



Trade Union and Labour Relations (Consolidation) Act 1992

1992 CHAPTER 52

PART V

INDUSTRIAL ACTION

Loss of unfair dismissal protection

238 Dismissals in connection with other industrial action

- (1) This section applies in relation to an employee who has a right to complain of unfair dismissal (the “complainant”) and who claims to have been unfairly dismissed, where at the date of the dismissal—
 - (a) the employer was conducting or instituting a lock-out, or
 - (b) the complainant was taking part in a strike or other industrial action.
- (2) In such a case an industrial tribunal shall not determine whether the dismissal was fair or unfair unless it is shown—
 - (a) that one or more relevant employees of the same employer have not been dismissed, or
 - (b) that a relevant employee has before the expiry of the period of three months beginning with the date of his dismissal been offered re-engagement and that the complainant has not been offered re-engagement.
- (3) For this purpose “relevant employees” means—
 - (a) in relation to a lock-out, employees who were directly interested in the dispute in contemplation or furtherance of which the lock-out occurred, and
 - (b) in relation to a strike or other industrial action, those employees at the establishment of the employer at or from which the complainant works who at the date of his dismissal were taking part in the action.

Status: This is the original version (as it was originally enacted).

Nothing in section 237 (dismissal of those taking part in unofficial industrial action) affects the question who are relevant employees for the purposes of this section.

- (4) An offer of re-engagement means an offer (made either by the original employer or by a successor of that employer or an associated employer) to re-engage an employee, either in the job which he held immediately before the date of dismissal or in a different job which would be reasonably suitable in his case.
- (5) In this section “date of dismissal” means—
- (a) where the employee’s contract of employment was terminated by notice, the date on which the employer’s notice was given, and
 - (b) in any other case, the effective date of termination.