
STATUTORY INSTRUMENTS

1996 No. 1919

The Employment Rights (Northern Ireland) Order 1996

PART XII

REDUNDANCY PAYMENTS ETC.

CHAPTER II

RIGHT ON DISMISSAL BY REASON OF REDUNDANCY

Exclusions

Strike during currency of employer's notice

178.—(1) This Article applies where—

- (a) an employer has given notice to an employee to terminate his contract of employment (“notice of termination”),
- (b) after the notice is given the employee begins to take part in a strike of employees of the employer, and
- (c) the employer serves on the employee a notice of extension.

(2) A notice of extension is a notice in writing which—

- (a) requests the employee to agree to extend the contract of employment beyond the time of expiry by a period comprising as many available days as the number of working days lost by striking (“the proposed period of extension”),
- (b) indicates the reasons for which the employer makes that request, and
- (c) states that the employer will contest any liability to pay the employee a redundancy payment in respect of the dismissal effected by the notice of termination unless either—
 - (i) the employee complies with the request, or
 - (ii) the employer is satisfied that, in consequence of sickness or injury or otherwise, the employee is unable to comply with it or that (even though he is able to comply with it) it is reasonable in the circumstances for him not to do so.

(3) Subject to paragraphs (4) and (5), if the employee does not comply with the request contained in the notice of extension, he is not entitled to a redundancy payment by reason of the dismissal effected by the notice of termination.

(4) Paragraph (3) does not apply if the employer agrees to pay a redundancy payment to the employee in respect of the dismissal effected by the notice of termination even though he has not complied with the request contained in the notice of extension.

(5) An industrial tribunal may determine that the employer is liable to make an appropriate payment to the employee if on a reference to the tribunal it appears to the tribunal that—

- (a) the employee has not complied with the request contained in the notice of extension and the employer has not agreed to pay a redundancy payment in respect of the dismissal effected by the notice of termination, but
 - (b) either the employee was unable to comply with the request by it was reasonable in the circumstances for him not to comply with it.
- (6) In paragraph (5) “appropriate payment” means—
- (a) the whole of the redundancy payment to which the employee would have been entitled apart from paragraph (3), or
 - (b) such part of that redundancy payment as the tribunal thinks fit.
- (7) If the employee—
- (a) complies with the request contained in the notice of extension, or
 - (b) does not comply with it but attends at his proper or usual place of work and is ready and willing to work on one or more (but not all) of the available days within the proposed period of extension,

the notice of termination has effect, and shall be deemed at all material times to have had effect, as if the period specified in it had been appropriately extended; and Articles 119 to 123 accordingly apply as if the period of notice required by Article 118 were extended to a corresponding extent.

- (8) In paragraph (7) “appropriately extended” means—
- (a) in a case within sub-paragraph (a) of that paragraph, extended beyond the time of expiry by an additional period equal to the proposed period of extension, and
 - (b) in a case within sub-paragraph (b) of that paragraph, extended beyond the time of expiry up to the end of the day (or last of the days) on which he attends at his proper or usual place of work and is ready and willing to work.