
STATUTORY INSTRUMENTS

2003 No. 2902

The Employment (Northern Ireland) Order 2003

PART IV

DISPUTE RESOLUTION, ETC.

Statutory procedures

Procedural fairness in unfair dismissal

23.—(1) Part XI of the Employment Rights Order (unfair dismissal) shall be amended as follows.

(2) After Article 130 there shall be inserted—

“Procedural fairness

130A.—(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if—

- (a) one of the procedures set out in Part I of Schedule 1 to the Employment (Northern Ireland) Order 2003 (dismissal and disciplinary procedures) applies in relation to the dismissal,
- (b) the procedure has not been completed, and
- (c) the non-completion of the procedure is wholly or mainly attributable to failure by the employer to comply with its requirements.

(2) Subject to paragraph (1), failure by an employer to follow a procedure in relation to the dismissal of an employee shall not be regarded for the purposes of Article 130(4)(a) as by itself making the employer’s action unreasonable if he shows that he would have decided to dismiss the employee if he had followed the procedure.

(3) For the purposes of this Article, any question as to the application of a procedure set out in Part I of Schedule 1 to the Employment (Northern Ireland) Order 2003, completion of such a procedure or failure to comply with the requirements of such a procedure shall be determined by reference to regulations under Article 17 of that Order.”

(3) In Article 146 (the remedies: orders and compensation), at the end there shall be inserted—

“(5) Where—

- (a) an employee is regarded as unfairly dismissed by virtue of Article 130A(1) (whether or not his dismissal is unfair or regarded as unfair for any other reason), and

(b) an order is made in respect of the employee under Article 147,

the industrial tribunal shall, subject to paragraph (6), also make an award of four weeks' pay to be paid by the employer to the employee.

(6) An industrial tribunal shall not be required to make an award under paragraph (5) if it considers that such an award would result in injustice to the employer.”.

(4) In Article 151 (under which an award of compensation falls to be made if an employee is reinstated or re-engaged in pursuance of an order under Article 147, but the terms of the order are not fully complied with), after paragraph (2) there shall be inserted—

“(2A) There shall be deducted from any award under paragraph (1) the amount of any award made under Article 146(5) at the time of the order under Article 147.”.

(5) In Article 154 (basic award: minimum in certain cases) after paragraph (1) there shall be inserted—

“(1A) Where—

- (a) an employee is regarded as unfairly dismissed by virtue of Article 130A(1) (whether or not his dismissal is unfair or regarded as unfair for any other reason),
- (b) an award of compensation falls to be made under Article 146(4), and
- (c) the amount of the award under Article 152(1)(a), before any reduction under Article 156(3A) or (4), is less than the amount of four weeks' pay,

the industrial tribunal shall, subject to paragraph (1B), increase the award under Article 152(1)(a) to the amount of four weeks' pay.

(1B) An industrial tribunal shall not be required by paragraph (1A) to increase the amount of an award if it considers that the increase would result in injustice to the employer.”.

(6) In Article 157 (compensatory award) at the end there shall be inserted—

“(8) Where the amount of the compensatory award falls to be calculated for the purposes of an award under Article 151(3)(a), there shall be deducted from the compensatory award any award made under Article 146(5) at the time of the order under Article 147.”.