



# Trade Union Reform and Employment Rights Act 1993

## 1993 CHAPTER 19

### PART I

#### TRADE UNIONS ETC.

##### *Rights in relation to union membership*

#### **13 Action short of dismissal: non-infringing actions.**

In section 148 of the 1992 Act (consideration of complaint of action short of dismissal), after subsection (2) there shall be inserted—

“(3) In determining what was the purpose for which action was taken by the employer against the complainant in a case where—

- (a) there is evidence that the employer’s purpose was to further a change in his relationship with all or any class of his employees, and
- (b) there is also evidence that his purpose was one falling within section 146,

the tribunal shall regard the purpose mentioned in paragraph (a) (and not the purpose mentioned in paragraph (b)) as the purpose for which the employer took the action, unless it considers that the action was such as no reasonable employer would take having regard to the purpose mentioned in paragraph (a).

(4) Where the action which the tribunal determines to have been the action taken against the complainant was action taken in consequence of previous action by the employer paragraph (a) of subsection (3) is satisfied if the purpose mentioned in that paragraph was the purpose of the previous action.

(5) In subsection (3) “class”, in relation to an employer and his employees, means those employed at a particular place of work, those employees of a particular

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grade, category or description or those of a particular grade, category or description employed at a particular place of work.”.

**Modifications etc. (not altering text)**

**C1** S. 13 restricted (27.7.1993) by S.I. 1993/1908, art. 3(5).

VALID FROM 30/11/1993

**14 Right not to be excluded or expelled.**

For sections 174 to 177 of the 1992 Act (right not to be unreasonably excluded or expelled from union where employment subject to union membership agreement) and the heading immediately preceding them there shall be substituted—

*“ Right to membership of trade union*

**174 Right not to be excluded or expelled from union.**

- (1) An individual shall not be excluded or expelled from a trade union unless the exclusion or expulsion is permitted by this section.
- (2) The exclusion or expulsion of an individual from a trade union is permitted by this section if (and only if)—
  - (a) he does not satisfy, or no longer satisfies, an enforceable membership requirement contained in the rules of the union,
  - (b) he does not qualify, or no longer qualifies, for membership of the union by reason of the union operating only in a particular part or particular parts of Great Britain,
  - (c) in the case of a union whose purpose is the regulation of relations between its members and one particular employer or a number of particular employers who are associated, he is not, or is no longer, employed by that employer or one of those employers, or
  - (d) the exclusion or expulsion is entirely attributable to his conduct.
- (3) A requirement in relation to membership of a union is enforceable for the purposes of subsection (2)(a) if it restricts membership solely by reference to one or more of the following criteria—
  - (a) employment in a specified trade, industry or profession,
  - (b) occupational description (including grade, level or category of appointment), and
  - (c) possession of specified trade, industrial or professional qualifications or work experience.
- (4) For the purposes of subsection (2)(d) conduct, in relation to an individual, does not include—
  - (a) his being or ceasing to be, or having been or ceased to be—
    - (i) a member of another trade union,

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- (ii) employed by a particular employer or at a particular place, or
  - (iii) a member of a political party, or
- (b) conduct to which section 65 (conduct for which an individual may not be disciplined by a trade union) applies or would apply if the references in that section to the trade union which is relevant for the purposes of that section were references to any trade union.
- (5) An individual who claims that he has been excluded or expelled from a trade union in contravention of this section may present a complaint to an industrial tribunal.

### **175 Time limit for proceedings.**

An industrial tribunal shall not entertain a complaint under section 174 unless it is presented—

- (a) before the end of the period of six months beginning with the date of the exclusion or expulsion, or
- (b) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period, within such further period as the tribunal considers reasonable.

### **176 Remedies.**

- (1) Where the industrial tribunal finds a complaint under section 174 is well-founded, it shall make a declaration to that effect.
- (2) An individual whose complaint has been declared to be well-founded may make an application for an award of compensation to be paid to him by the union.

The application shall be made to an industrial tribunal if when it is made the applicant has been admitted or re-admitted to the union, and otherwise to the Employment Appeal Tribunal.

- (3) The application shall not be entertained if made—
  - (a) before the end of the period of four weeks beginning with the date of the declaration, or
  - (b) after the end of the period of six months beginning with that date.
- (4) The amount of compensation awarded shall, subject to the following provisions, be such as the industrial tribunal or the Employment Appeal Tribunal considers just and equitable in all the circumstances.
- (5) Where the industrial tribunal or Employment Appeal Tribunal finds that the exclusion or expulsion complained of was to any extent caused or contributed to by the action of the applicant, it shall reduce the amount of the compensation by such proportion as it considers just and equitable having regard to that finding.
- (6) The amount of compensation calculated in accordance with subsections (4) and (5) shall not exceed the aggregate of—

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- (a) an amount equal to thirty times the limit for the time being imposed by paragraph 8(1)(b) of Schedule 14 to the <sup>M1</sup>Employment Protection (Consolidation) Act 1978 (maximum amount of a week's pay for basic award in unfair dismissal cases), and
  - (b) an amount equal to the limit for the time being imposed by section 75 of that Act (maximum compensatory award in such cases);
- and, in the case of an award by the Employment Appeal Tribunal, shall not be less than £5,000.
- (7) The Secretary of State may by order increase the sum specified in subsection (6).
- (8) An order under subsection (7)—
- (a) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament, and
  - (b) may contain such incidental, supplementary or transitional provisions as appear to the Secretary of State to be necessary or expedient.

### **177 Interpretation and other supplementary provisions.**

- (1) For the purposes of section 174—
- (a) trade union does not include an organisation falling within paragraph (b) of section 1,
  - (b) conduct includes statements, acts and omissions, and
  - (c) employment includes any relationship whereby an individual personally does work or performs services for another person (related expressions being construed accordingly).
- (2) For the purposes of sections 174 to 176—
- (a) if an individual's application for membership of a trade union is neither granted nor rejected before the end of the period within which it might reasonably have been expected to be granted if it was to be granted, he shall be treated as having been excluded from the union on the last day of that period, and
  - (b) an individual who under the rules of a trade union ceases to be a member of the union on the happening of an event specified in the rules shall be treated as having been expelled from the union.
- (3) The remedy of an individual for infringement of the rights conferred by section 174 is by way of a complaint to an industrial tribunal in accordance with that section, sections 175 and 176 and this section, and not otherwise.
- (4) Where a complaint relating to an expulsion which is presented under section 174 is declared to be well-founded, no complaint in respect of the expulsion shall be presented or proceeded with under section 66 (complaint of infringement of right not to be unjustifiably disciplined).
- (5) The rights conferred by section 174 are in addition to, and not in substitution for, any right which exists apart from that section; and, subject

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to subsection (4), nothing in that section, section 175 or 176 or this section affects any remedy for infringement of any such right.”.

#### Marginal Citations

M1 1978 c. 44.

## 15 Right not to suffer deduction of unauthorised or excessive subscriptions.

For section 68 of the 1992 Act (right to require employer to stop deduction of union dues on termination of membership) and the heading immediately preceding it there shall be substituted—

*“ Right not to suffer deduction of unauthorised or excessive union subscriptions*

### **68 Right not to suffer deduction of unauthorised or excessive subscriptions.**

- (1) Where arrangements (subscription deduction arrangements) exist between the employer of a worker and a trade union relating to the making from workers' wages of deductions representing payments to the union in respect of the workers' membership of the union (subscription deductions), the employer shall ensure—
  - (a) that no subscription deduction is made from wages payable to the worker on any day (the relevant day) unless it is an authorised deduction, and
  - (b) that the amount of any subscription deduction which is so made does not exceed the permitted amount.
- (2) For the purposes of subsection (1)(a) a subscription deduction is an authorised deduction in relation to the relevant day if—
  - (a) a document containing the worker's authorisation of the making from his wages of subscription deductions has been signed and dated by the worker, and
  - (b) the authorisation is current on that day.
- (3) For the purposes of subsection (2)(b) an authorisation is current on the relevant day if that day falls within the period of three years beginning with the day on which the worker signs and dates the document containing the authorisation and subsection (4) does not apply.
- (4) This subsection applies if a document containing the worker's withdrawal of the authorisation has been received by the employer in time for it to be reasonably practicable for him to secure that no subscription deduction is made from wages payable to the worker on the relevant day.
- (5) For the purposes of subsection (1)(b) the permitted amount in relation to the relevant day is—
  - (a) the amount of the subscription deduction which falls to be made from wages payable to the worker on that day in accordance with the subscription deduction arrangements, or

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- (b) if there is a relevant increase in the amount of subscription deductions and appropriate notice has not been given by the employer to the worker at least one month before that day, the amount referred to in paragraph (a) less the amount of the increase.
- (6) So much of the increase referred to in subsection (5)(b) is relevant as is not attributable solely to an increase in the wages payable on the relevant day.
- (7) In subsection (5)(b) appropriate notice means, subject to subsection (8) below, notice in writing stating—
  - (a) the amount of the increase and the increased amount of the subscription deductions, and
  - (b) that the worker may at any time withdraw his authorisation of the making of subscription deductions by giving notice in writing to the employer.
- (8) Where the relevant increase is attributable to an increase in any percentage by reference to which the worker's subscription deductions are calculated, subsection (7) above shall have effect with the substitution, in paragraph (a), for the reference to the amount of the increase and the increased amount of the deductions of a reference to the percentage before and the percentage after the increase.
- (9) A worker's authorisation of the making of subscription deductions from his wages shall not give rise to any obligation on the part of the employer to the worker to maintain or continue to maintain subscription deduction arrangements.
- (10) Where arrangements, whether included in subscription deduction arrangements or not, exist between the parties to subscription deduction arrangements for the making from workers' wages of deductions representing payments to the union which are additional to subscription deductions, the amount of the deductions representing such additional payments shall be treated for the purposes of this section (where they would otherwise not be so treated) as part of the subscription deductions.
- (11) In this section and section 68A employer, wages and worker have the same meanings as in Part I of the <sup>M2</sup>Wages Act 1986.

### **68A Complaint of infringement of rights.**

- (1) A worker may present a complaint to an industrial tribunal that his employer has made a deduction from his wages in contravention of section 68—
  - (a) within the period of three months beginning with the date of the payment of the wages from which the deduction, or (if the complaint relates to more than one deduction) the last of the deductions, was made, or
  - (b) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within that period, within such further period as the tribunal considers reasonable.
- (2) Where a tribunal finds that a complaint under this section is well-founded, it shall make a declaration to that effect and shall order the employer to pay to the worker—

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- (a) in the case of a contravention of paragraph (a) of subsection (1) of section 68, the whole amount of the deduction, and
  - (b) in the case of a contravention of paragraph (b) of that subsection, the amount by which the deduction exceeded the amount permitted to be deducted by that paragraph,
- less any such part of the amount as has already been paid to the worker by the employer.
- (3) Where the making of a deduction from the wages of a worker both contravenes section 68(1) and involves one or more of the contraventions specified in subsection (4) of this section, the aggregate amount which may be ordered by an industrial tribunal or court (whether on the same occasion or on different occasions) to be paid in respect of the contraventions shall not exceed the amount, or (where different amounts may be ordered to be paid in respect of different contraventions) the greatest amount, which may be ordered to be paid in respect of any one of them.
- (4) The contraventions referred to in subsection (3) are—
- (a) a contravention of the requirement not to make a deduction without having given the particulars required by section 8 (itemised pay statements) or 9(1) (standing statements of fixed deductions) of the <sup>M3</sup>Employment Protection (Consolidation) Act 1978,
  - (b) a contravention of section 1(1) of the <sup>M4</sup>Wages Act 1986 (requirement not to make unauthorised deductions), and
  - (c) a contravention of section 86(1) or 90(1) of this Act (requirements not to make deductions of political fund contributions in certain circumstances).”.

#### Marginal Citations

- M2 1986 c. 48.
- M3 1978 c. 44.
- M4 1986 c. 48.

## 16 Extension of right not to be unjustifiably disciplined.

- (1) In section 65(2) of the 1992 Act (conduct for which an individual may not be disciplined by a trade union), after paragraph (e) there shall be inserted the following paragraphs—
- “(f) failing to agree, or withdrawing agreement, to the making from his wages (in accordance with arrangements between his employer and the union) of deductions representing payments to the union in respect of his membership,
  - (g) resigning or proposing to resign from the union or from another union, becoming or proposing to become a member of another union, refusing to become a member of another union, or being a member of another union,
  - (h) working with, or proposing to work with, individuals who are not members of the union or who are or are not members of another union,

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- (i) working for, or proposing to work for, an employer who employs or who has employed individuals who are not members of the union or who are or are not members of another union, or
  - (j) requiring the union to do an act which the union is, by any provision of this Act, required to do on the requisition of a member.”.
- (2) In section 65(7) of the 1992 Act (definitions), after the definition of “representative”, there shall be inserted the following—
- ““require” (on the part of an individual) includes request or apply for, and “requisition” shall be construed accordingly.”.



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