
STATUTORY INSTRUMENTS

2004 No. 752

The Employment Act 2002 (Dispute Resolution) Regulations 2004

Dismissals to which the dismissal and disciplinary procedures do not apply

4.—(1) Neither of the dismissal and disciplinary procedures applies in relation to the dismissal of an employee where—

- (a) all the employees of a description or in a category to which the employee belongs are dismissed, provided that the employer offers to re-engage all the employees so dismissed either before or upon the termination of their contracts;
- (b) the dismissal is one of a number of dismissals in respect of which the duty in section 188 of the 1992 Act (duty of employer to consult representatives when proposing to dismiss as redundant a certain number of employees) applies;
- (c) at the time of the employee's dismissal he is taking part in—
 - (i) an unofficial strike or other unofficial industrial action, or
 - (ii) a strike or other industrial action (being neither unofficial industrial action nor protected industrial action), unless the circumstances of the dismissal are such that, by virtue of section 238(2) of the 1992 Act, an employment tribunal is entitled to determine whether the dismissal was fair or unfair;
- (d) the reason (or, if more than one, the principal reason) for the dismissal is that the employee took protected industrial action and the dismissal would be regarded, by virtue of section 238A(2) of the 1992 Act, as unfair for the purposes of Part 10 of the 1996 Act;
- (e) the employer's business suddenly ceases to function, because of an event unforeseen by the employer, with the result that it is impractical for him to employ any employees;
- (f) the reason (or, if more than one principal reason) for the dismissal is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under any enactment; or
- (g) the employee is one to whom a dismissal procedures agreement designated by an order under section 110 of the 1996 Act applies at the date of dismissal.

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

“unofficial” shall be construed in accordance with subsections (2) to (4) of section 237 of the 1992 Act;

“strike” has the meaning given to it by section 246 of the 1992 Act;

“protected industrial action” shall be construed in accordance with section 238A(1) of the 1992 Act;

and an employer shall be regarded as offering to re-engage an employee if that employer, a successor of that employer or an associated employer of that employer offers to re-engage the employee, either in the job which he held immediately before the date of dismissal or in a different job which would be suitable in his case.