
STATUTORY INSTRUMENTS

1996 No. 1919

The Employment Rights (Northern Ireland) Order 1996

PART III

EMPLOYMENT PARTICULARS

Enforcement

References to industrial tribunals

43.—(1) Where an employer does not give an employee a statement as required by Article 33, 36 or 40 (either because he gives him no statement or because the statement he gives does not comply with what is required), the employee may require a reference to be made to an industrial tribunal to determine what particulars ought to have been included or referred to in a statement so as to comply with the requirements of the Article concerned.

(2) Where—

- (a) a statement purporting to be a statement under Article 33 or 36, or a pay statement or a standing statement of fixed deductions purporting to comply with Article 40 or 41, has been given to an employee, and
- (b) a question arises as to the particulars which ought to have been included or referred to in the statement so as to comply with the requirements of this Part,

either the employer or the employee may require the question to be referred to and determined by an industrial tribunal.

(3) For the purposes of this Article—

- (a) a question as to the particulars which ought to have been included in the note required by Article 35 to be included in the statement under Article 33 does not include any question whether the employment is, has been or will be contracted-out employment (for the purposes of Part III of the Pension Schemes (Northern Ireland) Act 1993), and
- (b) a question as to the particulars which ought to have been included in a pay statement or standing statement of fixed deductions does not include a question solely as to the accuracy of an amount stated in any such particulars.

(4) An industrial tribunal shall not consider a reference under this Article in a case where the employment to which the reference relates has ceased unless an application requiring the reference to be made was made—

- (a) before the end of the period of three months beginning with the date on which the employment ceased, or
- (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the application to be made before the end of that period of three months.

Determination of references

44.—(1) Where, on a reference under Article 43(1), an industrial tribunal determines particulars as being those which ought to have been included or referred to in a statement given under Article 33 or 36, the employer shall be deemed to have given to the employee a statement in which those particulars were included, or referred to, as specified in the decision of the tribunal.

(2) On determining a reference under Article 43(2) relating to a statement purporting to be a statement under Article 33 or 36, an industrial tribunal may—

- (a) confirm the particulars as included or referred to in the statement given by the employer,
- (b) amend those particulars, or
- (c) substitute other particulars for them,

as the tribunal may determine to be appropriate; and the statement shall be deemed to have been given by the employer to the employee in accordance with the decision of the tribunal.

(3) Where on a reference under Article 43 an industrial tribunal finds—

- (a) that an employer has failed to give an employee any pay statement in accordance with Article 40, or
- (b) that a pay statement or standing statement of fixed deductions does not, in relation to a deduction, contain the particulars required to be included in that statement by that Article or Article 41,

the tribunal shall make a declaration to that effect.

(4) Where on a reference in the case of which paragraph (3) applies the tribunal further finds that any unnotified deductions have been made from the pay of the employee during the period of thirteen weeks immediately preceding the date of the application for the reference (whether or not the deductions were made in breach of the contract of employment), the tribunal may order the employer to pay the employee a sum not exceeding the aggregate of the unnotified deductions so made.

(5) For the purposes of paragraph (4) a deduction is an unnotified deduction if it is made without the employer giving the employee, in any pay statement or standing statement of fixed deductions, the particulars of the deduction required by Article 40 or 41.