



# Employment Act 1982

## 1982 CHAPTER 46

### *Unfair dismissal*

#### **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
  - (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—

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- (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—

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- (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.”.