



# Trade Union and Labour Relations (Consolidation) Act 1992

## 1992 CHAPTER 52

### PART III

#### RIGHTS IN RELATION TO UNION MEMBERSHIP AND ACTIVITIES

##### *Dismissal*

#### **152 Dismissal on grounds related to union membership or activities.**

(1) For purposes of Part V of the <sup>M1</sup>Employment Protection (Consolidation) Act 1978 (unfair dismissal) the dismissal of an employee shall be regarded as unfair if the reason for it (or, if more than one, the principal reason) was that the employee—

- (a) was, or proposed to become, a member of an independent trade union, or
- (b) had taken part, or proposed to take part, in the activities of an independent trade union at an appropriate time, or
- (c) was not a member of any trade union, or of a particular trade union, or of one of a number of particular trade unions, or had refused, or proposed to refuse, to become or remain a member.

(2) In subsection (1)(b) “an appropriate time” means—

- (a) a time outside the employee’s working hours, or
- (b) a time within his working hours at which, in accordance with arrangements agreed with or consent given by his employer, it is permissible for him to take part in the activities of a trade union;

and for this purpose “working hours”, in relation to an employee, means any time when, in accordance with his contract of employment, he is required to be at work.

(3) Where the reason, or one of the reasons, for the dismissal was—

- (a) the employee’s refusal, or proposed refusal, to comply with a requirement (whether or not imposed by his contract of employment or in writing) that,

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in the event of his not being a member of any trade union, or of a particular trade union, or of one of a number of particular trade unions, he must make one or more payments, or

- (b) his objection, or proposed objection, (however expressed) to the operation of a provision (whether or not forming part of his contract of employment or in writing) under which, in the event mentioned in paragraph (a), his employer is entitled to deduct one or more sums from the remuneration payable to him in respect of his employment,

the reason shall be treated as falling within subsection (1)(c).

- (4) References in this section to being, becoming or ceasing to remain a member of a trade union include references to being, becoming or ceasing to remain a member of a particular branch or section of that union or of one of a number of particular branches or sections of that trade union; and references to taking part in the activities of a trade union shall be similarly construed.

#### Marginal Citations

M1 1978 c. 44.

### 153 Selection for redundancy on grounds related to union membership or activities.

Where the reason or principal reason for the dismissal of an employee was that he was redundant, but it is shown—

- (a) that the circumstances constituting the redundancy applied equally to one or more other employees in the same undertaking who held positions similar to that held by him and who have not been dismissed by the employer, and
- (b) that the reason (or, if more than one, the principal reason) why he was selected for dismissal was one of those specified in section 152(1),

the dismissal shall be regarded as unfair for the purposes of Part V of the <sup>M2</sup>Employment Protection (Consolidation) Act 1978 (unfair dismissal).

#### Marginal Citations

M2 1978 c. 44.

### 154 Exclusion of requirement as to qualifying period, &c.

[<sup>F1</sup>(1)] [<sup>F2</sup>Section] 64 <sup>F3</sup>. . . of the Employment Protection (Consolidation) Act 1978 (qualifying period and upper age limit for unfair dismissal protection) [<sup>F2</sup>does] not apply to the dismissal of an employee if it is shown that the reason or principal reason for the dismissal [<sup>F4</sup>or, in a redundancy case, for selecting the employee for dismissal, was an inadmissible reason.]

[<sup>F1</sup>(2) For the purposes of this section—

“inadmissible”, in relation to a reason, means that it is one of those specified in section 152(1); and

“a redundancy case” means a case where the reason or principal reason for the dismissal was that the employee was redundant but the equal application

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of the circumstances to non-dismissed employees required by section 153(a) is also shown.]

#### Textual Amendments

- F1** S. 154 renumbered as s. 154(1) and s. 154(2) inserted (30.8.1993) by virtue of 1993 c. 19, s. 49(1), **Sch. 7 para. 1(b)**; S.I. 1993/1908, art. 2(1), **Sch.1**
- F2** Words in s. 154 substituted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para.67**; S.I. 1993/1908, art. 2(1), **Sch.1**
- F3** Words in s. 154 repealed (30.8.1993) by 1993 c. 19, ss. 49(2), 51, **Sch. 8 para. 67**, **Sch.10**; S.I. 1993/1908, art. 2(1), **Sch.1**
- F4** Words in s. 154 substituted (30.8.1993) by 1993 c. 19, s. 49(1), **Sch. 7 para. 1(a)**; S.I. 1993/1908, art. 2(1), **Sch.1**

### 155 Matters to be disregarded in assessing contributory fault.

- (1) Where an industrial tribunal makes an award of compensation for unfair dismissal in a case where the dismissal is unfair by virtue of section 152 or 153, the tribunal shall disregard, in considering whether it would be just and equitable to reduce, or further reduce, the amount of any part of the award, any such conduct or action of the complainant as is specified below.
- (2) Conduct or action of the complainant shall be disregarded in so far as it constitutes a breach or proposed breach of a requirement—
  - (a) to be or become a member of any trade union or of a particular trade union or of one of a number of particular trade unions,
  - (b) to cease to be, or refrain from becoming, a member of any trade union or of a particular trade union or of one of a number of particular trade unions, or
  - (c) not to take part in the activities of any trade union or of a particular trade union or of one of a number of particular trade unions.

For the purposes of this subsection a requirement means a requirement imposed on the complainant by or under an arrangement or contract of employment or other agreement.

- (3) Conduct or action of the complainant shall be disregarded in so far as it constitutes a refusal, or proposed refusal, to comply with a requirement of a kind mentioned in section 152(3)(a) (payments in lieu of membership) or an objection, or proposed, objection, (however expressed) to the operation of a provision of a kind mentioned in section 152(3)(b) (deductions in lieu of membership).

### 156 Minimum basic award.

- (1) Where a dismissal is unfair by virtue of section 152(1) or 153, the amount of the basic award of compensation, before any reduction is made under subsection (7A), (7B) or (9) of section 73 of the <sup>M3</sup>Employment Protection (Consolidation) Act 1978, shall be not less than £2,700.
- (2) But where the dismissal is unfair by virtue of section 153, subsection (7B) of that section (reduction for contributory fault) applies in relation to so much of the basic award as is payable because of subsection (1) above.

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#### Marginal Citations

M3 1978 c. 44.

### 157 Special award of compensation.

- (1) Where an industrial tribunal makes an award of compensation for unfair dismissal in a case where the dismissal is unfair by virtue of section 152(1) or 153, then, unless—
  - (a) the complaint does not request the tribunal to make an order for reinstatement or re-engagement, or
  - (b) the case falls within section 73(2) of the Employment Protection (Consolidation) Act 1978 (cases where employer takes requisite steps to renew employment or re-engage employee),
 the award shall include a special award calculated in accordance with section 158.
- (2) Section 71(2)(b) of the Employment Protection (Consolidation) Act 1978 (additional award of compensation in case of failure to comply with an order for reinstatement or re-engagement) does not apply in a case where the dismissal is unfair by virtue of section 152(1) or 153.

### 158 Amount of special award.

- (1) Subject to the following provisions of this section, the amount of the special award shall be one week's pay multiplied by 104, or £13,400, whichever is the greater, but shall not exceed £26,800.
- (2) Where the award of compensation is made under section 71(2)(a) of the Employment Protection (Consolidation) Act 1978 (compensation where employee not reinstated or re-engaged in accordance with order) then, unless the employer satisfies the tribunal that it was not practicable to comply with the order for reinstatement or re-engagement, the amount of the special award shall be increased to one week's pay multiplied by 156, or £20,100 whichever is the greater [<sup>F5</sup>, but subject to the following provisions of this section.].
- (3) In a case where the amount of the basic award is reduced under section 73(5) of the <sup>M4</sup>Employment Protection (Consolidation) Act 1978 (reduction where complainant aged over 64), the amount of the special award shall be reduced by the same fraction.
- (4) 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) was such that it would be just and equitable to reduce or further reduce the amount of the special award to any extent, the tribunal shall reduce or further reduce that amount accordingly.
- (5) Where the tribunal finds that the complainant has unreasonably—
  - (a) prevented an order for reinstatement or re-engagement from being complied with, or
  - (b) refused an offer by the employer (made otherwise than in compliance with such an order) 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 special award to such extent as it considers just and equitable having regard to that finding.

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(6) Where the employer has engaged a permanent replacement for the complainant, the tribunal shall not take that fact into account in determining for the purposes of subsection (2) whether it was practicable to comply with an order for reinstatement or re-engagement unless the employer shows that it was not practicable for his to arrange for the complainant's work to be done without engaging a permanent replacement.

[<sup>F6</sup>(7) Schedule 14 to the <sup>M5</sup>Employment Protection (Consolidation) Act 1978 (calculation of a week's pay) shall apply for the purposes of this section with the substitution, for paragraph 7, of the following:—

For the purposes of this Part in its application to section 158 of the <sup>M6</sup>Trade Union and Labour Relations (Consolidation) Act 1992, the calculation date is—

- (a) where the dismissal was with notice, the date on which the employer's notice was given;
- (b) where paragraph (a) does not apply, the effective date of termination.]

#### Textual Amendments

**F5** Words in s. 158(2) inserted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para.68**; S.I. 1993/1098, art. 2(1), **Sch.1**

**F6** S. 158(7) inserted (30.8.1993) by 1993 c. 19, s. 49(1), **Sch. 7 para.21**; S.I. 1993/1908, art. 2(1), **Sch.1**

#### Marginal Citations

**M4** 1978 c. 44.

**M5** 1978 c. 44.

**M6** 1992 c. 52.

### 159 Power to increase sums by order.

- (1) The Secretary of State may by order made by statutory instrument increase—
  - (a) the sum mentioned in section 156(1) (minimum basic award), or
  - (b) any of the sums specified in section 158(1) or (2) (limits on amount of special award).
- (2) The order may contain such incidental, supplementary or transitional provisions as appear to the Secretary of State to be necessary or expedient.
- (3) No order under this section shall be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.

### 160 Awards against third parties.

- (1) If in proceedings before an industrial tribunal on a complaint of unfair dismissal either the employer or the complainant claims—
  - (a) that the employer was induced to dismiss the complainant by pressure which a trade union or other person exercised on the employer 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 or of one of a number of particular trade unions,

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the employer or the complainant may request the tribunal to direct that the person who he claims exercised the pressure be joined or sisted as a party to the proceedings.

- (2) The request shall be granted if it is made before the hearing of the complaint begins, but may be refused after that time; and no such request may be made after the tribunal has made an award of compensation for unfair dismissal or an order for reinstatement or re-engagement.
- (3) Where a person has been so joined or sisted as a party to the proceedings and the tribunal—
  - (a) makes an award of compensation for unfair dismissal, and
  - (b) finds that the claim mentioned in subsection (1) is well-founded,
 the tribunal may order that the compensation shall be paid by that person instead of the employer, or partly by that person and partly by the employer, as the tribunal may consider just and equitable.

#### **161 Application for interim relief.**

- (1) An employee who presents a complaint of unfair dismissal alleging that the dismissal is unfair by virtue of section 152 may apply to the tribunal for interim relief.
- (2) The tribunal shall not entertain an application for interim relief unless it is presented to the tribunal before the end of the period of seven days immediately following the effective date of termination (whether before, on or after that date).
- (3) In a case where the employee relies on section 152(1)(a) or (b) the tribunal shall not entertain an application for interim relief unless before the end of that period there is also so presented a certificate in writing signed by an authorised official of the independent trade union of which the employee was or proposed to become a member stating—
  - (a) that on the date of the dismissal the employee was or proposed to become a member of the union, and
  - (b) that there appear to be reasonable grounds for supposing that the reason for his dismissal (or, if more than one, the principal reason) was one alleged in the complaint.
- (4) An “authorised official” means an official of the trade union authorised by it to act for the purposes of this section.
- (5) A document purporting to be an authorisation of an official by a trade union to act for the purposes of this section and to be signed on behalf of the union shall be taken to be such an authorisation unless the contrary is proved; and a document purporting to be a certificate signed by such an official shall be taken to be signed by him unless the contrary is proved.
- (6) For the purposes of subsection (3) the date of dismissal shall be taken to be—
  - (a) where the employee’s contract of employment was terminated by notice (whether given by his employer or by him), the date on which the employer’s notice was given, and
  - (b) in any other case, the effective date of termination.

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## **162 Application to be promptly determined.**

- (1) An industrial tribunal shall determine an application for interim relief as soon as practicable after receiving the application and, where appropriate, the requisite certificate.
- (2) The tribunal shall give to the employer, not later than seven days before the hearing, a copy of the application and of any certificate, together with notice of the date, time and place of the hearing.
- (3) If a request under section 160 (awards against third parties) is made three days or more before the date of the hearing, the tribunal shall also give to the person to whom the request relates, as soon as reasonably practicable, a copy of the application and of any certificate, together with notice of the date, time and place of the hearing.
- (4) The tribunal shall not exercise any power it has of postponing the hearing of an application for interim relief except where it is satisfied that special circumstances exist which justify it in doing so.

## **163 Procedure on hearing of application and making of order.**

- (1) If on hearing an application for interim relief it appears to the tribunal that it is likely that on determining the complaint to which the application relates that it will find that, by virtue of section 152, the complainant has been unfairly dismissed, the following provisions apply.
- (2) The tribunal shall announce its findings and explain to both parties (if present) what powers the tribunal may exercise on the application and in what circumstances it will exercise them, and shall ask the employer (if present) whether he is willing, pending the determination or settlement of the complaint—
  - (a) to reinstate the employee, that is to say, to treat him in all respects as if he had not been dismissed, or
  - (b) if not, to re-engage him in another job on terms and conditions not less favourable than those which would have been applicable to him if he had not been dismissed.
- (3) For this purpose “terms and conditions not less favourable than those which would have been applicable to him if he had not been dismissed” means as regards seniority, pension rights and other similar rights that the period prior to the dismissal shall be regarded as continuous with his employment following the dismissal.
- (4) If the employer states that he is willing to reinstate the employee, the tribunal shall make an order to that effect.
- (5) If the employer states that he is willing to re-engage the employee in another job, and specifies the terms and conditions on which he is willing to do so, the tribunal shall ask the employee whether he is willing to accept the job on those terms and conditions; and—
  - (a) if the employee is willing to accept the job on those terms and conditions, the tribunal shall make an order to that effect, and
  - (b) if he is not, then, if the tribunal is of the opinion that the refusal is reasonable, the tribunal shall make an order for the continuation of his contract of employment, and otherwise the tribunal shall make no order.

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- (6) If on the hearing of an application for interim relief the employer fails to attend before the tribunal, or states that he is unwilling either to reinstate the employee or re-engage him as mentioned in subsection (2), the tribunal shall make an order for the continuation of the employee's contract of employment.

#### **164 Order for continuation of contract of employment.**

- (1) An order under section 163 for the continuation of a contract of employment is an order that the contract of employment continue in force—
- (a) for the purposes of pay or [<sup>F7</sup>any other benefit] derived from the employment, seniority, pension rights and other similar matters, and
  - (b) for the purpose of determining for any purpose the period for which the employee has been continuously employed,
- from the date of its termination (whether before or after the making of the order) until the determination or settlement of the complaint.
- (2) Where the tribunal makes such an order it shall specify in the order the amount which is to be paid by the employer to the employee by way of pay in respect of each normal pay period, or part of any such period, falling between the date of dismissal and the determination or settlement of the complaint.
- (3) Subject as follows, the amount so specified shall be that which the employee could reasonably have been expected to earn during that period, or part, and shall be paid—
- (a) in the case of payment for any such period falling wholly or partly after the making of the order, on the normal pay day for that period, and
  - (b) in the case of a payment for any past period, within such time as may be specified in the order.
- (4) If an amount is payable in respect only of part of a normal pay period, the amount shall be calculated by reference to the whole period and reduced proportionately.
- (5) Any payment made to an employee by an employer under his contract of employment, or by way of damages for breach of that contract, in respect of a normal pay period or part of any such period shall go towards discharging the employer's liability in respect of that period under subsection (2); and conversely any payment under that subsection in respect of a period shall go towards discharging any liability of the employer under, or in respect of the breach of, the contract of employment in respect of that period.
- (6) If an employee, on or after being dismissed by his employer, receives a lump sum which, or part of which, is in lieu of wages but is not referable to any normal pay period, the tribunal shall take the payment into account in determining the amount of pay to be payable in pursuance of any such order.
- (7) For the purposes of this section the amount which an employee could reasonably have been expected to earn, his normal pay period and the normal pay day for each such period shall be determined as if he had not been dismissed.

#### **Textual Amendments**

**F7** Words in s. 164(1)(a) substituted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para.69**; S.I. 1993/1908, art. 2(1), **Sch.1**



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## **165 Application for variation or revocation of order.**

- (1) At any time between the making of an order under section 163 and the determination or settlement of the complaint, the employer or the employee may apply to an industrial tribunal for the revocation or variation of the order on the ground of a relevant change of circumstances since the making of the order.
- (2) Sections 161 to 163 apply in relation to such an application as in relation to an original application for interim relief, except that—
  - (a) no certificate need be presented to the tribunal under section 161(3), and
  - (b) in the case of an application by the employer, section 162(2) (service of copy of application and notice of hearing) has effect with the substitution of a reference to the employee for the reference to the employer.

## **166 Consequences of failure to comply with order.**

- (1) If on the application of an employee an industrial tribunal is satisfied that the employer has not complied with the terms of an order for the reinstatement or re-engagement of the employee under section 163(4) or [F8(5)], the tribunal shall—
  - (a) make an order for the continuation of the employee's contract of employment, and
  - (b) order the employer to pay the employee such compensation as the tribunal considers just and equitable in all the circumstances having regard—
    - (i) to the infringement of the employee's right to be reinstated or re-engaged in pursuance of the order, and
    - (ii) to any loss suffered by the employee in consequence of the non-compliance.
- (2) Section 164 applies to an order under subsection (1)(a) as in relation to an order under section 163.
- (3) If on the application of an employee an industrial tribunal is satisfied that the employer has not complied with the terms of an order for the continuation of a contract of employment, the following provisions apply.
- (4) If the non-compliance consists of a failure to pay an amount by way of pay specified in the order, the tribunal shall determine the amount owed by the employer on the date of the determination.

If on that date the tribunal also determines the employee's complaint that he has been unfairly dismissed, it shall specify that amount separately from any other sum awarded to the employee.
- (5) In any other case, the tribunal shall order the employer to pay the employee such compensation as the tribunal considers just and equitable in all the circumstances having regard to any loss suffered by the employee in consequence of the non-compliance.

### **Textual Amendments**

**F8** Words in s. 166(1) substituted (30.8.1993) by 1993 c. 19, s. 49(1), **Sch. 7 para.22**; S.I. 1993/1908, art. 2(1), **Sch. 1**

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## 167 Interpretation and other supplementary provisions.

- (1) Part V of the Employment Protection (Consolidation) Act 1978 (unfair dismissal) has effect subject to the provisions of sections 152 to 166 above.
- (2) Those sections shall be construed as one with that Part; and in those sections—
  - “complaint of unfair dismissal” means a complaint under section 67 of the <sup>M7</sup>Employment Protection (Consolidation) Act 1978;
  - “award of compensation for unfair dismissal” means an award of compensation for unfair dismissal under section 68(2) or 71(2)(a) of that Act; and
  - “order for reinstatement or re-engagement” means an order for reinstatement or re-engagement under section 69 of that Act.
- (3) Nothing in those sections shall be construed as conferring a right to complain of unfair dismissal from employment of a description to which that Part does not otherwise apply.

### Marginal Citations

M7 1978 c. 44.

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