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STATUTORY INSTRUMENTS

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**1996 No. 1919**

**The Employment Rights (Northern Ireland) Order 1996**

**PART VI**

**PROTECTION FROM SUFFERING DETRIMENT ETC. IN EMPLOYMENT**

**CHAPTER II**

**ACTION SHORT OF DISMISSAL**

**Action short of dismissal on grounds related to union membership or activities**

**73.—**(1) An employee has the right not to have action short of dismissal taken against him as an individual by his employer for the purpose of—

- (a) preventing or deterring him from being or seeking to become a member of an independent trade union, or penalising him for doing so.
  - (b) preventing or deterring him from taking part in the activities of an independent trade union at an appropriate time, or penalising him for doing so, or
  - (c) compelling him to be or become a member of any trade union or of a particular trade union or of one of a number of particular trade unions.
- (2) In paragraph (1)(b) “an appropriate time” means—
- (a) a time outside the employee’s working hours, or
  - (b) a time within his working hours at which, in accordance with arrangements agreed with or consent given by his employer, it is permissible for him to take part in the activities of a trade union;

and for this purpose “working hours”, in relation to an employee, means any time when, in accordance with his contract of employment, he is required to be at work.

(3) An employee also has the right not to have action short of dismissal taken against him for the purpose of enforcing a requirement (whether or not imposed by his contract of employment or in writing) that, in the event of his not being a member of any trade union or of a particular trade union or of one of a number of particular trade unions, he must make one or more payments.

(4) For the purposes of paragraph (3) any deduction made by an employer from the remuneration payable to an employee in respect of his employment shall, if it is attributable to his not being a member of any trade union or of a particular trade union or of one of a number of particular trade unions, be treated as action short of dismissal taken against him for the purpose of enforcing a requirement of a kind mentioned in that paragraph.

(5) References in this Chapter to being or becoming a member of a trade union include references to being or becoming a member of a particular branch or section of that union and to being or becoming a member of one of a number of particular branches or sections of that union; and references to taking part in the activities of a trade union shall be similarly construed.

### **Complaints to industrial tribunal**

**74.**—(1) An employee may present a complaint to an industrial tribunal on the ground that action has been taken against him by his employer in contravention of Article 73.

(2) An industrial tribunal shall not consider a complaint under this Article unless it is presented—

- (a) before the end of the period of three months beginning with the date of the action to which the complaint relates or, where that action is part of a series of similar actions, the last of those actions, 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 three months.

### **Consideration of complaint**

**75.**—(1) On a complaint under Article 74 it shall be for the employer to show the purpose for which action was taken against the complainant.

(2) In determining any question whether action was taken by the employer or the purpose for which it was taken, no account shall be taken of any pressure which was exercised on him by calling, organising, procuring or financing a strike or other industrial action, or by threatening to do so; and that question shall be determined as if no such pressure had been exercised.

(3) In determining what was the purpose for which action was taken by the employer against the complainant in a case where—

- (a) there is evidence that the employer's purpose was to further a change in his relationship with all or any class of his employees, and
- (b) there is also evidence that his purpose was one falling within Article 73,

the tribunal shall regard the purpose mentioned in sub-paragraph (a) (and not the purpose mentioned in sub-paragraph (b)) as the purpose for which the employer took the action, unless it considers that the action was such as no reasonable employer would take having regard to the purpose mentioned in sub-paragraph (a).

(4) Where the action which the tribunal determines to have been the action taken against the complainant was action taken in consequence of previous action 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 action.

(5) In paragraph (3) "class", in relation to an employer and his employees, means those employed at a particular place of work, those employees of a particular grade, category or description or those of a particular grade, category or description employed at a particular place of work.

### **Remedies**

**76.**—(1) Where the industrial tribunal finds that a complaint under Article 74 is well-founded, the tribunal—

- (a) shall make a declaration to that effect, and
- (b) may make an award of compensation to be paid by the employer to the complainant in respect of the action complained of.

(2) The amount of the compensation awarded shall be such as the tribunal considers just and equitable in all the circumstances having regard to—

- (a) the infringement complained of; and
- (b) any loss sustained by the complainant which is attributable to the action which infringed his right.

(3) The loss shall be taken to include—

- (a) any expenses reasonably incurred by the complainant in consequence of the action complained of, and
- (b) loss of any benefit which he might reasonably be expected to have had but for that action.

(4) In ascertaining the loss, the tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law of Northern Ireland.

(5) In determining the amount of compensation to be awarded no account shall be taken of any pressure which was exercised on the employer by calling, organising, procuring or financing a strike or other industrial action, or by threatening to do so; and that question shall be determined as if no such pressure had been exercised.

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

### **Awards against third parties**

77.—(1) If in proceedings on a complaint under Article 74—

- (a) the complaint is made on the ground that action has been taken against the complainant by his employer for the purpose of compelling him to be or become a member of any trade union or of a particular trade union or of one of a number of particular trade unions, and
- (b) either the complainant or the employer claims in proceedings before the tribunal that the employer was induced to take the action complained of by pressure which a trade union or other person exercised on him by calling, organising, procuring or financing a strike or other industrial action, or by threatening to do so,

the complainant or the employer may request the tribunal to direct that the person who he claims exercised the pressure be joined as a party to the proceedings.

(2) The request shall be granted if it is made before the hearing of the complaint begins, but may be refused if it is made after that time; and no such request may be made after the tribunal has made a declaration that the complaint is well-founded.

(3) Where a person has been so joined as a party to proceedings and the tribunal—

- (a) makes an award of compensation, and
- (b) finds that the claim mentioned in paragraph (1)(b) is well-founded,

it may order that the compensation shall be paid by the person joined instead of by the employer, or partly by that person and partly by the employer, as the tribunal may consider just and equitable in the circumstances.