



Employment Relations Act 2004

2004 CHAPTER 24

PART 2

LAW RELATING TO INDUSTRIAL ACTION

28 Dismissal after end of protected period

(1) In section 238A(6) of the 1992 Act (dismissal after end of protected period), after paragraph (d) insert—

“(e) where there was agreement to use either of the services mentioned in paragraphs (c) and (d), the matters specified in section 238B.”

(2) After section 238A of the 1992 Act insert—

“238B Conciliation and mediation: supplementary provisions

- (1) The matters referred to in subsection (6)(e) of section 238A are those specified in subsections (2) to (5); and references in this section to “the service provider” are to any person who provided a service mentioned in subsection (6)(c) or (d) of that section.
- (2) The first matter is: whether, at meetings arranged by the service provider, the employer or, as the case may be, a union was represented by an appropriate person.
- (3) The second matter is: whether the employer or a union, so far as requested to do so, co-operated in the making of arrangements for meetings to be held with the service provider.
- (4) The third matter is: whether the employer or a union fulfilled any commitment given by it during the provision of the service to take particular action.
- (5) The fourth matter is: whether, at meetings arranged by the service provider between the parties making use of the service, the representatives of the

Status: This is the original version (as it was originally enacted).

employer or a union answered any reasonable question put to them concerning the matter subject to conciliation or mediation.

- (6) For the purposes of subsection (2) an “appropriate person” is—
- (a) in relation to the employer—
 - (i) a person with the authority to settle the matter subject to conciliation or mediation on behalf of the employer, or
 - (ii) a person authorised by a person of that type to make recommendations to him with regard to the settlement of that matter, and
 - (b) in relation to a union, a person who is responsible for handling on the union’s behalf the matter subject to conciliation or mediation.
- (7) For the purposes of subsection (4) regard may be had to any timetable which was agreed for the taking of the action in question or, if no timetable was agreed, to how long it was before the action was taken.
- (8) In any proceedings in which regard must be had to the matters referred to in section 238A(6)(e)—
- (a) notes taken by or on behalf of the service provider shall not be admissible in evidence;
 - (b) the service provider must refuse to give evidence as to anything communicated to him in connection with the performance of his functions as a conciliator or mediator if, in his opinion, to give the evidence would involve his making a damaging disclosure; and
 - (c) the service provider may refuse to give evidence as to whether, for the purposes of subsection (5), a particular question was or was not a reasonable one.
- (9) For the purposes of subsection (8)(b) a “damaging disclosure” is —
- (a) a disclosure of information which is commercially sensitive, or
 - (b) a disclosure of information that has not previously been disclosed which relates to a position taken by a party using the conciliation or mediation service on the settlement of the matter subject to conciliation or mediation,
- to which the person who communicated the information to the service provider has not consented.”