Protection from detriment of employees warning of potentially harmful health and safety circumstances

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Miles v Driver and Vehicles Standards Agency [2023] EAT 62

Section 44(1)(c)(i) of the Employment Rights Act 1996 protects an employee from being subjected to a detriment by his employer on the grounds that he brought to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety. However, to have this protection, the subsection stipulates that the employee be an employee "at a place where" there was no representative on matters of health and safety at work or member of a safety committee. This judgment of the Employment Appeal Tribunal, published on 28 April 2023, considered the scope of the word "at", for these purposes.

The claimant was employed as a driving examiner at the Pontefract office of the DVSA. The representative was not based at Pontefract and so the claimant asserted that he came within section 44(1)(c) ERA; he contended that the representative or safety committee must be at the place where he worked. The EAT considered, at [29-30], that the ET applied the correct analysis in holding that it was sufficient that there be a safety representative or committee *for* the place at which the claimant worked. In the case of *Castano* it was asserted (rather optimistically) that the place at which a bus driver worked was his bus, so he came within the provision because none of the passengers on the bus he was driving was a safety representative. Eady J rejected that analysis on the basis that the claimant's place of work was the bus garage, where there was a safety representative. However, that did not answer the question of whether a safety representative or committee must be at the place of work where the claimant works or may be based at some other location, provided there is cover for the place at which the claimant works. The EAT in *Miles* reasoned that section 44(1)(c) ERA refers to the place at which the employee works. It is the employee who must work at that place, even if absent from time to time. Once the place at which the claimant works has been

identified one has to determine whether it is a place where there is such a representative. While the most literal reading of section 44(1)(c) would require the safety representative or committee to be at the same place where the employee works, the EAT considered that the section can also be sensibly interpreted to require that the place at which the employee works is one where there is such a representative or committee, albeit that the representative or committee is based at some other location, provided they cover the place at which the employee works. The latter interpretation avoided absurdity and was consistent with the purpose of the provision:

https://www.bailii.org/uk/cases/UKEAT/2023/62.html

5 June 2023

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