



Employment Act 1988

1988 CHAPTER 19

PART I

TRADE UNIONS

Rights of trade union members

5 Further remedies for infringement of right under section 3

- (1) An individual whose complaint against a trade union under section 4 above has been declared to be well-founded may make an application in accordance with subsection (2) below for one or both of the following, that is to say—
 - (a) an award of compensation to be paid to him by the union; and
 - (b) an order that the union pay to him an amount equal to any sum which he has paid in pursuance of a determination falling within subsection (5)(b) of section 3 above.
- (2) If at the time when the application under this section is made—
 - (a) the determination constituting the infringement of the applicant's right under section 3 above has not been revoked; or
 - (b) the trade union in question has failed to take all such steps as are necessary for securing the reversal of anything done for the purpose of giving effect to that determination,the application shall be to the Employment Appeal Tribunal; and, in any other case, it shall be to an industrial tribunal.
- (3) An industrial tribunal or the Employment Appeal Tribunal shall not entertain an application under this section if it is made before the end of the period of four weeks beginning with the date of the declaration under section 4 above or after the end of the period of six months beginning with that date.
- (4) Where the Employment Appeal Tribunal or any industrial tribunal is satisfied, on an application under this section, that it would (but for this subsection) be required by virtue of subsection (2) above to dismiss the application, it may, instead of dismissing

Status: This is the original version (as it was originally enacted).

it, transfer the application to an industrial tribunal or, as the case may be, to the Employment Appeal Tribunal; and an application transferred under this subsection shall be proceeded with as if it had been made in accordance with that subsection at the time when it was originally made.

- (5) Subject to the following provisions of this section, the amount of compensation awarded on an application under this section shall be such as the industrial tribunal or, as the case may be, the Employment Appeal Tribunal considers just and equitable in all the circumstances.
- (6) In determining the amount of compensation to be awarded under this section, the industrial tribunal or the Employment Appeal Tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable at common law in England and Wales or, as the case may be, in Scotland.
- (7) Where the industrial tribunal or the Employment Appeal Tribunal finds that the infringement which is the subject matter of the application was to any extent caused or contributed to by any action of the applicant, it shall reduce the amount of the compensation by such proportion as it considers just and equitable having regard to that finding.
- (8) The amount of compensation awarded against a trade union on an application under this section shall not exceed the aggregate of—
 - (a) an amount equal to thirty times the limit for the time being imposed by paragraph 8(1)(b) of Schedule 14 to the 1978 Act (maximum amount of a week's pay for purpose of calculating basic award in unfair dismissal cases); and
 - (b) an amount equal to the limit for the time being imposed by section 75 of that Act (maximum compensatory award in such cases),and, in the case of an application to the Employment Appeal Tribunal, shall not be less than the amount for the time being specified in section 73(4A) of that Act (minimum basic award in certain cases of unfair dismissal).
- (9) In determining the amount of any compensation to be awarded against a trade union on an application under this section any reduction or increase which is required to be made by virtue of subsection (8) above shall be made—
 - (a) before any reduction is made by virtue of subsection (6) or (7) above; and
 - (b) before any reduction is made on account of sums already paid by the union by way of compensation in respect of the determination to which the application relates or in respect of anything done for the purpose of giving effect to that determination;and, accordingly, where the case so requires, the reductions mentioned in paragraphs (a) and (b) above shall be applied to the maximum or, as the case may be, minimum award under subsection (8) above.
- (10) An appeal shall lie to the Employment Appeal Tribunal on a question of law arising from any decision of, or arising in proceedings before, an industrial tribunal under this section.