



Trade Union and Labour Relations (Consolidation) Act 1992

1992 CHAPTER 52

PART I

TRADE UNIONS

CHAPTER V

RIGHTS OF TRADE UNION MEMBERS

Right not to be unjustifiably disciplined

64 Right not to be unjustifiably disciplined

- (1) An individual who is or has been a member of a trade union has the right not to be unjustifiably disciplined by the union.
- (2) For this purpose an individual is “disciplined” by a trade union if a determination is made, or purportedly made, under the rules of the union or by an official of the union or a number of persons including an official that—
 - (a) he should be expelled from the union or a branch or section of the union,
 - (b) he should pay a sum to the union, to a branch or section of the union or to any other person;
 - (c) sums tendered by him in respect of an obligation to pay subscriptions or other sums to the union, or to a branch or section of the union, should be treated as unpaid or paid for a different purpose,
 - (d) he should be deprived to any extent of, or of access to, any benefits, services or facilities which would otherwise be provided or made available to him by virtue of his membership of the union, or a branch or section of the union,
 - (e) another trade union, or a branch or section of it, should be encouraged or advised not to accept him as a member, or

Status: This is the original version (as it was originally enacted).

- (f) he should be subjected to some other detriment;
and whether an individual is “unjustifiably disciplined” shall be determined in accordance with section 65.
- (3) Where a determination made in infringement of an individual’s right under this section requires the payment of a sum or the performance of an obligation, no person is entitled in any proceedings to rely on that determination for the purpose of recovering the sum or enforcing the obligation.
- (4) Subject to that, the remedies for infringement of the right conferred by this section are as provided by sections 66 and 67, and not otherwise.
- (5) The right not to be unjustifiably disciplined is in addition to (and not in substitution for) any right which exists apart from this section; and nothing in this section or sections 65 to 67 affects any remedy for infringement of any such right.

65 Meaning of “unjustifiably disciplined”

- (1) An individual is unjustifiably disciplined by a trade union if the actual or supposed conduct which constitutes the reason, or one of the reasons, for disciplining him is—
- (a) conduct to which this section applies, or
 - (b) something which is believed by the union to amount to such conduct;
- but subject to subsection (6) (cases of bad faith in relation to assertion of wrongdoing).
- (2) This section applies to conduct which consists in—
- (a) failing to participate in or support a strike or other industrial action (whether by members of the union or by others), or indicating opposition to or a lack of support for such action;
 - (b) failing to contravene, for a purpose connected with such a strike or other industrial action, a requirement imposed on him by or under a contract of employment;
 - (c) asserting (whether by bringing proceedings or otherwise) that the union, any official or representative of it or a trustee of its property has contravened, or is proposing to contravene, a requirement which is, or is thought to be, imposed by or under the rules of the union or any other agreement or by or under any enactment (whenever passed) or any rule of law;
 - (d) encouraging or assisting a person—
 - (i) to perform an obligation imposed on him by a contract of employment, or
 - (ii) to make or attempt to vindicate any such assertion as is mentioned in paragraph (c); or
 - (e) contravening a requirement imposed by or in consequence of a determination which infringes the individual’s or another individual’s right not to be unjustifiably disciplined.
- (3) This section applies to conduct which involves the Commissioner for the Rights of Trade Union Members or the Certification Officer being consulted or asked to provide advice or assistance with respect to any matter whatever, or which involves any person being consulted or asked to provide advice or assistance with respect to a matter which forms, or might form, the subject-matter of any such assertion as is mentioned in subsection (2)(c) above.

- (4) This section also applies to conduct which consists in proposing to engage in, or doing anything preparatory or incidental to, conduct falling within subsection (2) or (3).
- (5) This section does not apply to an act, omission or statement comprised in conduct falling within subsection (2), (3) or (4) above if it is shown that the act, omission or statement is one in respect of which individuals would be disciplined by the union irrespective of whether their acts, omissions or statements were in connection with conduct within subsection (2) or (3) above.
- (6) An individual is not unjustifiably disciplined if it is shown—
- (a) that the reason for disciplining him, or one of them, is that he made such an assertion as is mentioned in subsection (2)(c), or encouraged or assisted another person to make or attempt to vindicate such an assertion,
 - (b) that the assertion was false, and
 - (c) that he made the assertion, or encouraged or assisted another person to make or attempt to vindicate it, in the belief that it was false or otherwise in bad faith, and that there was no other reason for disciplining him or that the only other reasons were reasons in respect of which he does not fall to be treated as unjustifiably disciplined.
- (7) In this section—
- “conduct” includes statements, acts and omissions;
- “contract of employment”, in relation to an individual, includes any agreement between that individual and a person for whom he works or normally works; and
- “representative”, in relation to a union, means a person acting or purporting to act—
- (a) in his capacity as a member of the union, or
 - (b) on the instructions or advice of a person acting or purporting to act in that capacity or in the capacity of an official of the union.
- (8) Where a person holds any office or employment under the Crown on terms which do not constitute a contract of employment between him and the Crown, those terms shall nevertheless be deemed to constitute such a contract for the purposes of this section.

66 Complaint of infringement of right

- (1) An individual who claims that he has been unjustifiably disciplined by a trade union may present a complaint against the union to an industrial tribunal.
- (2) The tribunal shall not entertain such a complaint unless it is presented—
- (a) before the end of the period of three months beginning with the date of the making of the determination claimed to infringe the right, or
 - (b) where the tribunal is satisfied—
 - (i) that it was not reasonably practicable for the complaint to be presented before the end of that period, or
 - (ii) that any delay in making the complaint is wholly or partly attributable to a reasonable attempt to appeal against the determination or to have it reconsidered or reviewed,
- within such further period as the tribunal considers reasonable.

- (3) Where the tribunal finds the complaint well-founded, it shall make a declaration to that effect.
- (4) Where an individual who is, or is seeking to be, in employment to which section 174 applies (employment subject to union membership agreement) is refused membership of, or is expelled from, a union in pursuance of a determination which infringes his right not to be unjustifiably disciplined, he may not present a complaint under this section but the refusal or expulsion shall be regarded as unreasonable for the purposes of that section.

67 Further remedies for infringement of right

- (1) An individual whose complaint under section 66 has been declared to be well-founded may make an application for one or both of the following—
 - (a) an award of compensation to be paid to him by the union;
 - (b) an order that the union pay him an amount equal to any sum which he has paid in pursuance of any such determination as is mentioned in section 64(2)(b).
- (2) An application under this section shall be made to the Employment Appeal Tribunal if, when it is made—
 - (a) the determination infringing the applicant's right not to be unjustifiably disciplined has not been revoked, or
 - (b) the union has failed to take all the steps necessary for securing the reversal of anything done for the purpose of giving effect to the determination;and in any other case it shall be made to an industrial tribunal.
- (3) An application under this section shall not be entertained if made before the end of the period of four weeks beginning with the date of the declaration or after the end of the period of six months beginning with that date.
- (4) Where the Employment Appeal Tribunal or industrial tribunal is satisfied that it would be required by virtue of subsection (2) to dismiss the application, it may instead transfer it to the tribunal to which it should have been made; and an application so transferred shall be proceeded with as if it had been made in accordance with that subsection when originally made.
- (5) The amount of compensation awarded shall, subject to the following provisions, be such as the Employment Appeal Tribunal or industrial tribunal considers just and equitable in all the circumstances.
- (6) In determining the amount of compensation to be awarded, the same rule shall be applied concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law in England and Wales or Scotland.
- (7) Where the Employment Appeal Tribunal or industrial tribunal finds that the infringement complained of was to any extent caused or contributed to by the action of the applicant, it shall reduce the amount of the compensation by such proportion as it considers just and equitable having regard to that finding.
- (8) The amount of compensation awarded against a trade union on an application under this section shall not exceed the aggregate of—
 - (a) an amount equal to 30 times the limit for the time being imposed by paragraph 8(1)(b) of Schedule 14 to the Employment Protection (Consolidation) Act

1978 (maximum amount of a week's pay for basic award in unfair dismissal cases), and

- (b) an amount equal to the limit for the time being imposed by section 75 of that Act (maximum compensatory award in such cases);

and, in the case of an award by the Employment Appeal Tribunal, shall not be less than the amount for the time being specified in section 156(1) of this Act (minimum basic award in certain cases of unfair dismissal).

- (9) A reduction or increase required to be made by virtue of the limits in subsection (8) shall be made before a reduction made—

- (a) by virtue of subsection (6) or (7), or
- (b) on account of sums already paid by the union by way of compensation in respect of the determination to which the application relates or in respect of anything done for the purpose of giving effect to the determination;

and, accordingly, where the case so requires, the reductions mentioned in paragraphs (a) and (b) shall be applied to the maximum or minimum award under subsection (8).