



# Employment Act 1980

## 1980 CHAPTER 42

### *Unfair dismissal*

#### **6 Determination of fairness of dismissal**

In section 57(3) of the 1978 Act (determination of question of fairness to depend on whether employer can satisfy tribunal that he acted reasonably) for the words from "the employer can " to the end there shall be substituted the words " in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and that question shall be determined in accordance with equity and the substantial merits of the case ".

#### **7 Dismissal relating to trade union membership**

(1) In subsection (3) of section 58 of the 1978 Act (dismissal of employee for non-membership of a union to be fair where there is a union membership agreement unless he objects to membership on grounds of religious belief) for the words from " unless " to the end there shall be substituted the words " but subject to subsections (3A) to (3C) ".

(2) After subsection (3) of that section there shall be inserted—

“(3A) The dismissal of an employee in the circumstances set out in subsection (3) shall be regarded as unfair if he genuinely objects on grounds of conscience or other deeply-held personal conviction to being a member of any trade union whatsoever or of a particular trade union.

(3B) The dismissal of an employee by an employer in the circumstances set out in subsection (3) shall be regarded as unfair if the employee—

(a) has been among those employees of the employer who belong to the class to which the union membership agreement relates since before the agreement had the effect of requiring them to be or become members of a trade union, and

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*Status: This is the original version (as it was originally enacted).*

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- (b) has not at any time while the agreement had that effect been a member of a trade union in accordance with the agreement.
- (3C) Where a union membership agreement takes effect after the commencement of section 7 of the Employment Act 1980 in relation to the employees of any class of an employer, and an employee of that class is dismissed by the employer in the circumstances set out in subsection (3), the dismissal shall be regarded as unfair if—
- (a) the agreement has not been approved in relation to those employees in accordance with section 58A, or
  - (b) it has been so approved through a ballot in which the dismissed employee was entitled to vote, but he has not at any time since the day on which the ballot was held been a member of a trade union in accordance with the agreement.
- (3D) Where the employer of any employees changes in such circumstances that the employees' period of continuous employment is not broken, this section and section 58A shall have effect as if any reference to the employees of any class of title later employer included a reference to the employees of that class of the former employer.
- (3E) In determining for the purposes of subsection (3B) and of section 58A(2) whether a person belongs to a class of employees, any restriction of the class by reference to membership (or objection to membership) of a trade union shall be disregarded.”
- (3) After that section there shall be inserted—

**“58A Ballots as to union membership agreements.**

- (1) A union membership agreement shall be taken for the purposes of section 58(3C) to have been approved in relation to the employees of any class of an employer if a ballot has been held on the question whether the agreement should apply in relation to them and not less than 80 per cent, of those entitled to vote in the ballot voted in favour of the agreement's application.
- (2) The persons entitled to vote in a ballot under this section in relation to the application of a union membership agreement to the employees of any class of an employer shall be all those employees who belong to that class, and are in the employment of the employer, on the day on which the ballot is held.
- (3) A ballot under this section shall be so conducted as to secure that, so far as reasonably practicable, all those entitled to vote have an opportunity of voting, and of doing so in secret.”

**8 Exclusions of rights**

- (1) After section 64 of the 1978 Act there shall be inserted—

**“64A Extended qualifying period where no more than twenty employees.**

- (1) Subject to subsection (2), section 54 does not apply to the dismissal of an employee from any employment if—

- (a) the period (ending with the effective date of termination) during which the employee was continuously employed did not exceed two years; and
  - (b) at no time during that period did the number of employees employed by the employer for the time being of the dismissed employee, added to the number employed by any associated employer, exceed twenty.
- (2) Subsection (1) shall not apply to the dismissal of an employee by reason of any such requirement or recommendation as is referred to in section 19(1), or if it is shown that the reason (or, if more than one, the principal reason) for the dismissal was an inadmissible reason.”
- (2) In section 142(1) of the 1978 Act (which provides that section 54 does not apply in relation to a contract for a fixed term of two years or more) for the words " two years " there shall be substituted the words " one year ".

## **9 Basic award**

- (1) Section 73 of the 1978 Act (calculation of basic award for unfair dismissal) shall be amended as follows.
- (2) In subsection (1) (provisions to which calculation of basic award is subject)—
- (a) after paragraph (b) there shall be inserted—
    - “(ba) subsection (7A) (which provides for the amount of the award to be reduced where the employee has unreasonably refused an offer of reinstatement);
    - (bb) subsection (7B) (which provides for the amount of the award to be reduced because of the employee's conduct);”; and
  - (b) paragraph (c) shall cease to have effect.
- (3) In subsection (3) (calculation by reference to number of years of employment) for paragraphs (b) and (c) there shall be substituted—
- “(b) one week's pay for each year of employment not falling within paragraph (a) which consists wholly of weeks in which the employee was not below the age of twenty-two; and
  - (c) half a week's pay for each such year of employment not falling within either of paragraphs (a) and (&).”.
- (4) After subsection (7) there shall be inserted—
- “(7A) Where the tribunal finds that the complainant has unreasonably refused an offer by the employer which if accepted would have the effect of reinstating the complainant in his employment in all respects as if he had not been dismissed, the tribunal shall reduce or further reduce the amount of the basic award to such extent as it considers just and equitable having regard to that finding.
  - (7B) Where the tribunal considers that any conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given), other than conduct taken into account by virtue of subsection (7), was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent, the tribunal shall reduce or further reduce that amount accordingly.”.

(5) Subsection (8) (minimum basic award of two weeks' pay) shall cease to have effect.

## 10 Contribution in respect of compensation

After section 76 of the 1978 Act there shall be inserted—

### “76A Contribution in respect of compensation.

- (1) If in proceedings before an industrial tribunal on a complaint against an employer under section 67 the employer claims—
  - (a) that he was induced to dismiss the complainant by pressure which a trade union or other person exercised on him by calling, organising, procuring or financing a strike or other industrial action, or by threatening to do so, and
  - (b) that the pressure was exercised because the complainant was not a member of any trade union or of a particular trade union,

the employer may before the hearing of the complaint require the person who he claims exercised the pressure to be joined, or in Scotland sisted, as a party to the proceedings.
- (2) Where any person has been joined, or in Scotland sisted, as a party to proceedings before an industrial tribunal by virtue of subsection (1), and the tribunal—
  - (a) makes an award of compensation under section 68(2) or 71(2) (a) or (b), but
  - (b) finds that the claim of the employer (as specified in subsection (1)) is well-founded,

the tribunal may make an order requiring that person to pay to the employer a contribution in respect of that compensation.
- (3) The amount of any contribution ordered to be paid under this section in respect of any compensation shall be such as the tribunal considers to be just and equitable in the circumstances, and may constitute a complete indemnity.

### 76B Indemnity in respect of union membership clauses.

- (1) If in proceedings before an industrial tribunal on a complaint against an employer under section 67 the employer claims that—
  - (a) he and another person (in this section and in section 76C called " the contractor ") were parties to a contract requiring that work done by employees of his for the purposes of the contract should be done only by employees who were members of trade unions or of a particular trade union,
  - (b) the complainant could not, consistently with that requirement, be employed on that work,
  - (c) the employer had requested the contractor to consent to the employment of the complainant on that work notwithstanding that requirement,
  - (d) the contractor had withheld his consent,

- (e) apart from the work to which that requirement (or any similar requirement under other contracts to which the employer was a party) related, the employer had no work available which was suitable for the complainant to do, and
- (f) the employer would not have dismissed the complainant but for that requirement,

then, subject to subsection (2), the employer may before the hearing of the complaint require the contractor to be joined, or in Scotland sisted, as a party to the proceedings.

- (2) An employer may not by virtue of this section require more than one person to be joined, or in Scotland sisted, in proceedings in respect of any complaint.
- (3) Where a person has been joined, or in Scotland sisted, as a party to proceedings before an industrial tribunal by virtue of subsection (1), and the tribunal—
  - (a) makes an award of compensation under section 68(2) or 71(2)(a) or (b), but
  - (b) finds that the claim of the employer (as specified in subsection (1)) is well-founded,

the tribunal shall order that person to pay to the employer an amount equal to the amount of that compensation.

#### **76C Contribution in respect of indemnity under s. 76B.**

- (1) If in the proceedings referred to in section 76B the contractor claims that he was induced to withhold the consent referred to in subsection (1) of that section by pressure which a trade union or other person exercised on him by calling, organising, procuring or financing a strike or other industrial action, or by threatening to do so, the contractor may before the hearing of the complaint require the person who he claims exercised the pressure to be joined, or in Scotland sisted, as a party to the proceedings.
- (2) Where any person has been joined, or in Scotland sisted, as a party to proceedings before an industrial tribunal by virtue of subsection (1), and the tribunal—
  - (a) makes an order under section 76B, but
  - (b) finds that the claim of the contractor (as specified in subsection (1)) is well-founded,

the tribunal may make an order requiring that person to pay to the contractor a contribution in respect of the contractor's liability to the employer by virtue of the order under section 76B.

- (3) The amount of any contribution ordered to be paid under this section in respect of any such liability shall be such as the tribunal considers to be just and equitable in the circumstances, and may constitute a complete indemnity.”