
STATUTORY INSTRUMENTS

1987 No. 936

The Industrial Relations (Northern Ireland) Order 1987

Action short of dismissal

Action relating to trade union membership

11. For Article 33 of the No. 2 Order (trade union membership and activities) there shall be substituted—

“Trade union membership and activities

33.—(1) Subject to the following provisions of this Article, every employee shall have the right not to have action (short of dismissal) taken against him as an individual by his employer for the purpose of—

- (a) preventing or deterring him from being or seeking to become a member of an independent trade union, or penalising him for doing so; or
- (b) preventing or deterring him from taking part in the activities of an independent trade union at any appropriate time, or penalising him for doing so; or
- (c) compelling him 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.

(2) Every employee shall also have the right not to have action (short of dismissal) taken against him for the purpose of enforcing 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.

(3) For the purposes of this Article, any deduction made by an employer from the remuneration payable to an employee of his in respect of that employee’s employment shall, if the deduction is attributable to the employee’s 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, be treated as if it were action (short of dismissal) taken against the employee for the purpose of enforcing a requirement of a kind mentioned in paragraph (2).

(4) In this Article “appropriate time”, in relation to an employee taking part in any activities of a trade union, means 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.

(5) Where it is the practice, in accordance with a union membership agreement, for the employees of any class of an employer to belong to a specified independent trade union, or to one of a number of specified independent trade unions, then—

- (a) subject to paragraph (6), the right conferred on employees of that class by virtue of paragraph (1)(b) in relation to a union's activities shall extend to activities on the employer's premises only if the union is a specified union; and
 - (b) employees of that class shall not have the right conferred by virtue of paragraph (1)(c) or (2) except in respect of action which, if it amounted to dismissal from employment to which Article 20 of the No. 1 Order applies, would be regarded as unfair by reason of Article 22A of that Order.
- (6) A union membership agreement having effect in relation to the employees of any class of an employer shall be disregarded for the purposes of the application of paragraph (5) (a) to those employees unless the agreement has, for the purposes of Article 22A(3)(c) of the No. 1 Order, been approved in relation to them in accordance with Article 22B of that Order through a ballot held within the period of five years ending with the date on which the action in question occurred.
- (7) For the purposes of this Article a trade union shall be taken to be specified for the purposes of, or in relation to, a union membership agreement if—
- (a) the Agency has made a recommendation under Article 7 of the No. 1 Order 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 of the No. 1 Order 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.
- (8) In this Article references to a trade union include references to a branch or section of a trade union.”.

Awards against third parties

12. For Article 36A of the No. 2 Order (contribution in respect of compensation) there shall be substituted—

“Awards against third parties

36A.—(1) Where—

- (a) a complaint is presented to an industrial tribunal under Article 34 on the ground that action has been taken against the complainant by his employer for the purpose of compelling him 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, and
 - (b) either the employer or the complainant claims in proceedings before the tribunal that the employer was induced to take the action 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, 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 a declaration under Article 34(3).
- (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, 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.”