



Trade Union and Labour Relations (Consolidation) Act 1992

1992 CHAPTER 52

PART III

RIGHTS IN RELATION TO UNION MEMBERSHIP AND ACTIVITIES

Exclusion or expulsion from trade union where employment subject to union membership agreement

174 Right not to be unreasonably excluded or expelled from union

- (1) A person who is, or is seeking to be, in employment with respect to which it is the practice, in accordance with a union membership agreement, for the employee to belong to a specified trade union, or one of a number of specified trade unions, has the right—
 - (a) not to have an application for membership of a specified trade union unreasonably refused, and
 - (b) not to be unreasonably expelled from a specified union.
- (2) A “union membership agreement” means an agreement or arrangement relating to employees of an identifiable class which—
 - (a) is made by or on behalf of, or otherwise exists between one or more independent trade unions and one or more employers or employers' associations, and
 - (b) has the effect in practice of requiring the employees of the class to which it relates (whether or not there is a condition to that effect in their contract of employment) to be or become members of the union or one of the unions which is or are parties to the agreement or arrangement or of another specified independent trade union.

Status: This is the original version (as it was originally enacted).

Employees shall be treated as belonging to the same class if they have been identified as such by the parties to the agreement, and they may be so identified by reference to any characteristics or circumstances whatever.

- (3) A trade union shall be treated as “specified” for the purposes of, or in relation to, a union membership agreement if it is specified in the agreement or is accepted by the parties to the agreement as being the equivalent of a union so specified.
- (4) For the purposes of this section—
 - (a) an application for membership of a trade union which is neither granted nor rejected before the end of the period within which it might reasonably have been expected to be granted if it was to be granted, shall be treated as having been refused on the last day of that period, and
 - (b) a person who under the rules of a trade union ceases to be a member of the union on the happening of an event specified in the rules shall be treated as having been expelled from the union.
- (5) A person who claims that an application by him for membership of a trade union has been unreasonably refused, or that he has been unreasonably expelled from a trade union, in contravention of this section, may present a complaint to an industrial tribunal.
- (6) The question whether the trade union acted reasonably or unreasonably shall be determined in accordance with equity and the substantial merits of the case.

In particular, a union shall not be regarded as having acted reasonably only because it has acted in accordance with the requirements of its rules or unreasonably only because it has acted in contravention of them.

175 Time limit for proceedings

An industrial tribunal shall not entertain a complaint under section 174 unless it is presented to the tribunal—

- (a) before the end of the period of six months beginning with the date of the refusal or expulsion, 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 the tribunal considers reasonable.

176 Remedies

- (1) Where the industrial tribunal finds a complaint under section 174 is well-founded, it shall make a declaration to that effect.
- (2) A person whose complaint has been declared to be well-founded may make an application for an award of compensation to be paid to him by the union.

The application shall be made to an industrial tribunal if when it is made the applicant has been admitted or re-admitted to membership of the union, and otherwise to the Employment Appeal Tribunal.

- (3) The application shall not be entertained if made—
 - (a) before the end of the period of four weeks beginning with the date of the declaration, or

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- (b) after the end of the period of six months beginning with that date.
- (4) The amount of compensation awarded by an industrial tribunal shall be such as it considers appropriate to compensate the applicant for the loss sustained by him in consequence of the refusal or expulsion complained of.
- The amount of the compensation shall not exceed the aggregate of—
- (a) an amount equal to thirty times the limit for the time being imposed by paragraph 8(1)(b) of Schedule 14 to the Employment Protection (Consolidation) Act 1978 (maximum amount of a week's pay for basic award in unfair dismissal cases), and
 - (b) an amount equal to the limit for the time being imposed by section 75 of that Act (maximum compensatory award in such cases).
- (5) The amount of compensation awarded by the Employment Appeal Tribunal shall be such as it considers just and equitable in all the circumstances.
- The amount of the compensation shall not exceed the aggregate of—
- (a) the aggregate amount mentioned in subsection (4), and
 - (b) an amount equal to fifty-two times the limit for the time being imposed by paragraph 8(1)(a) of Schedule 14 to the Employment Protection (Consolidation) Act 1978 (maximum amount of a week's pay for additional award of compensation in unfair dismissal cases),
- and shall not be less than the amount for the time being specified in section 156(1) (minimum basic award).
- (6) In determining the amount of compensation to be awarded, the industrial tribunal or Employment Appeal 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 England and Wales or Scotland.
- (7) Where the industrial tribunal or Employment Appeal Tribunal finds that the refusal or expulsion complained of was to any extent caused or contributed to by action of the applicant, it shall reduce the amount of compensation by such proportion as it considers just and equitable having regard to that finding.
- (8) In determining the amount of compensation to be awarded, any reduction or increase under subsection (4) or (5) shall be made before—
- (a) any reduction by virtue of subsection (6) or (7), or
 - (b) any reduction on account of sums already paid by the union by way of compensation in respect of the subject matter of the application;
- and accordingly, where the case so required the reductions mentioned in paragraphs (a) and (b) shall be made to the maximum or, as the case may be, minimum award under subsection (4) or (5).

177 Interpretation and other supplementary provisions

- (1) References in section 174 to a trade union include a branch or section of a trade union.
- (2) The remedy of a person for infringement of the rights conferred by section 174 is by way of a complaint to an industrial tribunal in accordance with this Part, and not otherwise.
- (3) Those rights are in addition to, and not in substitution for, any right existing apart from that section.