

Unfair Dismissal and Trade Union Activities

Elizabeth Stephenson



PATTINSON BREWER Est. 1890

Introduction

- often said that union representatives enjoy “special protection” under the law
- not strictly true but are some important protections should be aware of



PATTINSON BREWER Est. 1890

Ordinary Unfair Dismissal - Service Requirements

s98 Employment Rights Act 1996

Employees need 1 or 2 years service to be eligible to claim

1 year if employment commenced before 5 April 2012

2 years if employment commenced on or after 6 April 2012



PATTINSON BREWER Est. 1890

Ordinary Unfair Dismissal - Reasonableness

If the employer has shown that the reason put forward for the dismissal is one of the potentially fair reasons under s98 then the Tribunal goes on to consider

> whether the employer acted reasonablyin treating it as a sufficient reason for dismissal



Automatic Unfair Dismissal

If the Tribunal is persuaded that the reason for the dismissal is one of the prohibited and automatically unfair reasons

> the dismissal is automatically unfair without going on to consider reasonableness



Section 152 Trade Union and Labour Relations Act 1992

Dismissal on grounds related to union membership or activities

The dismissal of an employee shall be regarded as unfair if the reason for the dismissal (or, if more than one, the principal reason) was that the employee-

(a) was or proposed to become a member of an independent trade union

(b) had taken part, or proposed to take part in the activities of an independent trade union at an appropriate time.....



**Section 152 TULRA 1992 -
Other prohibited reasons**

Making use of trade union services
(ba)

Failing to accept an inducement
offered in contravention of s145A
related to union membership/
activities (bb)

For not being a member of a
particular union or one of a number
of particular trade unions or
refusing to become/remain one (c)



**Selection for redundancy
on grounds related to
union membership or
activities (s153)**

Where the reason or principal
reason for dismissal is that the
employee was redundant but it is
shown that other employees in
circumstances similar to his have
not been made redundant and he
seems to have been selected for
redundancy due to a reason in s152

Dismissal > automatically unfair



**Automatic Unfair
Dismissal under s152
(dismissal) or s153
(selection for redundancy)**

No minimum service requirement

So you can claim even if you have
less than 1 or 2 years' service

Minimum basic award for unfair
dismissal (currently £5,300)



S152 (b) dismissal on grounds related to union activities

The dismissal is unfair if the reason (or principal reason) is that the employee had taken part in or proposed to take part the activities of an independent trade union at an appropriate time



What is an independent trade union?

Defined in s5 TULRA 1992 as a trade union which -

(a) is not under the domination or control of an employer or group of employers or of one or more employers' associations, and

(b) is not liable to interference by an employer or any such group or association (arising out of the provision of financial or material support or by any other means whatsoever) tending towards control



What are "union activities"?

No need for union recognition to be a union activity but if recognised possibly the scope of union activities will be seen as wider

It needs to be the activities of individual acting on the union's behalf in some way - can be done by those holding an actual union position or by members themselves.

Someone who is a union representative or holds a union position is more likely to be acting on behalf of the union than an ordinary member.



What are “union activities”?

Dick v Aberdeen Scaffolding Ltd
EAT 400/91

Employee who acted as a spokesperson for workers during a period of industrial disputes had not been taking part in union activities

He only became spokesperson because he got on with people and he claimed no authority from the union.



What are “union activities”?

SAS Service Partner v MacEachen EAT 414/92

M had been a steward in the past but held no official union position at his workplace (where there was no union recognition) but acted as an unofficial union spokesman recruiting members, convening meetings and lobbying union officials. He was involved in TU activities.

Fortune v Thames Water Authority 1978 EAT

A steward who initiated industrial action without union authority was not



Acts of a steward that might be

Taking part in bargaining, consultation, grievance/disciplinary handling and disputes

Discussions with full-time officers

Representing members

Recruiting new members

Undergoing approved union training

Writing for a union magazine

Putting up union notices and distributing union literature



Acts of a member that might be

- Voting in a union election
- Recruitment of new members
- Distributing union literature
- Discussions with or complaints to a union official in line with approved union procedures
- Attending branch meetings, national conferences or other union committees



“had taken part or proposed to take part”?

Dismissal of an employee by their new employer because of their union activities in their previous employment was held to be unfair under s152

In Fitzpatrick v British Railways Board 1992 ICR 221

F was dismissed when her employer discovered her union activism in her old job. Court of Appeal found that the employer must have dismissed for fear that she would repeat conduct of that nature in her new job so it was a dismissal for “proposing to take part”



“at an appropriate time”

S152(2) “an appropriate time” means -

(a) a time outside the employee’s working hours, or

(b) a time within his working hours at which in accordance with arrangements agreed with or consent given by his employer, it is permissible for him to take part in the activities of a trade union

“working hours” means any time when in accordance with his contract he is required to be at work



Appropriate time - Caselaw

Carter v Wiltshire CC 1979 IRLR 331

A meeting that took place after working hours on social club premises was at an appropriate time because it was outside working hours.

Robb v Leon Motor Services 1978 ICR 506 EAT

A shop steward was transferred because he was "over-enthusiastic" in pursuing his steward's duties during working hours. His detriment claim failed because his activities were during working hours and there were no arrangements or employer consent



Detriment on grounds of union activities s146 TULRA 1992

Similar provisions regarding not subjecting an employee to a detriment in order to:-

Penalise/ prevent/ deter them from

- being or becoming a union member or
- carrying out union activities at an appropriate time or
- using trade union services

Compel them to become a member



Health and Safety reps

Additional protection where an employee is

- subjected to detriments (s44 Employment Rights Act 1996)
- or dismissed (s100 Employment Rights Act 1996)

for carrying out health and safety rep functions



Time Limits

Claims in relation to dismissal should be brought within 3 months less one day of the effective date of termination

Claims in relation to detriment should be brought within 3 months less one day of the act complained of (or the last of a series of acts)



Interim relief

If the reason or if more than one the principal reason for dismissal is the employee's union activities then he may wish to apply for interim relief

The ET can make an order that his contract of employment continue pending full hearing if at a preliminary hearing they decide it is likely he will succeed in his claim under s152

Time limits - within 7 days of dismissal or notice being given


