SCHEDULES

SCHEDULE 2

Article 4.

UNION MEMBERSHIP: DETRIMENT

Introduction

1. The Employment Rights Order shall be amended as provided in this Schedule.

Detriment

2.—(1) Article 73 (action short of dismissal on grounds related to union membership or activities) shall be amended as follows.

(2) In paragraph (1) for "have action short of dismissal taken against him as an individual by his employer" substitute "be subjected to any detriment as an individual by any act, or any deliberate failure to act, by his employer if the act or failure takes place".

(3) In paragraph (3) for "have action short of dismissal taken against him" substitute "be subjected to any detriment as an individual by any act, or any deliberate failure to act, by his employer if the act or failure takes place".

(4) In paragraph (4) for "action short of dismissal taken against him" substitute "a detriment to which he has been subjected as an individual by an act of his employer taking place".

(5) After paragraph (5) insert—

"(6) For the purposes of this Article and Article 74, detriment is detriment short of dismissal.".

Complaints to industrial tribunal

3.—(1) Article 74 shall be amended as follows.

(2) In paragraph (1) for "action has been taken against him" substitute "he has been subjected to a detriment".

(3) In paragraph (2)(a) for the words from "action to which" to "those actions" substitute "act or failure to which the complaint relates or, where that act or failure is part of a series of similar acts or failures (or both) the last of them".

(4) After paragraph (2) insert—

"(3) For the purposes of paragraph (2)—

(a) where an act extends over a period, the reference to the date of the act is a reference to the last day of that period;

(b) a failure to act shall be treated as done when it was decided on.

(4) For the purposes of paragraph (3), in the absence of evidence establishing the contrary an employer shall be taken to decide on a failure to act—

(a) when he does an act inconsistent with doing the failed act; or

(b) if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.”.

Consideration of complaint

4.—(1) Article 75 shall be amended as follows.

(2) In paragraph (1) for “action was taken against the complainant” substitute “he acted or failed to act”.

(3) In paragraph (2) for “action was taken by the employer or the purpose for which it was taken” substitute “the employer acted or failed to act, or the purpose for which he did so”.

(4) In paragraph (3)—

(a) for “action was taken by the employer against the complainant” substitute “the employer acted or failed to act”;

(b) for the words from “took the action” to “would take” substitute “acted or failed to act, unless it considers that no reasonable employer would act or fail to act in the way concerned”.

(5) For paragraph (4) substitute—

“(4) Where the tribunal determines that—

(a) the complainant has been subjected to a detriment by an act or deliberate failure to act by his employer; and

(b) the act or failure took place in consequence of a previous act or deliberate failure to act by the employer,

sub-paragraph (a) of paragraph (3) is satisfied if the purpose mentioned in that sub-paragraph was the purpose of the previous act or failure.”.

Remedies

5. In Article 76 for “action” there shall be substituted “act or failure”—

(a) in paragraphs (1), (2) and (3)(a) and (b); and

(b) in paragraph (6), in the first place where “action” occurs.

Awards against third parties

6. In Article 77(1)—

(a) in sub-paragraph (a) for “action has been taken against the complainant by his employer” there shall be substituted “the complainant has been subjected to detriment by an act or failure by his employer taking place”;

(b) in sub-paragraph (b) for “take the action” there shall be substituted “act or fail to act in the way”.