Trade Union Reform and Employment Rights Act 1993

1993 CHAPTER 19

PART I

TRADE UNIONS ETC.

Industrial action

22 Industrial action affecting supply of goods or services to an individual.

After section 235 of the 1992 Act there shall be inserted—

" Industrial action affecting supply of goods or services to an individual

235A Industrial action affecting supply of goods or services to an individual.

(1) Where an individual claims that—

(a) any trade union or other person has done, or is likely to do, an unlawful act to induce any person to take part, or to continue to take part, in industrial action, and

(b) an effect, or a likely effect, of the industrial action is or will be to—

(i) prevent or delay the supply of goods or services, or

(ii) reduce the quality of goods or services supplied,

to the individual making the claim,

he may apply to the High Court or the Court of Session for an order under this section.

(2) For the purposes of this section an act to induce any person to take part, or to continue to take part, in industrial action is unlawful—

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(a) if it is actionable in tort by any one or more persons, or

(b) (where it is or would be the act of a trade union) if it could form the basis of an application by a member under section 62.

(3) In determining whether an individual may make an application under this section it is immaterial whether or not the individual is entitled to be supplied with the goods or services in question.

(4) Where on an application under this section the court is satisfied that the claim is well-founded, it shall make such order as it considers appropriate for requiring the person by whom the act of inducement has been, or is likely to be, done to take steps for ensuring—

(a) that no, or no further, act is done by him to induce any persons to take part or to continue to take part in the industrial action, and

(b) that no person engages in conduct after the making of the order by virtue of having been induced by him before the making of the order to take part or continue to take part in the industrial action.

(5) Without prejudice to any other power of the court, the court may on an application under this section grant such interlocutory relief (in Scotland, such interim order) as it considers appropriate.

(6) For the purposes of this section an act of inducement shall be taken to be done by a trade union if it is authorised or endorsed by the union; and the provisions of section 20(2) to (4) apply for the purposes of determining whether such an act is to be taken to be so authorised or endorsed.

Those provisions also apply in relation to proceedings for failure to comply with an order under this section as they apply in relation to the original proceedings.

235B Application for assistance for proceedings under section 235A.

(1) An individual who is an actual or prospective party to proceedings to which this section applies may apply to the Commissioner for Protection Against Unlawful Industrial Action (in this section and section 235C referred to as "the Commissioner") for assistance in relation to the proceedings, and the Commissioner shall, as soon as reasonably practicable after receiving the application, consider it and decide whether and to what extent to grant it.

(2) This section applies to proceedings or prospective proceedings to the extent that they consist in, or arise out of, an application to the court under section 235A brought with respect to an act of a trade union; but the Secretary of State may by order provide that this section shall also apply to such proceedings brought with respect to an act of a person other than a trade union.

Any order shall be made by statutory instrument; and no such order shall be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

(3) The matters to which the Commissioner may have regard in determining whether, and to what extent, to grant an application under this section include—

(a) whether it is unreasonable, having regard to the complexity of the case, to expect the applicant to deal with it unaided, and

(b) whether, in the Commissioner's opinion, the case involves a matter of substantial public interest or concern.

(4) If the Commissioner decides not to provide assistance, he shall, as soon as reasonably practicable after making the decision, notify the applicant of his decision and, if he thinks fit, of the reasons for it.

(5) If the Commissioner decides to provide assistance, he shall, as soon as reasonably practicable after making the decision—

(a) notify the applicant, stating the extent of the assistance to be provided, and

(b) give him a choice, subject to any restrictions specified in the notification, as to the financial arrangements to be made in connection with the provision of the assistance.

(6) The assistance provided may include the making of arrangements for, or for the Commissioner to bear the costs of—

(a) the giving of advice or assistance by a solicitor or counsel, and

(b) the representation of the applicant, or the provision to him of such assistance as is usually given by a solicitor or counsel—

(i) in steps preliminary or incidental to the proceedings, or

(ii) in arriving at or giving effect to a compromise to avoid or bring an end to the proceedings.

235C Provisions supplementary to section 235B.

(1) Where assistance is provided under section 235B with respect to the conduct of proceedings—

(a) it shall include an agreement by the Commissioner to indemnify the applicant (subject only to any exceptions specified in the notification) in respect of any liability to pay costs or expenses arising by virtue of any judgment or order of the court in the proceedings,

(b) it may include an agreement by the Commissioner to indemnify the applicant in respect of any liability to pay costs or expenses arising by virtue of any compromise or settlement arrived at in respect of the matter in connection with which the assistance is provided in order to avoid or bring proceedings to an end, and

(c) it may include an agreement by the Commissioner to indemnify the applicant in respect of any liability to pay damages pursuant to an undertaking given on the grant of interlocutory relief (in Scotland, an interim order) to the applicant.

(2) Where the Commissioner provides assistance in relation to any proceedings, he shall do so on such terms, or make such other arrangements, as will secure that a person against whom the proceedings have been or are commenced is informed that assistance has been or is being provided by the Commissioner in relation to them.

(3) In England and Wales, the recovery of expenses incurred by the Commissioner in providing an applicant with assistance (as taxed or assessed in such manner as may be prescribed by rules of court) shall constitute a first charge for the benefit of the Commissioner—

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(a) on any costs which, by virtue of any judgment or order of the court, are payable to the applicant by any other person in respect of the matter in connection with which the assistance is provided, and

(b) on any sum payable to the applicant under a compromise or settlement arrived at in connection with that matter to avoid or bring proceedings to an end.

(4) In Scotland, the recovery of such expenses (as taxed or assessed in such manner as may be prescribed by rules of court) shall be paid to the Commissioner, in priority to other debts—

(a) out of any expenses which, by virtue of any judgment or order of the court, are payable to the applicant by any other person in respect of the matter in connection with which the assistance is provided, and

(b) out of any sum payable to the applicant under a compromise or settlement arrived at in connection with that matter to avoid or bring proceedings to an end.

(5) Where a person is receiving assistance in relation to proceedings, there shall, if he so wishes, be added after his name in the title of the proceedings the words (assisted by the Commissioner for Protection Against Unlawful Industrial Action).

(6) The addition of those words shall not be construed as making the Commissioner a party to the proceedings or as liable to be treated as a party for any purpose; and the omission of those words shall be treated as an irregularity only and shall not nullify the proceedings, any step taken in the proceedings or any document, judgment or order therein.

(7) Where the Commissioner grants an application to a person who for the purposes of the application—

(a) has made a statement which he knew to be false in a material particular, or

(b) has recklessly made a statement which was false in a material particular,

he is entitled to recover from that person any sum paid by him to that person, or to any other person, by way of assistance; but nothing in this subsection affects the power of the Commissioner to enter into any agreement he thinks fit as to the terms on which assistance is provided.

(8) Nothing in section 235B or this section affects the law and practice regulating the description of persons who may appear in, conduct, defend and address the court in any proceedings.

(9) In section 235B and this section “applicant”, in relation to assistance, means the individual on whose application the assistance is provided.”.

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