Raising safety concerns can make your job un-safe, if you don’t do it right. Sure, there are laws against victimising workers for raising safety concerns, laws against victimising safety reps and other union reps, and laws against victimising whistleblowers. But those employers willing to break safety laws, sometimes show a similar disdain for all workplace laws.

Although HSE doesn’t collate stats on victimisation “it does however have laws. Everyone wants workplaces reps, and laws against victimising. But make sure you have an agreement for doing so. The number died and dangerous work thinks getting hazards reme-
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Victimisation

TULR(C)A covers people at work raising genuine concerns about crime, including danger to health and safety or the environment; covers employees, trainees, agency staff, contractors, homeworkers, and the NHS, but not for now the generously self-employed, volunteers, the intelligence services, the army or police officers; covers disclosures within any organi-
sation, to government departments such as the HSE, to government min-
isters, to the media, the police and MPs; allows claims to be made to an em-
ployment tribunal for reinstatement and compensation. Awards are un-
capped. Fiduciary employees can apply for an interim order to keep their job, and renders “gagging clauses” void.

Employment tribunals

Employment Tribunals (ET) determine the issues of a victimisation case, hear evidence from both sides and following questions arise on the facts of the case and make a judgment. If they find in favour of the victimised person (the applicant) they can award damages and request reinstatement. Winning a case is difficult.

HSE and ETs will expect a person making a complaint to have tried using all internal mechanisms – safety reps, the safety committee or the grievance procedure, for example – before taking a case to a tribunal. The amount of damages awarded is normally quite small. If the employer refuses to reinstate then the award will be bigger. Either side can appeal the ET decision to an Employment Appeals Tribunal (EAT).

There is a rigid 13-week deadline for starting a case at ET – even if you are still going through procedures at work.

ET pointers

If you lose a case your conduct after dismissal will be taken into account – have you been looking for work, going to interviews, accepted another job? You will be expected to try and minimise your losses following dismissal. But beware – if you lose you could end up paying costs, but normally only in frivolous or vexatious cases or where you have been told the case is unfounded. If you are considering taking a case to an ET, try attending one first as an observer. ET offices are in the phone book and the hearings are open to the public.

Most unfair dismissal cases involving agency workers fail because they are not “employed” by the company they are dismissed by.

Case in point

Former train driver and RMT safety rep Laurie Holden was found by an ET in 2002 to have been unfairly dismissed for raising health and safety issues and awarded £10,000. The award would have been much higher, but the EAT said she contributed 60 per cent towards her own dismissal (Hazards 71).

UCATT safety rep Dave Smith was found in 1998 to have been unfairly dismissed by construction giant Costain after raising safety concerns (Hazards 63). In 1995 an EAT over-
turned the judgment, because Smith was not a Costain employee, but agency labour.

An ET ruled in 2001 that construc-
tion company Balfour Kilpatrick had unfairly dismissed 80 electricians, mostly T&G and AEEU (Amicus) members, after they refused to wear damp “protective” clothing and walked off the job. The company had to pay at least the basic award of £3,300 a worker (Hazards 76).

Train driver and RMT safety rep Sarah Friday was found in 2000 to have been fired for raising health and safety issues and awarded £16,000. The award would have been much higher, but the EAT said she contributed 60 per cent towards her own dismissal (Hazards 71).

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RAILRAODED: RMT safety rep Sarah Friday (right) won her unfair dismissal industrial tribunal – but still lost her job on South West Trains. ‘She was not a Costain employee, but agency labour so I got no award and the travelling public,’ she said. ‘It’s not just an attack on me, but the right of all safety reps to have any safety on at work.’