



Employment Rights Act 1996

1996 CHAPTER 18

PART X

UNFAIR DISMISSAL

CHAPTER II

REMEDIES FOR UNFAIR DISMISSAL

Introductory

111 Complaints to industrial tribunal

- (1) A complaint may be presented to an industrial tribunal against an employer by any person that he was unfairly dismissed by the employer.
- (2) Subject to subsection (3), an industrial tribunal shall not consider a complaint under this section unless it is presented to the tribunal—
 - (a) before the end of the period of three months beginning with the effective date of termination, or
 - (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.
- (3) Where a dismissal is with notice, an industrial tribunal shall consider a complaint under this section if it is presented after the notice is given but before the effective date of termination.
- (4) In relation to a complaint which is presented as mentioned in subsection (3), the provisions of this Act, so far as they relate to unfair dismissal, have effect as if—
 - (a) references to a complaint by a person that he was unfairly dismissed by his employer included references to a complaint by a person that his employer

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has given him notice in such circumstances that he will be unfairly dismissed when the notice expires,

- (b) references to reinstatement included references to the withdrawal of the notice by the employer,
- (c) references to the effective date of termination included references to the date which would be the effective date of termination on the expiry of the notice, and
- (d) references to an employee ceasing to be employed included references to an employee having been given notice of dismissal.

112 The remedies: orders and compensation

- (1) This section applies where, on a complaint under section 111, an industrial tribunal finds that the grounds of the complaint are well-founded.
- (2) The tribunal shall—
 - (a) explain to the complainant what orders may be made under section 113 and in what circumstances they may be made, and
 - (b) ask him whether he wishes the tribunal to make such an order.
- (3) If the complainant expresses such a wish, the tribunal may make an order under section 113.
- (4) If no order is made under section 113, the tribunal shall make an award of compensation for unfair dismissal (calculated in accordance with sections 118 to 127) to be paid by the employer to the employee.

Orders for reinstatement or re-engagement

113 The orders

An order under this section may be—

- (a) an order for reinstatement (in accordance with section 114), or
 - (b) an order for re-engagement (in accordance with section 115),
- as the tribunal may decide.

114 Order for reinstatement

- (1) An order for reinstatement is an order that the employer shall treat the complainant in all respects as if he had not been dismissed.
- (2) On making an order for reinstatement the tribunal shall specify—
 - (a) any amount payable by the employer in respect of any benefit which the complainant might reasonably be expected to have had but for the dismissal (including arrears of pay) for the period between the date of termination of employment and the date of reinstatement,
 - (b) any rights and privileges (including seniority and pension rights) which must be restored to the employee, and
 - (c) the date by which the order must be complied with.
- (3) If the complainant would have benefited from an improvement in his terms and conditions of employment had he not been dismissed, an order for reinstatement shall

require him to be treated as if he had benefited from that improvement from the date on which he would have done so but for being dismissed.

- (4) In calculating for the purposes of subsection (2)(a) any amount payable by the employer, the tribunal shall take into account, so as to reduce the employer's liability, any sums received by the complainant in respect of the period between the date of termination of employment and the date of reinstatement by way of—
 - (a) wages in lieu of notice or ex gratia payments paid by the employer, or
 - (b) remuneration paid in respect of employment with another employer, and such other benefits as the tribunal thinks appropriate in the circumstances.
- (5) Where a dismissal is treated as taking place by virtue of section 96, references in this section to the date of termination of employment are to the notified date of return.

115 Order for re-engagement

- (1) An order for re-engagement is an order, on such terms as the tribunal may decide, that the complainant be engaged by the employer, or by a successor of the employer or by an associated employer, in employment comparable to that from which he was dismissed or other suitable employment.
- (2) On making an order for re-engagement the tribunal shall specify the terms on which re-engagement is to take place, including—
 - (a) the identity of the employer,
 - (b) the nature of the employment,
 - (c) the remuneration for the employment,
 - (d) any amount payable by the employer in respect of any benefit which the complainant might reasonably be expected to have had but for the dismissal (including arrears of pay) for the period between the date of termination of employment and the date of re-engagement,
 - (e) any rights and privileges (including seniority and pension rights) which must be restored to the employee, and
 - (f) the date by which the order must be complied with.
- (3) In calculating for the purposes of subsection (2)(d) any amount payable by the employer, the tribunal shall take into account, so as to reduce the employer's liability, any sums received by the complainant in respect of the period between the date of termination of employment and the date of re-engagement by way of—
 - (a) wages in lieu of notice or ex gratia payments paid by the employer, or
 - (b) remuneration paid in respect of employment with another employer, and such other benefits as the tribunal thinks appropriate in the circumstances.
- (4) Where a dismissal is treated as taking place by virtue of section 96, references in this section to the date of termination of employment are to the notified date of return.

116 Choice of order and its terms

- (1) In exercising its discretion under section 113 the tribunal shall first consider whether to make an order for reinstatement and in so doing shall take into account—
 - (a) whether the complainant wishes to be reinstated,
 - (b) whether it is practicable for the employer to comply with an order for reinstatement, and

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- (c) where the complainant caused or contributed to some extent to the dismissal, whether it would be just to order his reinstatement.
- (2) If the tribunal decides not to make an order for reinstatement it shall then consider whether to make an order for re-engagement and, if so, on what terms.
- (3) In so doing the tribunal shall take into account—
 - (a) any wish expressed by the complainant as to the nature of the order to be made,
 - (b) whether it is practicable for the employer (or a successor or an associated employer) to comply with an order for re-engagement, and
 - (c) where the complainant caused or contributed to some extent to the dismissal, whether it would be just to order his re-engagement and (if so) on what terms.
- (4) Except in a case where the tribunal takes into account contributory fault under subsection (3)(c) it shall, if it orders re-engagement, do so on terms which are, so far as is reasonably practicable, as favourable as an order for reinstatement.
- (5) Where in any case an employer has engaged a permanent replacement for a dismissed employee, the tribunal shall not take that fact into account in determining, for the purposes of subsection (1)(b) or (3)(b), whether it is practicable to comply with an order for reinstatement or re-engagement.
- (6) Subsection (5) does not apply where the employer shows—
 - (a) that it was not practicable for him to arrange for the dismissed employee's work to be done without engaging a permanent replacement, or
 - (b) that—
 - (i) he engaged the replacement after the lapse of a reasonable period, without having heard from the dismissed employee that he wished to be reinstated or re-engaged, and
 - (ii) when the employer engaged the replacement it was no longer reasonable for him to arrange for the dismissed employee's work to be done except by a permanent replacement.

117 Enforcement of order and compensation

- (1) An industrial tribunal shall make an award of compensation, to be paid by the employer to the employee, if—
 - (a) an order under section 113 is made and the complainant is reinstated or re-engaged, but
 - (b) the terms of the order are not fully complied with.
- (2) Subject to section 124, the amount of the compensation shall be such as the tribunal thinks fit having regard to the loss sustained by the complainant in consequence of the failure to comply fully with the terms of the order.
- (3) Subject to subsections (1) and (2), if an order under section 113 is made but the complainant is not reinstated or re-engaged in accordance with the order, the tribunal shall make—
 - (a) an award of compensation for unfair dismissal (calculated in accordance with sections 118 to 127), and
 - (b) except where this paragraph does not apply, an additional award of compensation of the appropriate amount,
 to be paid by the employer to the employee.

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- (4) Subsection (3)(b) does not apply where—
- (a) the employer satisfies the tribunal that it was not practicable to comply with the order, or
 - (b) the reason (or, if more than one, the principal reason)—
 - (i) in a redundancy case, for selecting the employee for dismissal, or
 - (ii) otherwise, for the dismissal,is one of those specified in section 100(1)(a) and (b), 102(1) or 103.
- (5) In subsection (3)(b) “the appropriate amount” means—
- (a) where the dismissal is of a description referred to in subsection (6), not less than twenty-six nor more than fifty-two weeks' pay, and
 - (b) in any other case, not less than thirteen nor more than twenty-six weeks' pay.
- (6) The descriptions of dismissal in respect of which an employer may incur a higher additional award in accordance with subsection (5)(a) are—
- (a) a dismissal which is an act of discrimination within the meaning of the Sex Discrimination Act 1975 which is unlawful by virtue of that Act, and
 - (b) a dismissal which is an act of discrimination within the meaning of the Race Relations Act 1976 which is unlawful by virtue of that Act.
- (7) Where in any case an employer has engaged a permanent replacement for a dismissed employee, the tribunal shall not take that fact into account in determining for the purposes of subsection (4)(a) whether it was practicable to comply with the order for reinstatement or re-engagement unless the employer shows that it was not practicable for him to arrange for the dismissed employee's work to be done without engaging a permanent replacement.
- (8) Where in any case an industrial tribunal finds that the complainant has unreasonably prevented an order under section 113 from being complied with, in making an award of compensation for unfair dismissal (in accordance with sections 118 to 127) it shall take that conduct into account as a failure on the part of the complainant to mitigate his loss.

Compensation

118 General

- (1) Where a tribunal makes an award of compensation for unfair dismissal under section 112(4) or 117(3)(a) the award shall consist of—
- (a) a basic award (calculated in accordance with sections 119 to 122 and 126), and
 - (b) a compensatory award (calculated in accordance with sections 123, 124, 126 and 127).
- (2) Where this subsection applies, the award shall also include a special award calculated in accordance with section 125 unless—
- (a) the complainant does not request the tribunal to make an order under section 113, or
 - (b) the case falls within section 121.
- (3) Subsection (2) applies where the reason (or, if more than one, the principal reason)—
- (a) in a redundancy case, for selecting the employee for dismissal, or

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(b) otherwise, for the dismissal,
 is one of those specified in section 100(1)(a) and (b), 102(1) or 103.

119 Basic award

- (1) Subject to the provisions of this section, sections 120 to 122 and section 126, the amount of the basic award shall be calculated by—
 - (a) determining the period, ending with the effective date of termination, during which the employee has been continuously employed,
 - (b) reckoning backwards from the end of that period the number of years of employment falling within that period, and
 - (c) allowing the appropriate amount for each of those years of employment.
- (2) In subsection (1)(c) “the appropriate amount” means—
 - (a) one and a half weeks' pay for a year of employment in which the employee was not below the age of forty-one,
 - (b) one week's pay for a year of employment (not within paragraph (a)) in which he was not below the age of twenty-two, and
 - (c) half a week's pay for a year of employment not within paragraph (a) or (b).
- (3) Where twenty years of employment have been reckoned under subsection (1), no account shall be taken under that subsection of any year of employment earlier than those twenty years.
- (4) Where the effective date of termination is after the sixty-fourth anniversary of the day of the employee's birth, the amount arrived at under subsections (1) to (3) shall be reduced by the appropriate fraction.
- (5) In subsection (4) “the appropriate fraction” means the fraction of which—
 - (a) the numerator is the number of whole months reckoned from the sixty-fourth anniversary of the day of the employee's birth in the period beginning with that anniversary and ending with the effective date of termination, and
 - (b) the denominator is twelve.
- (6) Subsections (4) and (5) do not apply to a case within section 96(1).

120 Basic award: minimum in certain cases

- (1) The amount of the basic award (before any reduction under section 122) shall not be less than £2,770 where the reason (or, if more than one, the principal reason)—
 - (a) in a redundancy case, for selecting the employee for dismissal, or
 - (b) otherwise, for the dismissal,
 is one of those specified in section 100(1)(a) and (b), 102(1) or 103.
- (2) The Secretary of State may by order increase the sum specified in subsection (1).

121 Basic award of two weeks' pay in certain cases

The amount of the basic award shall be two weeks' pay where the tribunal finds that the reason (or, where there is more than one, the principal reason) for the dismissal of the employee is that he was redundant and the employee—

- (a) by virtue of section 138 is not regarded as dismissed for the purposes of Part XI, or
- (b) by virtue of section 141 is not, or (if he were otherwise entitled) would not be, entitled to a redundancy payment.

122 Basic award: reductions

- (1) 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.
- (2) 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 basic award to any extent, the tribunal shall reduce or further reduce that amount accordingly.
- (3) Subsection (2) does not apply in a redundancy case unless the reason for selecting the employee for dismissal was one of those specified in section 100(1)(a) and (b), 102(1) or 103; and in such a case subsection (2) applies only to so much of the basic award as is payable because of section 120.
- (4) The amount of the basic award shall be reduced or further reduced by the amount of—
 - (a) any redundancy payment awarded by the tribunal under Part XI in respect of the same dismissal, or
 - (b) any payment made by the employer to the employee on the ground that the dismissal was by reason of redundancy (whether in pursuance of Part XI or otherwise).

123 Compensatory award

- (1) Subject to the provisions of this section and sections 124 and 126, the amount of the compensatory award shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer.
- (2) The loss referred to in subsection (1) shall be taken to include—
 - (a) any expenses reasonably incurred by the complainant in consequence of the dismissal, and
 - (b) subject to subsection (3), loss of any benefit which he might reasonably be expected to have had but for the dismissal.
- (3) The loss referred to in subsection (1) shall be taken to include in respect of any loss of—
 - (a) any entitlement or potential entitlement to a payment on account of dismissal by reason of redundancy (whether in pursuance of Part XI or otherwise), or
 - (b) any expectation of such a payment,only the loss referable to the amount (if any) by which the amount of that payment would have exceeded the amount of a basic award (apart from any reduction under section 122) in respect of the same dismissal.

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- (4) In ascertaining the loss referred to in subsection (1) the tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law of England and Wales or (as the case may be) Scotland.
- (5) In determining, for the purposes of subsection (1), how far any loss sustained by the complainant was attributable to action taken by the employer, no account shall be taken of any pressure which by—
 - (a) calling, organising, procuring or financing a strike or other industrial action, or
 - (b) threatening to do so,
 was exercised on the employer to dismiss the employee; and that question shall be determined as if no such pressure had been exercised.
- (6) Where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding.
- (7) If the amount of any payment made by the employer to the employee on the ground that the dismissal was by reason of redundancy (whether in pursuance of Part XI or otherwise) exceeds the amount of the basic award which would be payable but for section 122(4), that excess goes to reduce the amount of the compensatory award.

124 Limit of compensatory award etc

- (1) The amount of—
 - (a) any compensation awarded to a person under section 117(1) and (2), or
 - (b) a compensatory award to a person calculated in accordance with section 123,
 shall not exceed £11,300.
- (2) The Secretary of State may by order increase the sum specified in subsection (1).
- (3) In the case of compensation awarded to a person under section 117(1) and (2), the limit imposed by this section may be exceeded to the extent necessary to enable the award fully to reflect the amount specified as payable under section 114(2)(a) or section 115(2)(d).
- (4) Where—
 - (a) a compensatory award is an award under paragraph (a) of subsection (3) of section 117, and
 - (b) an additional award falls to be made under paragraph (b) of that subsection,
 the limit imposed by this section on the compensatory award may be exceeded to the extent necessary to enable the aggregate of the compensatory and additional awards fully to reflect the amount specified as payable under section 114(2)(a) or section 115(2)(d).
- (5) The limit imposed by this section applies to the amount which the industrial tribunal would, apart from this section, award in respect of the subject matter of the complaint after taking into account—
 - (a) any payment made by the respondent to the complainant in respect of that matter, and
 - (b) any reduction in the amount of the award required by any enactment or rule of law.

125 Special award

- (1) Subject to the following provisions, the amount of the special award shall be—
 - (a) one week's pay multiplied by 104, or
 - (b) £13,775,whichever is the greater, but shall not exceed £27,500.
- (2) Where the award of compensation is made under section 117(3)(a) then, unless the employer satisfies the tribunal that it was not practicable to comply with the order under section 113, the amount of the special award shall be increased to—
 - (a) one week's pay multiplied by 156, or
 - (b) £20,600,whichever is the greater (but subject to the following provisions).
- (3) In a case where the amount of the basic award is reduced under section 119(4), 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 under section 113 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.
- (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 under section 113 unless the employer shows that it was not practicable for him to arrange for the complainant's work to be done without engaging a permanent replacement.
- (7) The Secretary of State may by order increase any of the sums specified in subsections (1) and (2).

126 Acts which are both unfair dismissal and discrimination

- (1) This section applies where compensation falls to be awarded in respect of any act both under—
 - (a) the provisions of this Act relating to unfair dismissal, and
 - (b) either or both of the Sex Discrimination Act 1975 and the Race Relations Act 1976.
- (2) An industrial tribunal shall not award compensation under any one of those two or three Acts in respect of any loss or other matter which is or has been taken into account under the other, or any of the others, by the tribunal (or another industrial tribunal) in awarding compensation on the same or another complaint in respect of that act.

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127 Dismissal of woman at or after end of maternity leave period

Where section 84 applies in relation to an employee, compensation in any unfair dismissal proceedings shall be assessed without regard to the right conferred on the employee by section 79.

Interim relief

128 Interim relief pending determination of complaint

- (1) An employee who presents a complaint to an industrial tribunal—
 - (a) that he has been unfairly dismissed by his employer, and
 - (b) that the reason (or, if more than one, the principal reason) for the dismissal is one of those specified in section 100(1)(a) and (b), 102(1) or 103,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) The tribunal shall determine the application for interim relief as soon as practicable after receiving the application.
- (4) The tribunal shall give to the employer not later than seven days before the date of the hearing a copy of the application together with notice of the date, time and place of the hearing.
- (5) 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.

129 Procedure on hearing of application and making of order

- (1) This section applies where, on hearing an employee's application for interim relief, it appears to the tribunal that it is likely that on determining the complaint to which the application relates the tribunal will find that the reason (or, if more than one, the principal reason) for his dismissal is one of those specified in section 100(1)(a) and (b), 102(1) or 103.
- (2) The tribunal shall announce its findings and explain to both parties (if present)—
 - (a) what powers the tribunal may exercise on the application, and
 - (b) in what circumstances it will exercise them.
- (3) The tribunal 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 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.
- (4) For the purposes of subsection (3)(b) "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 should be regarded as continuous with his employment following the dismissal.

- (5) If the employer states that he is willing to reinstate the employee, the tribunal shall make an order to that effect.
- (6) If the employer—
 - (a) states that he is willing to re-engage the employee in another job, and
 - (b) 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.
- (7) If the employee is willing to accept the job on those terms and conditions, the tribunal shall make an order to that effect.
- (8) If the employee is not willing to accept the job on those terms and conditions—
 - (a) where 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
 - (b) otherwise, the tribunal shall make no order.
- (9) If on the hearing of an application for interim relief the employer—
 - (a) fails to attend before the tribunal, or
 - (b) states that he is unwilling either to reinstate or re-engage the employee as mentioned in subsection (3),the tribunal shall make an order for the continuation of the employee's contract of employment.

130 Order for continuation of contract of employment

- (1) An order under section 129 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 any other benefit derived from the employment, seniority, pension rights and other similar matters, and
 - (b) for the purposes 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 to the following provisions, 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 a 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.

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- (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, goes 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 goes towards discharging any liability of the employer under, or in respect of 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.

131 Application for variation or revocation of order

- (1) At any time between—
 - (a) the making of an order under section 129, and
 - (b) 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 128 and 129 apply in relation to such an application as in relation to an original application for interim relief except that, in the case of an application by the employer, section 128(4) has effect with the substitution of a reference to the employee for the reference to the employer.

132 Consequence 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 129(5) or (7), the tribunal shall—
 - (a) make an order for the continuation of the employee's contract of employment, and
 - (b) order the employer to pay compensation to the employee.
- (2) Compensation under subsection (1)(b) shall be of such amount as the tribunal considers just and equitable in all the circumstances having regard—
 - (a) to the infringement of the employee's right to be reinstated or re-engaged in pursuance of the order, and
 - (b) to any loss suffered by the employee in consequence of the non-compliance.
- (3) Section 130 applies to an order under subsection (1)(a) as in relation to an order under section 129.

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- (4) 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 subsection (5) or (6) applies.
- (5) Where the non-compliance consists of a failure to pay an amount by way of pay specified in the order—
 - (a) the tribunal shall determine the amount owed by the employer on the date of the determination, and
 - (b) 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.
- (6) 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.