

What's really involved in Acas Collective arbitration?

This case study looks at the experience of a manufacturing company that used Acas arbitration. It considers all aspects of the process and puts forward views from all those involved. ¹

Background

This manufacturing company, situated in the north of England, supplies parts primarily for the automotive industry in Britain and Europe and is part of a Japanese owned group of companies which has manufacturing facilities world-wide, principally in Japan, Europe and the USA.

The company was established in 1991 on a Greenfield site with some government support and at the time of writing employed 330 people. When it was set up the Japanese owners were determined to avoid industrial conflict because under their supply contracts with the customers in the automotive industry, they could face substantial fines if their production was disrupted. In addition, the company wanted to avoid the multi-union scenario common in many British companies at that time and the possibility of inter-union strife which could undermine teamwork. Accordingly, at the planning stage the company decided to have a single union agreement with the Amalgamated Engineering and Electrical Union (EEPTU section) which, after a succession of mergers, is now part of Unite.

The procedure agreement

The agreement, made in 1993, recognises a single union for 'for all employees'. If membership is less than 51%, the union only has representational rights. If it is 51% or more, the union has negotiating rights in return for the avoidance of conflict and binding arbitration to resolve disputes. The agreement says:

Every endeavour will be made to reach an agreement on referred employment issues. However in the event that an acceptable solution cannot be found the following procedure provides for the matter to be resolved through discussion, negotiation, conciliation and, as a last resort, arbitration.

Accordingly, this and other similar agreements have been dubbed 'no strike' agreements, but unlike many agreements of this ilk, the procedure does not specify the form of arbitration, that is whether it is conventional arbitration or pendulum arbitration. (Under the latter, the arbitrator must choose between the position of the employer or the trade union and so, unlike conventional arbitration, has no right to recommend a third solution which perhaps is part way between the demands of both sides.) So far the union and management have agreed on conventional arbitration.



“We always go for conventional because pendulum you can lose... Company are happy to go with that. One day they might not be. They might say no, we’re going for pendulum.”

Senior shop steward

The Corporate Affairs Director said that there had been discussions with the union about the form of arbitration but conventional arbitration had always been adopted because “this was always how we’ve done it”.

There are four stages set out in the procedure: the first stage is a meeting between the union rep and a member of the company; the second stage is a meeting between the local full time union official (FTO) and the Personnel Manager or another person nominated by the company; the third stage is a joint referral to conciliation by Acas; and the fourth stage is arbitration provided by Acas. Arbitration has been used six times: 1993, 2002, 2004, 2012, 2013 and 2014. In 2002, Acas categorised the arbitration issue as ‘other pay and conditions’ and the senior shop steward explained that it was a dispute about payments during lay-off, but in the other years, the arbitration issue was the annual pay round.

The process

Before arbitration is first considered, Acas tries to resolve the matter by conciliation as noted above. Conciliation at the company however, has never resulted in a resolution of the dispute and the Corporate Affairs Director said that he and the union had always mutually agreed to go to arbitration. The senior shop steward confirmed this: it was “both together really” and never the case of one side dragging the other along.

At the point that the parties decide to go to arbitration, the collective conciliator, with the parties’ assistance, draws up the terms of reference and in the last three years it has been as follows:

The arbitrator is asked to consider the submission by both parties in connection with the pay round for [year specified], and to make an award.

The next stage is for the arbitrator to be appointed and in 2013 and 2014, Acas enquired from both sides whether they wanted the same arbitrator as before, or a different arbitrator, but both parties agreed to leave the choice of arbitrator to Acas. Then the two sides prepare their statements of case and exchange their statements with each other, while Acas ensures that the arbitrator has both sides’ statements. This occurs about a week before the hearing. At the hearing both sides outline the main points of their statement of case and cross-question the other side.



The Corporate Affairs Director said that he had a full opportunity to say what he wanted to say at the hearing and compared arbitration favourably with an Employment Tribunal.

“I think it’s more relaxed. Certainly you don’t feel pressured.... It’s friendly, if not familiar. [The senior shop steward] and I have been together for a long time... Clearly we have differences, but we’ve got to work together afterwards so it’s not so adversarial, I would suggest.”

Corporate Affairs Director

The senior shop steward similarly compared Acas arbitration favourably with an Employment Tribunal.

“I like what [Acas] do to be fair.. Arbitration, that’s obviously, you can still seek a compromise and the arbitrator is listening to both sides of the story and he’s going to make a decision. In an Employment Tribunal, you either win or lose and there’s no in between.”

Senior shop steward

Nor was there any criticism of the timescale by either the union or the company.

“[Acas] come and do the conciliation bit; that could take a month or so and then, okay, that didn’t go very far so then an arbitrator gets appointed. There’s then some time to prepare the statements, prepare the cases; that goes off. He [the arbitrator] reads them and a date is fixed ... and it’s probably I think maybe a couple or three weeks between the arbitration meeting and the result... It’s generally fine. We don’t think it drags on particularly. If there were a decision on the day it might smack of, I don’t know, there’s not a lot of consideration going into this... We’ve never waited longer than a month.”

Corporate Affairs Director

The benefits of arbitration

The Corporate Affairs Director, who joined the company in 1993, had not had any experience of any type of arbitration, never mind binding arbitration agreements, despite working for many years elsewhere, including a Japanese owned company albeit on a Brownfield site. He was of the view, however that such arbitration had some benefits.

“Our customers want an element of certainty and that’s one way we can demonstrate that..... It suits us at the moment. Well, what is likely to have happened if we hadn’t got binding arbitration? There might’ve been a strike ballot, maybe threatening industrial action. The Japanese would’ve got scared to death. Thrown money at it.....



[The workers would] have learnt that a threat of a strike is more than enough. They probably wouldn't have to go on strike; it's more than enough to get the Japanese to cave in because the biggest thing the Japanese can do is not supply, or supply bad quality. It's anathema to them so they'll do anything to avoid that. So if they thought that's going to happen they'll probably cave... So the ante would go up and the workforce would learn that's easy and they'd price themselves out of the market and probably this place would've disappeared."

Corporate Affairs Director

The senior shop steward praised arbitration wholeheartedly.

"I were 12 months on strike with miners and we achieved absolutely nothing. Now with an arbitrator, obviously if it's by agreement, with the arbitrator I would say that there's a good chance that you're going to get something without having to withdraw your labour... It's benefited us here. I can't speak for other plants. Like now, I'm trying to save jobs. Now I need something off management. If I'm forever withdrawing my labour, then that becomes difficult for them to listen."

Senior shop steward

The senior shop steward was also of the view that arbitration should be used more widely.

"I think [arbitration] is something to consider and I think other factories or workplace ought to consider it... Your trouble is a lot of people are set in their ways and they might think no, we've always done this for years and we're not going to alter... Obviously they've got to get agreement of the membership and that might be difficult in companies what never had that facility before."

Senior shop steward

Concerns about arbitration

The Corporate Affairs Director argued that although arbitration had had benefits in the case study company, he had some concerns.

"[Arbitration]'s just easier. It's a free shot. There's no cost to it for either party and so we might as well throw the dice... [Without binding arbitration] there's got to be some sort of industrial action. All these things have to be put in place and it consolidates the, 'well, hang on a minute, if I do go on strike, I'm going to lose this amount of money and what might I get'. So there are all those judgements made in people's mind, where the arbitration it's a free shot. Why not; why shouldn't we go...? I would probably do the same in their [the workers'] position."

Corporate Affairs Director



The regional full-time union official (FTO) similarly had concerns, albeit of a different kind. He had not been involved at all in the original procedure agreement that specified binding arbitration and its so-called 'no strike' provision and was of the view that it removed from workers' the right to make their own decision.

"[My] view is that it should always be up to the workers to choose whether they accept what the company is offering them or not. It should be their democratic right to inform the employer via a collective ballot whether they feel the deal is good enough or not. Should they choose not to accept it should still be in their hands, whatever method they choose to continue negotiations whether it be continued negotiations with a mediator or a conciliator or industrial action of some kind. It shouldn't be down to an independent person to decide who gets what. It should be down to the workers as far as I'm concerned. I always enter into negotiations however with the principle that once an offer is achieved that is fair I will as the Union lead recommend acceptance of the offer."

Regional full-time union official

Nevertheless, paradoxically he admitted that the arbitration provisions at the case study company had benefited workers, that the shop steward was happy with arbitration to resolve collective disputes and that the arbitrator had "been absolutely fantastic."

"Although we ought to be able to resolve things without somebody else making a decision, it is good to know that people are there to assist with resolving issues."

Regional full-time union official

Endnotes

1 This case study is based on interviews conducted by an independent researcher in February – March 2015.

