The role of Acas in dispute resolution

In this guest article, Amit Sen of the Advisory, Conciliation and Arbitration Service (Acas) explains how this confidential and impartial service undertakes resolving employment relations disputes. He outlines the arbitration process and describes the role of the Acas arbitrator, and also indicates the benefits that can accrue to employers and trade unions from making use of the service.

Since its inception in 1975, Acas has provided its arbitration service for the resolution of employment relations disputes. There are important differences between contractual models of arbitration and that provided by Acas, but they share some characteristics.

■ Voluntary and binding

Acas arbitration is binding in honour only. The traditions of British employment relations and the need for parties to ‘live’ together after the dispute has been settled have ensured that non-compliance with an award has not been an issue. Acas arbitration is free to users, with the arbitrator’s fees and expenses all borne by Acas.

■ Flexible and speedy

Parties to the dispute can develop their own terms of reference or develop them with the assistance of an Acas conciliator. Experience suggests that an Acas conciliator helps parties to produce clearer terms of reference. Arbitrations can be arranged within three weeks if diaries permit.

■ Impartial

The parties’ confidence that the arbitrator will hear and decide their case sensitively and with complete impartiality is the one thing that, perhaps above all else, serves to maintain the integrity of arbitration as a process. This impartiality also extends to the separation of functions between the parties in dispute, the conciliation function and the arbitrator. The effect of this is that the arbitrator can approach a case with a fresh pair of eyes, untainted by knowledge of what has gone before.

■ Confidential

Acas provides all users of its arbitration service with an assurance that it will not disclose details of its cases to anyone other than the parties involved. The commitment to confidentiality also extends to the parties who, in the main, honour their pledge. However, in an age of instant communications, sometimes one or both parties choose to take their dispute into the public domain, particularly where there is wider public or media interest.

With the parties’ respective constituencies eager to learn of the outcome of a hearing as soon as possible, it is perhaps understandable that parties feel under pressure to ‘communicate’ as fully and as quickly as possible. Parties in this situation could however help themselves and their relationship by agreeing some simple rules of behaviour: for example, co-ordinating the timing of announcements; tempering their respective analyses of an award with an eye to the future conduct of the relationship; avoiding any triumphalism or seeking to apportion blame for what, on occasion, they might perceive as an unfavourable outcome.

Sources

The majority of Acas arbitration cases originate from three principal sources: collective procedures, ad hoc arrangements and the electricity supply industry. Most collective agreements specify a joint referral to arbitration. However, there are some agreements still in force, for example in the police services, which allow for a unilateral referral.

Where conciliation has taken place but failed to produce a settlement, Acas conciliators can explore the possibility of arbitration with the parties although collective procedures providing for this option do not exist. The electricity industry disciplinary procedure is a third source and continues to provide cases. Not surprisingly perhaps, disputes over pay have tended to be the single most common cause for referrals to arbitration.

Conventional or pendulum arbitration?

The majority of Acas arbitration cases are of the conventional variety; that is, the arbitrator is not constrained by an ‘either or option’ as in ‘pendulum’ or ‘last offer’ arbitration. The arguments for and against both have been discussed at length elsewhere but suffice it to say that relatively few referrals to Acas are of the pendulum variety.

Arranging an arbitration

Acas has a small team based at its head office in Euston Tower. This team is responsible for administering the process, collating statistics for internal and external use and giving advice to field colleagues about the process. The electricity supply industry cases excepted, each arbitration case requires a unique set of terms of reference to be agreed. All terms of reference are lodged with the head office team; a case file originated and an arbitrator appointed usually according to availability and location, though occasionally on the basis of familiarity with the industry.

The Acas arbitrators are from a variety of backgrounds and provide an impressive breadth of experience. In a departure from the commercial practice, Acas usually selects the arbitrator. The majority of Acas cases require one arbitrator. It is relatively rare now for Acas to appoint an ad hoc ‘board’ comprising three people. Where a board is required, parties may each appoint one side member, usually from a list provided by Acas.
Alternatively, Acas may, with the agreement of the parties, appoint all three members.

Once an arbitrator (or board) has been appointed, a date for the hearing agreed and a venue arranged, letters confirming all the arrangements are issued to all parties. The parties are required to exchange written submissions of their case and send a copy to the arbitrator, seven days prior to the hearing date.

The hearing

The hearing, which is unlikely to take more than one day, is relatively informal. Acas arbitration is characterised by an inquisitorial as opposed to an adversarial, legalistic approach and all questions are routed via the arbitrator. New evidence is not normally allowed on the day. Where such evidence is tabled by one side, the arbitrator will normally ask the other side whether they are amenable to it being allowed and in any event will be given time to read and consider it. The arbitrator does not give a decision on the day of the hearing but forwards it to the head office team.

The award

Awards are always in writing and are normally split into six sections as follows:

1. This identifies the parties to the dispute, confirms the appointment of the arbitrator, the terms of reference, the date and venue of the hearing and those who attended the hearing
2. The ‘background’ describes the nature of the dispute and its progress to the arbitration stage
3. A summary of the trade union case
4. A summary of the employer’s case
5. Considerations’ outlining the main arguments taken into account by the arbitrator
6. This final section contains the ‘award’ or decision itself.

Awards issued by Acas are ‘screened’ at head office for quality, consistency and in particular to ensure that they are sound. Contrary to the belief in some circles, Acas arbitrators do not ‘split the difference’ in, for example, pay awards. Awards are based on the strengths of the parties’ arguments in relation to the terms of reference and with a view to the parties’ continuing relationship. Once checked, the details of the awards are forwarded electronically to the parties within 21 days of the hearing.

Complaints and clarifications

Arbitration is intended to bring finality to a dispute. Unless there is some serious procedural error or there is a decision which is manifestly flawed, Acas does not seek to interfere with an arbitrator’s award. To seek to persuade highly experienced arbitrators that an award requires amendment in some fundamental way, is not a step Acas officials take lightly. Acas is keen to ensure that the dispute is ended; but it is also mindful of the necessity to preserve the independence of its arbitrators.

It is worth stressing that Acas arbitration is a mechanism of final recourse. It does not provide for an appeal or re-run option (except perhaps in the very narrow set of circumstances outlined above). A more likely, though still fairly rare situation, is when one party seeks ‘clarification’ of an award. In such instances Acas stipulates that a complaint must be made jointly by the parties. This is not always easy to achieve, not least because the request for clarification invariably originates from the party who perceives that they have ‘lost’. Where a joint request is received, the arbitrator concerned is asked by Acas to provide the clarification sought.

From the parties’ point of view perhaps the most difficult situation – apart from an unfavourable outcome – is when the rationale for the award is unclear. To address this issue, Acas arbitrators take care to outline the factors taken into account in reaching a decision and the impression is that in recent years Acas arbitrators have tended to provide more details in the ‘considerations’ section.

Confidentiality

Acas offers users of its arbitration service a guarantee of confidentiality. Indeed, one of the attractions of arbitration from the parties’ point of view is the lack of publicity surrounding their dispute and its outcome. Inevitably as outlined earlier, there are cases which generate media comment. Usually, the Acas approach is to refrain from commenting publicly on cases which feature in the media.

Occasionally, Acas may comment generally on the process. The organisation recognises that to comment in any detail about specific cases could serve to undermine the credibility of its claim to offer a confidential service and, conceivably, have implications for other strands of its service.

Acas arbitration continues to be a valuable dispute resolution mechanism. It is fast, flexible and highly cost-effective. It is acknowledged that relative to previous decades, its use has declined. The radically altered employment relations climate – largely unconnected with the nature and effectiveness of the process – has contributed to this trend.

However, the efficacy of the process may be underlined by the popularity of arbitration in the commercial world, where the prohibitive financial and time costs of litigation have ensured its continuing success. In the different but equally complex world of employment relations, parties need not be apprehensive about using Acas arbitration.

For further information visit the Acas website on: www.acas.org.uk or contact the Acas head office on 020 7210 3742.