

No. 22/1993:

UNFAIR DISMISSALS (AMENDMENT) ACT, 1993

AN ACT TO AMEND AND EXTEND THE UNFAIR DISMISSALS ACTS, 1977  
AND 1991, AND TO PROVIDE FOR RELATED MATTERS.

[14th July, 1993]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Interpretation.

**1.** —(1) In this Act "the Principal Act" means the Unfair Dismissals Act, 1977 .

(2) In this Act, a reference to any enactment shall, unless the context otherwise requires, be construed as a reference to that enactment as amended, adapted or extended by or under any subsequent enactment including this Act.

Amendment of section 1 of Principal Act.

**2.** —Section 1 of the Principal Act is hereby amended by—

( a ) the substitution of the following definitions for the definitions of "trade union" and "the Tribunal":

" 'trade union' means a trade union which is the holder of a negotiation licence under Part II of the Trade Union Act, 1941 ;

'the Tribunal' means the Tribunal established by section 39 of the Redundancy Payments Act, 1967 , and known, by virtue of section 18 of this Act, as the Employment Appeals Tribunal.",

and

( b ) the addition of the following subsections:

"(2) Where on the date of an award to an employee of re-instatement under this Act—

( a ) the terms or conditions

on which are employed other employees of the same employer who occupy positions similar to that from which the employee was dismissed, or

( *b* ) if there are no such employees, the terms or conditions on which are employed employees generally of the same employer,

are more favourable to the employees concerned than they were at the date of the dismissal, then, the references in sections 5 (4) and 7 (1) (*a*) of this Act to the terms and conditions on which an employee was employed immediately before his dismissal shall, in the case of the first-mentioned employee, be construed as references to terms and conditions corresponding to those on which the other employees concerned are employed on the date of the award.

(3) In this Act a reference to any enactment shall, unless the context otherwise requires, be construed as a reference to that enactment as amended, adapted or extended by or under any subsequent enactment including this Act."

Amendment of section 2 of Principal Act.

**3.** —Section 2 of the Principal Act is hereby amended by—

( *a* ) in subsection (1), the substitution of the following paragraph for paragraph (*j*):

"(*j*) officers of a health board (other than temporary officers) or a vocational education committee established by the Vocational Education Act, 1930 .",

( *b* ) in subsection (2), the insertion after

paragraph (b) of the following proviso to subsection (2):

"Provided that where, following dismissal consisting only of the expiry of the term of a contract of employment such as aforesaid ('the prior contract') without the term being renewed under the contract or the cesser of the purpose of the contract—

(i) the employee concerned is re-employed by the employer concerned within 3 months of the dismissal under a contract of employment such as aforesaid made between the employer and the employee ('the subsequent contract') and the nature of the employment is the same as or similar to that of the employment under the prior contract,

(ii) the employee is dismissed from the employment,

(iii) the dismissal consisted only of the expiry of the term of the subsequent contract without the term being renewed under the contract or the cesser of the purpose of the contract, and

(iv) in the opinion of the rights commissioner, the Tribunal or the Circuit Court, as the case may be, the entry by the

employer into the subsequent contract was wholly or partly for or was connected with the purpose of the avoidance of liability under this Act—

then—

(I) this Act shall, subject to the other provisions thereof, apply to the dismissal, and

(II) the term of the prior contract and of any antecedent contracts shall be added to that of the subsequent contract for the purpose of the ascertainment under this Act of the period of service of the employee with the employer and the period so ascertained shall be deemed for those purposes to be one of continuous service.

In this proviso 'antecedent contract', in relation to a prior contract, means—

(A) a contract of employment such as aforesaid the term of which expired not more than

3 months before the commencement of the prior contract, or

(B) each of a series of contracts the term of the last of which expired not more than 3 months before the commencement of that of the prior contract and the term of the other or of each of the other contracts in the series expired not more than 3 months before the commencement of that of the other, or the next, contract in the series,

being a contract or contracts made between the employer and the employee who were parties to the prior contract and the nature of the employment under which was the same as or similar to that of the employment under the prior contract.

and

( c ) the insertion of the following subsection after subsection (4):

"(5) Notwithstanding subsection (4) of this section, the dismissal (not being a dismissal referred to in the proviso (inserted by the *Unfair Dismissals (Amendment) Act, 1993*) to subsection (2) of this section) of an employee followed by his re-employment by the same employer not later than 26 weeks after the dismissal shall not operate to break the continuity of service of the employee with the employer if the dismissal was wholly or partly for or was connected with the purpose of the avoidance of liability under this Act."

Amendment of section 5 of Principal Act.

**4.** —Section 5 of the Principal Act is hereby amended by the substitution of the following subsections for subsections (1), (2) and (3):

"(1) For the purposes of this Act (other than section 2 (4)), the lock-out of an employee shall be deemed to be a dismissal and the dismissal shall be deemed to be an unfair dismissal if, after the termination of the lock-out—

( a ) the employee was not permitted to resume his employment on terms and conditions at least as favourable to the employee as those specified in paragraph (a) or (b) of subsection (1) of section 7 of this Act, and

( b ) one or more other employees in the same employment were so permitted.

(2) The dismissal of an employee for taking part in a strike or other industrial action shall be deemed for the purposes of this Act to be an unfair dismissal if—

( a ) one or more employees of the same employer who took part in the strike or other industrial action were not dismissed for so taking part, or

( b ) one or more of such employees who were dismissed for so taking part were subsequently permitted to resume their employment on terms and conditions at least as favourable to the employees as those specified in the said paragraph (a) or (b) and the employee was not.

(3) The said section 7 shall be construed in relation to an unfair dismissal specified in subsection (1) or (2) of this section as if it contained a requirement that the terms or conditions on which the person the subject of the unfair dismissal is, if appropriate, to be reinstated under paragraph (a) of subsection (1) of that section or re-engaged under paragraph (b) of that subsection included a term that the reinstatement or re-engagement should be deemed

to have commenced on such day as is agreed upon by the employer concerned and by or on behalf of the employees or, in the absence of such agreement, on the earliest date from which re-instatement or re-engagement, as the case may be, was offered to a majority of the other employees of the same employer who were the subject of the lock-out concerned or took part in the strike or other industrial action concerned."

Amendment of section 6 of Principal Act.

**5.**—Section 6 of the Principal Act is hereby amended by—

( *a* ) the substitution in subsection (2) of the following paragraphs for paragraph (*e*):

"(*e*) the race, colour or sexual orientation of the employee,

( *ee* ) the age of the employee,

(*eee*) the employee's membership of the travelling community,"

and

( *b* ) the substitution of the following subsection for subsection (7):

"(7) Without prejudice to the generality of subsection (1) of this section, in determining if a dismissal is an unfair dismissal, regard may be had, if the rights commissioner, the Tribunal or the Circuit Court, as the case may be, considers it appropriate to do so—

( *a* ) to the reasonableness or otherwise of the conduct (whether by act or omission) of the employer in relation to the dismissal, and

( *b* ) to the extent (if any) of the compliance or failure to comply by the employer, in relation to the employee, with the procedure referred to in

section 14 (1) of this Act or with the provisions of any code of practice referred to in paragraph (d) (inserted by the Unfair Dismissals (Amendment) Act, 1993 ) of section 7 (2) of this Act."

Amendment of section 7 of Principal Act.

**6.**—Section 7 of the Principal Act is hereby amended by—

( a ) in subsection (1), the substitution of the following for paragraph (c):

"( c ) (i) if the employee incurred any financial loss attributable to the dismissal, payment to him by the employer of such compensation in respect of the loss (not exceeding in amount 104 weeks remuneration in respect of the employment from which he was dismissed calculated in accordance with regulations under section 17 of this Act) as is just and equitable having regard to all the circumstances, or

(ii) if the employee incurred no such financial loss, payment to the employee by the employer of such compensation (if any, but not exceeding in amount 4 weeks remuneration in respect of the employment from which he was dismissed calculated as aforesaid) as is just and equitable having regard to all the circumstances,

and the references in the foregoing paragraphs to an employer shall be construed, in a case where the ownership of the business of the employer changes after the dismissal, as references to the person who, by virtue of the change, becomes entitled to such

ownership.",

( *b* ) in subsection (2), the deletion of "and" in paragraph (c) and the substitution of the following paragraphs for paragraph (d):

"( *d* ) the extent (if any) of the compliance or failure to comply by the employer, in relation to the employee, with the procedure referred to in subsection (1) of section 14 of this Act or with the provisions of any code of practice relating to procedures regarding dismissal approved of by the Minister,

( *e* ) the extent (if any) of the compliance or failure to comply by the employer, in relation to the employee, with the said section 14, and

( *f* ) the extent (if any) to which the conduct of the employee (whether by act or omission) contributed to the dismissal.",

and

( *c* ) the insertion of the following subsection after subsection (2):

"(2A) In calculating financial loss for the purposes of subsection (1), payments to the employee—

( *a* ) under the Social Welfare Acts, 1981 to 1993, in respect of any period following the dismissal concerned, or

( *b* ) under the Income Tax Acts arising by reason of the dismissal,

shall be disregarded."

Amendment of section 8 of Principal Act.

7. —Section 8 of the Principal Act is hereby amended by—

( a ) the substitution of the following subsections for subsections (2), (3) and (4):

"(1A) There shall be included in—

( a ) a recommendation of a rights commissioner under subsection (1) of this section,

( b ) a determination of the Tribunal under the said subsection (1), and

( c ) an order of the Circuit Court, under section 11 of the, *Unfair Dismissals (Amendment) Act, 1993,*

under which specified redress under this Act is awarded to an employee a statement of the reasons why either of the other forms of redress specified in section 7 (1) of this Act was not awarded to the employee.

(2) A claim for redress under this Act shall be initiated by giving a notice in writing (containing such particulars (if any) as may be specified in regulations under section 17 of this Act made for the purposes of subsection (8) of this section) to a rights commissioner or the Tribunal, as the case may be—

( a ) within the period of 6 months beginning

on the date of the relevant dismissal, or

( *b* ) if the rights commissioner or the Tribunal, as the case may be, is satisfied that exceptional circumstances prevented the giving of the notice within the period aforesaid, then, within such period not exceeding 12 months from the date aforesaid as the rights commissioner or the Tribunal, as the case may be, considers reasonable,

and a copy of the notice shall be given by the rights commissioner or the Tribunal, as the case may be, to the employer concerned as soon as may be after the receipt of the notice by the rights commissioner or the Tribunal.

(3) A rights commissioner shall not hear a claim for redress under this Act if—

( *a* ) the Tribunal has made a determination in relation to the claim, or

( *b* ) any party concerned notifies the rights commissioner in writing, within 21 days of the giving to the employer pursuant to subsection (2) of this section of the copy of the notice concerned referred to in that subsection and relating

to the claim, that he objects to the claim being heard by a rights commissioner.

(4) ( a ) Where a recommendation of a rights commissioner in relation to a claim for redress under this Act has not been carried out by the employer concerned in accordance with its terms, the time for bringing an appeal against the recommendation has expired and no such appeal has been brought, the employee concerned may bring the claim before the Tribunal and the Tribunal shall, notwithstanding subsection (5) of this section, without hearing the employer concerned or any evidence (other than in relation to the matters aforesaid), make a determination to the like effect as the recommendation.

( b ) The bringing of a claim before the Tribunal by virtue of this subsection shall be effected by giving to the Tribunal a notice in writing containing such particulars (if any) as may be specified in regulations under section 17 of this Act made for the purposes of subsection (8) of this

section".

( *b* ) in subsection (5),

(i) the deletion of "Subject to subsection (4) of this section," and

(ii) the substitution of the following paragraph for paragraph (*b*):

"( *b* ) unless, before the commencement of the hearing of the claim, one of the parties concerned notifies in writing—

(i) in a case where the claim has been initiated before a rights commissioner, the rights commissioner, or

(ii) in any other case, the Tribunal,

that he objects to the claim being heard by a rights commissioner.",

( *c* ) in subsection (9), the insertion after "the said section 3C of "with the substitution in paragraph (*e*) of the said subsection (17) of 'a fine not exceeding £1,000' for 'a fine not exceeding twenty pounds'", and

( *d* ) the substitution of the following subsections for subsection (10):

"(10) ( *a* ) A dispute in relation to a dismissal as respects which a recommendation has been made by a rights commissioner under this Act or a hearing by the Tribunal under this Act has commenced shall not be referred, under the Industrial Relations Acts, 1946 to 1990, to a rights commissioner or the Labour Court.

( *b* ) Where, in relation to a dismissal, a recommendation has been made by a rights commissioner, or a hearing by the Labour Court under the said Acts has commenced, the employee concerned shall not be entitled to redress under this Act in respect of the dismissal.

(11) Where the dismissal of an employee is an unfair dismissal and a term or condition of the contract of employment concerned contravened any provision of or made under the Income Tax Acts or the Social Welfare Acts, 1981 to 1993, the employee shall, notwithstanding the contravention, be entitled to redress under this Act, in respect of the dismissal.

(12) Where, in proceedings under this Act, it is shown that a term or condition of a contract of employment contravened any such

provision as aforesaid, the rights commissioner, the Tribunal or the Circuit Court, as the case may be, shall notify the Revenue Commissioners or the Minister for Social Welfare, as may be appropriate, of the matter."

Amendment of section 9 of Principal Act.

**8.**—Section 9 of the Principal Act is hereby amended by the substitution in subsection (2) for "within the said period of 6 weeks" of "by the Tribunal as soon as may be after the receipt by it of the notice".

Amendment of section 14 of Principal Act.

**9.**—Section 14 of the Principal Act is hereby amended by the substitution of the following subsections for subsections (3) and (4):

"(3) The reference in subsection (1) of this section to a procedure is a reference to a procedure that has been agreed upon by or on behalf of the employer concerned and by the employee concerned or a trade union or an excepted body within the meaning of the Trade Union Act, 1941, representing him or has been established by the custom and practice of the employment concerned, and the references in subsection (2) of this section to an alteration in the said procedure are references to an alteration that has been agreed upon by the employer concerned or a person representing him and by the employee concerned or a trade union, or an excepted body, within the meaning aforesaid, representing him.

(4) Where an employee is dismissed, the employer shall, if so requested, furnish to the employee within 14 days of the request, particulars in writing of the principal grounds for dismissal, but, in determining for the purposes of this Act whether, in accordance with the provisions of this Act, the dismissal was an unfair dismissal, there may be taken into account any other grounds which, subject to the provisions of this Act and having regard to all the circumstances, are substantial grounds justifying the dismissal."

Amendment of section 15 of Principal Act.

**10.**—Section 15 of the Principal Act is hereby

Act.

amended by the substitution of the following subsections for subsections (2) and (3):

"(2) Where a recommendation has been made by a rights commissioner in respect of a claim by an employee for redress under this Act or the hearing of a claim by the Tribunal has commenced, the employee shall not be entitled to recover damages at common law for wrongful dismissal in respect of the dismissal concerned.

(3) Where the hearing by a court of proceedings for damages at common law for wrongful dismissal of an employee has commenced, the employee shall not be entitled to redress under this Act in respect of the dismissal to which the proceedings relate."

Appeals from, and enforcement of determinations of, Tribunal.

**11.** —(1) A party concerned may appeal to the Circuit Court from a determination of the Tribunal in relation to a claim for redress under the Principal Act within 6 weeks from the date on which the determination is communicated to the parties.

( 2 ) ( a ) Where, in proceedings under this section, the Circuit Court finds that an employee is entitled to redress under the Principal Act, it shall order the employer concerned to make to the employee the appropriate redress.

( b ) If an employer fails to comply with an order of the Circuit Court under *paragraph (a)* of this subsection ("the former order"), the Circuit Court shall, on application to it in that behalf by—

(i) the employee concerned, or

(ii) if he considers it appropriate to make the application having regard to all the circumstances, the Minister,

make—

(I) such order for the enforcement of the former order as it considers appropriate having regard to all the circumstances, or

(II) if the former order directed the re-instatement or re-engagement of the employee concerned and that Court considers it appropriate to do so having regard to all the circumstances, in lieu of making an order under *subparagraph (I)*, make an order directing the employer, in lieu of reinstating or re-engaging the employee, to pay compensation to him under section 7 (1) (c) of the Principal Act and giving such directions for the enforcement of the latter order as it considers appropriate having regard to all the circumstances.

( 3 ) ( a ) If an employer fails to carry out in accordance with its terms a determination of the Tribunal in relation to a claim for redress under the Principal Act within 6 weeks from the date on which the determination is communicated to the parties, the Circuit Court shall, on application to it in that behalf by—

(i) the employee concerned, or

(ii) if he considers it appropriate to make the application having regard to all the circumstances, the Minister,

without hearing the employer or any evidence (other than in relation to the matters aforesaid) make—

(I) an order directing the employer to carry out the determination in accordance with its terms, or

(II) if the determination directed the re-instatement or re-engagement of the employee concerned and that Court considers it appropriate to do so having regard to all the circumstances, in lieu of making an order under *subparagraph (I)*, make an order directing the employer, in lieu of reinstating or re-engaging the employee, to pay compensation to him under section 7 (1) (c) of the Principal Act and giving such directions for the enforcement of the latter order as it considers appropriate having regard to all the circumstances.

( b ) In *paragraph (a)* of this subsection the reference to a determination of the Tribunal is a reference to such a determination in relation to which, at the expiration of the time for bringing an appeal

against it, no such appeal has been brought, or if such an appeal has been brought it has been abandoned and the reference to the date on which the determination is communicated to the parties shall, in a case where such an appeal is abandoned, be construed as a reference to the date of such abandonment.

(4) The Circuit Court may, in an order under this section, if in all the circumstances it considers it appropriate to do so—

( *a* ) in case the order relates to the payment of compensation, direct the employer concerned to pay to the employee concerned interest on the compensation at the rate referred to in section 22 of the Courts Act, 1981 , in respect of the whole or any part of the period beginning 6 weeks after the date on which the determination of the Tribunal is communicated to the parties and ending on the date of the order, and

( *b* ) in case the order relates to re-instatement or re-engagement, direct the employer to pay to the employee compensation of such amount as it considers reasonable in respect of the loss of wages suffered by the employee by reason of the failure of the employer to comply with the determination aforesaid.

(5) Proceedings under this section shall be heard in the county where the employer concerned ordinarily resides or carries on any profession, business or occupation.

Evidence of failure to attend before or give evidence or produce documents to Tribunal.

**12.** —A document purporting to be signed by the chairman or a vice-chairman of the Tribunal stating that—

( *a* ) a person named in the document

was, by a notice under paragraph (c) of section 39 (17) of the Redundancy Payments Act, 1967 , required to attend before the Tribunal on a day and at a time and place specified in the document, to give evidence or produce a document,

( b ) a sitting of the Tribunal was held on that day and at that time and place, and

( c ) the person did not attend before the Tribunal in pursuance of the notice or, as the case may be, having so attended, refused to give evidence or refused or failed to produce the document,

shall, in a prosecution of the person under paragraph (e) of the said section 39 (17), be evidence of the matters so stated without further proof.

Employment agencies.

**13.** —Where, whether before, on or after the commencement of this Act, an individual agrees with another person, who is carrying on the business of an employment agency within the meaning of the Employment Agency Act, 1971 , and is acting in the course of that business, to do or perform personally any work or service for a third person (whether or not the third person is a party to the contract and whether or not the third person pays the wages or salary of the individual in respect of the work or service), then, for the purposes of the Principal Act, as respects a dismissal occurring after such commencement—

( a ) the individual shall be deemed to be an employee employed by the third person under a contract of employment,

( b ) if the contract was made before such commencement, it shall be deemed to have been made upon such commencement, and

( c ) any redress under the Principal Act for unfair dismissal of the individual under the contract shall be awarded

against the third person.

Dismissal of persons during apprenticeship, training, etc., or during first year of service, for trade union membership or activities.

**14.** —Sections 2 (1), 3 and 4 and subsections (1) and (6) of section 6 of the Principal Act shall not apply to a person referred to in paragraph (a) or (b) of the said section 2 (1) or the said section 3 or 4 who is dismissed if the dismissal results wholly or mainly from one or more of the matters referred to in subsection (2) (a) of the said section 6.

Amendment of First Schedule to Minimum Notice and Terms of Employment Act, 1973 .

**15.** —The First Schedule to the Minimum Notice and Terms of Employment Act, 1973 , is hereby amended by the substitution of the following paragraph for paragraph 7 (inserted by the Principal Act):

"7. Where the whole or part of a trade, business or undertaking was or is transferred to another person either before or after the passing of this Act, the service of an employee before the transfer in the trade, business or undertaking, or the part thereof so transferred—

( a ) shall be reckoned as part of the service of the employee with the transferee, and

( b ) the transfer shall not operate to break the continuity of the service of the employee,

unless the employee received and retained redundancy payment from the transferor at the time of and by reason of the transfer."

Repeal.

**16.** —Section 10 of the Principal Act is hereby repealed.

Short title, collective citation, construction, commencement and application.

**17.** —(1) This Act may be cited as the Unfair Dismissals (Amendment) Act, 1993 .

(2) The Unfair Dismissals Acts, 1977 and 1991, and this Act may be cited together as the Unfair Dismissals Acts, 1977 to 1993.

(3) The Unfair Dismissals Acts, 1977 and 1991, and this Act shall be construed together as one.

(4) This Act shall come into operation on the 1st

day of October, 1993.

(5) This Act shall have effect as respects dismissals occurring after the commencement of this Act.