

SCHEDULES

^{F1}SCHEDULE 1A

COLLECTIVE BARGAINING: RECOGNITION

F1 1999 NI 9

PART VIII

DETRIMENT

Detriment

156.—(1) A worker has a right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer if the act or failure takes place on any of the grounds set out in sub-paragraph (2).

(2) The grounds are that—

- (a) the worker acted with a view to obtaining or preventing recognition of a union (or unions) by the employer under this Schedule;
- (b) the worker indicated that he supported or did not support recognition of a union (or unions) by the employer under this Schedule;
- (c) the worker acted with a view to securing or preventing the ending under this Schedule of bargaining arrangements;
- (d) the worker indicated that he supported or did not support the ending under this Schedule of bargaining arrangements;
- (e) the worker influenced or sought to influence the way in which votes were to be cast by other workers in a ballot arranged under this Schedule;
- (f) the worker influenced or sought to influence other workers to vote or to abstain from voting in such a ballot;
- (g) the worker voted in such a ballot;
- (h) the worker proposed to do, failed to do, or proposed to decline to do, any of the things referred to in paragraphs (a) to (g).

(3) A ground does not fall within sub-paragraph (2) if it constitutes an unreasonable act or omission by the worker.

(4) This paragraph does not apply if the worker is an employee and the detriment amounts to dismissal within the meaning of the Employment Rights Order.

(5) A worker may present a complaint to an industrial tribunal on the ground that he has been subjected to a detriment in contravention of this paragraph.

(6) Apart from the remedy by way of complaint as mentioned in sub-paragraph (5), a worker has no remedy for infringement of the right conferred on him by this paragraph.

157.—(1) An industrial tribunal shall not consider a complaint under paragraph 156 unless it is presented—

- (a) before the end of the period of 3 months starting with the date of the act or failure to which the complaint relates or, if that act or failure is part of a series of similar acts or failures (or both), the last of them, or
- (b) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period, within such further period as it considers reasonable.

(2) For the purposes of sub-paragraph (1)—

- (a) where an act extends over a period, the reference to the date of the act is a reference to the last day of that period;
- (b) a failure to act shall be treated as done when it was decided on.

(3) For the purposes of sub-paragraph (2), in the absence of evidence establishing the contrary an employer must be taken to decide on a failure to act—

- (a) when he does an act inconsistent with doing the failed act, or
- (b) if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.

[^{F1}(4) Article 147A (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of sub-paragraph (1)(a).]

F1 Sch. 1A para. 157(4) added (27.1.2020) by [Employment Act \(Northern Ireland\) 2016 \(c. 15\), s. 29\(2\), Sch. 2 para. 10](#); S.R. 2020/1, art. 2(n)

158. On a complaint under paragraph 156 it shall be for the employer to show the ground on which he acted or failed to act.

159.—(1) If the industrial tribunal finds that a complaint under paragraph 156 is well-founded it shall make a declaration to that effect and may make an award of compensation to be paid by the employer to the complainant in respect of the act or failure complained of.

(2) The amount of the compensation awarded shall be such as the tribunal considers just and equitable in all the circumstances having regard to the infringement complained of and to any loss sustained by the complainant which is attributable to the act or failure which infringed his right.

(3) The loss shall be taken to include—

- (a) any expenses reasonably incurred by the complainant in consequence of the act or failure complained of, and
- (b) loss of any benefit which he might reasonably be expected to have had but for that act or failure.

(4) In ascertaining the loss, 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 Northern Ireland.

(5) If the tribunal finds that the act or failure complained of was to any extent caused or contributed to by action of the complainant, it shall reduce the amount of the compensation by such proportion as it considers just and equitable having regard to that finding.

160.—(1) If the industrial tribunal finds that a complaint under paragraph 156 is well-founded and—

- (a) the detriment of which the worker has complained is the termination of his worker's contract, but

(b) that contract was not a contract of employment,
any compensation awarded under paragraph 159 must not exceed the limit specified in sub-paragraph (2).

(2) The limit is the total of—

- (a) the sum which would be the basic award for unfair dismissal, calculated in accordance with Article 153 of the Employment Rights Order, if the worker had been an employee and the contract terminated had been a contract of employment, and
- (b) the sum for the time being specified in Article 158 of that Order which is the limit for a compensatory award to a person calculated in accordance with Article 157 of that Order.

Dismissal

161.—(1) For the purposes of Part XI of the Employment Rights Order (unfair dismissal) the dismissal of an employee shall be regarded as unfair if the dismissal was made—

- (a) for a reason set out in sub-paragraph (2), or
- (b) for reasons the main one of which is one of those set out in sub-paragraph (2).

(2) The reasons are that—

- (a) the employee acted with a view to obtaining or preventing recognition of a union (or unions) by the employer under this Schedule;
- (b) the employee indicated that he supported or did not support recognition of a union (or unions) by the employer under this Schedule;
- (c) the employee acted with a view to securing or preventing the ending under this Schedule of bargaining arrangements;
- (d) the employee indicated that he supported or did not support the ending under this Schedule of bargaining arrangements;
- (e) the employee influenced or sought to influence the way in which votes were to be cast by other workers in a ballot arranged under this Schedule;
- (f) the employee influenced or sought to influence other workers to vote or to abstain from voting in such a ballot;
- (g) the employee voted in such a ballot;
- (h) the employee proposed to do, failed to do, or proposed to decline to do, any of the things referred to in paragraphs (a) to (g).

(3) A reason does not fall within sub-paragraph (2) if it constitutes an unreasonable act or omission by the employee.

Selection for redundancy

162. For the purposes of Part XI of the Employment Rights Order (unfair dismissal) the dismissal of an employee shall be regarded as unfair if the reason or principal reason for the dismissal was that he was redundant but it is shown—

- (a) 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
- (b) that the reason (or, if more than one, the principal reason) why he was selected for dismissal was one falling within paragraph 161(2).

Changes to legislation: There are currently no known outstanding effects for the The Trade Union and Labour Relations (Northern Ireland) Order 1995, PART VIII. (See end of Document for details)

Para. 163 rep. by 1999 NI 9

Exclusion of requirement as to qualifying period

164. Articles 140 and 141 of the Employment Rights Order (qualifying period and upper age limit for unfair dismissal protection) do not apply to a dismissal which by virtue of paragraph 161 or 162 is regarded as unfair for the purposes of Part XI of that Order.

Meaning of worker's contract

165. References in this Part to a worker's contract shall be construed in accordance with Article 3(3) of the Employment Rights Order.

Changes to legislation:

There are currently no known outstanding effects for the The Trade Union and Labour Relations (Northern Ireland) Order 1995, PART VIII.