



Employment Protection (Consolidation) Act 1978

1978 CHAPTER 44

PART V

UNFAIR DISMISSAL

Amount of compensation

72 Compensation for unfair dismissal

Where a tribunal makes an award of compensation for unfair dismissal under section 68(2) or 71(2)(a) the award shall consist of a basic award (calculated in accordance with section 73) and a compensatory award (calculated in accordance with section 74).

73 Calculation of basic award

- (1) The amount of the basic award shall be the amount calculated in accordance with subsections (3) to (6), subject to—
- (a) subsection (2) of this section (which provides for an award of two weeks' pay in certain redundancy cases);
 - (b) subsection (7) (which provides for the amount of the award to be reduced where the employee contributed to the dismissal);
 - (c) subsection (8) (which provides for a minimum award of two weeks' pay in certain cases);
 - (d) subsection (9) (which provides for the amount of the award to be reduced where the employee received a payment in respect of redundancy); and
 - (e) section 76 (which prohibits compensation being awarded under this Part and under the Sex Discrimination Act 1975 or the Race Relations Act 1976 in respect of the same matter).

- (2) The amount of the basic award shall be two weeks' pay where the tribunal finds that the reason or principal reason for the dismissal of the employee was that he was redundant and the employee—
 - (a) by virtue of section 82(5) or (6) is not, or if he were otherwise entitled would not be, entitled to a redundancy payment; or
 - (b) by virtue of the operation of section 84(1) is not treated as dismissed for the purposes of Part VI.
- (3) The amount of the basic award shall be calculated by reference to the period, ending with the effective date of termination, during which the employee has been continuously employed, by starting at the end of that period and reckoning backwards the numbers of years of employment falling within that period, and allowing—
 - (a) one and a half weeks' pay for each such year of employment which consists wholly of weeks in which the employee was not below the age of forty-one;
 - (b) one week's pay for each such year of employment which consists wholly of weeks in which the employee was below the age of forty-one and was not below the age of twenty-two; and
 - (c) half a week's pay for each such year of employment which consists wholly of weeks in which the employee was below the age of twenty-two and was not below the age of eighteen.
- (4) Where, in reckoning the number of years of employment in accordance with subsection (3), twenty years of employment have been reckoned no account shall be taken of any year of employment earlier than those twenty years.
- (5) Where in the case of an employee the effective date of termination is after the specified anniversary the amount of the basic award calculated in accordance with subsections (3) and (4) shall be reduced by the appropriate fraction.
- (6) In subsection (5) " the specified anniversary " in relation to a man means the sixty-fourth anniversary of the day of his birth, and in relation to a woman means the fifty-ninth anniversary of the day of her birth, and " the appropriate fraction " means the fraction of which—
 - (a) the numerator is the number of whole months reckoned from the specified anniversary in the period beginning with that anniversary and ending with the effective date of termination; and
 - (b) the denominator is twelve.
- (7) Where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant it shall, except in a case where the dismissal was by reason of redundancy, reduce the amount of the basic award by such proportion as it considers just and equitable having regard to that finding.
- (8) Where the amount calculated in accordance with subsections (3) to (7) is less than the amount of two weeks' pay, the amount of the basic award shall be two weeks' pay.
- (9) The amount of the basic award shall be reduced or, as the case may be, be further reduced, by the amount of any redundancy payment awarded by the tribunal under Part VI in respect of the same dismissal or 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 VI or otherwise.

74 Calculation of compensatory award

- (1) Subject to sections 75 and 76, 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 said loss 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 said loss, in respect of any loss of any entitlement or potential entitlement to, or expectation of, a payment on account of dismissal by reason of redundancy, whether in pursuance of Part VI or otherwise, shall include 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 73(7) or (9)) in respect of the same dismissal.
- (4) In ascertaining the said loss 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 of Scotland, as the case may be.
- (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 calling, organising, procuring or financing a strike or other industrial action, or 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 VI or otherwise, exceeds the amount of the basic award which would be payable but for section 73(9) that excess shall go to reduce the amount of the compensatory award.

75 Limit on compensation.

- (1) The amount of compensation awarded to a person under section 71(1) or of a compensatory award to a person calculated in accordance with section 74 shall not exceed £5,200.
- (2) The Secretary of State may by order increase the said limit of £5,200 or that limit as from time to time increased under this subsection, but no such order shall be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.
- (3) It is hereby declared for the avoidance of doubt that the limit imposed by this section applies to the amount which the industrial tribunal would, apart from this section, otherwise award in respect of the subject matter of the complaint after taking into account any payment made by the respondent to the complainant in respect of that

matter and any reduction in the amount of the award required by any enactment or rule of law.

76 Compensation for act which is both sex or racial discrimination (or both) and unfair dismissal

- (1) Where compensation falls to be awarded in respect of any act both under the provisions of this Act relating to unfair dismissal and under one or both of the following Acts, namely the Sex Discrimination Act 1975 and the Race Relations Act 1976, an industrial tribunal shall not award compensation under any one of those two or, as the case may be, three Acts in respect of any loss or other matter which is or has been taken into account under the other or any other of them by the tribunal or another industrial tribunal in awarding compensation on the same or another complaint in respect of that act.
- (2) Without prejudice to section 75 (whether as enacted or as applied by section 65 of the Sex Discrimination Act 1975 or section 56 of the Race Relations Act 1976) in a case to which subsection (1) applies, the aggregate of the following amounts of compensation awarded by an industrial tribunal, that is to say—
 - (a) any compensation awarded under the said Act of 1975 ; and
 - (b) any compensation awarded under the said Act of 1976 ; and
 - (c) any compensation awarded under section 71(1) or, as the case may be, which is calculated in accordance with section 74,shall not exceed the limit for the time being imposed by section 75.