

EMPLOYMENT – TRADE UNIONS 2

TU RULES - *Rules were regarded as unlawful at common law and could give rise to charges of criminal conspiracy. S.11 TULR(C)A states that the rules will not be unenforceable/void as a restraint of trade. TU free to adopt own rules if within statutory framework. Rules between TU and members are contractual.

***Taking disciplinary action against a member:** Power to discipline/expel/impose fines must be contained in rules. *Courts can imply disciplinary powers into rules in certain circumstances: *McVitie v UNISON* *Procedure for disciplining a member must be followed. *TU cannot oust the jurisdiction of the courts. * If there is an appeal procedure and member excluded without allowing appeal, will be invalid.* Expelled member can seek declaration, injunction and damages from the courts.

***Rights of members & liability for TU** -If rules provide right to legal advice and none provided/negligent: TU sued for damages. Failure to properly advise/submit claim at ET will see TU liable.

***Ability of official to act:** Action by TU officials must be contained in rules: *Weakly v Amalgamated Union of Engineering Workers*. This covers payment of strike money not contained in rules and imposing a levy whose purpose is ultra vires. If TU takes action which benefit majority, minority who are not benefitted can bring action eg TU need to be mindful of equality to their members.

TU GOVERNANCE

***Executive Committee** - Governed by s.46 TULR(C)A. Elected by a ballot every 5 years. * Every member of the TU can vote except: Excluded class under the list; Members not in employment; Members in arrears; Student/apprentice members.

***Accounts and records:** Duty to keep accounts and records s.28. * An annual financial statement must be sent to all members.* Members have a rights to inspect accounts.*It is like a trust system.

***Similarly, remedies against trustees** - Property held on trust by trustees.* S.16 provides a remedy against trustees.* Follow for removal of trustees.

***It is possible for TU to collect political fund and political objects** - *Amalgamated Society of Railway Servants v Osborne*.

Legal for TU to have a political fund and pursue political objects under ss.71-74. Trade Union Act 1913. Requirement for a ballot by all members every 10 years.*Members can contribute to fund but no other TU assets can be added.*Members can contract out of contributing to fund.*Fund can be used to finance political parties, support candidates, literature and pay for conferences.*Labour party receives considerable funds from TU's hence role of TU in running of the party. TU could support Conservatives or Liberal Democrats.

***TU under a duty to keep a register of members** - S.24 TULR(C)A stipulates this requirement. Rights of the members: Confidentiality (s.24A); Limited disclosure: consent, required by certification officer, and investigation a crime.

TU MEMBERSHIP

*TU will decide who is eligible to join. This might be included in their rules. Tends to be particular workforce *Cannot accept membership from those outside class/ or create additional class outside TU's rules: *Martin v Scottish Transport and General Workers' Union* * Can create excluded class in rules.

***Limits on restricting membership:** Cannot exclude membership or arbitrary and unreasonable grounds. Cannot discriminate/restrict benefits on grounds of sex or race: this will now be governed by the Equality Act 2010. *S.174 TULR(C)A prevents exclusion/expulsion if this is against statute.

MEMBERSHIP RIGHTS:*Access to employment; Inducement relating to TU membership or activities; Action short of dismissal; Time off work for trade union duties; Time off work for trade union activities; Dismissal on grounds of trade union activities/ membership; Dismissal in connection with industrial action

***Access to employment:** s.137(1) *When a person will be regarded as having refused employment: S.137(5) if the employer..

*A claim can then be made to the Employment Tribunal within 3 months of the act complained of. S.137 prevents closed shops within the UK.

*TU blacklists: Consulting Association helped employers sort out suitability for employment in the construction industry, with a heavy focus on trade union membership and names of potential or actual troublemakers (over 3,000 names). An investigation by the **Information Commissioner** led to the Employment Relations Act 1999 (Blacklists) Regulations 2010.

***Inducement relating to TU membership or activities** – s145A – extension of s137. It should be a free choice to join a union.

***Action short of dismissal** - S.146 worker protected from detriment/deliberate failure to act by employer, if for purpose of: Deterrence/penalising because of membership; Preventing/deterring taking part in activities at **appropriate time**, or penalising; Preventing/deterring/or penalising use of TU services at **appropriate time**; Compulsion to join a TU. *Appropriate time means a member picketing in their own time for example ie doesn't interfere with work. *Need to show that action taken against worker as an individual. *Employer can raise a defence.

***Time off work for TU duties:** S.168 TULR(C)A an employer must allow an e'ye who is an **official** of a recognised independent TU to take time off work during working hours for her official duties: negotiations/collective bargaining; Performance of duties under collective bargaining; Information consultation in connection to redundancies/TUPE.

***Time of work for TU activities** S.170 an employee must allow member of a recognised TU time off work to undertake relevant activities *Reasonableness depends on the circumstances *The employer does not have to pay the employee for time off in relation to TU activities.

***Dismissal on ground of TU membership/activities** - S.152 states that a dismissal of an employee will be unfair if the reason was because the employee: Is/proposes to become a member of an independent TU; Proposes to/has taken part in TU activities/sought services at an appropriate time ; If dismissed because of refusal to join a TU or a particular TU; Made use of TU services at an appropriate time. *Employer's have to be careful how to treat their staff in this way. Emee can not be dismissed if they have followed correct procedure re strike action.

MEMBERSHIP RIGHTS – INDUSTRIAL ACTION - *Dismissal in connection with industrial action: dismissal where emee imposes a lock out (s238(1)) – emee protection as breach of contract by emr; *dismissal where unauthorised strike (s237)- protection more for emr; *an extension of that is dismissal where strikers are not members (s238)- protection for emr, but emr cannot pick/choose who to dismiss if that is the reason for their misconduct. Must follow fair procedure; *TU supports industrial action but unprotected (s219 excludes these). Members lose statutory protection. This is worse case for members, as a lot of time it transpires after strike that what they were doing was unprotected, and subsequently they are lawfully dismissed*; official protected strike and the protection afforded to members under s238A. – it would be emr to pay out in this situation.