

1980 No. 2035

INDUSTRIAL TRIBUNALS**The Employment Appeal Tribunal Rules 1980***Made* - - - - 18th December 1980*Laid before Parliament* 9th January 1981*Coming into Operation* 1st February 1981**ARRANGEMENT OF RULES**

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Schedule.

The Lord Chancellor, in exercise of the powers conferred on him by paragraph 17 of Schedule 11 to the Employment Protection (Consolidation) Act 1978(a) and after consultation with the Lord President of the Court of Session, hereby makes the following Rules:—

Citation and commencement

1.—(1) These Rules may be cited as the Employment Appeal Tribunal Rules 1980 and shall come into operation on 1st February 1981.

(2) The Employment Appeal Tribunal Rules 1976(b) shall cease to have effect except in relation to appeals instituted before that date.

Interpretation

2. In these Rules, unless the context otherwise requires—

“the Act” means the Employment Protection (Consolidation) Act 1978 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 of the Employment Protection Act 1975(c) and continued in existence under section 135 of the Act 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 135(2)(a) or (b) and includes a judge nominated under paragraph 5 or 6 and a judge appointed under paragraph 8 of Schedule 11 to act temporarily in the place of a judge of the Tribunal;

“member” means a member of the Appeal Tribunal appointed under section 135(2)(c) and includes a member appointed under paragraph 7 of Schedule 11 to act temporarily in the place of a member appointed under that section;

“the President” means the judge appointed under section 135(4) to be President of the Appeal Tribunal and includes a judge nominated under paragraph 4 of Schedule 11 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) of the Employment Protection Act 1975;

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

Institution of appeal

3.—(1) Every appeal 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, 2 or 3 in the Schedule to these Rules, together with a copy of the said decision or order.

(a) 1978 c. 44.

(b) S.I. 1976/322.

(c) 1975 c. 71.

(2) Where it appears to the Registrar that the grounds of appeal stated in the notice of appeal do not give the Appeal Tribunal jurisdiction to entertain the appeal, he shall notify the appellant accordingly informing him of the reasons for the opinion and, subject to paragraphs (3) and (5) of this rule, no further action shall be taken on the appeal.

(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.

(4) Where the appellant serves a fresh notice of appeal under paragraph (3) of this rule the Registrar shall consider such fresh notice of appeal with regard to jurisdiction as though it were an original notice of appeal lodged pursuant to paragraph (1) of this rule.

(5) Where an appellant expresses dissatisfaction in writing with the reasons given by the Registrar, under paragraph (2) of this rule, for his opinion that the grounds of appeal stated in a notice of appeal do not give the Appeal Tribunal jurisdiction to entertain the appeal, the Registrar shall place the papers before the President or a judge for his direction as to whether any further action should be taken on the appeal.

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 any of his decisions; or
- (d) the Secretary of State in the case of an appeal under section 36 or Part VI of the Act or Part IV of the Employment Protection Act 1975 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^(a) or section 4 of the Trade Union (Amalgamations, etc.) Act 1964^(b), 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^(c) 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.

(a) 1913 c.30 (2 & 3 Geo. 5).

(b) 1964 c. 24.

(c) 1974 c. 52.

(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 4 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.

(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 one of his decisions; or
- (d) the Secretary of State in the case of an appeal under section 36 or Part VI of the Act or Part IV of the Employment Protection Act 1975 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.

Application under section 5(2) of the Employment Act 1980(a)

8. Every application to the Appeal Tribunal for an award of compensation for unreasonable exclusion or expulsion from a trade union shall be made in writing in or substantially in accordance with Form 5 in the Schedule to these Rules and shall be served on the Tribunal together with a copy of the decision or order declaring that the applicant's complaint against the trade union was well-founded.

9. If on receipt of an application under rule 8 it becomes clear that at the time the application was made the applicant had been admitted or re-admitted to membership of the union against which the complaint was made, the Registrar shall forward the application to the Central Office of Industrial Tribunals.

Service of application

10. On receipt of an application under rule 8, the Registrar shall seal it with the Appeal Tribunal's seal and shall serve a sealed copy on the applicant and on the respondent trade union and the Secretary of Industrial Tribunals.

Appearance by respondent trade union

11. A respondent trade union wishing to resist an application shall within 14 days of receiving the sealed copy of the application enter an appearance by serving on the Appeal Tribunal a notice of appearance in, or substantially in accordance with, Form 6 in the Schedule to these Rules and setting out the grounds on which the union relies.

12. On receipt of the notice of appearance the Registrar shall serve a copy of it on the applicant.

Disposal of application

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

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

Joinder of parties

14. 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

15.—(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

16.—(1) Every interlocutory application made to the Appeal Tribunal shall be considered in the first place by the Registrar who will have regard to the just and economical disposal of the application and to the expense which may be incurred by the parties in attending an oral hearing.

(2) Every interlocutory application shall be disposed of by the Registrar except that any matter which he thinks should properly be decided by the President or a judge shall be referred by him to the President or a judge, who may dispose of it himself or refer it in whole or in part to the Appeal Tribunal as required to be constituted by paragraph 16 of Schedule 11 or refer it back to the Registrar with such directions as he thinks fit.

Appeals from Registrar

17.—(1) Where an application is disposed of by the Registrar in pursuance of rule 16(2) 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 constituted by paragraph 16 of Schedule 11.

(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 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 Tribunal for disposing of the appeal.

Hearing of interlocutory applications

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

Appointment for direction

19.—(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 in the proceedings appoint a date for a meeting for directions as to their future conduct and thereupon the following provisions of this rule shall apply.

(2) The Registrar shall give to every party in 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 direction 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 30, 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 15.

Appeal Tribunal's power to give directions

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

Default by parties

21. If a respondent to any proceedings fails to deliver an answer or, in the case of an application made under section 5(2) of the Employment Act 1980, a notice of appearance 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

22.—(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

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

Oral hearings

24.—(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 16 of Schedule 11) the President may nominate for the purpose.

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

- (a)** relate to matters of such a nature that it would be against the interests of national security to allow the proceedings to be conducted in public; or
- (b)** in the course of which, evidence is likely to be given (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)** of 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

25.—(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 the Industrial Tribunals; or

(b) in the case of an order disposing of an appeal from the Certification Officer, 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

26.—(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 or expenses

27.—(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 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 17 and 18 shall apply to an appeal under paragraph (2) of this rule as they apply to an appeal from the Registrar.

(4) The costs of an assisted person shall be taxed in accordance with Schedule 2 to the Legal Aid Act 1974(a) by a Taxing Master of the Supreme Court.

Service of documents

28.—(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) 1974 c. 4.

- (a) in the case of a notice instituting proceedings, at the central office of any other offices 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 32(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

29. 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

30.—(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.

(3) An application for an extension of the time prescribed for the doing of an act, including the institution of an appeal under rule 3, shall be heard and determined as an interlocutory application under rule 16.

Tribunal offices and allocation of business

31.—(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

32.—(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 takings of any step required or authorised by these Rules, or may direct that any such steps be taken in some manner other than that prescribed by these Rules.

Dated 18th December 1980.

Hailsham of St. Marylebone, C.

SCHEDULE

FORM 1

Rule 3

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

FORM 2

Rule 3

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 Office's decision is attached to this notice.

Date

Signed

Rule 3

FORM 3

*Notice of Appeal from Decision of Industrial Tribunal under
Section 4(8) of the Employment Act 1980*

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*).
4. The appellant's grounds of appeal are:
(*here state the grounds of appeal*).
5. In so far as the appeal relates to the findings of fact by the industrial tribunal, the appellant states
 - (a) that the following findings of fact by the industrial tribunal were wrong:
 - (b) and that the industrial tribunal should have found the facts to be as follows.
6. A copy of the industrial tribunal decision is attached to this notice.

Date

Signed

Rule 6

FORM 4

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 the 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

Rule 8

FORM 5

*Application to the Employment Appeal Tribunal
for Compensation for Unreasonable
Exclusion or Expulsion from a Trade Union*

1. My name is

My address is

2. Any communication relating to this application may be sent to me at
(here state address for service, including telephone number if any).

3. My complaint against the (state the name and address of the trade union) was
declared to be well-founded by:
(state tribunal or court)

on
(give date of the decision or order).

4. I have not been admitted/re-admitted to membership of the above named trade
union and hereby apply for compensation on the following grounds.

Date

Signed

N.B.—A copy of the decision or order declaring the complaint against the trade union
to be well-founded must be enclosed with this application.

Rule 11

FORM 6

*Notice of Appearance
to Application to Employment Appeal Tribunal
for Compensation for Unreasonable Exclusion
or Expulsion from a Trade Union*

1. The respondent trade union is (name and address of union).

2. Any communication relating to this application may be sent to the respondent at
(respondent's address for service, including telephone number if any).

3. The respondent intends to resist the application of:
(here give name of the applicant)
the grounds on which the respondent will rely are as follows.

4. State whether or not the applicant had been admitted or re-admitted to member-
ship on or before the date of application.

Date

Signed

Position in union

EXPLANATORY NOTE

(This Note is not part of the Rules.)

These Rules replace, with some amendments, the Employment Appeal Tribunal Rules 1976 and 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 the 1975 Act and to hear applications for compensation under section 5(2) of the Employment Act 1980. The Schedule to the Rules prescribes the forms of notices of appeal, a respondent's answer and cross-appeal and an application for compensation.

The principal provisions to take account of the Employment Act 1980 are to be found in rules 8, 9, 10, 11, 12 and 13. The two other main changes occur in rules 3 and 16 in relation to institution of appeals and interlocutory applications.

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