
Changes to legislation: There are currently no known outstanding effects for the Employment Relations Act 1999, Paragraph 3. (See end of Document for details)

SCHEDULES

SCHEDULE 5

UNFAIR DISMISSAL OF STRIKING WORKERS

Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52)

3 The following shall be inserted after section 238—

“238A Participation in official industrial action.

- (1) For the purposes of this section an employee takes protected industrial action if he commits an act which, or a series of acts each of which, he is induced to commit by an act which by virtue of section 219 is not actionable in tort.
- (2) An employee who is dismissed shall be regarded for the purposes of Part X of the Employment Rights Act 1996 (unfair dismissal) as unfairly dismissed if—
 - (a) the reason (or, if more than one, the principal reason) for the dismissal is that the employee took protected industrial action, and
 - (b) subsection (3), (4) or (5) applies to the dismissal.
- (3) This subsection applies to a dismissal if it takes place within the period of eight weeks beginning with the day on which the employee started to take protected industrial action.
- (4) This subsection applies to a dismissal if—
 - (a) it takes place after the end of that period, and
 - (b) the employee had stopped taking protected industrial action before the end of that period.
- (5) This subsection applies to a dismissal if—
 - (a) it takes place after the end of that period,
 - (b) the employee had not stopped taking protected industrial action before the end of that period, and
 - (c) the employer had not taken such procedural steps as would have been reasonable for the purposes of resolving the dispute to which the protected industrial action relates.
- (6) In determining whether an employer has taken those steps regard shall be had, in particular, to—
 - (a) whether the employer or a union had complied with procedures established by any applicable collective or other agreement;
 - (b) whether the employer or a union offered or agreed to commence or resume negotiations after the start of the protected industrial action;

Changes to legislation: There are currently no known outstanding effects for the Employment Relations Act 1999, Paragraph 3. (See end of Document for details)

- (c) whether the employer or a union unreasonably refused, after the start of the protected industrial action, a request that conciliation services be used;
 - (d) whether the employer or a union unreasonably refused, after the start of the protected industrial action, a request that mediation services be used in relation to procedures to be adopted for the purposes of resolving the dispute.
- (7) In determining whether an employer has taken those steps no regard shall be had to the merits of the dispute.
- (8) For the purposes of this section no account shall be taken of the repudiation of any act by a trade union as mentioned in section 21 in relation to anything which occurs before the end of the next working day (within the meaning of section 237) after the day on which the repudiation takes place.”

Changes to legislation:

There are currently no known outstanding effects for the Employment Relations Act 1999, Paragraph 3.