



Employment Rights Act 1996

1996 CHAPTER 18

PART X

UNFAIR DISMISSAL

CHAPTER II

REMEDIES FOR UNFAIR DISMISSAL

Compensation

123 Compensatory award.

- (1) Subject to the provisions of this section and sections 124 ^[F1], 124A 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,

Status: Point in time view as at 06/04/2019.

Changes to legislation: Employment Rights Act 1996, Section 123 is up to date with all changes known to be in force on or before 04 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

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.

- (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.

[^{F2}(6A) Where—

- (a) the reason (or principal reason) for the dismissal is that the complainant made a protected disclosure, and
 - (b) it appears to the tribunal that the disclosure was not made in good faith,
- the tribunal may, if it considers it just and equitable in all the circumstances to do so, reduce any award it makes to the complainant by no more than 25%.]

- (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.

[^{F3}(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.]

Textual Amendments

- F1** Words in s. 123(1) substituted (1.10.2004) by [Employment Act 2002 \(c. 22\), ss. 53, 55\(2\), Sch. 7 para. 39](#); [S.I. 2004/2185, art. 2](#)
- F2** S. 123(6A) inserted (25.6.2013) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), ss. 18\(5\), 103\(2\)](#) (with [s. 24\(6\)](#))
- F3** S. 123(8) inserted (1.10.2004) by [Employment Act 2002 \(c. 22\), ss. 34\(5\), 55\(2\)](#); [S.I. 2004/1717, art. 2\(2\)](#) (subject to [art. 3](#))

Modifications etc. (not altering text)

- C1** S. 123 applied (1.11.1998) by [1998 c. 39, s. 24\(4\)\(b\)](#)
 Ss. 117-127A applied (with modifications) (2.7.1999) by [S.I. 1999/1548, reg. 3](#)
 S. 123 applied (6.6.2000) by [1992 c. 52, s. 70A, Sch. A1 para. 160\(2\)\(b\)](#) (as inserted (6.6.2000) by [1999 c. 26, s. 1, Sch. 1](#); [S.I. 2000/1338, art. 2](#) (with transitional provisions in [art. 3](#)))

Status:

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