
STATUTORY INSTRUMENTS

1996 No. 1919

The Employment Rights (Northern Ireland) Order 1996

PART XI

UNFAIR DISMISSAL

CHAPTER II

REMEDIES FOR UNFAIR DISMISSAL

Introductory

Complaints to industrial tribunal

145.—(1) A complaint may be presented to an industrial tribunal against an employer by any person that he was unfairly dismissed by the employer.

(2) Subject to paragraph (3), an industrial tribunal shall not consider a complaint under this Article unless it is presented to the tribunal—

- (a) before the end of the period of three months beginning with the effective date of termination, 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 complaint to be presented before the end of that period of three months.

(3) Where a dismissal is with notice, an industrial tribunal shall consider a complaint under this Article if it is presented after the notice is given but before the effective date of termination.

(4) In relation to a complaint which is presented as mentioned in paragraph (3), the provisions of this Order, so far as they relate to unfair dismissal, have effect as if—

- (a) references to a complaint by a person that he was unfairly dismissed by his employer included references to a complaint by a person that his employer has given him notice in such circumstances that he will be unfairly dismissed when the notice expires,
- (b) references to reinstatement included references to the withdrawal of the notice by the employer,
- (c) references to the effective date of termination included references to the date which would be the effective date of termination on the expiry of the notice, and
- (d) references to an employee ceasing to be employed included references to an employee having been given notice of dismissal.

The remedies: orders and compensation

146.—(1) This Article applies where, on a complaint under Article 145, an industrial tribunal finds that the grounds of the complaint are well-founded.

(2) The tribunal shall—

- (a) explain to the complainant what orders may be made under Article 147 and in what circumstances they may be made, and
 - (b) ask him whether he wishes the tribunal to make such an order.
- (3) If the complainant expresses such a wish, the tribunal may make an order under Article 147.
- (4) If no order is made under Article 147, the tribunal shall make an award of compensation for unfair dismissal (calculated in accordance with Articles 152 to 162) to be paid by the employer to the employee.

Orders for reinstatement or re-engagement

The orders

147. An order under this Article may be—

- (a) an order for reinstatement (in accordance with Article 148),
- (b) an order for re-engagement (in accordance with Article 149),

as the tribunal may decide.

Order for reinstatement

148.—(1) An order for reinstatement is an order that the employer shall treat the complainant in all respects as if he had not been dismissed.

(2) an order for reinstatement the tribunal shall specify—

- (a) any amount payable by the employer in respect of any benefit which the complainant might reasonably be expected to have had but for the dismissal (including arrears of pay) for the period between the date of termination of employment and the date of reinstatement,
- (b) any rights and privileges (including seniority and pension rights) which must be restored to the employee, and
- (c) the date by which the order must be complied with.

(3) If the complainant would have benefited from an improvement in his terms and conditions of employment had he not been dismissed, an order for reinstatement shall require him to be treated as if he had benefited from that improvement from the date on which he would have done so but for being dismissed.

(4) In calculating for the purposes of paragraph (2)(a) any amount payable by the employer, the tribunal shall take into account, so as to reduce the employer's liability, any sums received by the complainant in respect of the period between the date of termination of employment and the date of reinstatement by way of—

- (a) wages in lieu of notice or ex gratia payments paid by the employer, or
- (b) remuneration paid in respect of employment with another employer,

and such other benefits as the tribunal thinks appropriate in the circumstances.

(5) Where a dismissal is treated as taking place by virtue of Article 128, references in this Article to the date of termination of employment are to the notified date of return.

Order for re-engagement

149.—(1) An order for re-engagement is an order, on such terms as the tribunal may decide, that the complainant be engaged by the employer, or by a successor of the employer or by an

associated employer, in employment comparable to that from which he was dismissed or other suitable employment.

(2) On making an order for re-engagement the tribunal shall specify the terms on which re-engagement is to take place, including—

- (a) the identity of the employer,
- (b) the nature of the employment,
- (c) the remuneration for the employment,
- (d) any amount payable by the employer in respect of any benefit which the complainant might reasonably be expected to have had but for the dismissal (including arrears of pay) for the period between the date of termination of employment and the date of re-engagement,
- (e) any rights and privileges (including seniority and pension rights) which must be restored to the employee, and
- (f) the date by which the order must be complied with.

(3) In calculating for the purposes of paragraph (2)(d) any amount payable by the employer, the tribunal shall take into account, so as to reduce the employer's liability, any sums received by the complainant in respect of the period between the date of termination of employment and the date of re-engagement by way of—

- (a) wages in lieu of notice or ex gratia payments paid by the employer, or
- (b) remuneration paid in respect of employment with another employer,

and such other benefits as the tribunal thinks appropriate in the circumstances.

(4) Where a dismissal is treated as taking place by virtue of Article 128, references in this Article to the date of termination of employment are to the notified date of return.

Choice of order and its terms

150.—(1) In exercising its discretion under Article 147 the tribunal shall first consider whether to make an order for reinstatement and in so doing shall take into account—

- (a) whether the complainant wishes to be reinstated,
- (b) whether it is practicable for the employer to comply with an order for reinstatement, and
- (c) where the complainant caused or contributed to some extent to the dismissal, whether it would be just to order his reinstatement.

(2) If the tribunal decides not to make an order for reinstatement it shall then consider whether to make an order for re-engagement and, if so, on what terms.

(3) In so doing the tribunal shall take into account—

- (a) any wish expressed by the complainant as to the nature of the order to be made,
- (b) whether it is practicable for the employer (or a successor or an associated employer) to comply with an order for re-engagement, and
- (c) where the complainant caused or contributed to some extent to the dismissal, whether it would be just to order his re-engagement and (if so) on what terms.

(4) Except in a case where the tribunal takes into account contributory fault under paragraph (3) (c) it shall, if it orders re-engagement, do so on terms which are, so far as is reasonably practicable, as favourable as an order for reinstatement.

(5) Where in any case an employer has engaged a permanent replacement for a dismissed employee, the tribunal shall not take that fact into account in determining, for the purposes of paragraph (1)(b) or (3)(b), whether it is practicable to comply with an order for reinstatement or re-engagement.

- (6) Paragraph (5) does not apply where the employer shows—
 - (a) that it was not practicable for him to arrange for the dismissed employee's work to be done without engaging a permanent replacement, or
 - (b) that—
 - (i) he engaged the replacement after the lapse of a reasonable period, without having heard from the dismissed employee that he wished to be reinstated or re-engaged, and
 - (ii) when the employer engaged the replacement it was no longer reasonable for him to arrange for the dismissed employee's work to be done except by a permanent replacement.

Enforcement of order and compensation

151.—(1) An industrial tribunal shall make an award of compensation, to be paid by the employer to the employee, if—

- (a) an order under Article 147 is made and the complainant is reinstated or re-engaged, but
- (b) the terms of the order are not fully complied with.

(2) Subject to Article 158, the amount of the compensation shall be such as the tribunal thinks fit having regard to the loss sustained by the complainant in consequence of the failure to comply fully with the terms of the order.

(3) Subject to paragraphs (1) and (2), if an order under Article 147 is made but the complainant is not reinstated or re-engaged in accordance with the order, the tribunal shall make—

- (a) an award of compensation for unfair dismissal (calculated in accordance with Articles 152 to 162), and
- (b) except where this sub-paragraph does not apply, an additional award of compensation of the appropriate amount,

to be paid by the employer to the employee.

- (4) Paragraph (3)(b) does not apply where—
 - (a) the employer satisfies the tribunal that it was not practicable to comply with the order, or
 - (b) the reason (or, if more than one, the principal reason)—
 - (i) in a redundancy case, for selecting the employee for dismissal, or
 - (ii) otherwise, for the dismissal,
 is one of those specified in Article 132(1)(a) and (b), 133(1), 134 or 136(1).

(5) In paragraph (3)(b) “the appropriate amount” means—

- (a) where the dismissal is of a description referred to in paragraph (6), not less than twenty-six nor more than fifty-two weeks' pay, and
- (b) in any other case, not less than thirteen nor more than twenty-six weeks' pay.

(6) The descriptions of dismissal in respect of which an employer may incur a higher additional award in accordance with paragraph (5)(a) are—

- (a) a dismissal which is an act of discrimination within the meaning of the Sex Discrimination (Northern Ireland) Order 1976 which is unlawful by virtue of that Order, and
- (b) a dismissal which is an act of discrimination within the meaning of the Fair Employment (Northern Ireland) Act 1976 which is unlawful by virtue of Part III of that Act.

(7) Where in any case an employer has engaged a permanent replacement for a dismissed employee, the tribunal shall not take that fact into account in determining for the purposes of paragraph (4)(a) whether it was practicable to comply with the order for reinstatement or re-

engagement unless the employer shows that it was not practicable for him to arrange for the dismissed employee's work to be done without engaging a permanent replacement.

(8) Where in any case an industrial tribunal finds that the complainant has unreasonably prevented an order under Article 147 from being complied with, in making an award of compensation for unfair dismissal (in accordance with Articles 152 to 162) it shall take that conduct into account as a failure on the part of the complainant to mitigate his loss.

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,

Interim relief

Interim relief pending determination of complaint

163.—(1) An employee who presents a complaint to an industrial tribunal—

- (a) that he has been unfairly dismissed by his employer, and
- (b) that the reason (or, if more than one, the principal reason) for the dismissal is one of those specified in Article 132(1)(a) and (b), 133(1), 134 or 136(1), may apply to the tribunal for interim relief.

(2) The tribunal shall not entertain an application for interim relief unless it is presented to the tribunal before the end of the period of seven days immediately following the effective date of termination (whether before, on or after that date).

(3) In a case where the employee relies on Article 136(1)(a) or (b) the tribunal shall not entertain an application for interim relief unless before the end of that period there is also so presented a

certificate in writing signed by an authorised official of the independent trade union of which the employee was or proposed to become a member stating—

- (a) that on the date of the dismissal the employee was or proposed to become a member of the union, and
- (b) that there appear to be reasonable grounds for supposing that the reason for his dismissal (or, if more than one, the principal reason) was one alleged in the complaint.

(4) An “authorised official” means an official of the trade union authorised by it to act for the purposes of this Article.

(5) A document purporting to be an authorisation of an official by a trade union to act for the purposes of this Article and to be signed on behalf of the union shall be taken to be such an authorisation unless the contrary is proved; and a document purporting to be a certificate signed by such an official shall be taken to be signed by him unless the contrary is proved.

(6) For the purposes of paragraph (3) the date of dismissal shall be taken to be—

- (a) where the employee’s contract of employment was terminated by notice (whether given by his employer or by him), the date on which the notice was given, and
- (b) in any other case, the effective date of termination.

(7) The tribunal shall determine the application for interim relief as soon as practicable after receiving the application and, where appropriate, the requisite certificate.

(8) The tribunal shall give to the employer not later than seven days before the date of the hearing a copy of the application and of any certificate together with notice of the date, time and place of the hearing.

(9) If a request under Article 169 is made three days, or more before the date of the hearing, the tribunal shall also give to the person to whom the request relates, as soon as reasonably practicable, a copy of the application and of any certificate, together with notice of the date, time and place of the hearing.

(10) The tribunal shall not exercise any power it has of postponing the hearing of an application for interim relief except where it is satisfied that special circumstances exist which justify it in doing so.

Procedure on hearing of application and making of order

164.—(1) This Article applies where, on hearing an employee’s application for interim relief, it appears to the tribunal that it is likely that on determining the complaint to which the application relates the tribunal will find that the reason (or, if more than one, the principal reason) for his dismissal is one of those specified in Article 132(1)(a) and (b), 133(1), 134 or 136(1).

(2) The tribunal shall announce its findings and explain to both parties (if present)—

- (a) what powers the tribunal may exercise on the application, and
- (b) in what circumstances it will exercise them.

(3) The tribunal shall ask the employer (if present) whether he is willing, pending the determination or settlement of the complaint—

- (a) to reinstate the employee (that is, to treat him in all respects as if he had not been dismissed), or
- (b) if not, to re-engage him in another job on terms and conditions not less favourable than those which would have been applicable to him if he had not been dismissed.

(4) For the purposes of paragraph (3)(b) “terms and conditions not less favourable than those which would have been applicable to him if he had not been dismissed” means, as regards seniority,

pension rights and other similar rights, that the period prior to the dismissal should be regarded as continuous with his employment following the dismissal.

(5) If the employer states that he is willing to reinstate the employee, the tribunal shall make an order to that effect.

(6) If the employer—

(a) states that he is willing to re-engage the employee in another job, and

(b) specifies the terms and conditions on which he is willing to do so,

the tribunal shall ask the employee whether he is willing to accept the job on those terms and conditions.

(7) If the employee is willing to accept the job on those terms and conditions, the tribunal shall make an order to that effect.

(8) If the employee is not willing to accept the job on those terms and conditions—

(a) where the tribunal is of the opinion that the refusal is reasonable, the tribunal shall make an order for the continuation of his contract of employment, and

(b) otherwise, the tribunal shall make no order.

(9) If on the hearing of an application for interim relief the employer—

(a) fails to attend before the tribunal, or

(b) states that he is unwilling either to reinstate or re-engage the employee as mentioned in paragraph (3),

the tribunal shall make an order for the continuation of the employee's contract of employment.

Order for continuation of contract of employment

165.—(1) An order under Article 164 for the continuation of a contract of employment is an order that the contract of employment continue in force—

(a) for the purposes of pay or any other benefit derived from the employment, seniority, pension rights and other similar matters, and

(b) for the purposes of determining for any purpose the period for which the employee has been continuously employed,

from the date of its termination (whether before or after the making of the order) until the determination or settlement of the complaint.

(2) Where the tribunal makes such an order it shall specify in the order the amount which is to be paid by the employer to the employee by way of pay in respect of each normal pay period, or part of any such period, falling between the date of dismissal and the determination or settlement of the complaint.

(3) Subject to the following provisions, the amount so specified shall be that which the employee could reasonably have been expected to earn during that period, or part, and shall be paid—

(a) in the case of a payment for any such period falling wholly or partly after the making of the order, on the normal pay day for that period, and

(b) in the case of a payment for any past period, within such time as may be specified in the order.

(4) If an amount is payable in respect only of part of a normal pay period, the amount shall be calculated by reference to the whole period and reduced proportionately.

(5) Any payment made to an employee by an employer under his contract of employment, or by way of damages for breach of that contract, in respect of a normal pay period, or part of any such period, goes towards discharging the employer's liability in respect of that period under

paragraph (2); and, conversely, any payment under that paragraph in respect of a period goes towards discharging any liability of the employer under, or in respect of breach of, the contract of employment in respect of that period.

(6) If an employee, on or after being dismissed by his employer, receives a lump sum which, or part of which, is in lieu of wages but is not referable to any normal pay period, the tribunal shall take the payment into account in determining the amount of pay to be payable in pursuance of any such order.

(7) For the purposes of this Article, the amount which an employee could reasonably have been expected to earn, his normal pay period and the normal pay day for each such period shall be determined as if he had not been dismissed.

Application for variation or revocation of order

166.—(1) At any time between—

- (a) the making of an order under Article 164, and
- (b) the determination or settlement of the complaint,

the employer or the employee may apply to an industrial tribunal for the revocation or variation of the order on the ground of a relevant change of circumstances since the making of the order.

(2) Articles 163 and 164 apply in relation to such an application as in relation to an original application for interim relief except that —

- (a) no certificate need be presented to the tribunal under Article 163(3), and
- (b) in the case of an application by the employer, Article 163(8) has effect with the substitution of a reference to the employee for the reference to the employer.

Consequence of failure to comply with order

167.—(1) If, on the application of an employee, an industrial tribunal is satisfied that the employer has not complied with the terms of an order for the reinstatement or re-engagement of the employee under Article 164(5) or (7), the tribunal shall—

- (a) make an order for the continuation of the employee's contract of employment, and
- (b) order the employer to pay compensation to the employee.

(2) on under paragraph (1)(b) shall be of such amount as the tribunal considers just and equitable in all the circumstances having regard—

- (a) to the infringement of the employee's right to be reinstated or re-engaged in pursuance of the order, and
- (b) to any loss suffered by the employee in consequence of the non-compliance.

(3) Article 165 applies to an order under paragraph (1)(a) as in relation to an order under Article 164.

(4) If on the application of an employee an industrial tribunal is satisfied that the employer has not complied with the terms of an order for the continuation of a contract of employment paragraph (5) or (6) applies.

(5) Where the non-compliance consists of a failure to pay an amount by way of pay specified in the order—

- (a) the tribunal shall determine the amount owed by the employer on the date of the determination, and

- (b) if on that date the tribunal also determines the employee's complaint that he has been unfairly dismissed, it shall specify that amount separately from any other sum awarded to the employee.
- (6) In any other case, the tribunal shall order the employer to pay the employee such compensation as the tribunal considers just and equitable in all the circumstances having regard to any loss suffered by the employee in consequence of the non-compliance.