

1976 No. 322**TERMS AND CONDITIONS OF EMPLOYMENT****The Employment Appeal Tribunal Rules 1976**

<i>Made - - - -</i>	<i>2nd March 1976</i>
<i>Laid before Parliament</i>	<i>10th March 1976</i>
<i>Coming into Operation</i>	<i>30th March 1976</i>

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Schedule.

The Lord Chancellor, in exercise of the powers conferred on him by paragraph 15 of Schedule 6 to the Employment Protection Act 1975(a) and after consultation with the Lord President of the Court of Session, hereby makes the following Rules:—

Citation and commencement

1. These Rules may be cited as the Employment Appeal Tribunal Rules 1976 and shall come into operation on 30th March 1976.

Interpretation

2.—(1) The Interpretation Act 1889(b) shall apply to the interpretation of these Rules as it applies to the interpretation of an Act of Parliament.

(2) In these Rules, unless the context otherwise requires—

“the Act” means the Employment Protection Act 1975 and a section or Schedule referred to by number means the section or Schedule so numbered in the Act;

“the Appeal Tribunal” means the Employment Appeal Tribunal established under section 87 and includes the President, a judge, a member or the Registrar acting on behalf of the Tribunal;

“judge” means a judge of the Appeal Tribunal nominated under section 87(2)(a) or (b) and includes a judge nominated under paragraph 5 or 6 of Schedule 6 to act temporarily in the place of a judge of the Tribunal;

“member” means a member of the Appeal Tribunal appointed under section 87(2)(c) and includes a member appointed under paragraph 7 of Schedule 6 to act temporarily in the place of a member appointed under that section;

“the President” means the judge appointed under section 87(4) to be President of the Appeal Tribunal and includes a judge nominated under paragraph 4 of Schedule 6 to act temporarily in his place;

“the Registrar” means the person appointed to be Registrar of the Appeal Tribunal and includes any officer of the Tribunal authorised by the President to act on behalf of the Registrar;

“the Secretary of Industrial Tribunals” means the person acting for the time being as the Secretary of the Central Office of the Industrial Tribunals (England and Wales) or, as may be appropriate, of the Central Office of the Industrial Tribunals (Scotland);

“the Certification Officer” means the person appointed to be the Certification Officer under section 7(1);

“taxing officer” means any officer of the Appeal Tribunal authorised by the President to assess costs and expenses.

Institution of appeal

3.—(1) Every appeal under section 88 to the Appeal Tribunal shall be instituted by serving on the Tribunal, within 42 days of the date on which the document recording the decision or order appealed from was sent to the appellant, a notice of appeal in, or substantially in accordance with, Form 1 or 2 in the Schedule to these Rules, together with a copy of the said decision or order.

(a) 1975 c. 71.

(b) 1889 c. 63.

(2) Where it appears to the Registrar that the grounds of appeal stated in the notice do not give the Appeal Tribunal jurisdiction to entertain the appeal, he shall notify the appellant accordingly, informing him of the reasons for his opinion and, subject to paragraph (3) of this rule, no further action shall be taken on the appeal unless the President or a judge otherwise directs.

(3) Where notification has been given under paragraph (2) of this rule, the appellant may serve a fresh notice of appeal within the time remaining under paragraph (1) or within 28 days from the date on which the Registrar's notification was sent to him, whichever is the longer period.

Service of notice of appeal

4. On receipt of notice under rule 3, the Registrar shall seal the notice with the Appeal Tribunal's seal and shall serve a sealed copy on the appellant and on—

- (a) every person who, in accordance with rule 5, is a respondent to the appeal; and
- (b) the Secretary of Industrial Tribunals in the case of an appeal from an industrial tribunal; or
- (c) the Certification Officer in the case of an appeal from him to which he is not a respondent; or
- (d) the Secretary of State in the case of an appeal under the Redundancy Payments Act 1965(a) to which he is not a respondent.

Respondents to appeals

5. The respondents to an appeal shall be—

- (a) in the case of an appeal from an industrial tribunal or from a decision of the Certification Officer under section 3 of the Trade Union Act 1913(b), or section 4 of the Trade Union (Amalgamations, etc.) Act 1964(c), the parties (other than the appellant) to the proceedings before the industrial tribunal or the Certification Officer;
- (b) in the case of an appeal against a decision of the Certification Officer under section 4 or 5 of the Trade Union Act 1913, section 8 of the Trade Union and Labour Relations Act 1974(d) or section 8 of the Act, that Officer.

Respondent's answer and notice of cross-appeal

6.—(1) The Registrar shall, as soon as practicable, notify every respondent of the date appointed by the Appeal Tribunal by which any answer under this rule must be delivered.

(2) A respondent who wishes to resist an appeal shall, within the time appointed under paragraph (1) of this rule, deliver to the Appeal Tribunal an answer in writing in, or substantially in accordance with, Form 3 in the Schedule to these Rules, setting out the grounds on which he relies, so, however, that it shall be sufficient for a respondent to an appeal referred to in rule 5(a) who wishes to rely on any ground which is the same as a ground relied on by the industrial tribunal or the Certification Officer for making the decision or order appealed from to state that fact in his answer.

(a) 1965 c. 62.

(c) 1964 c. 24.

(b) 2 & 3 Geo. 5. c. 30.

(d) 1974 c. 52.

(3) A respondent who wishes to cross-appeal may do so by including in his answer a statement of the grounds of his cross-appeal, and in that event an appellant who wishes to resist the cross-appeal shall, within a time to be appointed by the Appeal Tribunal, deliver to the Tribunal a reply in writing setting out the grounds on which he relies.

(4) The Registrar shall serve a copy of every answer and reply to a cross-appeal on every party other than the party by whom it was delivered.

(5) Where the respondent does not wish to resist an appeal, the parties may deliver to the Appeal Tribunal an agreed draft of an order allowing the appeal and the Tribunal may, if it thinks it right to do so, make an order allowing the appeal in the terms agreed.

Disposal of appeal

7.—(1) The Registrar shall, as soon as practicable, give notice of the arrangements made by the Appeal Tribunal for hearing the appeal to—

- (a) every party to the proceedings; and
- (b) the Secretary of Industrial Tribunals in the case of an appeal from an industrial tribunal; or
- (c) the Certification Officer in the case of an appeal from him to which he is not a respondent; or
- (d) the Secretary of State in the case of an appeal under the Redundancy Payments Act 1965 to which he is not a respondent.

(2) Any such notice shall state the date appointed by the Appeal Tribunal by which any interlocutory application must be made.

Joinder of parties

8. The Appeal Tribunal may, on the application of any person or of its own motion, direct that any person not already a party to the proceedings be added as a party, or that any party to proceedings shall cease to be a party, and in either case may give such consequential directions as it considers necessary.

Interlocutory applications

9.—(1) An interlocutory application may be made to the Appeal Tribunal by giving notice in writing specifying the direction or order sought.

(2) On receipt of a notice under paragraph (1) of this rule, the Registrar shall serve a copy on every other party to the proceedings who appears to him to be concerned in the matter to which the notice relates and shall notify the applicant and every such party of the arrangements made by the Appeal Tribunal for disposing of the application.

Disposal of interlocutory applications

10. Except where the President or a judge, whether generally or in any particular case, otherwise directs, every interlocutory application shall be considered by a judge who may—

- (a) dispose of it himself; or
- (b) refer it in whole or in part to the Appeal Tribunal as required to be constituted by paragraph 14 of Schedule 6; or
- (c) refer it in whole or in part to the Registrar.

Appeals from Registrar

11.—(1) Where an application is disposed of by the Registrar in pursuance of rule 10, any party aggrieved by his decision may appeal to a judge and in that case the judge may determine the appeal himself or refer it in whole or in part to the Appeal Tribunal as required to be constituted by paragraph 14 of Schedule 6.

(2) Notice of appeal under paragraph (1) of this rule may be given to the Appeal Tribunal, either orally or in writing, within three days of the decision appealed from and the Registrar shall notify every other party who appears to him to be concerned in the appeal and shall inform every such party and the appellant of the arrangements made by the Appeal Tribunal for disposing of the appeal.

Hearing of interlocutory applications

12. The Appeal Tribunal may sit either in private or in public for the hearing of any interlocutory application.

Appointment for directions

13.—(1) Where it appears to the Appeal Tribunal that the future conduct of any proceedings would thereby be facilitated, the Tribunal may (either of its own motion or on application) at any stage of the proceedings appoint a date for the giving of directions as to their future conduct and thereupon the following provisions of this rule shall apply.

(2) The Registrar shall give to every party to the proceedings notice of the date appointed under paragraph (1) of this rule and any party applying for directions shall, if practicable, before that date give to the Appeal Tribunal particulars of any directions for which he asks.

(3) The Registrar shall take such steps as may be practicable to inform every party of any directions applied for by any other party.

(4) On the date appointed under paragraph (1) of this rule, the Appeal Tribunal shall consider every application for directions made by any party and any written representations relating to the application submitted to the Tribunal and shall give such directions as it thinks fit for the purpose of securing the just, expeditious and economical disposal of the proceedings, including, where appropriate, directions in pursuance of rule 23, for the purpose of ensuring that the parties are enabled to avail themselves of opportunities for conciliation.

(5) Without prejudice to the generality of paragraph (4) of this rule, the Appeal Tribunal may give such directions as it thinks fit as to—

- (a) the amendment of any notice, answer or other document;
- (b) the admission of any facts or documents;
- (c) the admission in evidence of any documents;
- (d) the mode in which evidence is to be given at the hearing;
- (e) the consolidation of the proceedings with any other proceedings pending before the Tribunal;
- (f) the place and date of the hearing.

(6) An application for further directions or for the variation of any directions already given may be made in accordance with rule 9.

Appeal Tribunal's power to give directions

14. The Appeal Tribunal may of its own motion, at any stage of any proceedings, give any party directions as to any steps to be taken by him in relation to the proceedings.

Default by parties

15. If a respondent to any proceedings fails to deliver an answer within the time appointed under these Rules, or if any party fails to comply with an order or direction of the Appeal Tribunal, the Tribunal may order that he be debarred from taking any further part in the proceedings, or may make such other order as it thinks just.

Attendance of witnesses and production of documents

16.—(1) The Appeal Tribunal may, on the application of any party, order any person to attend before the Tribunal as a witness or to produce any document.

(2) No person to whom an order is directed under paragraph (1) of this rule shall be treated as having failed to obey that order unless at the time at which the order was served on him there was tendered to him a sufficient sum of money to cover his costs of attending before the Appeal Tribunal.

Oaths

17. The Appeal Tribunal may, either of its own motion or on application, require any evidence to be given on oath.

Oral hearings

18.—(1) Subject to paragraph (2) of this rule, an oral hearing at which any proceedings before the Appeal Tribunal are finally disposed of shall take place in public before such members of the Tribunal as (subject to paragraph 14 of Schedule 6) the President may nominate for the purpose.

(2) The Appeal Tribunal may sit in private to hear evidence which in the opinion of the Tribunal—

- (a) relates to matters of such a nature that it would be against the interests of national security to allow the evidence to be given in public; or
- (b) is likely to consist (wholly or in part) of information which—
 - (i) the person giving the evidence could not disclose without contravening a prohibition imposed by or under an enactment; or
 - (ii) has been communicated to that person in confidence or which he has otherwise obtained in consequence of the confidence reposed in him by another person; or
 - (iii) is information the disclosure of which would cause substantial injury to an undertaking of the person giving the evidence or any undertaking in which he works for reasons other than its effect on any negotiations with respect to any of the matters mentioned in section 29(1) of the Trade Union and Labour Relations Act 1974.

Drawing up, reasons for, and enforcement of orders

19.—(1) Every order of the Appeal Tribunal shall be drawn up by the Registrar and a copy, sealed with the seal of the Tribunal, shall be served by the Registrar on every party to the proceedings to which it relates and—

(a) in the case of an order disposing of an appeal from an industrial tribunal, on the Secretary of Industrial Tribunals; or

(b) in the case of an order disposing of an appeal from the Certification Officer to which he is not a respondent on that Officer.

(2) The Appeal Tribunal shall, on the application of any party made within 14 days after the making of an order finally disposing of any proceedings, give its reasons in writing for the order unless it was made after the delivery of a reasoned judgment.

(3) Subject to any order made by the Court of Appeal or Court of Session and to any directions given by the Appeal Tribunal, an appeal from the Tribunal shall not suspend the enforcement of any order made by it.

Review of decisions and correction of errors

20.—(1) The Appeal Tribunal may, either of its own motion or on application, review any order made by it and may, on such review, revoke or vary that order on the grounds that—

(a) the order was wrongly made as the result of an error on the part of the Tribunal or its staff;

(b) a party did not receive proper notice of the proceedings leading to the order; or

(c) the interests of justice require such review.

(2) An application under paragraph (1) above shall be made within 14 days of the date of the order.

(3) A clerical mistake in any order arising from an accidental slip or omission may at any time be corrected by, or on the authority of, a judge or member.

Costs

21.—(1) Where it appears to the Appeal Tribunal that any proceedings were unnecessary, improper or vexatious or that there has been unreasonable delay or other unreasonable conduct in bringing or conducting the proceedings, the Tribunal may order the party at fault to pay to any other party the whole or such part as it thinks fit of the costs or expenses incurred by that other party in connection with the proceedings.

(2) Where an order is made under paragraph (1) of this rule, the Appeal Tribunal may assess the sum to be paid, or may direct that it be assessed by the taxing officer, from whose decision an appeal shall lie to a judge.

(3) Rules 11 and 12 shall apply to an appeal under paragraph (2) of this rule as they apply to an appeal from the Registrar.

Service of documents

22.—(1) Any notice or other document required or authorised by these Rules to be served on, or delivered to, any person may be sent to him by post to his address for service or, where no address for service has been given, to his registered office, principal place of business, head or main office or last known address, as the case may be, and any notice or other document required or authorised to be served on, or delivered to, the Appeal Tribunal may be sent by post or delivered to the Registrar—

- (a) in the case of a notice instituting proceedings, at the central office or any other office of the Tribunal; or
- (b) in any other case, at the office of the Tribunal in which the proceedings in question are being dealt with in accordance with rule 25(2).
- (2) Any notice or other document required or authorised to be served on, or delivered to, an unincorporated body may be sent to its secretary, manager or other similar officer.
- (3) Every document served by post shall be assumed, in the absence of evidence to the contrary, to have been delivered in the normal course of post.
- (4) The Appeal Tribunal may inform itself in such manner as it thinks fit of the posting of any document by an officer of the Tribunal.
- (5) The Appeal Tribunal may direct that service of any document be dispensed with or be effected otherwise than in the manner prescribed by these Rules.

Conciliation

23. Where at any stage of any proceedings it appears to the Appeal Tribunal that there is a reasonable prospect of agreement being reached between the parties, the Tribunal may take such steps as it thinks fit to enable the parties to avail themselves of any opportunities for conciliation, whether by adjourning any proceedings or otherwise.

Time

24.—(1) The time prescribed by these Rules or by order of the Appeal Tribunal for doing any act may be extended (whether it has already expired or not) or abridged, and the date appointed for any purpose may be altered, by order of the Tribunal.

(2) Where the last day for the doing of any act falls on a day on which the appropriate office of the Tribunal is closed and by reason thereof the act cannot be done on that day, it may be done on the next day on which that office is open.

Tribunal offices and allocation of business

25.—(1) The central office and any other office of the Appeal Tribunal shall be open at such times as the President may direct.

(2) Any proceedings before the Tribunal may be dealt with at the central office or at such other office as the President may direct.

Non-compliance with, and waiver of, rules

26.—(1) Failure to comply with any requirements of these Rules shall not invalidate any proceedings unless the Appeal Tribunal otherwise directs.

(2) The Tribunal may, if it considers that to do so would lead to the more expeditious or economical disposal of any proceedings or would otherwise be desirable in the interests of justice, dispense with the taking of any step required or authorised by these Rules, or may direct that any such step be taken in some manner other than that prescribed by these Rules.

Dated 2nd March 1976.

Elwyn-Jones, C.

SCHEDULE

Rule 3

FORM 1

Notice of Appeal from Decision of Industrial Tribunal

1. The appellant is (*name and address of appellant*).
2. Any communication relating to this appeal may be sent to the appellant at (*appellant's address for service, including telephone number if any*).
3. The appellant appeals from
(*here give particulars of the decision of the industrial tribunal from which the appeal is brought*)
on the following question of law:
(*here set out the question of law on which the appeal is brought*).
4. The parties to the proceedings before the industrial tribunal, other than the appellant, were (*names and addresses of other parties to the proceedings resulting in decision appealed from*).
5. The appellant's grounds of appeal are:
(*here state the grounds of appeal*).
6. A copy of the industrial tribunal's decision is attached to this notice.

Date

Signed

Rule 3

FORM 2

Notice of Appeal from Decision of Certification Officer

1. The appellant is (*name and address of appellant*).
2. Any communication relating to this appeal may be sent to the appellant at (*appellant's address for service, including telephone number if any*).
3. The appellant appeals from:
(*here give particulars of the order or decision of the Certification Officer from which the appeal is brought*).
4. The appellant's grounds of appeal are:
(*here state the grounds of appeal*).
5. A copy of the Certification Officer's decision is attached to this notice.

Date

Signed

FORM 3

Rule 6

Respondent's Answer

1. The respondent is (*name and address of respondent*).
2. Any communication relating to this appeal may be sent to the respondent at (*respondent's address for service, including telephone number if any*).
3. The respondent intends to resist the appeal of (*here give name of appellant*). The grounds on which the respondent will rely are [the grounds relied upon by the industrial tribunal/Certification Officer for making the decision or order appealed from] [and] [the following grounds]:
(*here set out any grounds which differ from those relied upon by the industrial tribunal or Certification Officer, as the case may be*).
4. The respondent cross-appeals from:
(*here give particulars of the decision appealed from*).
5. The respondent's grounds of appeal are:
(*here state the grounds of appeal*).

Date

Signed

EXPLANATORY NOTE

(This Note is not part of the Rules.)

These Rules prescribe the procedure relating to the institution, hearing and disposal of an appeal in the Employment Appeal Tribunal established by the Employment Protection Act 1975 to hear appeals from industrial tribunals in England, Wales and Scotland, and from the Certification Officer appointed under section 7(1) of the Act. The schedule to the Rules prescribes the forms of notices of appeal and of a respondent's answer and cross-appeal.

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