
STATUTORY INSTRUMENTS

2004 No. 3078

The Employment Relations (Northern Ireland) Order 2004

PART IV

RIGHTS OF TRADE UNION MEMBERS, WORKERS AND EMPLOYEES

Other rights of workers and employees

Expulsion from trade union attributable to conduct

16.—(1) Article 38 of the 1995 Order (right not to be expelled from trade union) is amended as follows.

(2) In paragraph (2)(d) for “his conduct” substitute “conduct of his (other than excluded conduct) and the conduct to which it is wholly or mainly attributable is not protected conduct”.

(3) For paragraph (4) substitute—

“(4) For the purposes of paragraph (2)(d) “excluded conduct”, in relation to an individual, means—

- (a) conduct which consists in his being or ceasing to be, or having been or ceased to be, a member of another trade union,
- (b) conduct which consists in his being or ceasing to be, or having been or ceased to be, employed by a particular employer or at a particular place, or
- (c) conduct to which Article 32 (conduct for which an individual may not be disciplined by a 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.

(4A) For the purposes of paragraph (2)(d) “protected conduct” is conduct which consists in the individual’s being or ceasing to be, or having been or ceased to be, a member of a political party.”.

(4) In Article 40 of that Order (remedies for infringement of right not to be expelled), after paragraph (1) insert—

“(1A) If a tribunal makes a declaration under paragraph (1) and it appears to the tribunal that the expulsion was mainly attributable to conduct falling within Article 38(4A) it shall make a declaration to that effect.

(1B) If a tribunal makes a declaration under paragraph (1A) and it appears to the tribunal that the other conduct to which the expulsion was attributable consisted wholly or mainly of conduct of the complainant which was contrary to—

- (a) a rule of the union, or
- (b) an objective of the union,

it shall make a declaration to that effect.”

(1C) For the purposes of paragraph (1B), it is immaterial whether the complainant was a member of the union at the time of the conduct contrary to the rule or objective.

(1D) A declaration by virtue of paragraph (1B)(b) shall not be made unless the union shows that, at the time of the conduct of the complainant which was contrary to the objective in question, it was reasonably practicable for that objective to be ascertained—

(a) if the complainant was not at that time a member of the union, by a member of the general public, and

(b) if he was at that time a member of the union, by a member of the union.”

(5) In paragraph (3)(a) of that Article, after “declaration” insert “under paragraph (1)”.

(6) In paragraph (6) of that Article the words from “and, in a case” to the end shall cease to have effect.

(7) For paragraph (7) of that Article substitute—

“(7) If on the date on which the application was made the applicant had not been re-admitted to the union, the award shall not be less than £5,900.

(8) Paragraph (7) does not apply in a case where the tribunal which made the declaration under paragraph (1) also made declarations under paragraphs (1A) and (1B).”.

(8) In Articles 38 and 40 of the 1995 Order references to the conduct of an individual include references to conduct which took place before the coming into operation of this Article.

National security: powers of industrial tribunals

17. For paragraph (6) of Article 12 of the [Industrial Tribunals \(Northern Ireland\) Order 1996 \(NI 18\)](#) (procedure regulations in relation to cases involving issues of national security) substitute—

“(6) Industrial tribunal procedure regulations may enable a tribunal, if it considers it expedient in the interests of national security, to do in relation to particular proceedings before it anything of a kind which, by virtue of paragraph (5), industrial tribunal procedure regulations may enable the Secretary of State to direct a tribunal to do in relation to particular Crown employment proceedings.”