



Trade Union and Labour Relations (Consolidation) Act 1992

1992 CHAPTER 52

PART I

TRADE UNIONS

CHAPTER V

RIGHTS OF TRADE UNION MEMBERS

Right not to be unjustifiably disciplined

64 Right not to be unjustifiably disciplined.

- (1) An individual who is or has been a member of a trade union has the right not to be unjustifiably disciplined by the union.
- (2) For this purpose an individual is “disciplined” by a trade union if a determination is made, or purportedly made, under the rules of the union or by an official of the union or a number of persons including an official that—
 - (a) he should be expelled from the union or a branch or section of the union,
 - (b) he should pay a sum to the union, to a branch or section of the union or to any other person;
 - (c) sums tendered by him in respect of an obligation to pay subscriptions or other sums to the union, or to a branch or section of the union, should be treated as unpaid or paid for a different purpose,
 - (d) he should be deprived to any extent of, or of access to, any benefits, services or facilities which would otherwise be provided or made available to him by virtue of his membership of the union, or a branch or section of the union,
 - (e) another trade union, or a branch or section of it, should be encouraged or advised not to accept him as a member, or

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- (f) he should be subjected to some other detriment;
and whether an individual is “unjustifiably disciplined” shall be determined in accordance with section 65.
- (3) Where a determination made in infringement of an individual’s right under this section requires the payment of a sum or the performance of an obligation, no person is entitled in any proceedings to rely on that determination for the purpose of recovering the sum or enforcing the obligation.
- (4) Subject to that, the remedies for infringement of the right conferred by this section are as provided by sections 66 and 67, and not otherwise.
- (5) The right not to be unjustifiably disciplined is in addition to (and not in substitution for) any right which exists apart from this section; ^{[F1}and, subject to section 66(4), nothing] in this section or sections 65 to 67 affects any remedy for infringement of any such right.

Textual Amendments

F1 Words in s. 64(5) substituted (30.11.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para.48**; S.I. 1993/1908, art. 2(2), **Sch. 2**

65 Meaning of “unjustifiably disciplined”.

- (1) An individual is unjustifiably disciplined by a trade union if the actual or supposed conduct which constitutes the reason, or one of the reasons, for disciplining him is—
- conduct to which this section applies, or
 - something which is believed by the union to amount to such conduct;
- but subject to subsection (6) (cases of bad faith in relation to assertion of wrongdoing).
- (2) This section applies to conduct which consists in—
- failing to participate in or support a strike or other industrial action (whether by members of the union or by others), or indicating opposition to or a lack of support for such action;
 - failing to contravene, for a purpose connected with such a strike or other industrial action, a requirement imposed on him by or under a contract of employment;
 - asserting (whether by bringing proceedings or otherwise) that the union, any official or representative of it or a trustee of its property has contravened, or is proposing to contravene, a requirement which is, or is thought to be, imposed by or under the rules of the union or any other agreement or by or under any enactment (whenever passed) or any rule of law;
 - encouraging or assisting a person—
 - to perform an obligation imposed on him by a contract of employment, or
 - to make or attempt to vindicate any such assertion as is mentioned in paragraph (c); ^{F2} . . .
 - contravening a requirement imposed by or in consequence of a determination which infringes the individual’s or another individual’s right not to be unjustifiably disciplined.

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- [^{F3}(f) failing to agree, or withdrawing agreement, to the making from his wages (in accordance with arrangements between his employer and the union) of deductions representing payments to the union in respect of his membership,
- (g) resigning or proposing to resign from the union or from another union, becoming or proposing to become a member of another union, refusing to become a member of another union, or being a member of another union,
- (h) working with, or proposing to work with, individuals who are not members of the union or who are or are not members of another union,
- (i) working for, or proposing to work for, an employer who employs or who has employed individuals who are not members of the union or who are or are not members of another union, or
- (j) requiring the union to do an act which the union is, by any provision of this Act, required to do on the requisition of a member.]
- (3) This section applies to conduct which involves ^{F4} . . . the Certification Officer being consulted or asked to provide advice or assistance with respect to any matter whatever, or which involves any person being consulted or asked to provide advice or assistance with respect to a matter which forms, or might form, the subject-matter of any such assertion as is mentioned in subsection (2)(c) above.
- (4) This section also applies to conduct which consists in proposing to engage in, or doing anything preparatory or incidental to, conduct falling within subsection (2) or (3).
- (5) This section does not apply to an act, omission or statement comprised in conduct falling within subsection (2), (3) or (4) above if it is shown that the act, omission or statement is one in respect of which individuals would be disciplined by the union irrespective of whether their acts, omissions or statements were in connection with conduct within subsection (2) or (3) above.
- (6) An individual is not unjustifiably disciplined if it is shown—
- (a) that the reason for disciplining him, or one of them, is that he made such an assertion as is mentioned in subsection (2)(c), or encouraged or assisted another person to make or attempt to vindicate such an assertion,
- (b) that the assertion was false, and
- (c) that he made the assertion, or encouraged or assisted another person to make or attempt to vindicate it, in the belief that it was false or otherwise in bad faith, and that there was no other reason for disciplining him or that the only other reasons were reasons in respect of which he does not fall to be treated as unjustifiably disciplined.
- (7) In this section—
- “conduct” includes statements, acts and omissions;
- “contract of employment”, in relation to an individual, includes any agreement between that individual and a person for whom he works or normally works; ^{F5} . . . [^{F6} “employer” includes such a person and related expressions shall be construed accordingly;]
- “representative”, in relation to a union, means a person acting or purporting to act—
- (a) in his capacity as a member of the union, or
- (b) on the instructions or advice of a person acting or purporting to act in that capacity or in the capacity of an official of the union.

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[^{F7}“require” (on the part of an individual) includes request or apply for, and “requisition” shall be construed accordingly][^{F8}and].

[^{F8}“wages” shall be construed in accordance with the definitions of “contract of employment”, “employer” and related expressions.]

- (8) Where a person holds any office or employment under the Crown on terms which do not constitute a contract of employment between him and the Crown, those terms shall nevertheless be deemed to constitute such a contract for the purposes of this section.

Textual Amendments

- F2** Word in s. 65(2) repealed (30.8.1993) by 1993 c. 19, s. 51, **Sch. 10**; S.I. 1993/1908, art. 2(1), **Sch. 1**
- F3** S. 65(2)(f)-(j) inserted (30.8.1993) by 1993 c. 19, s. 16(1); S.I. 1993/1908, art. 2(1), **Sch. 1**
- F4** Words in s. 65(3) repealed (25.10.1999) by 1999 c. 26, s. 44, **Sch. 9(6)**; S.I. 1999/2830, **art. 2(3) Sch. 2 Pt. 1** (with Sch. 3 para. 4)
- F5** Word in s. 65(7) repealed (30.8.1993) by 1993 c. 19, s. 51, **Sch. 10**; S.I. 1993/1908, art. 2(1), **Sch. 1**
- F6** S. 65(7) definition amended (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 49(a)**; S.I. 1993/1908, art. 2(1), **Sch. 1**
- F7** S. 65(7) definition inserted (30.8.1993) by 1993 c. 19, s. 16(2); S.I. 1993/1908, art. 2(1), **Sch. 1**
- F8** S. 65(7) definition and word preceding it inserted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 49(b)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

66 Complaint of infringement of right.

- (1) An individual who claims that he has been unjustifiably disciplined by a trade union may present a complaint against the union to an [^{F9}employment tribunal].
- (2) The tribunal shall not entertain such a complaint unless it is presented—
- (a) before the end of the period of three months beginning with the date of the making of the determination claimed to infringe the right, or
 - (b) where the tribunal is satisfied—
 - (i) that it was not reasonably practicable for the complaint to be presented before the end of that period, or
 - (ii) that any delay in making the complaint is wholly or partly attributable to a reasonable attempt to appeal against the determination or to have it reconsidered or reviewed,
 within such further period as the tribunal considers reasonable.
- [^{F10}(2A) Section 292A (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (2)(a).]
- (3) Where the tribunal finds the complaint well-founded, it shall make a declaration to that effect.
- ^{F11}[(4) Where a complaint relating to an expulsion which is presented under this section is declared to be well-founded, no complaint in respect of the expulsion shall be presented or proceeded with under section 174 (right not to be excluded or expelled from trade union).]

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Textual Amendments

- F9** Words in s. 66(1) substituted (1.8.1998) by 1998 c. 8, s. 1(2)(a) (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**
- F10** S. 66(2A) inserted (6.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 2 para. 2**; S.I. 2014/253, art. 3(g)
- F11** S. 66(4) substituted (30.11.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 50**; S.I. 1993/1908, art. 2(2), **Sch. 2**

67 Further remedies for infringement of right.

- (1) An individual whose complaint under section 66 has been declared to be well-founded may make an application [^{F12}to an employment tribunal] for one or both of the following—
- an award of compensation to be paid to him by the union;
 - an order that the union pay him an amount equal to any sum which he has paid in pursuance of any such determination as is mentioned in section 64(2)(b).
- (2) ^{F13}
- (3) An application under this section shall not be entertained if made before the end of the period of four weeks beginning with the date of the declaration or after the end of the period of six months beginning with that date.
- (4) ^{F13}
- (5) The amount of compensation awarded shall, subject to the following provisions, be such as the ^{F14} . . . [^{F15}employment tribunal] considers just and equitable in all the circumstances.
- (6) In determining the amount of compensation to be awarded, the same rule shall be applied concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law in England and Wales or Scotland.
- (7) Where the ^{F14} . . . [^{F15}employment tribunal] finds that the infringement complained of was to any extent caused or contributed to by the action of the applicant, it shall reduce the amount of the compensation by such proportion as it considers just and equitable having regard to that finding.
- (8) The amount of compensation [^{F16}calculated in accordance with subsections (5) to (7)] shall not exceed the aggregate of—
- an amount equal to 30 times the limit for the time being imposed by [^{F17}section 227(1)(a) of the Employment Rights Act 1996] (maximum amount of a week's pay for basic award in unfair dismissal cases), and
 - an amount equal to the limit for the time being imposed by [^{F18}section 124(1)] of that Act (maximum compensatory award in such cases);
- ^{F19}
- [^{F20}(8A) If on the date on which the application was made—
- the determination infringing the applicant's right not to be unjustifiably disciplined has not been revoked, or
 - the union has failed to take all the steps necessary for securing the reversal of anything done for the purpose of giving effect to the determination,

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the amount of compensation shall be not less than the amount for the time being specified in section 176(6A).]

^{F21}(9)

Textual Amendments

- F12** Words in s. 67(1) inserted (31.12.2004) by Employment Relations Act 2004 (c. 24), ss. **34(2)**, 59(2)-(4); S.I. 2004/3342, **art. 4** (with arts. 6-12)
- F13** S. 67(2)(4) repealed (31.12.2004) by Employment Relations Act 2004 (c. 24), ss. 34(3), 57(2), 59(2)-(4), **Sch. 2**; S.I. 2004/3342, **art. 4** (with arts. 6-12)
- F14** Words in s. 67(5)(7) repealed (31.12.2004) by Employment Relations Act 2004 (c. 24), ss. 34(4), 57(2), 59(2)-(4), **Sch. 2**; S.I. 2004/3342, **art. 4** (with arts. 6-12)
- F15** Words in s. 67 substituted (1.8.1998) by 1998 c. 8, s. **1(2)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**
- F16** Words in s. 67(8) substituted (30.11.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 51(a)(i)**; S.I. 1993/1908, art. 2(2), **Sch. 2**
- F17** Words in s. 67(8)(a) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 56(2)(a)** (with ss. 191-195, 202)
- F18** Words in s. 67(8)(b) substituted (22.8.1996) by 1996 c. 18, ss. 230, 243, **Sch. 1 para. 56(2)(b)** (with ss. 191-195, 202)
- F19** Words in s. 67(8) repealed (31.12.2004) by Employment Relations Act 2004 (c. 24), ss. 34(4), 57(2), 59(2)-(4), **Sch. 2**; S.I. 2004/3342, **art. 4** (with arts. 6-12)
- F20** S. 67(8A) inserted (31.12.2004) by Employment Relations Act 2004 (c. 24), ss. **34(6)**, 59(2)-(4); S.I. 2004/3342, **art. 4** (with arts. 6-12)
- F21** S. 67(9) repealed (30.11.1993) by 1993 c. 19, ss. 49(2), 51, Sch. 8 para. 51(b), **Sch. 10**; S.I. 1993/1908, art. 2(2), **Sch. 2**

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 212A(1)(zb) inserted by [2023 c. 46 Sch. para. 1](#)