



Employment Protection (Consolidation) Act 1978

1978 CHAPTER 44

PART II

RIGHTS ARISING IN COURSE OF EMPLOYMENT

Trade union membership and activities

23 Trade union membership and activities

- (1) Subject to the following provisions of this section, every employee shall have the right not to have action (short of dismissal) taken against him as an individual by his employer for the purpose of—
- preventing or deterring him from being or seeking to become a member of an independent trade union, or penalising him for doing so; or
 - preventing or deterring him from taking part in the activities of an independent trade union at any appropriate time, or penalising him for doing so; or
 - compelling him to be or become a member of a trade union which is not independent.
- (2) In this section "appropriate time", in relation to an employee taking part in any activities of a trade union, means time which either—
- is outside his working hours, or
 - is a time within his working hours at which, in accordance with arrangements agreed with, or consent given by his employer, it is permissible for him to take part in those activities;
- and in this subsection "working hours", in relation to an employee, means any time when, in accordance with his contract of employment, he is required to be at work.
- (3) The provisions of subsection (4) shall have effect in relation to an employee—

- (a) of the same class as employees for whom it is the practice in accordance with a union membership agreement to belong to a specified independent trade union or to one of a number of specified independent trade unions; or
 - (b) not of the same class as described in paragraph (a) but of the same grade or category as such employees as are referred to in that paragraph.
- (4) In relation to such an employee the right conferred by subsection (1)(b) in relation to the activities of an independent trade union shall extend to activities on the employer's premises only if that union is a specified union.
- (5) For the purposes of this section a trade union—
- (a) shall be taken to be specified for the purposes of, or in relation to, a union membership agreement if it is specified in the agreement or is accepted by the parties to the agreement as being the equivalent of a union so specified; and
 - (b) shall also be treated as so specified if—
 - (i) the Advisory, Conciliation and Arbitration Service has made a recommendation for recognition of that union covering the employee in question which is operative within the meaning of section 15 of the Employment Protection Act 1975 ; or
 - (ii) the union has referred a recognition issue covering that employee to the Advisory, Conciliation and Arbitration Service under section 11 of the said Act of 1975 and the Service has not declined to proceed on the reference under section 12 of that Act, the union has not withdrawn the reference, or from the reference, and the issue has not been settled or reported on under that section.
- (6) An employee who genuinely objects on grounds of religious belief to being a member of any trade union whatsoever shall have the right not to have action (short of dismissal) taken against him by his employer for the purpose of compelling him to belong to a trade union.
- (7) In this section, unless the context otherwise requires, references to a trade union include references to a branch or section of a trade union.

24 Complaint to industrial tribunal

- (1) An employee may present a complaint to an industrial tribunal on the ground that action has been taken against him by his employer in contravention of section 23.
- (2) An industrial tribunal shall not entertain a complaint under subsection (1) unless it is presented to the tribunal before the end of the period of three months beginning with the date on which there occurred the action complained of, or where that action is part of a series of similar actions, the last of those actions, or 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 within the period of three months.
- (3) Where the tribunal finds the complaint well-founded it shall make a declaration to that effect and may make an award of compensation, calculated in accordance with section 26, to be paid by the employer to the employee in respect of the action complained of.

25 Supplementary provisions relating to complaints under s.24

- (1) On a complaint under section 24 it shall be for the employer to show—
 - (a) the purpose for which action was taken against the complainant; and
 - (b) that the purpose was not such a purpose as is referred to in section 23(1)(a) to (c) or (6).
- (2) In determining on a complaint under section 24, any question as to whether action was taken by the complainant's employer or the purpose for which it was taken, no account shall be taken of any pressure which, by calling, organising, procuring or financing a strike or other industrial action, or threatening to do so, was exercised on the employer to take the action complained of, and that question shall be determined as if no such pressure had been exercised.

26 Assessment of compensation on a complaint under s. 24

- (1) The amount of the compensation awarded by a tribunal on a complaint under section 24 shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the infringement of the complainant's right under section 23 by the employer's action complained of and to any loss sustained by the complainant which is attributable to that action.
- (2) The said loss shall be taken to include—
 - (a) any expenses reasonably incurred by the complainant in consequence of the action complained of, and
 - (b) loss of any benefit which he might reasonably be expected to have had but for that action.
- (3) In ascertaining the said loss 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 England and Wales or of Scotland, as the case may be.
- (4) In determining the amount of compensation to be awarded under subsection (1), no account shall be taken of any pressure as is referred to in section 25(2), and that question shall be determined as if no such pressure had been exercised.
- (5) Where the tribunal finds that the action complained of was to any extent caused or contributed to by any action of the complainant it shall reduce the amount of the compensation by such proportion as it considers just and equitable having regard to that finding.