



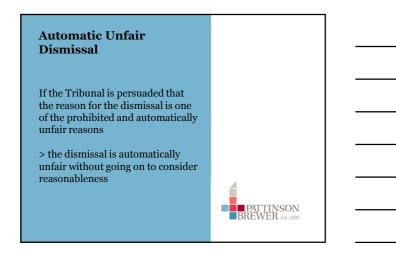
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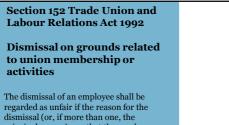
Ordinary Unfair Dismissal - Reasonableness

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







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.....



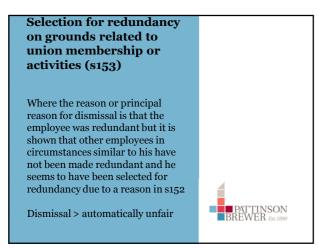
Section 152 TULRA 1992 -Other prohibited reasons

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)







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.



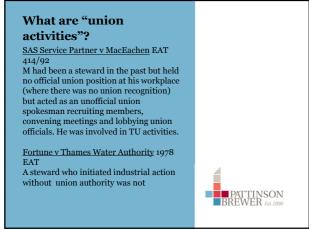
What are "union activities"?

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.







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 <u>Fitzpatrick v British Railways</u> Board 1992 ICR 221

Five a 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

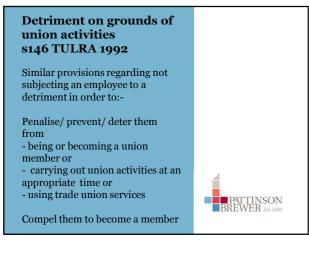
Carter v Wiltshire CC 1979 IRLR 331

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 workings hours and there were no arrangements or employer consent







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 - <u>within 7 days of</u> <u>dismissal or notice being given</u>

