Feb 2013-02-28

**Update on Rainbow Sickness Process from Stations Functional Council Reps (SFC).**

This update is overdue but we have been waiting for an agreed set of minutes from the last APC (Attendance, Performance & Conduct) meeting with management. The minutes are still in dispute but as the next meeting is not now scheduled until April and we are now getting more reports of the process kicking off again we are issuing this update to previous advice.

**Triggers**

LU continues to set a “trigger” under Rainbow, which is 10 items of sickness or 100 days in any three year period.

**Employing Manager’s Actions**

Employing managers are sent a report, sometimes referred to as an “under the radar report”. This highlights any member who has “triggered” rainbow.

The manager should carry out an “attendance review”, which may involve a manager just looking at the paperwork or may involve an informal discussion with the member. Managers will not normally allow a TU rep to attend such informal discussions. We should always advise members to state that they wish to be represented and ask the manager to make a note of it if they are denied this request. At any formal case-conference, members have the right to be represented but it remains the view of SFC reps that it would be counter-productive to demand formal case-conferences at this stage of the process.

Having reviewed the member’s record the manager may decide to ask them to attend a case-conference. At this point the member has the right to be represented.

**At the Case-Conference**

1. **Do not agree to ANY numerical target for future attendance.**

In a letter from Gerry Duffy to Bob Crow dated 25 Oct 2012 it is stated that,

“96% is a corporate target for overall attendance. I agree with RMT that it is not a trigger for interviewing and should not be used as such.”

This is important. In the past, members have been told that a failure to meet a numerical target (usually 96%) will result in a further case-conference and possible action leading to re-deployment and termination.

The only published standards for attendance are those contained in the AAW policy (which we have never accepted but at least it applies to all staff). Anything else is arbitrary and unfair.

1. **Challenge Management’s Data**

Management will usually present data going back 3 – 5 years showing non-attendance over a long period. Take as long as you need to confirm the info they are giving you.

1. **Identify items that would not count under the AAW policy, including:**

* Special Leave
* Work-related sickness
* Any sickness that could reasonably be covered by the equalities act

LU is considering ALL non-attendance together when they consider whether a member’s attendance is satisfactory. Legal advice received by RMT suggests that this approach could breach the equalities act or a member’s legal entitlement to special leave so it should be highlighted.

1. **Is there an underlying problem? Does the member need a reasonable adjustment?**

If the member needs a reasonable adjustment to help them improve attendance ask the manager to arrange this. Employers have the right, in law, to require regular attendance, even if a member is covered by the equalities act. However, if a member has a disability that results in them taking a reasonable amount of time off the company should attempt to put arrangements in place to accommodate this.

1. **Where a member’s attendance is improving there should be no need for any follow up action.**

If the member’s attendance has been poor in the past but is now improving you should ask the manager to note this and agree that no further action is required.

**Rainbow an All-Grades Issue on LU**

The SFC took up the issue of Rainbow when it was being applied mainly to station staff. Recent reports suggest that train operators are seeing more Rainbow case-conferences and the process has also appeared in the engineering grades.

We will now pass all of our information to the new Regional Officer and suggest that we now monitor Rainbow within each function.

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