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STATUTORY INSTRUMENTS

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**1992 No. 807**

**The Industrial Relations (Northern Ireland) Order 1992**

**PART IV**

**RIGHTS OF TRADE UNION MEMBERS**

**Further remedies for infringement of right under Article 34**

**36.**—(1) An individual whose complaint against a trade union under Article 35 has been declared to be well-founded may make an application to an industrial tribunal 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 paragraph (5)(b) of Article 34.

(2) An industrial tribunal shall not entertain an application under this Article if it is made before the end of the period of four weeks beginning with the date of the declaration under Article 35 or after the end of the period of six months beginning with that date.

(3) Subject to the following provisions of this Article, the amount of compensation awarded on an application under this Article shall be such as the industrial tribunal considers just and equitable in all the circumstances.

(4) In determining the amount of compensation to be awarded under this Article, the industrial 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) Where the industrial 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.

(6) The amount of compensation awarded against a trade union on an application under this Article shall not exceed the aggregate of—

- (a) an amount equal to thirty times the limit for the time being imposed by Article 35(4) of the No. 1 Order (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 Article 37 of that Order (maximum compensatory award in such cases),

and, in the case of an application to which paragraph (7) applies shall not be less than the amount for the time being specified in Article 34(5A) of that Order (minimum basic award in certain cases of unfair dismissal).

(7) This paragraph applies to an application under this Article if at the time when the application is made—

- (a) the determination constituting the infringement of the applicant's right under Article 34 has not been revoked; or

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(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.

(8) In determining the amount of any compensation to be awarded against a trade union on an application under this Article any reduction or increase which is required to be made by virtue of paragraph (6) shall be made—

(a) before any reduction is made by virtue of paragraph (4) or (5); 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 sub-paragraphs (a) and (b) shall be applied to the maximum or, as the case may be, minimum award under paragraph (6).