



# Employment Protection (Consolidation) Act 1978

## 1978 CHAPTER 44

### PART V

#### UNFAIR DISMISSAL

##### *Remedies for unfair dismissal*

#### **67 Complaint to industrial tribunal.**

- (1) A complaint may be presented to an industrial tribunal against an employer by any person (in this Part referred to as the complainant) that he was unfairly dismissed by the employer.
- (2) Subject to subsection (4), an industrial tribunal shall not consider a complaint under this section unless it is presented to the tribunal before the end of the period of three months beginning with the effective date of termination or 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 the period of three months.
- [<sup>F1</sup>(3) Subsection (2) shall apply in relation to a complaint to which section 62(3) applies as if—
  - (a) for the references to three months there were substituted, in each case, a reference to six months; and
  - (b) as if for the reference to the effective date of termination there were substituted a reference to the complainant's date of dismissal (within the meaning of section 62(4)).]
  - (4) An industrial tribunal shall consider a complaint under this section if, where the dismissal is with notice, the complaint is presented after the notice is given notwithstanding that it is presented before the effective date of termination and in

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relation to such a complaint the provisions of this Act, so far as they relate to unfair dismissal, shall have effect—

- (a) as if 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 has given him notice in such circumstances that he will be unfairly dismissed when the notice expires;
- (b) as if references to reinstatement included references to the withdrawal of the notice by the employer;
- (c) as if 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) as if references to an employee ceasing to be employed included references to an employee having been given notice of dismissal.

**Textual Amendments**

- F1** S. 67(3) substituted by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), s. 9(5) with saving in [S.I. 1982/1656, Sch. 2](#)

**68 Remedies for unfair dismissal.**

- (1) Where on a complaint under section 67 an industrial tribunal finds that the grounds of the complaint are well-founded, it shall explain to the complainant what orders for reinstatement or re-engagement may be made under section 69 and in what circumstances they may be made, and shall ask him whether he wishes the tribunal to make such an order, and if he does express such a wish the tribunal may make an order under section 69.
- (2) If on a complaint under section 67 the tribunal finds that the grounds of the complaint are well-founded and no order is made under section 69, the tribunal shall make an award of compensation for unfair dismissal, calculated in accordance with [<sup>F2</sup>sections 72 to 76], to be paid by the employer to the employee.

**Textual Amendments**

- F2** Words substituted by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), [Sch. 3 para. 21](#) with saving in [S.I. 1982/1656, Sch. 2](#)

**69 Order for reinstatement or re-engagement.**

- (1) An order under this section may be an order for reinstatement (in accordance with subsections (2) and (3)) or an order for re-engagement (in accordance with subsection (4)), as the industrial tribunal may decide, and in the latter case may be on such terms as the tribunal may decide.
- (2) An order for reinstatement is an order that the employer shall treat the complainant in all respects as if he had not been dismissed, and on making such an order 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,

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- 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) Without prejudice to the generality of subsection (2), 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) An order for re-engagement is an order 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, and on making such an order 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.
- (5) In exercising its discretion under this section the tribunal shall first consider whether to make an order for reinstatement and in so doing shall take into account the following considerations, that is to say—
- (a) whether the complainant wishes to be reinstated;
  - (b) whether it is practicable for the employer to comply with an order for reinstatement;
  - (c) where the complainant caused or contributed to some extent to the dismissal, whether it would be just to order his reinstatement.
- (6) 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; and in so doing the tribunal shall take into account the following considerations, that is to say—
- (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, as the case may be, a successor or associated employer to comply with an order for re-engagement;
  - (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;
- and except in a case where the tribunal takes into account contributory fault under paragraph (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.

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## 70 Supplementary provisions relating to s. 69.

- (1) 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 (5)(b) or (6)(b) of section 69, whether it is practicable to comply with an order for reinstatement or re-engagement unless 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 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 that 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.
- (2) In calculating for the purpose of subsection (2)(a) or (4)(d) of section 69 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 or re-engagement by way of—
  - (a) wages in lieu of notice or ex gratia payments paid by the employer;
  - (b) remuneration paid in respect of employment with another employer;
 and such other benefits as the tribunal thinks appropriate in the circumstances.

## 71 Enforcement of s. 69 order and compensation.

- (1) If an order under section 69 is made and the complainant is reinstated or, as the case may be, re-engaged but the terms of the order are not fully complied with, then, subject to section 75, an industrial tribunal shall make an award of compensation, to be paid by the employer to the employee, of such amount 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.
- (2) Subject to subsection (1), if an order under section 69 is made but the complainant is not reinstated or, as the case may be, re-engaged in accordance with the order—
  - (a) the tribunal shall make an award of compensation for unfair dismissal, calculated in accordance with [<sup>F3</sup>sections 72 to 76], to be paid by the employer to the employee; and
  - (b) [<sup>F4</sup>except in a case in which the dismissal is to be regarded as unfair by virtue of section 58 or 59(a) or in which] the employer satisfies the tribunal that it was not practicable to comply with the order, the tribunal shall make an additional award of compensation to be paid by the employer to the employee of an amount—
    - (i) where the dismissal is of a description referred to in subsection (3), not less than twenty-six nor more than fifty-two weeks' pay, or
    - (ii) in any other case, not less than thirteen nor more than twenty-six weeks' pay.
- (3) The descriptions of dismissal in respect of which an employer may incur a higher additional award in accordance with subsection (2)(b)(i) are the following, that is to say,—
  - (a)

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- <sup>F5</sup>(b) a dismissal which is an act of discrimination within the meaning of the <sup>M1</sup>Sex Discrimination Act 1975 which is unlawful by virtue of that Act;
- (c) a dismissal which is an act of discrimination within the meaning of the <sup>M2</sup>Race Relations Act 1976 which is unlawful by virtue of that Act.
- (4) 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 (2)(b) 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.
- (5) Where in any case an industrial tribunal makes an award of compensation for unfair dismissal, calculated in accordance with [<sup>F6</sup>sections 72 to 76], and the tribunal finds that the complainant has unreasonably prevented an order under section 69 from being complied with, it shall, without prejudice to the generality of section 74(4), take that conduct into account as a failure on the part of the complainant to mitigate his loss.

#### Textual Amendments

- F3** Words substituted by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), [Sch. 3 para. 22](#) with saving in S.I. 1982/1656, [Sch. 2](#)
- F4** Words substituted by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), [s. 5\(1\)](#) with saving in S.I. 1982/1656, [Sch. 2](#)
- F5** [S. 71\(3\)\(a\)](#) repealed by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), [Sch. 4](#) with saving in S.I. 1982/1656, [Sch. 2](#)
- F6** Words substituted by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), [Sch. 3 para. 22](#) with saving in S.I. 1982/1656, [Sch. 2](#)

#### Marginal Citations

- M1** 1975 c. 65.
- M2** 1976 c. 74.

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