
STATUTORY INSTRUMENTS

2003 No. 2902

The Employment (Northern Ireland) Order 2003

PART IV

DISPUTE RESOLUTION, ETC.

Statutory procedures

Non-completion of statutory procedure: adjustment of awards by industrial tribunals

17.—(1) This Article applies to proceedings before an industrial tribunal relating to a claim under any of the jurisdictions listed in Schedule 2 by an employee.

(2) If, in the case of proceedings to which this Article applies, it appears to the industrial tribunal that—

- (a) the claim to which the proceedings relate concerns a matter to which one of the statutory procedures applies,
- (b) the statutory procedure was not completed before the proceedings were begun, and
- (c) the non-completion of the statutory procedure was wholly or mainly attributable to failure by the employee—

- (i) to comply with a requirement of the procedure, or
- (ii) to exercise a right of appeal under it,

it shall, subject to paragraph (4), reduce any award which it makes to the employee by 10 per cent, and may, if it considers it just and equitable in all the circumstances to do so, reduce it by a further amount, but not so as to make a total reduction of more than 50 per cent.

(3) If, in the case of proceedings to which this Article applies, it appears to the industrial tribunal that—

- (a) the claim to which the proceedings relate concerns a matter to which one of the statutory procedures applies,
- (b) the statutory procedure was not completed before the proceedings were begun, and
- (c) the non-completion of the statutory procedure was wholly or mainly attributable to failure by the employer to comply with a requirement of the procedure,

it shall, subject to paragraph (4), increase any award which it makes to the employee by 10 per cent and may, if it considers it just and equitable in all the circumstances to do so, increase it by a further amount, but not so as to make a total increase of more than 50 per cent.

(4) The duty under paragraph (2) or (3) to make a reduction or increase of 10 per cent does not apply if there are exceptional circumstances which would make a reduction or increase of that percentage unjust or inequitable, in which case the tribunal may make no reduction or increase or a reduction or increase of such lesser percentage as it considers just and equitable in all the circumstances.

- (5) Where an award falls to be adjusted under this Article and under Article 27, the adjustment under this Article shall be made before the adjustment under that Article.
- (6) The Department may for the purposes of this Article by regulations—
- (a) make provision about the application of the statutory procedures;
 - (b) make provision about when a statutory procedure is to be taken to be completed;
 - (c) make provision about what constitutes compliance with a requirement of a statutory procedure;
 - (d) make provision about circumstances in which a person is to be treated as not subject to, or as having complied with, such a requirement;
 - (e) make provision for a statutory procedure to have effect in such circumstances as may be specified by the regulations with such modifications as may be so specified;
 - (f) make provision about when an employee is required to exercise a right of appeal under a statutory procedure.
- (7) The Department may by order—
- (a) amend Schedule 2 for the purpose of—
 - (i) adding a jurisdiction to the list in that Schedule, or
 - (ii) removing a jurisdiction from that list;
 - (b) make provision, in relation to a jurisdiction listed in Schedule 2, for this Article not to apply to proceedings relating to claims of a description specified in the order;
 - (c) make provision for this Article to apply, with or without modifications, as if—
 - (i) any individual of a description specified in the order who would not otherwise be an employee for the purposes of this Article were an employee for those purposes, and
 - (ii) a person of a description specified in the order were, in the case of any such individual, the individual's employer for those purposes.