
STATUTORY INSTRUMENTS

1995 No. 1980

**The Trade Union and Labour Relations
(Northern Ireland) Order 1995**

PART IV

RIGHTS IN RELATION TO TRADE UNION MEMBERSHIP

Right not to be expelled from trade union

Right not to be expelled from union

38.—(1) An individual shall not be expelled from a trade union unless the expulsion is permitted by this Article.

(2) The expulsion of an individual from a trade union is permitted by this Article if (and only if)—

- (a) he does not satisfy, or no longer satisfies, an enforceable membership requirement contained in the rules of the union,
- (b) he does not qualify, or no longer qualifies, for membership of the union by reason of the union operating only in a particular part or particular parts of Northern Ireland,
- (c) in the case of a union whose purpose is the regulation of relations between its members and one particular employer or a number of particular employers who are associated, he is not, or is no longer, employed by that employer or one of those employers, or
- (d) the expulsion is entirely attributable to his conduct.

(3) A requirement in relation to membership of a union is “enforceable” for the purposes of paragraph (2)(a) if it restricts membership solely by reference to one or more of the following criteria—

- (a) employment in a specified trade, industry or profession,
- (b) occupational description (including grade, level or category of appointment), and
- (c) possession of specified trade, industrial or professional qualifications or work experience.

(4) For the purposes of paragraph (2)(d) “conduct”, in relation to an individual, does not include—

- (a) his being or ceasing to be, or having been or ceased to be—
 - (i) a member of another trade union,
 - (ii) employed by a particular employer or at a particular place, or
 - (iii) a member of a political party, or
- (b) conduct to which Article 32 (conduct for which an individual may not be disciplined by a trade union) applies or would apply if the references in that Article to the trade union which is relevant for the purposes of that Article were references to any trade union.

(5) An individual who claims that he has been expelled from a trade union in contravention of this Article may present a complaint to an industrial tribunal.

Time limit for proceedings

39. An industrial tribunal shall not entertain a complaint under Article 38 unless it is presented—

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

Remedies

40.—(1) Where the industrial tribunal finds a complaint under Article 38 is well-founded, it shall make a declaration to that effect.

(2) An individual whose complaint has been declared to be well-founded may make an application to an industrial tribunal for an award of compensation to be paid to him by the union.

(3) The application shall not be entertained if made—

- (a) before the end of the period of four weeks beginning with the date of the declaration, or
- (b) after the end of the period of six months beginning with that date.

(4) The amount of compensation awarded shall, subject to the following provisions, be such as the industrial tribunal considers just and equitable in all the circumstances.

(5) Where the industrial tribunal finds that the expulsion complained of was to any extent caused or contributed to by the action of the applicant, it shall reduce the amount of the compensation by such proportion as it considers just and equitable having regard to that finding.

(6) The amount of compensation calculated in accordance with paragraphs (4) and (5) shall not exceed the aggregate of—

(a) an amount equal to 30 times the limit for the time being imposed by Article 35(4) of the No. 1 Order (maximum amount of a week's pay for basic award in unfair dismissal cases), and an amount equal to the limit for the time being imposed by Article 37 of that Order (maximum compensatory award in such cases); and, in a case to which paragraph (7) applies, shall not be less than £5,000.

(7) This paragraph applies to a case where when the application is made the applicant has not been re-admitted to the union.

Interpretation and other supplementary provisions

41.—(1) For the purposes of Article 38—

(a) “trade union” does not include an organisation falling within sub-paragraph (b) of Article 3(1) of the 1992 Order;

(b) “employment” includes any relationship whereby an individual personally does work or performs services for another person (related expressions being construed accordingly).

(2) For the purposes of Articles 38 to 40 an individual who under the rules of a trade union ceases to be a member of the union on the happening of an event specified in the rules shall be treated as having been expelled from the union.

(3) The remedy of an individual for infringement of the right conferred by Article 38 is by way of a complaint to an industrial tribunal in accordance with that Article, Articles 39 and 40 and this Article, and not otherwise.

(4) Where a complaint relating to an expulsion which is presented under Article 38 is declared to be well-founded, no complaint in respect of the expulsion shall be presented or proceeded with under Article 33 (complaint of infringement of right not to be unjustifiably disciplined).

(5) The right conferred by Article 38 is in addition to, and not in substitution for, any right which exists apart from that Article; and, subject to paragraph (4), nothing in that Article, Article 39 or 40 or this Article affects any remedy for infringement of any such right.