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STATUTORY INSTRUMENTS

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**1987 No. 936**

**The Industrial Relations (Northern Ireland) Order 1987**

*Unfair dismissal*

**Compensation for certain dismissals**

4. The provisions of Schedule 1 shall have effect for the purpose of enabling the Department to make payments towards compensating individuals who in certain past cases have been dismissed for failure to conform to the requirements of a union membership agreement.

**Meaning of unfair dismissal**

5.—(1) In Article 22 of the No. 1 Order for paragraphs (3) to (11) there shall be substituted—

“(3) Where the employer has fulfilled the requirements of paragraph (1), then, subject to Articles 22A to 23 and to Article 14 of the No. 2 Order, the determination of the question whether the dismissal was fair or unfair, having regard to the reason shown by the employer, shall depend on whether in the circumstances (including the size and administrative resources of the employer’s undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and that question shall be determined in accordance with equity and the substantial merits of the case.

(4) In this Article, in relation to an employee—

- (a) “capability” means capability assessed by reference to skill, aptitude, health or any other physical or mental quality;
- (b) “qualifications” means any degree, diploma or other academic, technical or professional qualification relevant to the position which the employee held.”.

(2) For Articles 22A and 23 of the No. 1 Order there shall be substituted—

**“Dismissal relating to trade union membership**

**22A.**—(1) Subject to paragraph (3), the dismissal of an employee by an employer shall be regarded for the purposes of this Order as having been unfair if the reason for it (or, if more than one, the principal reason) was that the employee—

- (a) was, or proposed to become, a member of an independent trade union; or
- (b) had taken part, or proposed to take part, in the activities of an independent trade union at an appropriate time; or
- (c) was not a member of any trade union, or of a particular trade union, or of one of a number of particular trade unions, or had refused or proposed to refuse to become or remain a member.

(2) In paragraph (1) “an appropriate time”, in relation to an employee taking part in the activities of a trade union, means a time which either—

- (a) is outside his working hours; or

- (b) is a time within his working hours at which, in accordance with arrangements agreed with or consent given by his employer, it is permissible for him to take part in those activities; and in this paragraph “working hours”, in relation to an employee, means any time when, in accordance with his contract of employment, he is required to be at work.
- (3) Subject to the following provisions of this Article, the dismissal of an employee by an employer shall be regarded for the purposes of this Order as having been fair if—
- (a) it is the practice, in accordance with a union membership agreement, for employees of the employer who are of the same class as the dismissed employee to belong to a specified independent trade union, or to one of a number of specified independent trade unions; and
  - (b) the reason (or, if more than one, the principal reason) for the dismissal was that the employee was not, or had refused or proposed to refuse to become or remain, a member of a union in accordance with the agreement; and
  - (c) the union membership agreement had been approved in relation to employees of that class in accordance with Article 22B through a ballot held within the period of five years ending with the time of dismissal.
- (4) Paragraph (3) shall not apply if the employee genuinely objects on grounds of conscience or other deeply-held personal conviction to being a member of any trade union whatsoever or of a particular trade union.
- (5) Paragraph (3) shall not apply if the employee—
- (a) has been among those employees of the employer who belong to the class to which the union membership agreement relates since before the agreement had the effect of requiring them to be or become members of a trade union; and
  - (b) has not at any time while the agreement had that effect been a member of a trade union in accordance with the agreement.
- (6) Paragraph (3) shall not apply if—
- (a) the union membership agreement took effect after 3rd May 1982 in relation to the employees of the employer who are of the same class as the dismissed employee; and
  - (b) the employee was entitled to vote in the ballot through which the agreement was approved in accordance with Article 22B or, if there have been two or more such ballots, in the first of them; and
  - (c) the employee has not at any time since the day on which that ballot was held been a member of a trade union in accordance with the agreement.
- (7) Paragraph (3) shall not apply if the dismissal was from employment in respect of which, at the time of dismissal, either—
- (a) there was in force a declaration made on a complaint presented by the employee under Article 6 of the Industrial Relations (Northern Ireland) Order 1982 (unreasonable exclusion or expulsion from trade union); or
  - (b) proceedings on such a complaint were pending before an industrial tribunal, unless the employee has at any time during the period beginning with the date of the complaint under Article 6 and ending with the effective date of termination been, or failed through his own fault to become, a member of a trade union in accordance with the union membership agreement.
- (8) In any case where neither paragraph (4) nor paragraph (7) has the effect of displacing paragraph (3) and the employee—
- (a) holds qualifications which are relevant to the employment in question;

- (b) is subject to a written code which governs the conduct of those persons who hold those qualifications; and
- (c) has—
  - (i) been expelled from a trade union for refusing to take part in a strike or other industrial action; or
  - (ii) refused to become or remain a member of a trade union, paragraph (3) shall not apply if the reason (or, if more than one, the principal reason) for his refusal was, in a case falling within sub-paragraph (c)(i), that his taking the action in question would be in breach of the code or, in a case falling within sub-paragraph (c)(ii), that if he became, or as the case may be remained, a member he would be required to take part in a strike, or other industrial action, which would be in breach of that code.

(9) For the purposes of paragraphs (3)(c) and (6)(c), where votes in a ballot may be cast on more than one day, the ballot shall be treated as held on the last of those days.

(10) For the purposes of paragraph (3) a union shall be treated as specified for the purposes of or in relation to a union membership agreement (in a case where it would not otherwise be so treated) if—

- (a) the Agency has made a recommendation under Article 7(1) for recognition of that union covering the employee in question; or
- (b) the Agency is exercising, or has been requested to exercise, its powers under Article 7 in relation to a dispute relating to or connected with recognition of that union covering that employee and the dispute has not been settled or otherwise disposed of by the Agency under that Article.

(11) For the purposes of paragraphs (3) and (7) the reference to the time of the dismissal shall, in a case where the dismissal was with notice, be construed as a reference to the time when the notice was given.

(12) For the purposes of paragraph (7) an employee shall be taken to have failed through his own fault to become a member of a trade union only if the tribunal is satisfied that the fact that he is not a member is attributable to his failure to apply (or re-apply) for membership or to his failure to accept an offer of membership.

(13) Where the employer of any employees changes in such circumstances that the employees' period of continuous employment is not broken, this Article and Article 22B shall have effect as if any reference to the employees of any class of the later employer included a reference to the employees of that class of the former employer.

(14) Where the reason, or one of the reasons, for the dismissal of an employee was—

- (a) his refusal, or proposed refusal, to comply with a requirement (whether or not imposed by his contract of employment or in writing) that, in the event of his failure to become or his ceasing to remain a member of any trade union or of a particular trade union or of one of a number of particular trade unions, he must make one or more payments; or
- (b) his objection, or proposed objection, (however expressed) to the operation of a provision (whether or not forming part of his contract of employment or in writing) under which, in the event mentioned in sub-paragraph (a), his employer is entitled to deduct one or more sums from the remuneration payable to him in respect of his employment, that reason shall be treated as falling within paragraph (1)(c) and (3)(b).

(15) References in this Article and Article 22B to a trade union include references to a branch or section of a trade union, unless the context otherwise requires.

### **Ballots as to union membership agreements**

**22B.**—(1) Subject to the following provisions of this Article, a union membership agreement shall be taken for the purposes of Article 22A(3)(c) to have been approved in relation to the employees of any class of an employer if a ballot has been held on the question whether the agreement should apply in relation to them and either—

- (a) not less than 80 per cent. of those entitled to vote; or
- (b) not less than 85 per cent. of those who voted, voted in favour of the agreement's application.

(2) Paragraph (1)(b) shall not apply if the agreement—

- (a) has not previously been approved in accordance with this Article in relation to the employer's employees of the class in question; and
- (b) came into force in relation to them after 3rd May 1982.

(3) The persons entitled to vote in a ballot under this Article, in relation to the application of a union membership agreement to the employees of any class of an employer, shall be all those employees who belong to that class and who—

- (a) in the case of a ballot in which votes may only be cast on one day, are in the employment of the employer on that day; or
- (b) in any other case, are in that employment on the qualifying day.

(4) "Qualifying day" means the day specified as such by the person conducting the ballot; but no day shall be specified which—

- (a) falls after the last of the days on which votes may be cast in the ballot; or
- (b) is so long before that date as to be unreasonable in relation to that ballot.

(5) A ballot under this Article shall be so conducted as to secure that, so far as reasonably practicable, all those entitled to vote—

- (a) have an opportunity of voting, and of doing so in secret; and
- (b) in a case which does not fall within paragraph (3)(a), know, before they cast their votes, which day has been specified as the qualifying day.

(6) In determining for the purposes of paragraph (3) whether a person belongs to a class of employees, any restriction of the class by reference to membership (or objection to membership) of a trade union shall be disregarded.

(7) An agreement shall not be taken for the purposes of Article 22A(3)(c) to have been approved through a ballot of the employees of any class of an employer if since it was held another ballot of those employees has been held under this Article and both—

- (a) less than 80 per cent. of those entitled to vote; and
- (b) less than 85 per cent. of those who voted, voted in favour of the agreement's application.

(8) Paragraph (7) shall not affect the determination in any case of the question whether the condition in paragraph (2)(a) is satisfied.

### **Dismissal on ground of redundancy**

**22C.** Where the reason or principal reason for the dismissal of an employee was that he was redundant, but it is shown that the circumstances constituting the redundancy applied equally to one or more other employees in the same undertaking who held positions similar to that held by him and who have not been dismissed by the employer, and either—

- (a) that the reason (or, if more than one, the principal reason) for which he was selected for dismissal was one of those specified in Article 22A(1); or
- (b) that he was selected for dismissal in contravention of a customary arrangement or agreed procedure relating to redundancy and there were no special reasons justifying a departure from that arrangement or procedure in his case, then, for the purposes of this Order, the dismissal shall be regarded as unfair.

**Dismissal in connection with a lock-out, strike or other industrial action**

**23.**—(1) The provisions of this Article shall have effect in relation to an employee (the “complainant”) who claims that he has been unfairly dismissed by his employer where at the date of dismissal—

- (a) the employer was conducting or instituting a lock-out; or
- (b) the complainant was taking part in a strike or other industrial action.

(2) In such a case an industrial tribunal shall not determine whether the dismissal was fair or unfair unless it is shown—

- (a) that one or more relevant employees of the same employer have not been dismissed; or
- (b) that any such employee has, before the expiry of the period of three months beginning with that employee’s date of dismissal, been offered re-engagement and that the complainant has not been offered re-engagement.

(3) Where it is shown that the condition referred to in paragraph (2)(b) is fulfilled, the provisions of Articles 22 to 22C and of Article 14 of the No. 2 Order shall have effect as if in those Articles for any reference to the reason or principal reason for which the complainant was dismissed there were substituted a reference to the reason or principal reason for which he has not been offered re-engagement.

(4) Article 59(5) shall apply in relation to a complaint to which paragraph (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.

(5) In this Article—

- (a) “date of dismissal” means—
  - (i) where the employee’s contract of employment was terminated by notice, the date on which the employer’s notice was given; and
  - (ii) in any other case, the effective date of termination;
- (b) “relevant employees” means—
  - (i) in relation to a lock-out, employees who were directly interested in the dispute in contemplation or furtherance of which the lock-out occurred; and
  - (ii) in relation to a strike or other industrial action, those employees at the establishment who were taking part in the action at the complainant’s date of dismissal;

“establishment”, in head (ii), meaning that establishment of the employer at or from which the complainant works; and

- (c) any reference to an offer of re-engagement is a reference to an offer (made either by the original employer or by a successor of that employer or an associated employer)

to re-engage an employee, either in the job which he held immediately before the date of dismissal or in a different job which would be reasonably suitable in his case.”.

### **Basic award**

6.—(1) In Article 34 of the No. 1 Order (calculation of basic award) after paragraph (5) there shall be inserted—

“(5A) Where the dismissal is to be regarded as unfair by virtue of Article 22A or 22C(a), the amount of the basic award (before any reduction under the following provisions of this Article or Article 35) shall not be less than £2,200.

(5B) The Department may by order increase or further increase the minimum award provided for by paragraph (5A).”.

(2) The following provisions of Article 35, namely—

- (a) paragraph (6) (reduction of award where complainant contributed to his own dismissal, except in cases of redundancy), and
- (b) in paragraph (6B) (reduction of award where justified by complainant’s conduct, other than conduct taken into account under paragraph (6)) the words from “other” to “paragraph (6)”, shall cease to have effect; and after paragraph (6B) there shall be inserted—

“(6C) Paragraph (6B) shall not apply where the reason or principal reason for the dismissal was that the employee was redundant unless the dismissal is to be regarded as unfair by virtue of Article 22C(a), and in that event shall apply only to so much of the basic award as is payable because of paragraph (5A) of Article 34.”.

### **New special award**

7.—(1) In Article 32(2)(b) of the No. 1 Order (additional compensation to be awarded where order under Article 31 not complied with unless it was not practicable for the employer to comply) for the word “unless” there shall be substituted the words “except in a case in which the dismissal is to be regarded as unfair by virtue of Article 22A or 22C(a) or in which”.

(2) For Article 33 (which provides that compensation for unfair dismissal shall consist of a basic award and a compensatory award) there shall be substituted—

#### **“Compensation for unfair dismissal**

33. Where a tribunal makes an award of compensation for unfair dismissal under Article 32(2)(a) or (5) the award shall consist of—

- (a) a basic award (calculated in accordance with Articles 34 and 35); and
- (b) a compensatory award (calculated in accordance with Article 36); and
- (c) where the dismissal is to be regarded as unfair by virtue of Article 22A or 22C(a), a special award (calculated in accordance with Article 37A); but paragraph (c) shall not apply unless the complainant requested the tribunal to make an order under Article 31, and shall not in any event apply in a case within Article 34(2).”.

(3) After Article 37 of the No. 1 Order there shall be inserted—

#### **“Calculation of special award**

37A.—(1) Subject to the following provisions of this Article, the amount of the special award shall be—

- (a) one week’s pay multiplied by 104; or

(b) £11,000; whichever is the greater, but shall not exceed £22,000.

(2) If the award of compensation is made under Article 32(2)(a) then, unless the employer satisfies the tribunal that it was not practicable to comply with the preceding order under Article 31, the amount of the special award shall be increased to—

(a) one week's pay multiplied by 156; or

(b) £16,500; whichever is the greater, but subject to the following provisions of this Article.

(3) In a case where the amount of the basic award is reduced under Article 34(6), the amount of the special award shall be reduced by the same fraction.

(4) Where the tribunal considers that any conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given) was such that it would be just and equitable to reduce or further reduce the amount of the special award to any extent, the tribunal shall reduce or further reduce that amount accordingly.

(5) Where the tribunal finds that the complainant has unreasonably—

(a) prevented an order under Article 31 from being complied with; or

(b) refused an offer by the employer (made otherwise than in compliance with such an order) which if accepted would have the effect of reinstating the complainant in his employment in all respects as if he had not been dismissed; the tribunal shall reduce or further reduce the amount of the special award to such extent as it considers just and equitable having regard to that finding.

(6) Where the employer has engaged a permanent replacement for the complainant, the tribunal shall not take that fact into account in determining, for the purposes of paragraph (2), whether it was practicable to comply with an order under Article 31 unless the employer shows that it was not practicable for him to arrange for the complainant's work to be done without engaging a permanent replacement.

(7) The Department may by order increase any of the sums of £11,000, £22,000 and £16,500 specified in paragraphs (1) and (2), or any of those sums as from time to time increased under this paragraph.”.

### **Reduction of compensation: matters to be disregarded**

8. After Article 33 of the No. 1 Order there shall be inserted—

#### **“Reduction of compensation: matters to be disregarded**

**33A.—**(1) This Article applies in any case where a tribunal makes an award of compensation for unfair dismissal under Article 32(2)(a) or (5) and the dismissal is to be regarded as unfair by virtue of Article 22A or 22C(a).

(2) In such a case the tribunal, in considering whether it would be just and equitable to reduce, or further reduce, the amount of any part of the award, shall disregard any conduct or action of the complainant in so far as it constitutes—

(a) a breach, or proposed breach, of any requirement falling within paragraph (3);

(b) a refusal, or proposed refusal, to comply with a requirement of a kind mentioned in Article 22A(14)(a); or

(c) an objection, or proposed objection, (however expressed) to the operation of a provision of a kind mentioned in Article 22A(14)(b).

(3) A requirement falls within this paragraph if it is imposed on the complainant in question by or under any arrangement or contract of employment or other agreement and requires him—

- (a) to be or become a member of any trade union or of a particular trade union or of one of a number of particular trade unions;
- (b) to cease to be, or refrain from becoming, a member of any trade union or of a particular trade union or of one of a number of particular trade unions; or
- (c) not to take part in the activities of any trade union or of a particular trade union or of one of a number of particular trade unions.”.

### **Awards against third parties**

9. For Article 38A of the No. 1 Order (contribution in respect of compensation) there shall be substituted—

#### **“Awards against third parties**

**38A.**—(1) If in proceedings before an industrial tribunal on a complaint against an employer under Article 29 either the employer or the complainant claims—

- (a) that the employer was induced to dismiss the complainant by pressure which a trade union or other person exercised on the employer by calling, organising, procuring or financing a strike or other industrial action, or by threatening to do so; and
- (b) that the pressure was exercised because the complainant was not a member of any trade union or of a particular trade union or of one of a number of particular trade unions, the employer or the complainant may request the tribunal to direct that the person who he claims exercised the pressure be joined as a party to the proceedings.

(2) A request under paragraph (1) shall be granted if it is made before the hearing of the complaint begins, but may be refused if it is made after that time; and no such request may be made after the tribunal has made an order under Article 31 or an award under Article 32(5).

(3) Where a person has been joined as a party to proceedings before an industrial tribunal by virtue of paragraph (1) and the tribunal—

- (a) makes an award of compensation under Article 32(2)(a) or (b) or (5); but
- (b) finds that the claim mentioned in paragraph (1) is well-founded, the award may be made against that person instead of against the employer, or partly against that person and partly against the employer, as the tribunal may consider just and equitable in the circumstances.”.

### **Interim relief**

10.—(1) For paragraph (1) of Article 39 of the No. 1 Order (interim relief where employee alleges unfair dismissal for union membership or activities) there shall be substituted—

“(1) An employee who presents a complaint to an industrial tribunal under Article 29 alleging that the dismissal is to be regarded as unfair by virtue of Article 22A may apply to the tribunal for an order under the following provisions of this Article.”.

(2) In paragraph (3) of Article 39 for the words from “, at least” onwards there shall be substituted “give at the appropriate time—

- (a) to the employer; and



- (b) in the case of an Article 38A request made at least three days before the date of the hearing, to the person to whom the request relates, a copy of the application and certificate (if any) together with notice of the date, time and place of the hearing.

(3A) In paragraph (3)—

“appropriate time” means—

- (a) in relation to sub-paragraph (a), not later than seven days before the date of the hearing;
- (b) in relation to sub-paragraph (b), as soon as reasonably practicable; and

“Article 38A request” means a request made under Article 38A(1) for the tribunal to direct a person to be joined as a party to the proceedings.”.