



Employment Act 1988

1988 CHAPTER 19

PART I

TRADE UNIONS

Rights of trade union members

3 Right not to be unjustifiably disciplined

- (1) An individual who is or has at any time been a member of a trade union shall have the right not to be unjustifiably disciplined by that union.
- (2) For the purposes of this section and sections 4 and 5 below an individual who is disciplined by a trade union is unjustifiably disciplined if the actual or supposed conduct which constitutes the reason, or one of the reasons, for disciplining him is—
 - (a) conduct falling within subsection (3) below; or
 - (b) something which is believed by the union to amount to any such conduct.
- (3) Conduct by an individual falls within this subsection if—
 - (a) it consists in a failure to participate in or support any strike or other industrial action (whether by members of the trade union in question or by others) or indicates opposition to, or a lack of support for, any such strike or industrial action;
 - (b) it consists in a failure to contravene, for any purpose connected with any such strike or other industrial action, any requirement imposed on that individual by or under a contract of employment or any other agreement between that individual and a person for whom he works or normally works;
 - (c) it consists in the making (whether by the bringing of proceedings or otherwise) of any assertion that the union, any official or representative of the union or any trustee of any of the union's property has contravened, or is proposing to contravene, any requirement which is, or is thought to be, imposed by or under the rules of the union or any other agreement or by or under any enactment or rule of law;

Status: This is the original version (as it was originally enacted).

- (d) it consists in encouraging or assisting any person to perform an obligation imposed on that person by a contract of employment or any other agreement between that person and a person for whom he works or normally works or to make or to attempt to vindicate any such assertion as is mentioned in paragraph (c) above;
- (e) it involves the Commissioner or the Certification Officer being consulted or asked to provide advice or assistance with respect to any matter whatever or involves any other person being consulted or asked to provide advice or assistance with respect to a matter which forms, or might form, the subject matter of any such assertion as is mentioned in paragraph (c) above;
- (f) it consists in a contravention of any requirement imposed by or in consequence of any determination constituting an infringement of the right under this section of that individual or of any other individual; or
- (g) it consists in proposing to engage in conduct falling within any of paragraphs (a) to (f) above or in doing anything preparatory or incidental to engaging in any such conduct;

but an act, omission or statement by any individual does not fall within this subsection by reason of its being comprised in conduct falling within any of paragraphs (a) to (g) above if it is shown that that act, omission or statement is one in respect of which individuals would be disciplined by the union irrespective of whether their acts, omissions or statements were in connection with conduct falling within any of paragraphs (a) to (f) above.

- (4) An individual who has been disciplined by a trade union shall not be treated for the purposes of this section and sections 4 and 5 below as having been unjustifiably disciplined if it is shown—
 - (a) that the reason or one of the reasons for disciplining him was that he made any such assertion as is mentioned in subsection (3)(c) above or encouraged or assisted any other person to make or to attempt to vindicate any such assertion;
 - (b) that that assertion was false and that, in making it or, as the case may be, in encouraging or assisting any other person to make or to attempt to vindicate it, that individual acted either in the belief that it was false or otherwise in bad faith; and
 - (c) that there was no other reason for disciplining him or that the only other reasons were reasons in respect of which he does not fall to be treated for those purposes as having been unjustifiably disciplined.
- (5) For the purposes of this section and sections 4 and 5 below an individual is disciplined by a trade union if a determination is made, or purportedly made, under the rules of the union or is made by an official of the union or by a number of persons including such an official—
 - (a) that that individual should be expelled from the union or from any branch or section of the union;
 - (b) that that individual should pay any sum to the union, to any branch or section of the union or to any other person whatever;
 - (c) that sums tendered by that individual in respect of any obligation to pay subscriptions or other sums to the union, or to any branch or section of the union, should be treated as unpaid or as paid for a different purpose;
 - (d) that that individual should be deprived (whether indefinitely or for a specified period and whether in all circumstances or only in particular circumstances) of, or of access to, any of the benefits, services or facilities which would

- otherwise be provided or made available to him by virtue of his membership of the union, or of any branch or section of the union;
- (e) that another trade union, or a branch or section of another trade union, should be encouraged or advised not to accept that individual as a member; or
 - (f) that that individual should be subjected to any other detriment.
- (6) In this section—
- “enactment” includes an enactment contained in this Act or in any Act passed after this Act;
 - “representative”, in relation to a trade union, means any person acting or purporting to act—
 - (a) in his capacity as a member of the union; or
 - (b) on the instructions or advice of a person acting or purporting to act in that capacity or in the capacity of an official of the union.
- (7) The right conferred by this section is in addition to (and not in substitution for) any right which exists otherwise than by virtue of this section; and, without prejudice to any remedy for the infringement of any such other right and subject to subsection (8) below, the only remedies for any infringement of the right conferred by this section shall be those provided by sections 4 and 5 below.
- (8) Where a determination made in infringement of any individual’s right under this section requires the payment of any sum or the performance of any other obligation, no person shall be entitled in any proceedings to rely on that determination for the purpose of recovering that sum or of enforcing that obligation.