
STATUTORY INSTRUMENTS

1996 No. 1919

The Employment Rights (Northern Ireland) Order 1996

PART XI

UNFAIR DISMISSAL

CHAPTER I

RIGHT NOT TO BE UNFAIRLY DISMISSED

Exclusion of right

Qualifying period of employment

140.—(1) Article 126 does not apply to the dismissal of an employee unless he has been continuously employed for a period of not less than two years ending with the effective date of termination.

(2) If an employee is dismissed by reason of any such requirement or recommendation as is referred to in Article 96(2), paragraph (1) has effect in relation to that dismissal as if for the words “two years” there were substituted the words “one month”.

(3) Paragraph (1) does not apply if—

- (a) Article 116 or 128(1) applies,
- (b) paragraph (1) of Article 131 (read with paragraph (2) of that Article) or paragraph (3) of that Article applies,
- (c) paragraph (1) of Article 132 (read with paragraphs (2) and (3) of that Article) applies,
- (d) Article 133 applies,
- (e) Article 134 applies,
- (f) paragraph (1) of Article 135 (read with paragraphs (2) and (3) of that Article) applies,
- (g) Article 136 applies, or
- (h) Article 137 applies.

Upper age limit

141.—(1) Article 126 does not apply to the dismissal of an employee if on or before the effective date of termination he has attained—

- (a) in a case where—
 - (i) in the undertaking in which the employee was employed there was a normal retiring age for an employee holding the position held by the employee, and

- (ii) the age was the same whether the employee holding that position was a man or a woman,
that normal retiring age, and
- (b) in any other case, the age of sixty-five.
- (2) Paragraph (1) does not apply if—
 - (a) Article 116 or 128(1) applies,
 - (b) paragraph (1) of Article 131 (read with paragraph (2) of that Article) or paragraph (3) of that Article applies,
 - (c) paragraph (1) of Article 132 (read with paragraphs (2) and (3) of that Article) applies,
 - (d) Article 133 applies,
 - (e) Article 134 applies,
 - (f) paragraph (1) of Article 135 (read with paragraphs (2) and (3) of that Article) applies,
 - (g) Article 136 applies, or
 - (h) Article 137 applies.

Dismissal procedures agreements

- 142.**—(1) Where a dismissal procedures agreement is designated by an order under paragraph (3) which is for the time being in force—
- (a) the provisions of that agreement relating to dismissal shall have effect in substitution for any rights under Article 126, and
 - (b) accordingly, Article 126 does not apply to the dismissal of an employee from any employment if it is employment to which, and he is an employee to whom, those provisions of the agreement apply.
- (2) Paragraph (1) does not apply if—
- (a) Article 116 or 128(1) applies,
 - (b) paragraph (1) of Article 131 (read with paragraph (2) of that Article) or paragraph (3) of that Article applies, or
 - (c) paragraph (1) of Article 135 (read with paragraphs (2) and (3) of that Article) applies.
- (3) An order designating a dismissal procedures agreement may be made by the Department, on an application being made to it jointly by all the parties to the agreement, if it is satisfied that—
- (a) every trade union which is a party to the agreement is an independent trade union,
 - (b) the agreement provides for procedures to be followed in cases where an employee claims that he has been, or is in the course of being, unfairly dismissed,
 - (c) those procedures are available without discrimination to all employees falling within any description to which the agreement applies,
 - (d) the remedies provided by the agreement in respect of unfair dismissal are on the whole as beneficial as (but not necessarily identical with) those provided in respect of unfair dismissal by this Part,
 - (e) the procedures provided by the agreement include a right to arbitration or adjudication by an independent referee, or by a tribunal or other independent body, in cases where (by reason of an equality of votes or for any other reason) a decision cannot otherwise be reached, and
 - (f) the provisions of the agreement are such that it can be determined with reasonable certainty whether or not a particular employee is one to whom the agreement applies.

(4) If at any time when an order under paragraph (3) is in force in relation to a dismissal procedures agreement the Department is satisfied, whether on an application made to it by any of the parties to the agreement or otherwise, either—

- (a) that it is the desire of all the parties to the agreement that the order should be revoked, or
- (b) that the agreement no longer satisfies all the conditions specified in paragraph (3),

the Department shall revoke the order by an order under this paragraph.

(5) The transitional provisions which may be made in an order under paragraph (4) include, in particular, provisions directing—

- (a) that an employee—
 - (i) shall not be excluded from his right under Article 126 where the effective date of termination falls within a transitional period which ends with the date on which the order takes effect and which is specified in the order, and
 - (ii) shall have an extended time for presenting a complaint under Article 145 in respect of a dismissal where the effective date of termination falls within that period, and
- (b) that, where the effective date of termination falls within such a transitional period, an industrial tribunal shall, in determining any complaint of unfair dismissal presented by an employee to whom the dismissal procedures agreement applies, have regard to such considerations as are specified in the order (in addition to those specified in this Part and Article 12(4) and (5) of the Industrial Tribunals (Northern Ireland) Order 1996).

Dismissal of those taking part in unofficial industrial action

143.—(1) Article 126 does not apply to the dismissal of an employee if at the time of dismissal he was taking part in an unofficial strike or other unofficial industrial action.

(2) Paragraph (1) does not apply if—

- (a) paragraph (1) of Article 131 (read with paragraph (2) of that Article) or paragraph (3) of that Article applies,
- (b) paragraph (1) of Article 132 (read with paragraphs (2) and (3) of that Article) applies,
- (c) Article 134 applies,
- (d) Article 137(1) and (2) applies,
- (e) Article 137(1) and (3) applies, or
- (f) Article 137(1) and (5) applies.

(3) A strike or other industrial action is unofficial in relation to an employee unless—

- (a) he is a member of a trade union and the action is authorised or endorsed by that union, or
- (b) he is not a member of a trade union but there are among those taking part in the industrial action members of a trade union by which the action has been authorised or endorsed;

but a strike or other industrial action shall not be regarded as unofficial if none of those taking part in it are members of a trade union.

(4) The provisions of Article 21(2) of the 1992 Order apply for the purpose of determining whether industrial action is to be taken to have been authorised or endorsed by a trade union.

(5) The question whether industrial action is to be so taken in any case shall be determined by reference to the facts as at the time of dismissal; but where an act is repudiated as mentioned in Article 21A of the 1992 Order, industrial action shall not thereby be treated as unofficial before the end of the next working day after the day on which the repudiation takes place.

(6) In this Article the “time of dismissal” means—

- (a) where the employee's contract of employment is terminated by notice, when the notice is given,
- (b) where the employee's contract of employment is terminated without notice, when the termination takes effect, and
- (c) where the employee is employed under a contract for a fixed term which expires without being renewed under the same contract, when that term expires;

and a "working day" means any day which is not a Saturday or Sunday, Christmas Day, Good Friday or a bank holiday under the Banking and Financial Dealings Act 1971.

(7) For the purposes of this Article membership of a trade union for purposes unconnected with the employment in question shall be disregarded; but an employee who was a member of a trade union when he began to take part in industrial action shall continue to be treated as a member for the purpose of determining whether that action is unofficial in relation to him or another notwithstanding that he may in fact have ceased to be a member.

Dismissals in connection with other industrial action

144.—(1) This Article applies in relation to an employee who has a right to complain of unfair dismissal (the "complainant") and who claims to have been unfairly dismissed, where at the date of the dismissal—

- (a) the employer was conducting or instituting a lock-out, or
- (b) the complainant was taking part in a strike or other industrial action.

(2) This Article does not apply if—

- (a) paragraph (1) of Article 131 (read with paragraph (2) of that Article) or paragraph (3) of that Article applies,
- (b) paragraph (1) of Article 132 (read with paragraphs (2) and (3) of that Article) applies,
- (c) Article 134 applies,
- (d) Article 137(1) and (2) applies,
- (e) Article 137(1) and (3) applies, or
- (f) Article 137(1) and (5) applies.

(3) In a case where this Article applies an industrial tribunal shall not determine whether the dismissal was fair or unfair unless it is shown—

- (a) that one or more relevant employees of the same employer have not been dismissed, or
- (b) that a relevant employee has before the expiry of the period of three months beginning with the date of his dismissal been offered re-engagement and that the complainant has not been offered re-engagement.

(4) For this purpose "relevant employees" means—

- (a) in relation to a lock-out, employees who were directly interested in the dispute in contemplation or furtherance of which the lock-out occurred, and
- (b) in relation to a strike or other industrial action, those employees at the establishment of the employer at or from which the complainant works who at the date of his dismissal were taking part in the action.

(5) Nothing in Article 143 affects the question who are relevant employees for the purposes of this Article.

(6) An offer of re-engagement means an offer (made either by the original employer or by a successor of that employer or an associated employer) to re-engage an employee, either in the

job which he held immediately before the date of dismissal or in a different job which would be reasonably suitable in his case.

(7) In this Article “date of dismissal” means—

- (a) where the employee’s contract of employment was terminated by notice, the date on which the employer’s notice was given, and
- (b) in any other case, the effective date of termination.

(8) Article 145(2) does not apply in relation to a complaint to which this Article applies, but an industrial tribunal shall not consider such a complaint unless it is presented—

- (a) before the end of the period of six months beginning with the date of the complainant’s dismissal; or
- (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of six months.

(9) Where it is shown that the condition referred to in paragraph (3)(b) is fulfilled the references in Articles 130 to 138 to the reason or principal reason for which the complainant was dismissed shall be read as references to the reason or principal reason he has not been offered re-engagement.