



Employment Protection (Consolidation) Act 1978

1978 CHAPTER 44

PART V

UNFAIR DISMISSAL

Meaning of unfair dismissal

55 Meaning of " dismissal "

- (1) In this Part, except as respects a case to which section 56 applies, " dismissal " and " dismiss " shall be construed in accordance with the following provisions of this section.
- (2) Subject to subsection (3), an employee shall be treated as dismissed by his employer if, but only if.—
 - (a) the contract under which he is employed by the employer is terminated by the employer, whether it is so terminated by notice or without notice, or
 - (b) where under that contract he is employed for a fixed term, that term expires without being renewed under the same contract, or
 - (c) the employee terminates that contract, with or without notice, in circumstances such that he is entitled to terminate it without notice by reason of the employer's conduct.
- (3) Where an employer gives notice to an employee to terminate his contract of employment and, at a time within the period of that notice, the employee gives notice to the employer to terminate the contract of employment on a date earlier than the date on which the employer's notice is due to expire, the employee shall for the purposes of this Part be taken to be dismissed by his employer, and the reasons for the dismissal shall be taken to be the reasons for which the employer's notice is given.
- (4) In this Part " the effective date of termination "—

- (a) in relation to an employee whose contract of employment is terminated by notice, whether given by his employer or by the employee, means the date on which that notice expires;
 - (b) in relation to an employee whose contract of employment is terminated without notice, means the date on which the termination takes effect; and
 - (c) in relation to an employee who is employed under a contract for a fixed term, where that term expires without being renewed under the same contract, means the date on which that term expires.
- (5) Where the notice required to be given by an employer by section 49 would, if duly given when notice of termination was given by the employer, or (where no notice was given) when the contract of employment was terminated by the employer, expire on a date later than the effective date of termination as defined by subsection (4), that later date shall be treated as the effective date of termination in relation to the dismissal for the purposes of sections 53(2), 64(1)(a) and 73(3) and paragraph 8(3) of Schedule 14.

56 Failure to permit woman to return to work after confinement treated as dismissal

Where an employee is entitled to return to work and has exercised her right to return in accordance with section 47 but is not permitted to return to work, then she shall be treated for the purposes of this Part as if she had been employed until the notified day of return, and, if she would not otherwise be so treated, as having been continuously employed until that day, and as if she had been dismissed with effect from that day for the reason for which she was not permitted to return.

57 General provisions relating to fairness of dismissal

- (1) In determining for the purposes of this Part whether the dismissal of an employee was fair or unfair, it shall be for the employer to show—
- (a) what was the reason (or, if there was more than one, the principal reason) for the dismissal, and
 - (b) that it was a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which that employee held.
- (2) In subsection (1)(b) the reference to a reason falling within this subsection is a reference to a reason which—
- (a) related to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do, or
 - (b) related to the conduct of the employee, or
 - (c) was that the employee was redundant, or
 - (d) was that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.
- (3) Where the employer has fulfilled the requirements of subsection (1), then, subject to sections 58 to 62, the determination of the question whether the dismissal was fair or unfair, having regard to the reason shown by the employer, shall depend on whether the employer can satisfy the tribunal that in the circumstances (having regard to equity and the substantial merits of the case) he acted reasonably in treating it as a sufficient reason for dismissing the employee.

- (4) In this section, in relation to an employee.—
- (a) " capability " means capability assessed by reference to skill, aptitude, health or any other physical or mental quality;
 - (b) " qualifications " means any degree, diploma or other academic, technical or professional qualification relevant to the position which the employee held.

58 Dismissal relating to trade union membership

- (1) For the purposes of this Part, the dismissal of an employee by an employer shall be regarded as having been unfair if the reason for it (or, if more than one, the principal reason) was that the employee—
- (a) was, or proposed to become, a member of an independent trade union;
 - (b) had taken, or proposed to take, part at any appropriate time in the activities of an independent trade union; or
 - (c) had refused, or proposed to refuse, to become or remain a member of a trade union which was not an independent trade union.
- (2) In subsection (1), " appropriate time " in relation to an employee taking part in the activities of a trade union means time which either—
- (a) is outside his working hours, or
 - (b) is 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 those activities ;
- and in this subsection "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) Dismissal of an employee by an employer shall be regarded as fair for the purposes of this Part if—
- (a) it is the practice, in accordance with a union membership agreement, for employees for the time being of the same class as the dismissed employee to belong to a specified independent trade union, or to one of a number of specified independent trade unions; and
 - (b) the reason for the dismissal was that the employee was not a member of the specified union or one of the specified unions, or had refused or proposed to refuse to become or remain a member of that union or one of those unions;
- unless the employee genuinely objects on grounds of religious belief to being a member of any trade union whatsoever, in which case the dismissal shall be regarded as unfair.
- (4) For the purposes of subsection (3), a union shall be treated as specified for the purposes of or in relation to a union membership agreement (in a case where it would not otherwise be so treated) if—
- (a) the Advisory, Conciliation and Arbitration Service has made a recommendation for recognition covering the employee in question which is operative within the meaning of section 15 of the Employment Protection Act 1975; or
 - (b) the union has referred a recognition issue (within the meaning of that Act) covering that employee to the Advisory, Conciliation and Arbitration Service under section 11 of that Act and the Service has not declined to proceed on the reference under section 12 of that Act, the union has not withdrawn the

reference, or from the reference, and the issue has not been settled or reported on under that section.

- (5) Any reason by virtue of which a dismissal is to be regarded as unfair in consequence of subsection (1) or (3) is in this Part referred to as an inadmissible reason.
- (6) In this section, unless the context otherwise requires, references to a trade union include references to a branch or section of a trade union.

59 Dismissal on ground of redundancy

Where the reason or principal reason for the dismissal of an employee was that he was redundant, but it is shown that the circumstances constituting the redundancy applied equally to one or more other employees in the same undertaking who held positions similar to that held by him and who have not been dismissed by the employer, and either—

- (a) that the reason (or, if more than one, the principal reason) for which he was selected for dismissal was an inadmissible reason; or
- (b) that he was selected for dismissal in contravention of a customary arrangement or agreed procedure relating to redundancy and there were no special reasons justifying a departure from that arrangement or procedure in his case,

then, for the purposes of this Part, the dismissal shall be regarded as unfair.

60 Dismissal on ground of pregnancy

- (1) An employee shall be treated for the purposes of this Part as unfairly dismissed if the reason or principal reason for her dismissal is that she is pregnant or is any other reason connected with her pregnancy, except one of the following reasons—
 - (a) that at the effective date of termination she is or will have become, because of her pregnancy, incapable of adequately doing the work which she is employed to do;
 - (b) that, because of her pregnancy, she cannot or will not be able to continue after that date to do that work without contravention (either by her or her employer) of a duty or restriction imposed by or under any enactment.
- (2) An employee shall be treated for the purposes of this Part as unfairly dismissed if her employer dismisses her for a reason mentioned in subsection (1)(a) or (b), but neither he nor any successor of his, where there is a suitable available vacancy, makes her an offer before or on the effective date of termination to engage her under a new contract of employment complying with subsection (3).
- (3) The new contract of employment must—
 - (a) take effect immediately on the ending of employment under the previous contract, or, where that employment ends on a Friday, Saturday or Sunday, on or before the next Monday after that Friday, Saturday or Sunday;
 - (b) be such that the work to be done under the contract is of a kind which is both suitable in relation to the employee and appropriate for her to do in the circumstances; and
 - (c) be such that the provisions of the new contract as to the capacity and place in which she is to be employed and as to the other terms and conditions of her employment are not substantially less favourable to her than the corresponding provisions of the previous contract.

- (4) On a complaint of unfair dismissal on the ground of failure to offer to engage an employee as mentioned in subsection (2), it shall be for the employer to show that he or a successor made an offer to engage her in compliance with subsections (2) and (3) or, as the case may be, that there was no suitable available vacancy for her.
- (5) Section 55(3) shall not apply in a case where an employer gives notice to an employee to terminate her contract of employment for a reason mentioned in subsection (1)(a) or (b).

61 Dismissal of replacement

- (1) Where an employer—
 - (a) on engaging an employee informs the employee in writing that his employment will be terminated on the return to work of another employee who is, or will be, absent wholly or partly because of pregnancy or confinement; and
 - (b) dismisses the first-mentioned employee in order to make it possible to give work to the other employee;

then, for the purposes of section 57(1)(b), but without prejudice to the application of section 57(3), the dismissal shall be regarded as having been for a substantial reason of a kind such as to justify the dismissal of an employee holding the position which that employee held.

- (2) Where an employer—
 - (a) on engaging an employee informs the employee in writing that his employment will be terminated on the end of a suspension such as is referred to in section 19 of another employee; and
 - (b) dismisses the first-mentioned employee in order to make it possible to allow the other employee to resume his original work;

then, for the purposes of section 57(1)(b), but without prejudice to the application of section 57(3), the dismissal shall be regarded as having been for a substantial reason of a kind such as to justify the dismissal of an employee holding the position which that employee held.

62 Dismissal in connection with a lock-out, strike or other industrial action

- (1) The provisions of this section shall have effect in relation to an employee who claims that he has been unfairly dismissed by his employer where at the date of dismissal—
 - (a) the employer was conducting or instituting a lock-out, or
 - (b) the employee was taking part in a strike or other industrial action.
- (2) In such a case an industrial tribunal shall not determine whether the dismissal was fair or unfair unless it is shown—
 - (a) that one or more relevant employees of the same employer have not been dismissed, or
 - (b) that one or more such employees have been offered re-engagement, and that the employee concerned has not been offered re-engagement.
- (3) Where it is shown that the condition referred to in paragraph (b) of subsection (2) is fulfilled, the provisions of sections 57 to 60 shall have effect as if in those sections for any reference to the reason or principal reason for which the employee was dismissed

there were substituted a reference to the reason or principal reason for which he has not been offered re-engagement.

(4) In this section—

- (a) " date of dismissal " means—
 - (i) where the employee's contract of employment was terminated by notice, the date on which the employer's notice was given, and
 - (ii) in any other case, the effective date of termination ;
- (b) " relevant employees " means—
 - (i) in relation to a lock-out, employees who were directly interested in the trade dispute in contemplation or furtherance of which the lock-out occurred and
 - (ii) in relation to a strike or other industrial action, employees who took part in it; and
- (c) any reference to an offer of re-engagement is a reference to an offer (made either by the original employer or by a successor of that employer or an associated employer) to re-engage an employee, either in the job which he held immediately before the date of dismissal or in a different job which would be reasonably suitable in his case.

63 Pressure on employer to dismiss unfairly

In determining, for the purposes of this Part any question as to the reason, or principal reason, for which an employee was dismissed or any question whether the reason or principal reason for which an employee was dismissed was a reason fulfilling the requirements of section 57(1)(b) or whether the employer acted reasonably in treating it as a sufficient reason for dismissing him.—

- (a) no account shall be taken of any pressure which, by calling, organising, procuring or financing a strike or other industrial action, or threatening to do so, was exercised on the employer to dismiss the employee, and
- (b) any such question shall be determined as if no such pressure had been exercised.