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STATUTORY INSTRUMENTS

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**1996 No. 1919**

**The Employment Rights (Northern Ireland) Order 1996**

PART XI

UNFAIR DISMISSAL

CHAPTER II

REMEDIES FOR UNFAIR DISMISSAL

*Compensation*

**General**

**152.**—(1) Where a tribunal makes an award of compensation for unfair dismissal under Article 146(4) or 151(3)(a) the award shall consist of—

- (a) a basic award (calculated in accordance with Articles 153 to 156, 160 and 161), and
- (b) a compensatory award (calculated in accordance with Articles 157, 158, 160 to 162).

(2) Where this paragraph applies, the award shall also include a special award calculated in accordance with Article 159 unless—

- (a) the complainant does not request the tribunal to make an order under Article 147, or
- (b) the case falls within Article 155.

(3) Paragraph (2) applies where the reason (or, if more than one, the principal reason)—

- (a) in a redundancy case, for selecting the employee for dismissal, or
- (b) otherwise, for the dismissal,

is one of those specified in Article 132(1)(a) and (b), 133(1), 134 or 136(1).

**Basic award**

**153.**—(1) Subject to the provisions of this Article, Articles 154 to 156 and Articles 160 and 161, the amount of the basic award shall be calculated by—

- (a) determining the period, ending with the effective date of termination, during which the employee has been continuously employed,
- (b) reckoning backwards from the end of that period the number of years of employment falling within that period, and
- (c) allowing the appropriate amount for each of those years of employment.

(2) In paragraph (1)(c) “the appropriate amount” means—

- (a) one and a half weeks' pay for a year of employment in which the employee was not below the age of forty-one,

- (b) one week's pay for a year of employment (not within sub-paragraph (a)) in which he was not below the age of twenty-two, and
  - (c) half a week's pay for a year of employment not within sub-paragraph (a) or (b).
- (3) Where twenty years of employment have been reckoned under paragraph (1), no account shall be taken under that paragraph of any year of employment earlier than those twenty years.
- (4) Where the effective date of termination is after the sixty-fourth anniversary of the day of the employee's birth, the amount arrived at under paragraphs (1) to (3) shall be reduced by the appropriate fraction.
- (5) In paragraph (4) "the appropriate fraction" means the fraction of which—
- (a) the numerator is the number of whole months reckoned from the sixty-fourth anniversary of the day of the employee's birth in the period beginning with that anniversary and ending with the effective date of termination, and
  - (b) the denominator is twelve.
- (6) Paragraphs (4) and (5) do not apply to a case within Article 128(1).

#### **Basic award: minimum in certain cases**

**154.**—(1) The amount of the basic award (before any reduction under Article 156) shall not be less than £2,770 where the reason (or, if more than one, the principal reason)—

- (a) in a redundancy case, for selecting the employee for dismissal, or
- (b) otherwise, for the dismissal,

is one of those specified in Article 132(1)(a) and (b), 133(1), 134 or 136(1).

- (2) The Department may by order increase the sum specified in paragraph (1).

#### **Basic award of two weeks' pay in certain cases**

**155.** The amount of the basic award shall be two weeks' pay where the tribunal finds that the reason (or, where there is more than one, the principal reason) for the dismissal of the employee is that he was redundant and the employee—

- (a) by virtue of Article 173 is not regarded as dismissed for the purposes of Part XII, or
- (b) by virtue of Article 176 is not, or (if he were otherwise entitled) would not be, entitled to a redundancy payment.

#### **Basic award: reductions**

**156.**—(1) Where the tribunal finds that the complainant has unreasonably refused an offer by the employer which (if accepted) would have the effect of reinstating the complainant in his employment in all respects as if he had not been dismissed, the tribunal shall reduce or further reduce the amount of the basic award to such extent as it considers just and equitable having regard to that finding.

(2) Where the tribunal considers that any conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given) was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent, the tribunal shall reduce or further reduce that amount accordingly.

(3) Paragraph (2) does not apply in a redundancy case unless the reason for selecting the employee for dismissal was one of those specified in Article 132(1)(a) and (b), 133(1), 134 or 136(1); and in such a case paragraph (2) applies only to so much of the basic award as is payable because of Article 154.

- (4) The amount of the basic award shall be reduced or further reduced by the amount of—

- (a) any redundancy payment awarded by the tribunal under Part XII in respect of the same dismissal, or
- (b) any payment made by the employer to the employee on the ground that the dismissal was by reason of redundancy (whether in pursuance of Part XII or otherwise).

### **Compensatory award**

**157.**—(1) Subject to the provisions of this Article and Articles 158, 160 and 161, the amount of the compensatory award shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer.

(2) The loss referred to in paragraph (1) shall be taken to include—

- (a) any expenses reasonably incurred by the complainant in consequence of the dismissal, and
- (b) subject to paragraph (3), loss of any benefit which he might reasonably be expected to have had but for the dismissal.

(3) The loss referred to in paragraph (1) shall be taken to include in respect of any loss of—

- (a) any entitlement or potential entitlement to a payment on account of dismissal by reason of redundancy (whether in pursuance of Part XII or otherwise), or
- (b) any expectation of such a payment,

only the loss referable to the amount (if any) by which the amount of that payment would have exceeded the amount of a basic award (apart from any reduction under Article 156) in respect of the same dismissal.

(4) In ascertaining the loss referred to in paragraph (1) the tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law of Northern Ireland.

(5) In determining, for the purposes of paragraph (1), how far any loss sustained by the complainant was attributable to action taken by the employer, no account shall be taken of any pressure which by—

- (a) calling, organising, procuring or financing a strike or other industrial action, or
- (b) threatening to do so,

was exercised on the employer to dismiss the employee; and that question shall be determined as if no such pressure had been exercised.

(6) Where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding.

(7) If the amount of any payment made by the employer to the employee on the ground that the dismissal was by reason of redundancy (whether in pursuance of Part XII or otherwise) exceeds the amount of the basic award which would be payable but for Article 156(4), that excess goes to reduce the amount of the compensatory award.

### **Limit of compensatory award etc.**

**158.**—(1) The amount of—

- (a) any compensation awarded to a person under Article 151(1) and (2), or
- (b) a compensatory award to a person calculated in accordance with Article 157,

shall not exceed £11,300.

(2) The Department may by order increase the sum specified in paragraph (1).

(3) In the case of compensation awarded to a person under Article 151(1) and (2), the limit imposed by this Article may be exceeded to the extent necessary to enable the award fully to reflect the amount specified as payable under Article 148(2)(a) or Article 149(2)(d).

(4) Where—

(a) a compensatory award is an award under sub-paragraph (a) of paragraph (3) of Article 151, and

(b) an additional award falls to be made under sub-paragraph (b) of that paragraph,

the limit imposed by this Article on the compensatory award may be exceeded to the extent necessary to enable the aggregate of the compensatory and additional awards fully to reflect the amount specified as payable under Article 148(2)(a) or Article 149(2)(d).

(5) The limit imposed by this Article applies to the amount which the industrial tribunal would, apart from this Article, award in respect of the subject matter of the complaint after taking into account—

(a) any payment made by the respondent to the complainant in respect of that matter, and

(b) any reduction in the amount of the award required by any statutory provision or rule of law.

### **Special award**

**159.**—(1) Subject to the following provisions, the amount of the special award shall be—

(a) one week's pay multiplied by 104, or

(b) £13,775,

whichever is the greater, but shall not exceed £27,500.

(2) Where the award of compensation is made under Article 151(3)(a) then, unless the employer satisfies the tribunal that it was not practicable to comply with the order under Article 147, the amount of the special award shall be increased to—

(a) one week's pay multiplied by 156, or

(b) £20,600,

whichever is the greater (but subject to the following provisions).

(3) In a case where the amount of the basic award is reduced under Article 153(4), the amount of the special award shall be reduced by the same fraction.

(4) Where the tribunal considers that any conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given) was such that it would be just and equitable to reduce or further reduce the amount of the special award to any extent, the tribunal shall reduce or further reduce that amount accordingly.

(5) Where the tribunal finds that the complainant has unreasonably—

(a) prevented an order under Article 147 from being complied with, or

(b) refused an offer by the employer (made otherwise than in compliance with such an order) which, if accepted, would have the effect of reinstating the complainant in his employment in all respects as if he had not been dismissed,

the tribunal shall reduce or further reduce the amount of the special award to such extent as it considers just and equitable having regard to that finding.

(6) Where the employer has engaged a permanent replacement for the complainant, the tribunal shall not take that fact into account in determining for the purposes of paragraph (2) whether it was practicable to comply with an order under Article 147 unless the employer shows that it was not practicable for him to arrange for the complainant's work to be done without engaging a permanent replacement.

(7) The Department may by order increase any of the sums specified in paragraphs (1) and (2).

#### **Acts which are both unfair dismissal and discrimination**

**160.**—(1) Where compensation falls to be awarded in respect of any act both under the Sex Discrimination (Northern Ireland) Order 1976 and under the provisions of this Order relating to unfair dismissal, an industrial tribunal shall not award compensation under that Order or this Order in respect of any loss or other matter which is or has been taken into account under the other Order by the tribunal or another industrial tribunal in awarding compensation on the same or another complaint in respect of that act.

(2) Where compensation falls to be awarded in respect of any act both under the Fair Employment (Northern Ireland) Act 1976 and under the provisions of this Order relating to unfair dismissal, an industrial tribunal shall not award compensation under this Order in respect of any loss or other matter which has been taken into account under that Act by the Fair Employment Tribunal for Northern Ireland in awarding compensation on a complaint in respect of that act.

#### **Matters to be disregarded in assessing contributory fault**

**161.**—(1) Where an industrial tribunal makes an award of compensation for unfair dismissal in a case where the dismissal is unfair by virtue of Article 136 or Article 137(1) and (7), the tribunal shall disregard, in considering whether it would be just and equitable to reduce, or further reduce, the amount of any part of the award, any such conduct or action of the complainant as is specified below.

(2) Conduct or action of the complainant shall be disregarded in so far as it constitutes a breach or proposed breach of a requirement—

- (a) to be or become a member of any trade union or of a particular trade union or of one of a number of particular trade unions,
- (b) to cease to be, or refrain from becoming, a member of any trade union or of a particular trade union or of one of a number of particular trade unions, or
- (c) not to take part in the activities of any trade union or of a particular trade union or of one of a number of particular trade unions.

For the purposes of this paragraph a requirement means a requirement imposed on the complainant by or under an arrangement or contract of employment or other agreement.

(3) Conduct or action of the complainant shall be disregarded in so far as it constitutes a refusal, or proposed refusal, to comply with a requirement of a kind mentioned in Article 136(3)(a) or an objection, or proposed, objection, (however expressed) to the operation of a provision of a kind mentioned in Article 136(3)(b)).

#### **Dismissal of woman at or after end of maternity leave period**

**162.** Where Article 116 applies in relation to an employee, compensation in any unfair dismissal proceedings shall be assessed without regard to the right conferred on the employee by Article 111,