Employment Protection Act 1975

1975 CHAPTER 71

PART I

MACHINERY FOR PROMOTING THE IMPROVEMENT OF INDUSTRIAL RELATIONS

Trade union recognition

16   Application arising from failure to comply with recommendation

(1) If conciliation under section 15(3) above does not result in a settlement, the trade union which referred the complaint under that section may apply to the Central Arbitration Committee in accordance with the following provisions of this section.

(2) The application shall be in writing and in such form as the Committee may require and shall consist of—

   (a)   a complaint that the employer is not complying (within the meaning of section 15(2) above) with a recommendation of the Service; and

   (b)   a claim that in respect of one or more descriptions of employees covered by that recommendation their contracts should include the terms and conditions specified in the claim.

(3) An application under this section comprising a complaint on substantially the same grounds as those of a complaint in a previous application under this section, shall not be entertained by the Committee before the end of the period of 12 months beginning with the date on which the Committee made its award under subsection (6) below, or determined not to make such an award, on that previous application.

(4) Subject to subsection (3) above, the Committee shall proceed to hear and determine the complaint and shall make a declaration stating whether it finds the complaint well founded, wholly or in part, and stating the reasons for its finding.

(5) If the Committee finds the complaint wholly or partly well-founded, the declaration shall specify—

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    (a)   the description or descriptions of employees in relation to whom the employer has failed to comply with the recommendation; and

    (b)   the matters in relation to which the employer has failed to comply with the recommendation.

(6) If the Committee finds the complaint wholly or partly well-founded, it may, after hearing the parties, make an award that in respect of any description of employees specified in the declaration under subsection (5)(a) above the employer shall observe either—

    (a)   the terms and conditions specified in the claim by the trade union in accordance with subsection (2)(b) above; or

    (b)   other terms and conditions which the Committee considers appropriate,

being in either case terms and conditions falling within the scope of the matters specified in the declaration under subsection (5)(b) above.

(7) Any terms and conditions which by an award under subsection (6) above the employer is required to observe in respect of employees of his shall have effect as part of the contract of employment of any such employee, as from the date specified in the award, except in so far as they are superseded or varied—

    (a)   by a subsequent award under this section;

    (b)   by a collective agreement between the employer and the union for the time being representing that employee; or

    (c)   by express or implied agreement between the employee and the employer so far as that agreement effects an improvement in any terms and conditions having effect by virtue of the award.

(8) Where—

    (a)   by virtue of any enactment, other than one contained in this section, providing for minimum remuneration or terms and conditions, a contract of employment is to have effect as modified by an award, order or other instrument under that enactment, and

    (b)   by virtue of an award under this section any terms and conditions are to have effect as part of that contract,

that contract shall have effect in accordance with that award, order or other instrument or in accordance with the award under this section, whichever is the more favourable, in respect of any terms and conditions of that contract, to the employee.

(9) No award shall be made under this section in respect of any terms and conditions of employment which are fixed by virtue of any enactment.