



Employment Act 2002

2002 CHAPTER 22

PART 3

DISPUTE RESOLUTION ETC.

Statutory procedures

34 Procedural fairness in unfair dismissal

- (1) Part 10 of the Employment Rights Act 1996 (c. 18) (unfair dismissal) is amended as follows.
- (2) After section 98 there is inserted—

“98A Procedural fairness

- (1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if—
 - (a) one of the procedures set out in Part 1 of Schedule 2 to the Employment Act 2002 (dismissal and disciplinary procedures) applies in relation to the dismissal,
 - (b) the procedure has not been completed, and
 - (c) the non-completion of the procedure is wholly or mainly attributable to failure by the employer to comply with its requirements.
- (2) Subject to subsection (1), failure by an employer to follow a procedure in relation to the dismissal of an employee shall not be regarded for the purposes of section 98(4)(a) as by itself making the employer's action unreasonable if he shows that he would have decided to dismiss the employee if he had followed the procedure.
- (3) For the purposes of this section, any question as to the application of a procedure set out in Part 1 of Schedule 2 to the Employment Act 2002, completion of such a procedure or failure to comply with the requirements

Status: This is the original version (as it was originally enacted).

of such a procedure shall be determined by reference to regulations under section 31 of that Act.”

(3) In section 112 (the remedies: orders and compensation), at the end there is inserted—

“(5) Where—

(a) an employee is regarded as unfairly dismissed by virtue of section 98A(1) (whether or not his dismissal is unfair or regarded as unfair for any other reason), and

(b) an order is made in respect of the employee under section 113, the employment tribunal shall, subject to subsection (6), also make an award of four weeks' pay to be paid by the employer to the employee.

(6) An employment tribunal shall not be required to make an award under subsection (5) if it considers that such an award would result in injustice to the employer.”

(4) In section 117 (under which an award of compensation falls to be made if an employee is reinstated or re-engaged in pursuance of an order under section 113, but the terms of the order are not fully complied with), after subsection (2) there is inserted—

“(2A) There shall be deducted from any award under subsection (1) the amount of any award made under section 112(5) at the time of the order under section 113.”

(5) In section 123 (compensatory award) at the end there is inserted—

“(8) Where the amount of the compensatory award falls to be calculated for the purposes of an award under section 117(3)(a), there shall be deducted from the compensatory award any award made under section 112(5) at the time of the order under section 113.”

(6) In section 120 (basic award: minimum in certain cases) after subsection (1) there is inserted—

“(1A) Where—

(a) an employee is regarded as unfairly dismissed by virtue of section 98A(1) (whether or not his dismissal is unfair or regarded as unfair for any other reason),

(b) an award of compensation falls to be made under section 112(4), and

(c) the amount of the award under section 118(1)(a), before any reduction under section 122(3A) or (4), is less than the amount of four weeks' pay,

the employment tribunal shall, subject to subsection (1B), increase the award under section 118(1)(a) to the amount of four weeks' pay.

(1B) An employment tribunal shall not be required by subsection (1A) to increase the amount of an award if it considers that the increase would result in injustice to the employer.”