

SCHEDULE

ACAS ARBITRATION SCHEME

XX. AWARDS OF REINSTATEMENT OR RE-ENGAGEMENT

Definitions

125. An order for reinstatement (which must be in the form of an award) is an order that the Employer shall treat the Employee in all respects as if he or she had not been dismissed.

126. An order for re-engagement (which must be in the form of an award) is an order, on such terms as the arbitrator may decide, that the Employee be engaged by the Employer, or by a successor of the Employer or by an associated employer, in employment comparable to that from which he or she was dismissed or in other suitable employment.

Choice of remedy

127. In exercising his or her discretion with respect to the remedy to be awarded under paragraph 123(i) above, the arbitrator shall first consider whether to make an order for reinstatement, and in so doing shall take into account:

- (i) whether the Employee wishes to be reinstated;
- (ii) whether it is practicable for the Employer to comply with an order for reinstatement; and
- (iii) where the Employee caused or contributed to some extent to the dismissal, whether it would be just to order his or her reinstatement.

128. If the arbitrator decides not to make an order for reinstatement, he or she shall then consider whether to make an order for re-engagement and, if so, on what terms. In so doing, the arbitrator shall take into account:

- (i) any wish expressed by the Employee as to the nature of the order to be made;
- (ii) whether it is practicable for the Employer (or a successor or an associated employer) to comply with an order for re-engagement, and
- (iii) where the Employee caused or contributed to some extent to the dismissal, whether it would be just to order his or her re-engagement and, if so, on what terms.

129. If ordering re-engagement, the arbitrator shall do so on terms which are, so far as is reasonably practicable, as favourable as an order for reinstatement (with the exception of cases where contributory fault has been taken into account under paragraph 127(iii) above).

Permanent replacements

130. Where in any case an Employer has engaged a permanent replacement for a dismissed Employee, the arbitrator shall not take that fact into account in determining, for the purposes of paragraphs 127(ii) and 128(ii) above, whether it is practicable to comply with an order for reinstatement or re-engagement. This does not apply, however, where the Employer shows:

- (i) that it was not practicable for him or her to arrange for the dismissed Employee's work to be done without engaging a permanent replacement, or
- (ii) that:

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- (a) he or she engaged the replacement after the lapse of a reasonable period, without having heard from the dismissed Employee that he or she wished to be reinstated or re-engaged, and
- (b) when the Employer engaged the replacement it was no longer reasonable for him or her to arrange for the dismissed Employee's work to be done except by a permanent replacement.

Reinstatement

131. On making an order for reinstatement, the arbitrator shall specify:

- (i) any amount payable by the Employer in respect of any benefit which the Employee might reasonably be expected to have had but for the dismissal (including arrears of pay) for the period between the date of termination of employment and the date of reinstatement,
- (ii) any rights and privileges (including seniority and pension rights) which must be restored to the Employee, and
- (iii) the date by which the order must be complied with.

132. If the Employee would have benefited from an improvement in his or her terms and conditions of employment had he or she not been dismissed, an order for reinstatement shall require him or her to be treated as if he or she had benefited from that improvement from the date on which he or she would have done so but for being dismissed.

133. In calculating for the purposes of paragraph 131(i) above any amount payable by the Employer, the arbitrator shall take into account, so as to reduce the Employer's liability, any sums received by the Employee in respect of the period between the date of termination of employment and the date of reinstatement by way of:

- (i) wages in lieu of notice or ex gratia payments paid by the Employer, or
- (ii) remuneration paid in respect of employment with another employer,

and such other benefits as the arbitrator thinks appropriate in the circumstances.

Re-engagement

134. On making an order for re-engagement the arbitrator shall specify the terms on which re-engagement is to take place, including:

- (i) the identity of the employer,
- (ii) the nature of the employment,
- (iii) the remuneration for the employment,
- (iv) any amount payable by the employer in respect of any benefit which the Employee might reasonably be expected to have had but for the dismissal (including arrears of pay) for the period between the date of termination of employment and the date of re-engagement,
- (v) any rights and privileges (including seniority and pension rights) which must be restored to the Employee, and
- (vi) the date by which the order must be complied with.

135. In calculating, for the purposes of paragraph 131(iv) above, any amount payable by the Employer, the arbitrator shall take into account, so as to reduce the Employer's liability, any sums received by the Employee in respect of the period between the date of termination of employment and the date of re-engagement by way of:

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(i) wages in lieu of notice or ex gratia payments paid by the Employer, or
(ii) remuneration paid in respect of employment with another employer,
and such other benefits as the arbitrator thinks appropriate in the circumstances.

Continuity of employment

136. The Employee's continuity of employment will be preserved in the same way as it would be under an award of the employment tribunal.