



Employment Act 1990

1990 CHAPTER 38

Industrial action and ballots

9 Dismissal of those taking part in unofficial industrial action.

- (1) In Part V of the ^{M1}Employment Protection (Consolidation) Act 1978 (unfair dismissal), after section 62 (dismissal in connection with lock-out, strike or other industrial action) insert—

“62A Dismissal of those taking part in unofficial industrial action.

- (1) An employee has no right to complain of unfair dismissal if at the time of dismissal he was taking part in an unofficial strike or other unofficial industrial action.
- (2) A strike or other industrial action is unofficial in relation to an employee unless—
- (a) he is a member of a trade union and the action is authorised or endorsed by that union, or
 - (b) he is not a member of a trade union but there are among those taking part in the industrial action members of a trade union by which the action has been authorised or endorsed.

Provided that, a strike or other industrial action shall not be regarded as unofficial if none of those taking part in it are members of a trade union.

- (3) The provisions of subsections (3) to (7) of section 15 of the Employment Act 1982 apply for the purpose of determining whether industrial action is to be taken to have been authorised or endorsed by a trade union.
- (4) The question whether industrial action is to be so taken in any case shall be determined by reference to the facts as at the time of dismissal.

Status: Point in time view as at 01/02/1991. This version of this provision has been superseded.

Changes to legislation: There are currently no known outstanding effects for the Employment Act 1990, Section 9. (See end of Document for details)

Provided that, where an act is repudiated as mentioned in subsection (4) of that section, industrial action shall not thereby be treated as unofficial before the end of the next working day after the day on which the repudiation takes place.

- (5) In this section the “time of dismissal” means—
- (a) where the employee’s contract of employment is terminated by notice, when the notice is given,
 - (b) where the employee’s contract of employment is terminated without notice, when the termination takes effect, and
 - (c) where the employee is employed under a contract for a fixed term which expires without being renewed under the same contract, when that term expires;

and a “working day” means any day which is not a Saturday or Sunday, Christmas Day, Good Friday or a bank holiday under the Banking and Financial Dealings Act 1971.

- (6) For the purposes of this section membership of a trade union for purposes unconnected with the employment in question shall be disregarded; but an employee who was a member of a trade union when he began to take part in industrial action shall continue to be treated as a member for the purpose of determining whether that action is unofficial in relation to him or another notwithstanding that he may in fact have ceased to be a member.”

- (2) Nothing in section 13 of the ^{M2}Trade Union and Labour Relations Act 1974 prevents an act from being actionable in tort if the reason, or one of the reasons, for doing it is the fact or belief that an employer has dismissed one or more employees in circumstances such that by virtue of section 62A of the ^{M3}Employment Protection (Consolidation) Act 1978 (dismissal in connection with unofficial industrial action) they have no right to complain of unfair dismissal.

- (3) Expressions used in subsection (2) above and the ^{M4}Trade Union and Labour Relations Act 1974 have the same meaning in that subsection as in that Act.

Marginal Citations

M1 1978 c. 44.

M2 1974 c. 52.

M3 1978 c. 44.

M4 1974 c. 52.

Status:

Point in time view as at 01/02/1991. This version of this provision has been superseded.

Changes to legislation:

There are currently no known outstanding effects for the Employment Act 1990, Section 9.