

ASLEF Personal Injury Legal Services

NORTH WEST REGION

Autumn/Winter 2014



Legal Helpline 0808 100 8009

Injured cyclist secures compensation

AN ASLEF member, who was injured after being knocked off his bike by a car, has secured over £24,500 in compensation, thanks to ASLEF's Legal Service.

Simon Hones was cycling along the A6 when a car took a reckless left turn into his path and knocked him off his bike. As a result, he suffered a nasty fracture to his elbow which meant he was unable to work and lost vital earnings.

He sought legal assistance through the ASLEF Legal Service and Thompsons Solicitors were instructed on his behalf to pursue a claim of damages.

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A claim was brought against the driver of the car for his negligent driving and full compensation for Simon's injuries was secured.

Member required surgery after trip

An ASLEF member who was injured whilst unloading coal at Fiddlers Ferry Power Station has secured compensation with the help of Thompsons.

The member, who was employed by DB Schenker, was walking in a poorly lit area towards the rear of a train when he caught his foot on the concrete apron near the weighbridge causing him to trip and fall.

As he put out his arm to prevent himself from falling, he suffered a ruptured bicep which required surgery.

Following the accident, the member contacted ASLEF who referred his case to personal injury specialists, Thompsons.

Claim against employer

A claim was brought on the member's behalf against Fiddlers Ferry Power Station for failing to provide a safe place of work and provide sufficient lighting.

Fiddlers Ferry continued to deny any fault in the accident, but Thompsons were still able to secure compensation for the ASLEF member.

Train driver compensated after trip

A TRAIN driver who was injured while changing ends on a 158 unit has secured £7,000 compensation with the help of ASLEF's Legal Service.

The member had entered the driver's cab and turned to sit on the seat. As he did so, his foot became caught on a raised metal strip on the cab floor, causing him to trip and strike his knee on the cab door.

As a result of the accident, he suffered painful persistent knee pain that meant he had to undergo an MRI scan.

Following the accident, the member contacted ASLEF who referred his case to Thompsons Solicitors. Thompsons' investigations revealed that two screws were missing allowing the metal strip to be raised and present a tripping hazard.

Compensation was secured after Thompsons brought a claim against the member's employer for not carrying out a simple piece of maintenance to ensure a safe place of work.

DON'T FORGET

Whether it's you or a member
of your family who has suffered,
ASLEF is here to help.



STANDING UP FOR YOU

Holiday – how much and where from?

IF YOU believed UKIP or the Conservatives you would think that the EU is all bad.

In fact your employer doesn't give you holidays out of the goodness of their heart, your legal entitlement to holidays comes from the Working Time Regulations 1998 (the Regs) which the UK brought in because of an EU Directive – the Working Time Directive (the Directive).

Under the Regs, employees are entitled to a minimum of 5.6 weeks' paid holiday in each leave year (subject to a maximum of 28 days) and 4 weeks of that comes from the holiday entitlement under the Directive. The Regs override any contractual term.

Payment for each week of holiday and the rate of a week's pay is calculated in accordance with sections 221-224 of the Employment Rights Act 1996 (ERA).

In 2004 the Court of Appeal considered the position in relation to overtime. In the case of *Bamsey -v- Albion Engineering and Manufacturing plc*, the Court of Appeal held that an

employee's normal working hours for the purposes of calculating a week's pay (for the purposes of holiday pay) will only include overtime if there is a contractual obligation for the employer to provide the employee with overtime and for the employee to work that overtime.

Where either the employer does not have to provide overtime, or the employee does not have to work overtime, overtime will be discounted when calculating a week's pay and the "normal working hours" are then the remaining basic hours within the employment contract.

Recent judgement

In a recent judgment of the European Court of Justice – another institution the Tories and UKIP would have you believe only deals with the shape of bananas or interferes with UK laws – it was decided that, for the four weeks holiday that the Directive guarantees you (but not for the 1.6 weeks you get from the Regs), a week's pay is not limited to the worker's basic salary but should

include pay for tasks the worker is required to carry out under their contract of employment – and that includes commission payments.

There have been several first court decisions in relation to whether overtime payments should also be included in the calculation of what is owed when a worker goes on holiday. All those decisions are being appealed by the Employers because they lost! The appeals are to be heard by the Employment Appeal Tribunal this summer.

A worker not paid their holiday pay in accordance with their legal entitlement can bring a claim for breach of the Regs and/or unlawful deduction from wages. Both claims are made in the Employment Tribunal. The time limit to bring either claim is three months less one day from the date that the employer failed to pay the correct amount of holiday pay.

If you think you have been paid incorrectly while on leave, you should raise this with your UNISON representative who will be able to give you further guidance on the issue.

Driver injured by exploding firework

AN ASLEF member who was left with permanent ringing in his ears has secured £3,300 compensation, with the help of the union's Legal Service.

The member was driving a train under a pedestrian bridge when an industrial firework or incendiary device was thrown from the bridge and exploded in the air only two feet from the side of the cab window.

As a result, the member experienced an immediate ringing in his left ear and was later diagnosed with tinnitus.

British Transport police investigated

the incident and concluded that someone had thrown an incendiary device at the train.

He sought legal advice through the ASLEF legal assistance scheme and a claim was lodged with the Criminal Injuries Compensation Authority. Despite being left with permanent ringing in his ears they rejected the claim saying that he did not suffer an injury sufficiently serious to warrant an award of compensation.

A review was submitted by Thompsons on his behalf and he eventually received an award of £3,300.

About Thompsons

Thompsons Solicitors is the largest national specialist personal injury practice in the country with over 1000 staff in a network of offices nationwide.

We secure over £150m compensation each year for people who have been injured and suffered loss as a result of accidents caused by the carelessness of others. Thompsons only works for injured people, never for insurance companies or employers.

Please email newsletters@thompsons.law.co.uk to let us know if this newsletter was helpful and what topics you would like covered in future.

 **THOMPSONS**
SOLICITORS

STANDING UP FOR YOU

If you have suffered an injury at work, call the legal helpline on 0808 100 8009