

Government Circular No 107/92

THE EMPLOYMENT ACT 1991

THE EMPLOYMENT TRIBUNAL RULES 1992

In exercise of the powers conferred at the Department of Industry by paragraphs 1, 2 and 5 of Part II of Schedule 4 to the Employment Act 1991(a) and of all other enabling powers, the following Rules are hereby made:-

Citation, commencement and application

(1) These Rules may be cited as the Employment Tribunal Rules 1992 and shall come into operation on the 1st April 1992.

(2) Nothing in these Rules applies to proceedings under the Employment Act 1986 (b).

Interpretation

2. In these Rules -

“the 1990 Act” means the Redundancy Payments Act 1990(c);

“the 1991 Act” means the Employment Act 1991;

“applicant” means a person who in pursuance of rule 3 has presented an originating application to the Clerk for a decision of the Tribunal and includes -

(a) the DHSS;

(b) a claimant or complainant;

(c) in relation to interlocutory applications under these Rules, a person who seeks any relief;

“the Chairman” means the Chairman of the Tribunal, and includes the deputy chairman of the Tribunal acting under paragraph 2 (2) of Part I of Schedule 4 to the 1991 Act;

“the Clerk” means the person for the time being appointed by the Department of Industry to act as Clerk of the Tribunal, and includes an acting Clerk;

“decision”, in relation to the Tribunal, includes a declaration, an order (other than an interlocutory order), a recommendation or an award of the Tribunal, but does not include an opinion given pursuant to a pre-hearing assessment held under rule 8;

“the DHSS” means the Department of Health and Social Security;

“the fund”, means the Manx National Insurance Fund;

“hearing” means a sitting of the Tribunal duly constituted for the purpose of receiving evidence, hearing addresses and witnesses or doing anything lawfully requisite to enable the Tribunal to reach a decision on any question;

“the Register” means the register of applications and decisions kept in pursuance of these Rules;

“respondent” means a party to proceedings before the Tribunal other than the applicant, and other than the DHSS in proceedings under the 1990 Act in which it is not cited as the person against whom relief is sought;

“the Tribunal” means the Employment Tribunal.

Originating application

3. (1) Proceedings for the determination of any matter by the Tribunal shall be instituted by the applicant presenting to the Clerk an originating application, which shall be in writing and shall set out:-

- (a) the name and address of the applicant; and
- (b) the names and addresses of the person or persons against whom relief is sought; and
- (c) the grounds, with particulars thereof, on which relief is sought.

(2) Where the Clerk is of the opinion that the originating application does not seek or on the facts stated therein cannot entitle the applicant to a relief which the Tribunal has power to give, he may give notice to that effect to the applicant stating the reasons for his opinion and informing him that the application will not be registered unless he states in writing that he wishes to proceed with it.

(3) An application as respects which a notice has been given in pursuance of paragraph (2) shall not be treated as having been received for the purposes of Rule 4 unless the applicant intimates in writing to the Clerk that he wishes to proceed with it; and upon receipt of such an intimation the Clerk shall proceed in accordance with that Rule.

Action upon receipt of originating application

4. (1) Upon receiving an originating application the Clerk shall enter particulars of it in the Register and shall forthwith send a copy of it to the respondent and inform the parties in writing of the case number of the originating application entered in the Register (which shall thereafter constitute the title of the proceedings) and of the address to which notices and other communications to the Clerk shall be sent.

(2) Every copy of the originating application sent by the Clerk under this Rule shall be accompanied by a written notice which shall include information, as appropriate to the case, about the means and time for entering an appearance, the consequences of failure to do so, and the right to receive a copy of the decision.

(3) The Clerk shall also notify the parties that in all cases under the provisions of any enactment providing for conciliation the services of an industrial relation officer are available to them.

Appearance by respondent

5. (1) A respondent shall within 14 days of receiving the copy originating application enter an appearance to the proceedings by presenting to the Clerk a written notice of appearance setting out his full name and address and stating whether or not he intends to resist the application and, if so, setting out sufficient particulars to show on what grounds. Upon receipt of a notice of appearance the Clerk shall forthwith send a copy of it to any other party.

(2) A respondent who has not entered an appearance shall not be entitled to take any part in the proceedings except -

- (i) to apply under Rule 15 (1) for an extension of the time appointed by this Rule for entering an appearance;
- (ii) to make an application under Rule 6(1) (1);
- (iii) to make an application under Rule 12 (2) in respect of Rule 12(1) (b);
- (iv) to be called as a witness by another person;
- (v) to be sent a copy of a document or corrected entry in pursuance of Rule 11(6), 11(10) or 12(5).

(3) A notice of appearance which is presented to the Clerk after the time appointed by this Rule for entering appearances shall be deemed to include an application under Rule 15(1) (by the respondent who has presented the notice of appearance) for an extension of the time so appointed.

(4) Without prejudice to Rule 15(4), if the Tribunal grants the application (which it may do notwithstanding that the grounds of the application are not stated), the Clerk shall forthwith send a copy of the notice of appearance to any other party.

(5) The Tribunal shall not refuse an extension of time under this Rule unless it has sent notice to the person wishing to enter an appearance giving him an opportunity to show cause why the extension should be granted.

Power to require further particulars and attendance of witnesses and to grant discovery

6. (1) The Tribunal may –

(a) subject to Rule 5(2) on the application of a party to the proceedings made either by notice to the Clerk or at the hearing of the originating application, or

(b) in relation to sub-paragraph (i), if it thinks fit of its own motion -

(i) require a party to furnish in writing to the person specified by the Tribunal further particulars of the grounds on which he or it relies and of any facts and contentions relevant thereto;

(ii) grant to the person making the application such discovery or inspection (including the taking of copies) of documents as might be granted by the High Court; and

(iii) require the attendance of any person (including a party to the proceedings) as witness and may, if it does so require the attendance of a person, require him to produce any document relating to the matter to be determined;

and may appoint the time at or within which or the place at which any act required in pursuance of this Rule is to be done.

(2) A party on whom a requirement has been made under paragraph (1) (i) or (1) (ii) on an ex parte application, or (in relation to a requirement under paragraph 1(i)) on the Tribunal's own motion, and a person on whom a requirement has been made under paragraph (1)(iii) may apply to the Tribunal by notice to the Clerk before the appointed time at or within which the requirement is to be complied with to vary or set aside the requirement. Notice of an application under this paragraph to vary or set aside a requirement shall be given to the parties (other than the party making the application)

and, where appropriate, in proceedings which may involve payments out of the Fund, the DHSS if not a party.

(3) Every document containing a requirement under paragraph (1) (ii) or (1) (iii) shall contain a reference to the fact that, under paragraph 1(6) of Part II of Schedule 4 to the 1991 Act, any person who without reasonable excuse fails to comply with any such requirement shall be liable on summary conviction to a fine, and the document shall state the amount of the current maximum fine.

(4) If the requirement under paragraph (1)(i) or (1)(ii) is not complied with, the Tribunal before or at the hearing may dismiss the whole or part of the originating applications, or, as the case may be, strike out the whole or part of the notice of appearance, and, where appropriate, direct that a respondent shall be debarred from defending altogether:

Provided that the Tribunal shall not so dismiss or strike out or give such a direction unless it has sent notice to the party who has not complied with the requirement giving him an opportunity to show cause why such should not be done.

Time and place of hearing

7. The Chairman shall fix the date, time and place of the hearing of the originating application and the Clerk shall (subject to Rule 5(2)) not less than 14 days (or such shorter time as may be agreed by him with the parties) before the date so fixed send to each party a notice of hearing which shall include information and guidance as to attendance at the hearing, witnesses and the bringing of documents (if any), representation by another person and written representations,

Pre-hearing assessment

8. (1) The Tribunal may at any time before the hearing (either, subject to Rule 5(2), on the application of a party to the proceedings made by notice to the Clerk or of its own motion) consider, by way of a pre-hearing assessment, the contents of the originating application and entry of appearance, any representations in writing which have been submitted and any oral argument advanced by or on behalf of a party.

(2) If upon a pre-hearing assessment, the Tribunal considers that the originating application or the contentions or any particular contention of a party appear or, as the case may be, appears to have no reasonable prospect of success, it may indicate that in its opinion, if the originating application shall not be withdrawn or the contentions or contention of the party shall be persisted in up to or at the hearing, the party in question may have an order for costs made against him at the hearing under the provisions of Rule 13.

A pre-hearing assessment shall not take place unless the Tribunal has sent notice to the parties to the proceedings giving them (and, where appropriate, in proceedings

which may involve payments out of the Fund, the DHSS, if not a party) an opportunity to submit representations in writing and to advance oral argument at the pre-hearing assessment if they so wish.

(3) Any indication of opinion made in accordance with paragraph (2) shall be recorded in a document signed by the Chairman, a copy of which shall be sent to the parties to the proceedings and a copy of which shall be available to the Tribunal at the hearing.

The hearing

9. (1) Any hearing of or in connection with an originating application shall take place in public unless in the opinion of the Tribunal a private hearing is appropriate for the purpose of hearing evidence which relates to matters of such a nature that it would be against the interests of national security to allow the evidence to be given in public or hearing evidence from any person which in the opinion of the Tribunal is likely to consist of -

- (a) information which he could not disclose without contravening a prohibition imposed by or under any enactment; or
- (b) any information which has been communicated to him in confidence, or which he has otherwise obtained in consequence of the confidence reposed in him by another person; or
- (c) information the disclosure of which would cause substantial injury to any undertaking of his or any undertaking in which he works for reasons other than its effect on negotiations with respect to any of the matters mentioned in the definition of "trade dispute" in section 88(1) of the 1991 Act.

(3) Subject to Rule 5(2), if a party shall desire to submit representations in writing for consideration by the Tribunal at the hearing of the originating application that party shall present such representations to the Clerk not less than 7 days before the hearing and shall at the same time send a copy to the other party or parties.

(4) Where a party has failed to attend or be represented at the hearing (whether or not he has sent any representations in writing) the contents of his originating application or, as the case may be, of his entry of appearance may be treated by the Tribunal as representations in writing.

(5) The DHSS if it so elects shall be entitled to apply under Rule 6(1), 15(1) and (2) and 17 and to appear as if it were a party and be heard at any hearing of or in connection with an originating application in proceedings in which it is not a party which may involve payments out of the Fund.

(6) Subject to Rule 5(2), at any hearing of or in connection with an originating application a party and any person entitled to appear may appear before the Tribunal and may be heard in person or be represented by an advocate or by a representative of a trade

union or an employers' association or by any other person whom he desires to represent him.

Procedure at hearing

10. (1) The Tribunal shall conduct the hearing in such manner as it considers most suitable to the clarification of the issues before it and generally to the just handling of the proceedings; it shall so far as appears to it appropriate seek to avoid formality in its proceedings and it shall not be bound by any enactment or rule of law relating to the admissibility of evidence in proceedings before the courts of law.

(2) Subject to paragraph (1), at the hearing of the originating application a party (unless disentitled by virtue of Rule 5(2)), the DHSS (if, not being a party, it elects to appear as provided in Rule 9(5)) and any other person entitled to appear shall be entitled to give evidence, to call witnesses, to question any witnesses and to address the Tribunal,

(3) If a party fails to appear or to be represented at the time and place fixed for the hearing, the Tribunal may, if that party is an applicant, dismiss or, in any case, dispose of the application in the absence of that party or may adjourn the hearing to a later date:

Provided that before deciding to dismiss or disposing of any application in the absence of a party the Tribunal shall consider any representations submitted by that party in pursuance of Rule 9(3).

(4) The Tribunal may require any witness to give evidence on oath or affirmation and for that purpose there may be administered on oath or affirmation in due form.

Decision of Tribunal

11. (1) A decision of the Tribunal may be taken by a majority thereof and, if the Tribunal is constituted of 2 members only, the Chairman shall have a second or casting vote.

(2) The decision of the Tribunal, which may be given orally at the end of a hearing or reserved, shall be recorded in a document signed by the Chairman.

(3) The Tribunal shall give reasons, which may be in full or in summary form, for its decision.

(4) The reasons for the decision of the Tribunal shall be recorded in a document signed by the Chairman, which shall also contain a statement as to whether the reasons are in full or in summary form.

(5) Where: -

- (a) the reasons have been given in summary form and it appears at any time to the Tribunal that the reasons should be given in full; or
- (b) a request that the reasons be given in full is made orally at the hearing by a party or by a person entitled to appear who did so appear; or
- (c) such a request is made in writing with 21 days of the date on which the document recording the reasons in summary form was sent to the parties;

the reasons shall be recorded in full in a document signed by the Chairman.

(6) The Clerk shall enter any document referred to in paragraphs (2), (4) and (5) in the Register and shall send a copy of the entry to each of the parties and to the persons entitled to appear who did so appear.

(7) Any document referred to in paragraphs (4) and (5) shall be omitted from the Register in any case in which evidence has been heard in private and the Tribunal so directs and in that event any such document shall be sent to the parties and to the High Court in any proceedings relating to such decision together with the copy of the entry.

(8) The Register shall be open to the inspection of any person without charge at all reasonable hours.

(9) Clerical mistakes in any document referred to in paragraphs (2), (4) and (5), or errors arising in such a document from an accidental slip or omission, may at any time be corrected by the Chairman by certificate under his hand.

(10) The Clerk shall as soon as may be make such correction as may be necessary in the Register and shall send a copy of any corrected entry or of any corrected document containing reasons for the Tribunal's decision, as the case may be, to each of the parties and, in the case of a corrected entry, to the persons entitled to appear who did so appear.

- (11) If any decision is –
- (a) corrected under paragraph (9),
 - (b) reviewed, revoked or varied under Rule 12, or
 - (c) altered in any way by order of the High Court,

the Clerk shall alter the entry in the Register to conform with any such certificate or order and shall send a copy of the new entry to each of the parties and to the persons entitled to appear who did so appear.

(12) Where by this Rule a document is required to be signed by the Chairman but by reason of death or incapacity the Chairman is unable to sign such document it shall be signed by the other members of the Tribunal, who shall certify that the Chairman is unable to sign.

Review of Tribunal's decision

12. (1) The Tribunal shall have power to review and to revoke or vary by certificate under the Chairman's hand any decision on the grounds that -

- (a) the decision was wrongly made as a result of an error on the part of the Tribunal staff; or
- (b) a party did not receive notice of the proceedings leading to the decision; or
- (c) the decision was made in the absence of a party or person entitled to be heard; or
- (d) new evidence has become available since the conclusion of the hearing to which the decision relates provided that its existence could not have been reasonably known of or foreseen; or
- (e) the interests of justice require such a review.

(2) An application for the purposes of paragraph (1) may be made at the hearing. If the application is not made at the hearing, such application shall be made to the Clerk at any time from the date of the hearing until 14 days after the date on which the decision was sent to the parties and must be in writing stating the grounds in full.

(3) An application for the purposes of paragraph (1) may be refused by the Chairman if in his opinion it has no reasonable prospect of success.

(4) If such an application is not refused under paragraph (3) the Tribunal shall proceed to a review of the decision and, having reviewed it, may confirm, vary or revoke that decision, and if the Tribunal revokes the decision it shall order a re-hearing,

(5) On the revocation or variation of the Tribunal's decision under this Rule the Clerk shall as soon as may be make such correction as may be necessary in the Register and shall send a copy of the entry to each of the parties and to the persons entitled to appear who did so appear.

Costs

13. (1) Subject to paragraphs (2) and (3), the Tribunal shall not normally make an award in respect of the costs or expenses incurred by a party to the proceedings, but where in its opinion a party (and if he is a respondent whether or not he has entered an appearance) has in bringing or conducting the proceedings acted frivolously, vexatiously or otherwise unreasonably the Tribunal may make an order that that party shall pay to another party (or to the DHSS if, not being a party, it has acted as provided in Rule 9(5)) either a specified sum in respect of the costs or expenses incurred by that other party (or,

as the case may be, by the JHSS) or the whole or part of those costs or expenses as taxed (if not otherwise agreed).

(2) Where the Tribunal has on the application of a party to the proceedings postponed the day or time fixed for or adjourned the hearing, the Tribunal may make orders against or, as the case may require, in favour of that party as at paragraph (1) as respects any costs or expenses incurred as a result of the postponement or adjournment.

(3) Where on a complaint of unfair dismissal in respect of which -

(i) the applicant has expressed a wish to be reinstated or re-engaged which has been communicated to the respondent at least 7 days before the hearing of the complaint, or

(ii) the proceedings arise out of the respondent's failure to permit the applicant to return to work after an absence due to pregnancy or confinement,

any postponement or adjournment of the hearing has been caused by the respondent's failure, without a special reason, to adduce reasonable evidence as to the availability of the job from which the applicant was dismissed, or, as the case may be, which she held before her absence, or of comparable or suitable employment, the Tribunal shall make orders against that respondent as at paragraph (1) as respects any costs or expenses incurred as a result of the postponement or adjournment.

(4) Any costs required by an order under this Rule to be taxed may be taxed in the High Court.

Miscellaneous powers of Tribunal

14. (1) Subject to the provisions of these Rules, the Tribunal may regulate its own procedure.

(2) The Tribunal may, if it thinks fit -

(a) extend the time appointed by or under these Rules for doing any act notwithstanding that the time appointed may have expired;

(b) postpone the day or time fixed for, or adjourn, any hearing (particularly as respects cases to which section 76 (conciliation) of the 1991 Act applies);

(c) if the applicant at any time gives notice of the withdrawal of his originating application, dismiss the proceedings;

(d) if both or all the parties (and the DHSS, if not being a party, it has acted as provided in Rule 9(5)) agree in writing upon the terms of a decision to be made by the Tribunal, decide accordingly;

- (e) subject to the proviso below, at any stage of the proceedings order to be struck out or amended any originating application or notice of appearance or anything in such application or notice of appearance on the grounds that it is scandalous, frivolous or vexatious;
- (f) subject to the proviso below, on the application of the respondent, or of its own motion, order to be struck out any originating application for want of prosecution;

Provided that before making any order under sub-paragraph (e) or (f) the Tribunal shall send notice to the party against whom it is proposed that any such order should be made giving him an opportunity to show cause why such an order should not be made.

(3) Subject to Rule 6(2), the Tribunal may, if it thinks fit, before granting an application under Rule 6 or Rule 15 require the party (or, as the case may be, the DHSS) making the application to give notice of it to the other party or parties. The notice shall give particulars of the application and indicate the address to which and the time within which any objection to the application shall be made being an address and time specified for the purposes of the application by the Tribunal.

(4) Any act other than the holding of a pre-hearing assessment under Rule, the hearing of an originating application or the making of an order under Rule 12(1), required or authorised by these Rules to be done by the Tribunal may be done by, or on the direction of, the Chairman.

- (5) Rule 13 applies to an order dismissing proceedings under paragraph (2)(c).

Extension of time and directions

15. (1) An application to the Tribunal for an extension of the time appointed by these Rules for doing any act may be made by a party either before or after the expiration of any time so appointed.

(2) Subject to Rule 5 (2), a party may at any time apply to the Tribunal for directions on any matter arising in connection with the proceedings.

(3) An application under paragraph (1) or (2) shall be made by presenting to the Clerk a notice of application, which shall state the title of the proceedings and shall set out the grounds of the application.

(4) The Clerk shall give notice to both or all the parties (subject to Rule 5(2)) of any extension of time granted under Rule 14(2)(a) or any directions given in pursuance of this Rule.

Joinder and representative respondents

16. (1) The Tribunal may at any time either upon the application of any person or where appropriate, of its own motion direct any person against whom any relief is sought to be joined as a party to the proceedings, and give such consequential directions as it considers necessary.

(2) The Tribunal may likewise, either upon such application or of its own motions order that any respondent named in the originating application, or subsequently added, who appears to the Tribunal not to have been, or to have ceased to be, directly interested in the subject of the originating application, be dismissed from the proceedings.

(3) Where there are numerous persons having the same interest in an originating application, one or more of them may be cited as the person or persons against whom relief is sought, or may be authorised by the Tribunal before or at the hearing, to defend on behalf of all the persons so interested.

Consolidation of proceedings

17. Where there are pending before the Tribunal 2 or more originating applications, then, if at any time upon the application of a party or of its own motion it appears to the Tribunal that -

- (a) some common question of law or fact arises in both or all originating applications, or
- (b) the relief claimed therein is in respect of or arises out of the same set of facts, or
- (c) for some other reason it is desirable to make an order under this Rule,

the Tribunal may order that some (as specified in the order) or all of the originating applications shall be considered together, and may give such consequential directions as may be necessary:

Provided that the Tribunal shall not make an order under this Rule without sending notice to all parties concerned giving them an opportunity to show cause why such an order should not be made.

Notices, etc.

18. (1) Any notice given under these Rules shall be in writing.

(2) All notices and documents required by these Rules to be presented to the Clerk may be presented at the office of the Tribunal or such other office as may be notified by the Clerk to the parties,

(3) All notices and documents required or authorised by these Rules to be sent or given to any person hereinafter mentioned may be sent by post (subject to paragraph (5)) or delivered to or at -

(a) in the case of a notice or document directed to the DHSS in proceedings to which it is not a party, the office of the DHSS at Markwell House, Market Street, Douglas, or such other office as may be notified by the DHSS;

(b) in the case of a notice or document directed to a party:-

(i) his address for service specified in the originating application or in a notice of appearance or in a notice under paragraph (4); or

(ii) if no address for service has been so specified, his last known address or place of business in the Isle of Man or the United Kingdom or, if the party is a corporation, the corporation's registered or principal office in the Isle of Man or the United Kingdom, or, in any case, such address or place outside the Isle of Man and the United Kingdom as the Chairman may allow;

(c) in the case of a notice or document directed to any person (other than a person specified in the foregoing provisions of this paragraph), his address or place of business in the Isle of Man or the United Kingdom, or if such a person is a corporation, the corporation's registered or principal office in the Isle of Man or the United Kingdom;

and if sent or given to the authorised representative of a party shall be deemed to have been sent or given to that party.

(4) A party may at any time by notice to the Clerk and to the other party or parties (and, where appropriate, to the industrial relations officer) change his address for service under these Rules.

(5) The recorded delivery service shall be used instead of the ordinary post:-

(a) when a second set of documents or notices is to be sent to a respondent who has not entered an appearance under Rule 5(1);

(b) for service of an order made under Rule 6(1)(iii) requiring the attendance of a witness.

(6) Where for any sufficient reason service of any document or notice cannot be effected in the manner prescribed under this Rule, the Chairman may make an order for substituted service in such manner as he may deem fit and such service shall have the same effect as service in the manner prescribed under this Rule.

(7) In proceedings to which section 76 (conciliation) of the 1991 Act applies, the Clerk shall send copies of all documents and notices to the industrial relations officer.

(8) In proceedings which may involve payments out of the Fund, the Clerk shall, where appropriate, send copies of all documents and notices to the DHSS notwithstanding the fact that it may not be a party to such proceedings.

Proof of decisions of Tribunal

19. The production in any proceedings in any court of a document purporting to be certified by the Chairman to be a true copy of the entry of a decision in the Register shall, unless the contrary is proved, be sufficient evidence of the document and of the facts stated therein.

Revocation

20. The Employment Tribunal Rules 1987 (d) and the Employment Tribunal (Amendment) Rules 1990 (e) are revoked.

MADE this 25th day of February 1992

Alan Bell

Minister for Industry

Approved by Tynwald 17 March 1992.

(d) GC 16/87 (e) GC 338/90

EXPLANATORY NOTE

(This note is not part of the Rules.)

These Rules prescribe the procedure of the Employment Tribunal. They replace the Employment Tribunal Rules 1987 as amended.