



Employment Rights (Dispute Resolution) Act 1998

1998 CHAPTER 8

PART I

EMPLOYMENT TRIBUNALS

Renaming of tribunals

1 Industrial tribunals to be known as employment tribunals

- (1) Industrial tribunals are renamed employment tribunals.
- (2) Accordingly, the Industrial Tribunals Act 1996 may be cited as the Employment Tribunals Act 1996; and (wherever they occur in any enactment)—
 - (a) for the words “industrial tribunal” substitute “employment tribunal”,
 - (b) for the words “industrial tribunals” substitute “employment tribunals”,
 - (c) for the words “the Industrial Tribunals Act 1996” substitute “the Employment Tribunals Act 1996”,
 - (d) for the words “President of the Industrial Tribunals (England and Wales)” substitute “President of the Employment Tribunals (England and Wales)”, and
 - (e) for the words “President of the Industrial Tribunals (Scotland)” substitute “President of the Employment Tribunals (Scotland)”.

Hearings etc.

2 Determinations without a hearing or full hearing

In section 7 of the Employment Tribunals Act 1996 (which authorises the making of employment tribunal procedure regulations), after subsection (3) insert—

- “(3A) Employment tribunal procedure regulations may authorise the determination of proceedings without any hearing (and in private) where the parties have given their written consent (whether or not they have subsequently withdrawn it).
- (3B) Employment tribunal procedure regulations may authorise the determination of proceedings without hearing anyone other than the person or persons by whom the proceedings are brought (or his or their representatives) where—
- (a) the person (or, where more than one, each of the persons) against whom the proceedings are brought has done nothing to contest the case, or
 - (b) it appears from the application made by the person (or, where more than one, each of the persons) bringing the proceedings that he is not (or they are not) seeking any relief which an employment tribunal has power to give or that he is not (or they are not) entitled to any such relief.
- (3C) Employment tribunal procedure regulations may authorise the determination of proceedings without hearing anyone other than the person or persons by whom, and the person or persons against whom, the proceedings are brought (or his or their representatives) where—
- (a) an employment tribunal is on undisputed facts bound by the decision of a court in another case to dismiss the case of the person or persons by whom, or of the person or persons against whom, the proceedings are brought, or
 - (b) the proceedings relate only to a preliminary issue which may be heard and determined in accordance with regulations under section 9(4).”

3 Hearings etc. by chairman alone

- (1) In section 4 of the Employment Tribunals Act 1996 (which makes provision about the composition of an employment tribunal), subsection (3) (which specifies the tribunal proceedings which are to be heard by the chairman alone unless he decides otherwise) is amended in accordance with subsections (2) to (5).
- (2) In paragraph (a) (which specifies proceedings under the Trade Union and Labour Relations (Consolidation) Act 1992)—
 - (a) after “proceedings” insert “on a complaint under section 68A or 192 of the Trade Union and Labour Relations (Consolidation) Act 1992 or”, and
 - (b) for “the Trade Union and Labour Relations (Consolidation) Act 1992” substitute “that Act”.
- (3) In paragraph (c) (which specifies proceedings under the Employment Rights Act 1996)—
 - (a) after “proceedings” insert “on a reference under section 11, 163 or 170 of the Employment Rights Act 1996,”,
 - (b) after “section 23” insert “, 34”,
 - (c) for “the Employment Rights Act 1996 or” substitute “that Act, on a complaint under section 70(1) of that Act relating to section 64 of that Act,”, and
 - (d) after “that” insert “Act or for an appointment under section 206(4) of that”.
- (4) After that paragraph insert—
 - (ca) proceedings on a complaint under regulation 11(5) of the Transfer of Undertakings (Protection of Employment) Regulations 1981,”.

(5) Omit paragraph (f) (which specifies proceedings in which the person bringing the proceedings has given written notice withdrawing the case), apart from the word “and”.

(6) After subsection (6) of that section (which makes provision for employment tribunal procedure regulations to provide that any act required or authorised by the regulations to be done by a tribunal may be done by the chairman alone) insert—

“(6A) Subsection (6) in particular enables employment tribunal procedure regulations to provide that—

- (a) the determination of proceedings in accordance with regulations under section 7(3A), (3B) or (3C)(a),
- (b) the carrying-out of pre-hearing reviews in accordance with regulations under subsection (1) of section 9 (including the exercise of powers in connection with such reviews in accordance with regulations under paragraph (b) of that subsection), or
- (c) the hearing and determination of a preliminary issue in accordance with regulations under section 9(4) (where it involves hearing witnesses other than the parties or their representatives as well as where, in accordance with regulations under section 7(3C)(b), it does not),

may be done by the person mentioned in subsection (1)(a) alone.”

4 Hearings by chairman and one other member

In subsection (1) of section 4 of the Employment Tribunals Act 1996 (which provides that, subject to the following provisions of that section, employment tribunal proceedings are to be heard by the chairman and either two other members or, with the consent of the parties, one other member), for paragraph (b) substitute—

“(b) two other members selected as the other members in accordance with regulations so made or, with appropriate consent, one other member selected as the other member in accordance with regulations so made;

and in paragraph (b) “appropriate consent” means either consent given at the beginning of the hearing by such of the parties as are then present in person or represented, or consent given by each of the parties.”

Other provisions

5 Legal officers

After subsection (6A) of section 4 of the Employment Tribunals Act 1996 (which is inserted by section 3(6) of this Act) insert—

“(6B) Employment tribunal procedure regulations may (subject to subsection (6C)) also provide that any act which—

- (a) by virtue of subsection (6) may be done by the person mentioned in subsection (1)(a) alone, and
- (b) is of a description specified by the regulations for the purposes of this subsection,

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

may be done by a person appointed as a legal officer in accordance with regulations under section 1(1); and any act so done shall be treated as done by an employment tribunal.

- (6C) But regulations under subsection (6B) may not specify—
- (a) the determination of any proceedings, other than proceedings in which the parties have agreed the terms of the determination or in which the person bringing the proceedings has given notice of the withdrawal of the case, or
 - (b) the carrying-out of pre-hearing reviews in accordance with regulations under section 9(1).”

6 Jurisdiction in cases about political fund contributions

For section 87 of the Trade Union and Labour Relations (Consolidation) Act 1992 (which provides that a person who alleges that his employer has failed to comply with section 86 of that Act by wrongly deducting a political fund contribution or refusing to deduct union dues may make an application to a county court or sheriff court) substitute—

“87 Complaint in respect of employer’s failure

- (1) A person who claims his employer has failed to comply with section 86 in deducting or refusing to deduct any amount from emoluments payable to him may present a complaint to an employment tribunal.
- (2) A tribunal shall not consider a complaint under subsection (1) unless it is presented—
 - (a) within the period of three months beginning with the date of the payment of the emoluments or (if the complaint relates to more than one payment) the last of the payments, or
 - (b) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within that period, within such further period as the tribunal considers reasonable.
- (3) Where on a complaint under subsection (1) arising out of subsection (3) (refusal to deduct union dues) of section 86 the question arises whether the employer’s refusal to deduct an amount was attributable to the giving of the certificate or was otherwise connected with the duty imposed by subsection (1) of that section, it is for the employer to satisfy the tribunal that it was not.
- (4) Where a tribunal finds that a complaint under subsection (1) is well-founded—
 - (a) it shall make a declaration to that effect and, where the complaint arises out of subsection (1) of section 86, order the employer to pay to the complainant the amount deducted in contravention of that subsection less any part of that amount already paid to him by the employer, and
 - (b) it may, if it considers it appropriate to do so in order to prevent a repetition of the failure, make an order requiring the employer to take, within a specified time, the steps specified in the order in relation to emoluments payable by him to the complainant.
- (5) A person who claims his employer has failed to comply with an order made under subsection (4)(b) on a complaint presented by him may present a further

complaint to an employment tribunal; but only one complaint may be presented under this subsection in relation to any order.

- (6) A tribunal shall not consider a complaint under subsection (5) unless it is presented—
- (a) after the end of the period of four weeks beginning with the date of the order, but
 - (b) before the end of the period of six months beginning with that date.
- (7) Where on a complaint under subsection (5) a tribunal finds that an employer has, without reasonable excuse, failed to comply with an order made under subsection (4)(b), it shall order the employer to pay to the complainant an amount equal to two weeks' pay.
- (8) Chapter II of Part XIV of the Employment Rights Act 1996 (calculation of a week's pay) applies for the purposes of subsection (7) with the substitution for section 225 of the following—

For the purposes of this Chapter in its application to subsection (7) of section 87 of the Trade Union and Labour Relations (Consolidation) Act 1992, the calculation date is the date of the payment, or (if more than one) the last of the payments, to which the complaint related.”