



The UK National Work-stress Network ● workstress.net

Annual Conference 27 & 28 November 2010

Mediation: an answer to stress at work?

**John Usher: employment solicitor and
accredited mediator**

From Zeus to the Conciliation Act 1896

- ◉ Zeus and the council of the gods...
- ◉ The Board of Trade, at the request of a party to a dispute, can appoint conciliators in respect of any difference between the parties "existing or apprehended".

From Conciliation Act 1896 to the Employment Act 2008

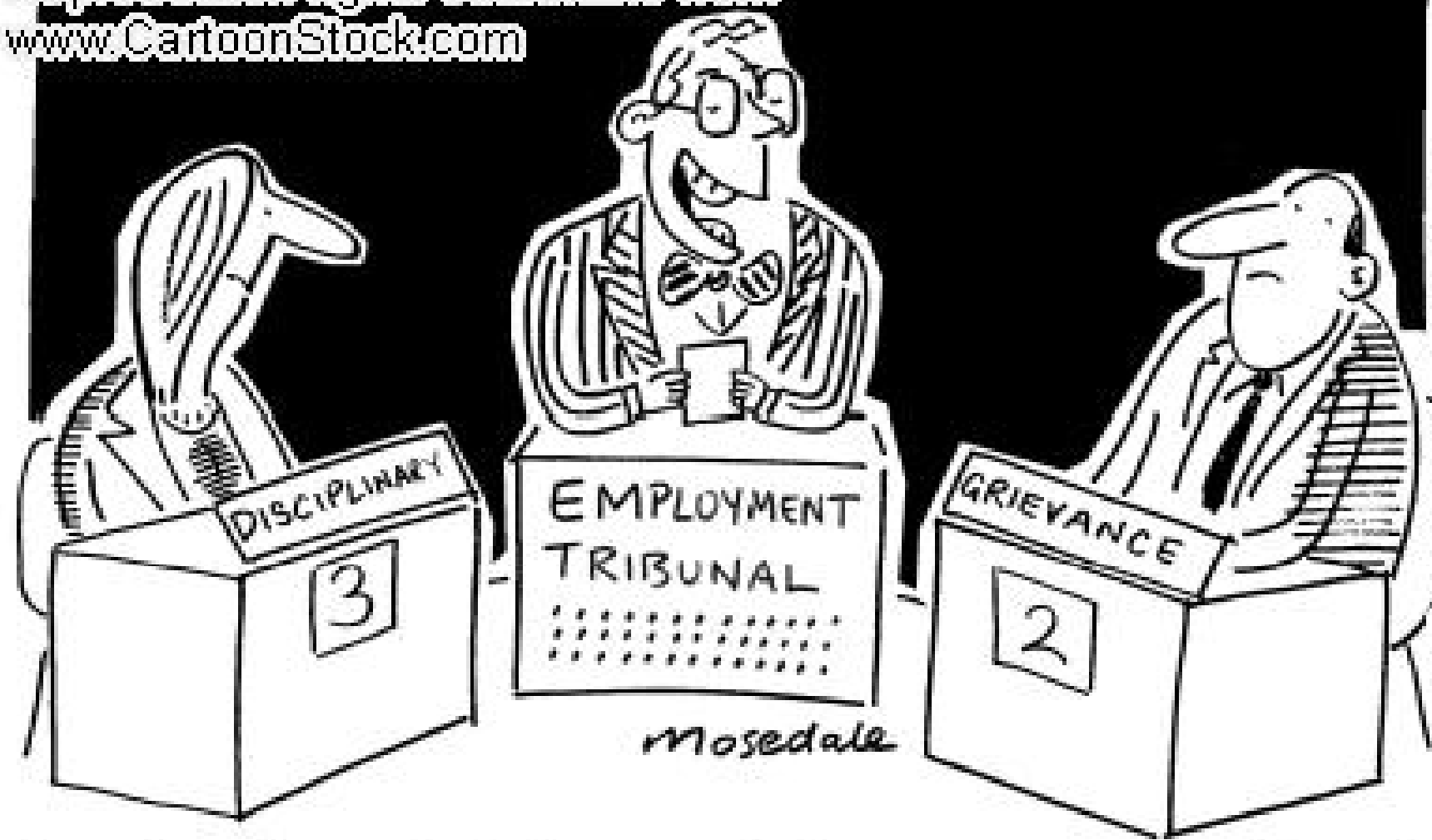
- The 2008 Act “will reform the mechanisms for dispute resolution by repealing the statutory workplace dispute resolution procedures and replacing them with a package of non-legislative measures to help employers and employees resolve disputes earlier.”

Minister for Employment Relations, Mr. Pat McFadden

The alternative to mediation...

- ◉ The courts and tribunal systems often do not provide effective remedies for those involved in a dispute
- ◉ How often do grievances and disciplinary procedures result in dissatisfaction?

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'And at the end of that round the score now stands at...'

What is mediation? (1)

- ◉ a skilled mediator aids those in dispute to reach a mutually acceptable resolution to their dispute;
- ◉ the participants take part on an entirely voluntary basis – and can walk away from the mediation at any time;
- ◉ all discussions are confidential and “without prejudice”;

What is mediation? (2)

- ◉ the mediator holds informal joint and private meetings with the participants;
- ◉ the mediator's function does not include making a binding decision;
- ◉ the mediator guides and facilitates the participants to identify the issues;
- ◉ if settlement is reached, as it is in the majority of cases, the parties may make a binding agreement.

What does a mediator do?

- ◉ Facilitative mediation
- ◉ Listen, listen, listen
- ◉ Probing questions
- ◉ Reality checks
- ◉ The dynamics of timed mediation
- ◉ Trust in the process

Include anything

- ◉ Exclude nothing
- ◉ Including mutual satisfaction
- ◉ And managing expectations



Ripe for mediation?

- ◉ Stress and bullying
- ◉ Discrimination
- ◉ And the ongoing relationship

East Sussex County Council

Workplace Mediation



What they did:

- Agreed a joint vision for the future of workforce dispute resolution
- Prepare a business case and established investment
- Developed a mediation process
- Revised all relevant employment policies

- Agreed a standard clause for inclusion in future contracts of employment
- Gained organisational approval from politicians, managers and Trade Unions (Mary Laxton – Unison Regional Organiser)
- Trained 13 in-house mediators
- Promotional campaign – internal and external

When to Mediate:

- Grievance
- Dignity at work
- Absence (when work related)
- Restructure
- Exit

Achievements to date!

- 100% Success (64 cases to date)
- Formal disputes down by 47%
- Recouped initial investment in one month
- Increase of 5800 productive days
- Average cost to mediate £2,400 compared to £18,000
- £500,000 in productivity
- 5 employees returned immediately from long term sickness absence after mediation

Case studies...

- ◉ Stephen Jones
- ◉ John Doe
- ◉ But first – John Walker

- Will trade unions resist in the face of the threat that early mediation poses to their role and their ability to help their members, or
- Will they take the opportunity to help their members resolve disputes at work?

Acas – earlier in the year

- If you appoint a representative to act for you we will conciliate through them...As settlements are legally binding, it is important to ensure that your representative fully understands your requirements...(06/10)
- **NB NOT INJURY THROUGH STRESS**



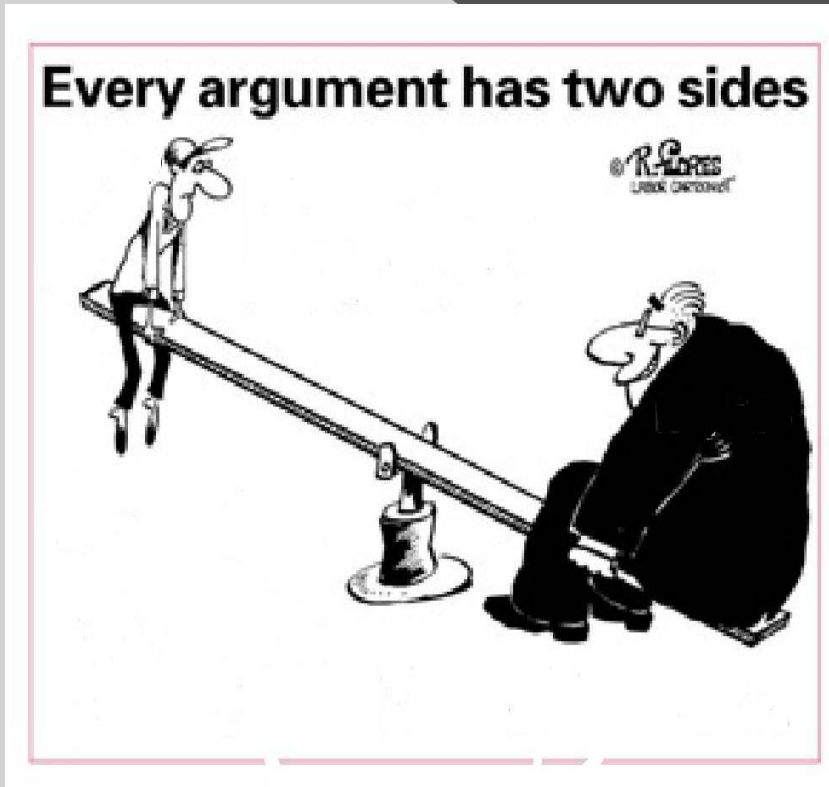
“Mediation: A guide for trade union representatives”

- Mediation is not offered as a panacea, and there are some types of conflict where it will not be suitable. However, when used appropriately, it can offer a way to avoid the potentially destructive effects of drawn-out conflict.
- Ed Sweeney, Acas Chair
- Brendan Barber, TUC General Secretary

But...is this right?

- "Mediation is most successful where no representatives are present."
- "There are also situations where representatives, whether they be lawyers, trade union representatives, other employee representatives or a friend, do sometimes attend mediations and can play an important role in providing *moral support*."
- What about advice?

The union's role?



- ◉ We've fought hard for representation and the right to be accompanied...
- ◉ "The mediator shall conduct the proceedings in an appropriate manner taking into account the circumstances of the case, including *possible power imbalances*..." European Code of Conduct for Mediators

Who will participate?

- ◉ Stress and the Unison protocol
- ◉ And who will pay for mediation?
- ◉ In Acas we trust...who else?
- ◉ The HR role
- ◉ The case for regulation

Beyond HR

- ◉ Mediation to resolve any dispute...
- ◉ Those who fight get hurt
- ◉ Those who mediate...
- ◉ ...do they compromise?

Pitfalls & Downsides

- ◉ Inadequate preparation
- ◉ Absence of trust in the process
- ◉ Cynicism
- ◉ Mediating too early?
- ◉ Additional cost?
- ◉ ...And what else?

The gains (reflecting on the examples perhaps...)

- ◉ Savings arising from settlement - many tens of thousands of pounds?
- ◉ Management time involved - several hundred hours?
- ◉ Before liaising with and providing instructions, evidence and documents to legal advisers
- ◉ The total cost cannot be measured in legal costs alone...

The human cost...

- ◉ The protagonist suffers damage to career, loss of confidence & stress
- ◉ Their family members suffer too – perhaps for years
- ◉ And the witnesses and managers are not immune
- ◉ Thanks for listening

WORK *stress*

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*Stress Prevention to secure an effective
workplace*

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