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## SCHEDULES

### SCHEDULE 1

#### RE-ENACTED PROVISIONS OF INDUSTRIAL RELATIONS ACT 1971

#### PART II

##### UNFAIR DISMISSAL

##### *Fair and unfair dismissal*

##### *[Section 24]*

- 6 (1) In determining for the purposes of this Schedule whether the dismissal of an employee was fair or unfair, it shall be for the employer to show—
- (a) what was the reason (or, if there was more than one, the principal reason) for the dismissal, and
  - (b) that it was a reason falling within sub-paragraph (2) below, or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which that employee held.
- (2) In sub-paragraph (1)(b) above the reference to a reason falling within this sub-paragraph is a reference to a reason which—
- (a) related to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do, or
  - (b) related to the conduct of the employee, or
  - (c) was that the employee was redundant, or
  - (d) was that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.
- (3) Where the employer has fulfilled the requirements of sub-paragraph (1) above, then, subject to paragraphs 7 and 8 below, the question whether the dismissal was fair or unfair shall be determined in accordance with the following provisions of this paragraph.
- (4) For the purposes of this Schedule the dismissal of an employee by an employer shall be regarded as having been unfair if the reason for it (or, if more than one, the principal reason) was that the employee—
- (a) was, or proposed to become, a member of an independent trade union;
  - (b) had taken, or proposed to take, part at any appropriate time in the activities of an independent trade union ; or
  - (c) had refused, or proposed to refuse, to become or remain a member of a trade union which was not an independent trade union.

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- (5) Dismissal of an employee by an employer shall be regarded as fair for the purposes of this Schedule if—
- (a) it is the practice, in accordance with a union membership agreement, for all the employees of that employer or all employees of the same class as the dismissed employee to belong to a specified independent trade union, or to one of a number of specified independent trade unions ; and
  - (b) the reason for the dismissal was that the employee was not a member of the specified union or one of the specified unions, or had refused or proposed to refuse to become or remain a member of that union or one of those unions ;
- unless the employee genuinely objects on grounds of religious belief to being a member of any trade union whatsoever or on any reasonable grounds to being a member of a particular trade union, in which case the dismissal shall be regarded as unfair.
- (6) Any reason by virtue of which a dismissal is to be regarded as unfair in consequence of sub-paragraph (4) or (5) above is hereafter in this Schedule referred to as an inadmissible reason.
- (7) Where the reason or principal reason for the dismissal of an employee was that he was redundant, but it is shown that the circumstances constituting the redundancy applied equally to one or more other employees in the same undertaking who held positions similar to that held by him and who have not been dismissed by the employer, and either—
- (a) that the reason (or, if more than one, the principal reason) for which he was selected for dismissal was an inadmissible reason ; or
  - (b) that he was selected for dismissal in contravention of a customary arrangement or agreed procedure relating to redundancy and there were no special reasons justifying a departure from that arrangement or procedure in his case,
- then, for the purposes of this Schedule the dismissal shall be regarded as unfair.
- (8) Subject to sub-paragraphs (4) to (7) above, the determination of the question whether the dismissal was fair or unfair, having regard to the reason shown by the employer, shall depend on whether the employer can satisfy the tribunal that in the circumstances (having regard to equity and the substantial merits of the case) he acted reasonably in treating it as a sufficient reason for dismissing the employee.
- (9) In this paragraph, in relation to an employee—
- (a) " capability " means capability assessed by reference to skill, aptitude, health or any other physical or mental quality ;
  - (b) " qualifications " means any degree, diploma or other academic, technical or professional qualification relevant to the position which the employee held ; and
  - (c) any reference to redundancy or to being redundant shall be construed as a reference to the existence of one or other of the facts specified in paragraphs (a) and (b) of section 1(2) of the Redundancy Payments Act 1965.