



Employment Relations Act 2004

2004 CHAPTER 24

PART 3

RIGHTS OF TRADE UNION MEMBERS, WORKERS AND EMPLOYEES

Exclusion and expulsion from trade unions

33 Exclusion or expulsion from trade union attributable to conduct

- (1) Section 174 of the 1992 Act (right not to be excluded or expelled from trade union) is amended as follows.
- (2) In subsection (2)(d) for “his conduct” substitute “conduct of his (other than excluded conduct) and the conduct to which it is wholly or mainly attributable is not protected conduct”.
- (3) For subsection (4) substitute—
 - “(4) For the purposes of subsection (2)(d) “excluded conduct”, in relation to an individual, means—
 - (a) conduct which consists in his being or ceasing to be, or having been or ceased to be, a member of another trade union,
 - (b) conduct which consists in his being or ceasing to be, or having been or ceased to be, employed by a particular employer or at a particular place, or
 - (c) conduct to which section 65 (conduct for which an individual may not be disciplined by a union) applies or would apply if the references in that section to the trade union which is relevant for the purposes of that section were references to any trade union.
- (4A) For the purposes of subsection (2)(d) “protected conduct” is conduct which consists in the individual’s being or ceasing to be, or having been or ceased to be, a member of a political party.

Status: This is the original version (as it was originally enacted).

- (4B) Conduct which consists of activities undertaken by an individual as a member of a political party is not conduct falling within subsection (4A).”
- (4) In section 176 of that Act (remedies for infringement of right not to be excluded or expelled), after subsection (1) insert—
- “(1A) If a tribunal makes a declaration under subsection (1) and it appears to the tribunal that the exclusion or expulsion was mainly attributable to conduct falling within section 174(4A) it shall make a declaration to that effect.
- (1B) If a tribunal makes a declaration under subsection (1A) and it appears to the tribunal that the other conduct to which the exclusion or expulsion was attributable consisted wholly or mainly of conduct of the complainant which was contrary to—
- (a) a rule of the union, or
- (b) an objective of the union,
- it shall make a declaration to that effect.
- (1C) For the purposes of subsection (1B), it is immaterial whether the complainant was a member of the union at the time of the conduct contrary to the rule or objective.
- (1D) A declaration by virtue of subsection (1B)(b) shall not be made unless the union shows that, at the time of the conduct of the complainant which was contrary to the objective in question, it was reasonably practicable for that objective to be ascertained—
- (a) if the complainant was not at that time a member of the union, by a member of the general public, and
- (b) if he was at that time a member of the union, by a member of the union.”
- (5) In subsection (3)(a) of that section, after “declaration” insert “under subsection (1)”.
- (6) After subsection (6) of that section insert—
- “(6A) n the date on which the application was made the applicant had not been admitted or re-admitted to the union, the award shall not be less than £5,900.
- (6B) Subsection (6A) does not apply in a case where the tribunal which made the declaration under subsection (1) also made declarations under subsections (1A) and (1B).”
- (7) In sections 174 and 176 of the 1992 Act references to the conduct of an individual include references to conduct which took place before the coming into force of this section.