



Employment Act 1982

1982 CHAPTER 46

Unfair dismissal

2 Compensation for certain dismissals

- (1) The provisions of Schedule 1 shall have effect for the purpose of enabling the Secretary of State to make payments towards compensating individuals who in certain past cases have been dismissed for failure to conform to the requirements of a union membership agreement.
- (2) The expenses incurred by the Secretary of State in consequence of that Schedule shall be defrayed out of money provided by Parliament.

3 Dismissal for non-membership of union

For sections 58 and 58A of the 1978 Act there shall be substituted—

“58 Dismissal relating to trade union membership.

- (1) Subject to subsection (3), the dismissal of an employee by an employer shall be regarded for the purposes of this Part 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, or
 - (b) had taken part, or proposed to take part, in the activities of an independent trade union at an appropriate time, or
 - (c) was not a member of any trade union, or of a particular trade union, or of one of a number of particular trade unions, or had refused or proposed to refuse to become or remain a member.
- (2) In subsection (1) "an appropriate time", in relation to an employee taking part in the activities of a trade union, means a time which either—
 - (a) is outside his working hours, or

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- (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) Subject to the following provisions of this section, the dismissal of an employee by an employer shall be regarded for the purposes of this Part as having been fair if—
- (a) it is the practice, in accordance with a union membership agreement, for employees of the employer who are 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 (or, if more than one, the principal reason) for the dismissal was that the employee was not, or had refused or proposed to refuse to become or remain, a member of a union in accordance with the agreement; and
 - (c) the union membership agreement had been approved in relation to employees of that class in accordance with section 58A through a ballot held within the period of five years ending with the time of dismissal.
- (4) Subsection (3) shall not apply if the employee genuinely objects on grounds of conscience or other deeply-held personal conviction to being a member of any trade union whatsoever or of a particular trade union.
- (5) Subsection (3) shall not apply if the employee—
- (a) has been among those employees of the employer who belong to the class to which the union membership agreement relates since before the agreement had the effect of requiring them to be or become members of a trade union, and
 - (b) has not at any time while the agreement had that effect been a member of a trade union in accordance with the agreement.
- (6) Subsection (3) shall not apply if—
- (a) the union membership agreement took effect after 14th August 1980 in relation to the employees of the employer who are of the same class as the dismissed employee, and
 - (b) the employee was entitled to vote in the ballot through which the agreement was approved in accordance with section 58A or, if there have been two or more such ballots, in the first of them, and
 - (c) the employee has not at any time since the day on which that ballot was held been a member of a trade union in accordance with the agreement.
- (7) Subsection (3) shall not apply if the dismissal was from employment in respect of which, at the time of dismissal, either—
- (a) there was in force a declaration made on a complaint presented by the employee under section 4 of the Employment Act 1980 (unreasonable exclusion or expulsion from trade union), or
 - (b) proceedings on such a complaint were pending before an industrial tribunal,

unless the employee has at any time during the period beginning with the date of the complaint under section 4 and ending with the effective date of termination been, or failed through his own fault to become, a member of a trade union in accordance with the union membership agreement.

- (8) In any case where neither subsection (4) nor subsection (7) has the effect of displacing subsection (3) and the employee—
- (a) holds qualifications which are relevant to the employment in question,
 - (b) is subject to a written code which governs the conduct of those persons who hold those qualifications, and
 - (c) has—
 - (i) been expelled from a trade union for refusing to take part in a strike or other industrial action, or
 - (ii) refused to become or remain a member of a trade union,
- subsection (3) shall not apply if the reason (or, if more than one, the principal reason) for his refusal was, in a case falling within paragraph (c)(i), that his taking the action in question would be in breach of the code or, in a case falling within paragraph (c)(ii), that if he became, or as the case may be remained, a member he would be required to take part in a strike, or other industrial action, which would be in breach of that code.
- (9) For the purposes of subsections (3)(c) and (6)(c), where votes in a ballot may be cast on more than one day, the ballot shall be treated as held on the last of those days.
- (10) For the purposes of subsections (3) and (7) the reference to the time of the dismissal shall, in a case where the dismissal was with notice, be construed as a reference to the time when the notice was given.
- (11) For the purposes of subsection (7) an employee shall be taken to have failed through his own fault to become a member of a trade union only if the tribunal is satisfied that the fact that he is not a member is attributable to his failure to apply (or re-apply) for membership or to his failure to accept an offer of membership.
- (12) Where the employer of any employees changes in such circumstances that the employees' period of continuous employment is not broken, this section and section 58A shall have effect as if any reference to the employees of any class of the later employer included a reference to the employees of that class of the former employer.
- (13) Where the reason, or one of the reasons, for the dismissal of an employee was—
- (a) his refusal, or proposed refusal, to comply with a requirement (whether or not imposed by his contract of employment or in writing) that, in the event of his failure to become or his ceasing to remain 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; or
 - (b) his objection, or proposed objection, (however expressed) to the operation of a provision (whether or not forming part of his contract of employment or in writing) under which, in the event mentioned in paragraph (a), his employer is entitled to deduct one or more sums from the remuneration payable to him in respect of his employment;
- that reason shall be treated as falling within subsections (1)(c) and (3)(b).

- (14) References in this section and section 58A to a trade union include references to a branch or section of a trade union, unless the context otherwise requires.

58A Ballots as to union membership agreements.

- (1) Subject to the following provisions of this section, a union membership agreement shall be taken for the purposes of section 58(3)(c) to have been approved in relation to the employees of any class of an employer if a ballot has been held on the question whether the agreement should apply in relation to them and either—
- (a) not less than 80 per cent, of those entitled to vote, or
 - (b) not less than 85 per cent, of those who voted,
- voted in favour of the agreement's application.
- (2) Subsection (1)(b) shall not apply if the agreement—
- (a) has not previously been approved in accordance with this section in relation to the employer's employees of the class in question, and
 - (b) came into force in relation to them after 14th August 1980.
- (3) The persons entitled to vote in a ballot under this section, in relation to the application of a union membership agreement to the employees of any class of an employer, shall be all those employees who belong to that class and who—
- (a) in the case of a ballot in which votes may only be cast on one day, are in the employment of the employer on that day; or
 - (b) in any other case, are in that employment on the qualifying day.
- (4) " Qualifying day " means the day specified as such by the person conducting the ballot; but no day shall be specified which—
- (a) falls after the last of the days on which votes may be cast in the ballot; or
 - (b) is so long before that date as to be unreasonable in relation to that ballot.
- (5) A ballot under this section shall be so conducted as to secure that, so far as reasonably practicable, all those entitled to vote—
- (a) have an opportunity of voting, and of doing so in secret; and
 - (b) in a case which does not fall within subsection (3)(a), know, before they cast their votes, which day has been specified as the qualifying day.
- (6) In determining for the purposes of subsection (3) whether a person belongs to a class of employees, any restriction of the class by reference to membership (or objection to membership) of a trade union shall be disregarded.
- (7) An agreement shall not be taken for the purposes of section 58(3)(c) to have been approved through a ballot of the employees of any class of an employer if since it was held another ballot of those employees has been held under this section and both—
- (a) less than 80 per cent, of those entitled to vote, and
 - (b) less than 85 per cent, of those who voted, voted in favour of the agreement's application.
- (8) Subsection (7) shall not affect the determination in any case of the question whether the condition in subsection (2)(a) is satisfied.”.

4 Basic award

- (1) In section 73 of the 1978 Act (calculation of basic award) after subsection (4) there shall be inserted—

“(4A) Where the dismissal is to be regarded as unfair by virtue of section 58 or 59(a), the amount of the basic award (before any reduction under the following provisions of this section) shall not be less than £2,000.

(4B) The Secretary of State may by order increase or further increase the minimum award provided for by subsection (4A), but no order shall be made under this subsection unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.”.

- (2) The following provisions of section 73, namely—

- (a) subsection (7) (reduction of award where complainant contributed to his own dismissal, except in cases of redundancy), and
- (b) in subsection (7B) (reduction of award where justified by complainant's conduct, other than conduct taken into account under subsection (7)) the words from " other " to " subsection (7) ",

shall cease to have effect; and after subsection (7B) there shall be added—

“(7C) Subsection (7B) shall not apply where the reason or principal reason for the dismissal was that the employee was redundant unless the dismissal is to be regarded as unfair by virtue of section 59(a), and in that event shall apply only to so much of the basic award as is payable because of subsection (4A).”.

5 New special award

- (1) In section 71(2)(b) of the 1978 Act (additional compensation to be awarded where order under section 69 not complied with unless it was not practicable for the employer to comply) for the word " unless " there shall be substituted the words " except in a case in which the dismissal is to be regarded as unfair by virtue of section 58 or 59(a) or in which ".

- (2) For section 72 of the 1978 Act (which provides that compensation for unfair dismissal shall consist of a basic award and a compensatory award) there shall be substituted—

“72 Compensation for unfair dismissal.

Where a tribunal makes an award of compensation for unfair dismissal under section 68(2) or 71(2) (a) the award shall consist of—

- (a) a basic award (calculated in accordance with section 73), and
- (b) a compensatory award (calculated in accordance with section 74), and
- (c) where the dismissal is to be regarded as unfair by virtue of section 58 or 59(a), a special award (calculated in accordance with section 75A);

but paragraph (c) shall not apply unless the complainant requested the tribunal to make an order under section 69, and shall not in any event apply in a case within section 73(2).”.

- (3) After section 75 of the 1978 Act there shall be inserted—

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“75A Calculation of special award.

- (1) Subject to the following provisions of this section, the amount of the special award shall be
 - (a) one week's pay multiplied by 104, or
 - (b) £10,000,
 whichever is the greater, but shall not exceed £20,000.
- (2) If the award of compensation is made under section 71(2)(a) then, unless the employer satisfies the tribunal that it was not practicable to comply with the preceding order under section 69, the amount of the special award shall be increased to—
 - (a) one week's pay multiplied by 156, or
 - (b) £15,000,
 whichever is the greater, but subject to the following provisions of this section.
- (3) In a case where the amount of the basic award is reduced under section 73(5), the amount of the special award shall be reduced by the same fraction.
- (4) Where the tribunal considers that any conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given) was such that it would be just and equitable to reduce or further reduce the amount of the special award to any extent, the tribunal shall reduce or further reduce that amount accordingly.
- (5) Where the tribunal finds that the complainant has unreasonably —
 - (a) prevented an order under section 69 from being complied with ; or
 - (b) refused an offer by the employer (made otherwise than in compliance with such an order) which if accepted would have the effect of reinstating the complainant in his employment in all respects as if he had not been dismissed;
 the tribunal shall reduce or further reduce the amount of the special award to such extent as it considers just and equitable having regard to that finding.
- (6) Where the employer has engaged a permanent replacement for the complainant, the tribunal shall not take that fact into account in determining, for the purposes of subsection (2), whether it was practicable to comply with an order under section 69 unless the employer shows that it was not practicable for him to arrange for the complainant's work to be done without engaging a permanent replacement.
- (7) The Secretary of State may by order increase any of the sums of £10,000, £20,000 and £15,000 specified in subsections (1) and (2), or any of those sums as from time to time increased under this subsection, but no such order shall be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.”.

6 Reduction of compensation: matters to be disregarded

After section 72 of the 1978 Act there shall be inserted the following section—

“72A Reduction of compensation : matters to be disregarded.

- (1) This section applies in any case where a tribunal makes an award of compensation for unfair dismissal under section 68(2) or 71(2)(a) and the dismissal is to be regarded as unfair by virtue of section 58 or 59(a).
- (2) In such a case the tribunal, in considering whether it would be just and equitable to reduce, or further reduce, the amount of any part of the award, shall disregard any conduct or action of the complainant in so far as it constitutes—
 - (a) a breach, or proposed breach, of any requirement falling within subsection (3);
 - (b) a refusal, or proposed refusal, to comply with a requirement of a kind mentioned in section 58 (13) (a); or
 - (c) an objection, or proposed objection, (however expressed) to the operation of a provision of a kind mentioned in section 58(13)(b).
- (3) A requirement falls within this subsection if it is imposed on the complainant in question by or under any arrangement or contract of employment or other agreement and requires him—
 - (a) 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 ;
 - (b) to cease to be, or refrain from becoming, a member of any trade union or of a particular trade union or of one of a number of particular trade unions ; or
 - (c) not to take part in the activities of any trade union or of a particular trade union or of one of a number of particular trade unions.”.

7 Awards against third parties

For section 76A of the 1978 Act (contribution in respect of compensation) there shall be substituted—

“76A Awards against third parties.

- (1) If in proceedings before an industrial tribunal on a complaint against an employer under section 67 either the employer or the complainant claims—
 - (a) that the employer was induced to dismiss the complainant by pressure which a trade union or other person exercised on the employer by calling, organising, procuring or financing a strike or other industrial action, or by threatening to do so, and
 - (b) that the pressure was exercised because the complainant was not a member of any trade union or of a particular trade union or of one of a number of particular trade unions,the employer or the complainant may request the tribunal to direct that the person who he claims exercised the pressure be joined, or in Scotland sisted, as a party to the proceedings.
- (2) A request under subsection (1) 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 an award under section 68(2) or an order under section 69.

- (3) Where a person has been joined, or in Scotland sisted, as a party to proceedings before an industrial tribunal by virtue of subsection (1) and the tribunal—
- (a) makes an award of compensation under section 68(2) or 71(2)(a) or (b), but
 - (b) finds that the claim mentioned in subsection (1) is well-founded,
- the award may be made against that person instead of against the employer, or partly against that person and partly against the employer, as the tribunal may consider just and equitable in the circumstances.”.

8 Interim relief

- (1) For subsection (1) of section 77 of the 1978 Act (interim relief where employee alleges unfair dismissal for union membership or activities) there shall be substituted—

“(1) An employee who presents a complaint to an industrial tribunal under section 67 alleging that the dismissal is to be regarded as unfair by virtue of section 58 may apply to the tribunal for an order under the following provisions of this section.”.

- (2) In subsection (3) of section 77 for the words from " , at least" onwards there shall be substituted

“give at the appropriate time—

- (a) to the employer; and
 - (b) in the case of a section 76A request made at least three days before the date of the hearing, to the person to whom the request relates ;
- a copy of the application and certificate (if any) together with notice of the date, time and place of the hearing.

- (3A) In subsection (3)—

' appropriate time ' means—

- (a) in relation to paragraph (a), not later than seven days before the date of the hearing ;
 - (b) in relation to paragraph (b), as soon as reasonably practicable;
- and

' section 76A request' means a request made under section 76A(1) for the tribunal to direct a person to be joined or sisted as a party to the proceedings.”.

9 Dismissal in connection with strike or other industrial action

- (1) Section 62 of the 1978 Act (dismissal in connection with a lock-out, strike or other industrial action) shall be amended in accordance with subsections (2) to (4) below.

- (2) In subsection (2), for paragraph (b) there shall be substituted—

“(b) that any such employee has, before the expiry of the period of three months beginning with that employee's date of dismissal, been offered re-engagement and that the complainant has not been offered re-engagement.”.

- (3) In subsection (4)(b) for sub-paragraph (ii) there shall be substituted—

“(ii) in relation to a strike or other industrial action, those employees at the establishment who were taking part in the action at the complainant's date of dismissal; ' establishment', in sub-paragraph (ii), meaning that establishment of the employer at or from which the complainant works; and”.

(4) In subsection (1), after the words " an employee " there shall be inserted the words " (the ' complainant') " ; and in subsections (1)(b) and (3) for the word " employee " there shall be substituted, in each case, the word " complainant " .

(5) In section 67 of the 1978 Act (complaint to industrial tribunal) for subsection (3) there shall be substituted—

“(3) Subsection (2) shall apply in relation to a complaint to which section 62(3) applies as if—

- (a) for the references to three months there were substituted, in each case, a reference to six months; and
- (b) as if for the reference to the effective date of termination there were substituted a reference to the complainant's date of dismissal (within the meaning of section 62(4)).”.