. A Sunday paper property section has not paid someone for a piece written last year. The Daily Mail owes money for an article submitted in February. A piece written for The Times in January was paid for in May.

Ideas theft

The theft of ideas is breath-takingly awful and here's one concerning a national newspaper. "I pitched a story about a writer to the features department, but they claimed that the literary editor had already set up an interview," a member relates.

In fact, the paper set up the interview some time later. This happened twice. Now, before pitching any idea, our member gets signed statements from interview subjects and PRs saying that they have not spoken to the paper.

I had a meeting with Philippa Stroud, head of the Tory thinktank Centre for Social Justice, a would-be MP, and put to her some concerns about the state of freelancing and the limitations of employment tribunals. She was sympathetic and promised to pass on my remarks to relevant bodies, so let's hope I hear back with a promise of action.

Feewatch

Mail Group title, £1,500 for 2000-word feature. Real-life feature for a tabloid, 1500 words, £1,000. Glossy magazine health feature, 1500 words, £550. Daily Mirror, £300 for a 700-word feature.

Evening Standard, 800-word feature, £350. Daily Telegraph, 600-word feature, £350. The Guardian, 1200-word feature for Work section, £325. hours magazine, a single case-study feature, 750 words, £250. Prima, 500 word single page feature, £225.

Oxford Mail, news piece, 250 words, £50. GMTV, three-minute live TV appearance, £150. TV morning programme tip-off fee, £100.

HELP US, OH WISE ONES!

WITH the support of BAJ freelance writers, we plan to compile a good practice guide for the benefit of present and future freelance members.

As a freelance, you have a huge amount of experience and knowledge. We are inviting you to share that wisdom in response to any or all of the questions below.

Please elaborate any answers as fully as you wish.

Cedric Palford will then compile the replies into the good practice guide.

He is the former editor of Freelance Forum in BAJ NEWS, and he also runs the NCTJ/Palford Media course, Successful Freelancing.

All contributions will be treated anonymously. We'll be pleased to accept responses by email to office@bajunion.org.uk, fax to 0207 353 2310, or post to BAJ office, 89 Fleet Street, London EC4Y 1DH.

Over to you ... please help!

Tell us know in which medium you mainly work – print (ie, newspapers, magazines, wire services), radio, television or internet – and then answer as many as you wish of the following questions. One is fine; so is 20, or any number in between!

(Please note that if you work in broadcasting, not all the questions will apply.)

- 1 What are the most fruitful ways for finding ideas?
- 2 What is the best medium of communication (phone call, email, fax, letter) to pitch an idea (a) to an editor with whom you've worked already and (b) to a new outlet?
- 3 How do you find out whom to pitch to in a large news organisation?
- 4 How much of a problem, if at all, is theft of ideas?
- 5 What is the relative importance for you of working with existing clients and opening up new markets?
- 6 What do you do – and when do you

Key Facts

● RPI INFLATION: January 1987–100, May 2008 = 215.1. Rise in past year 4.3 per cent

● AVERAGE EARNINGS: 2000–100, April 2008 = 133.5. Private sector rise in the past year, including bonuses, 3.8 per cent

● UNEMPLOYMENT: At 50 April was 1,640,000. Up 38,000 in 3 months.

● HOUSES: Halifax national house price index: 1985 = 100, May 2008 = 595.9. Annual change –3.8 per cent.

● MOTORING: AA's system for mileage rates for petrol cars averaging 10,000 miles a year: Car cost new up to £10,000 = 39.48p a mile. Car cost new £10,000–£13,000 = 48.17p a mile. Car cost new £13,000–£20,000 = 63.03p a mile.

Share your freelancing know-how

do it – about an editor who is "sitting on" an idea and not making a decision?

7 How important is a commissioning letter vis a vis an oral commission?

8 To what extent have you been able to charge expenses in addition to the fee?

9 How possible have you found it to negotiate higher fees?

10 How important is it to keep the rights to syndicate your own work and how practicable is it to agree this with the first user?

11 In a news feature of 800–1,200 words, what is the optimum number of sources to be quoted?

12 Are you ever asked to supply (a) a headline and (b) a standfirst and, if you are, what have you done about it?

13 How do you find and keep good contacts?

14 What do you see as an acceptable time for the client to pay?

15 What do you do about late payments?

16 What questionable or immoral practices are you aware of (eg lavish gifts, payment for product mentions)?

17 What proportion of your working week do you spend on admin? (Admin is any business activity that is not researching, writing and pitching ideas).

18 What proportion of (a) motoring costs, (b) household utility bills and (c) home telephone do you expect to be able to charge as business costs?

19 What advantage (if any) is voluntary registration for value added tax when fee income is below the threshold for compulsory registration (currently £67,000)?

20 When is a good time (if at all) to set yourself up as a limited company?

Cedric looks forward to receiving your know-how on all or any of these questions as soon as convenient to you

Your finances

THE audit of BAJ's 2007 accounts has been completed. The auditors, Civivals, of London, W1, found our affairs to be in order. You'll see BAJ had a surplus of £6,182 on the income and expenditure account. Enclosed is a copy of the audited accounts which includes the Statement to members required under Section 32A of the Trade Union and Labour Relations (Consolidation) Act 1992.

Our Management Accounts from 1 January until 31 May are:

INCOME

Advance/arrears subs	1,680.00	Monthly subs received	
Donations	1,167.50	January	10,086.00
Bank interest	106.48	February	10,161.00
Legal fees for compromise		March	10,294.00
agreements	1,000.00	April	10,213.00
Dividends	6.56	May	10,114.00
Sale of mobile phone	31.92		
		TOTAL	54,860.46

EXPENDITURE

Legal expenses/helpline premium	7,973.16	Equipment Fund	110.97
Legal advisers' retainers	10,496.65	Photocopying	114.26
Legal adviser's, NEC's and FOC's insurance	414.17	Postage	373.36
Other legal bills/court charges	2,671.01	Stationery/printing	713.35
Tax Helpline	538.55	Secretarial	2,630.80
BAJ Press Cards	1,077.46	Bookkeeping	470.00
UK Press Cards	363.63	Bank and BACS charges	148.37
Student Press Cards	10.00	Office rent	1,084.68
Company search fees	3.53	Service charge	526.83
BAJ NEWS	2,801.19	Office rates	493.30
Pay/NIC (S. Turner)	9,206.28	Office water rates	196.72
Pay/NIC (D. Thomas)	8,636.23	Sundry expenses	178.20
Keyman insurance	705.91		
Telephones (4)	1,254.93	TOTAL	53,942.19
Facsimiles (2)	265.00	TOTAL INCOME	54,860.46
Mobile telephone	330.68	TOTAL EXP	53,942.19
Computer support	102.98	IN HAND	4918.27
Website	49.99	Reserves:	£15,161.00
		Savings:	£1,500.00