

THE ESSENTIAL SERVICES (ARBITRATION) ACT, 1967

No. 32



of 1967

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AN ACT TO PROVIDE AN ARBITRATION TRIBUNAL FOR THE SETTLEMENT OF DISPUTES IN ESSENTIAL SERVICES

Date of Assent: 28th September, 1967.

Date of Commencement: 29th September, 1967.

ENACTED by the Parliament of Botswana.

PART I

PRELIMINARY

Short Title and Application

1. This Act may be cited as the Essential Services (Arbitration) Act, 1967, and shall apply to trade disputes in essential services as hereinafter defined.

Interpretation

2. In this Act unless the context otherwise requires -

“essential services” means the services, by whomsoever rendered and whether rendered to the State or to any other person, which are specified in the Schedule;

“Labour Commissioner” means the person holding the office of Commissioner of Labour;

“lock out” means the closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him in consequence of a trade dispute, done, not with the intention of finally determining employment, but with a view to compelling those persons, or to aid another employer in compelling persons employed by him, to accept terms or conditions of or affecting employment;

“organisation” means a trade union or other association of persons which is, in the opinion of the Labour Commissioner, representative of employers or of workers as the case may be, and includes representatives appointed under section 3;

“registered trade union” means trade union registered under the Trade Unions and Trade Disputes Proclamation (Chapter 151);

“strike” means the cessation of work by a body of persons employed, acting in combination, or a concerted refusal or a refusal under a common under-

standing of any number of persons employed to continue to work for an employer, done as a means of compelling their employer or any person or body of persons employed, or to aid other workmen in compelling their employer or any person or body of persons employed, to accept or not to accept terms or conditions of or affecting employment;

“trade dispute” means any dispute or difference between employers and workmen, or between workmen and workmen, or between workmen and any authority or body, connected with the employment or non-employment, or the terms of employment, or the conditions of labour, of any person;

“Tribunal” means an Arbitration Tribunal constituted under section 4;

“workman” means any person who has entered into or works under a contract with an employer, whether the contract is by way of manual labour, clerical work or otherwise, is expressed or implied or is oral or in writing, and whether it is a contract of service or of apprenticeship or a contract personally to execute any work or labour.

PART II

APPOINTMENT OF REPRESENTATIVES OF EMPLOYERS AND WORKMEN TO SETTLE TRADE DISPUTES

Representatives may be Appointed to Negotiate Settlement of Disputes

3. For the purpose of adjusting or negotiating settlements of trade disputes in any essential service where no registered trade union exists, or no registered trade union exists which is, in the opinion of the Labour Commissioner sufficiently representative of the employers or of the workmen, as the case may be, the employers or the workmen or each of them the employers and the workmen, as the case may require, may on the invitation of the Labour Commissioner appoint such number of representatives, not exceeding five, as they think fit and such representatives may act on behalf of the employees or of the workmen by whom they were appointed, in negotiating an agreed settlement of any trade dispute.

PART III

SETTLEMENT OF TRADE DISPUTES BY CONCILIATION, NEGOTIATION OR COMPULSORY ARBITRATION

Arbitration Tribunals

4. For the purpose of settling trade disputes in essential services which cannot otherwise be determined, there may be constituted, at the discretion of the Minister, an Arbitration Tribunal consisting of –

- (a) a sole arbitrator appointed by the Minister; or

- (b) an arbitrator, nominated by the Minister, assisted by one or more assessors nominated by the employers concerned, and an equal number of assessors nominated by the workmen concerned, all of whom shall be appointed by the Minister; or
- (c) one or more arbitrators, selected from a panel nominated by or on behalf of the employers concerned, and an equal number of arbitrators, selected from a panel nominated by or on behalf of the workmen concerned, and an independent chairman, all of whom shall be appointed by the Minister.

Dispute Procedure

5. (1) If any trade dispute in an essential service exists or is apprehended, that dispute, if not otherwise determined, may be reported in writing to the Labour Commissioner by or on behalf of either party to the dispute, and the decision of the Labour Commissioner as to whether a dispute is or is not a trade dispute in an essential service and whether a dispute has been so reported to him or not and as to the time at which a dispute has been so reported shall be conclusive for all purposes.

(2) The Labour Commissioner shall consider any trade dispute so reported to him as aforesaid, and shall endeavour to conciliate the parties and to effect a negotiated agreement or other settlement, or, if in his opinion suitable means for settling the trade dispute already exist by virtue of the provisions of any agreement made between organisations of employers and workmen respectively, he may refer the matter for settlement in accordance with those provisions, or he may refer the matter for settlement by representatives appointed under section 3 of this Act: so, however, that where an attempt to conciliate the parties has failed or where a matter has been referred for settlement in accordance with any of the provisions of this subsection and there is a failure to reach a settlement or, in the opinion of the Labour Commissioner, a settlement is unduly delayed, the Labour Commissioner shall cancel the reference and report to the Minister, who may constitute a Tribunal under section 4 of this Act and refer the trade dispute to the Tribunal.

(3) Such reference shall be made by the Minister within twenty-one days from the date on which the trade dispute was reported to the Labour Commissioner under subsection (1) of this section unless, in the opinion of the Minister, the special circumstances of the case made it necessary or desirable to postpone such a reference for such further period as the Minister may in writing allow.

(4) The Tribunal shall consider any trade dispute referred to it under this section and shall make an award.

Regulation of Tribunal Proceedings

6. Save as expressly provided in this Act or in rules made under this Act, a Tribunal may regulate its procedure and proceedings as it thinks fit.

Powers of Labour Commissioner and Tribunal

7. (1) The Labour Commissioner for the purpose of effecting a negotiated agreement or other settlement, or a Tribunal for the purpose of dealing with any matter referred to it under section 5, may by order require any person –

- (a) to give such information and furnish such particulars as the Labour Commissioner or the Tribunal may specify in relation to the trade dispute;
- (b) to attend before the Labour Commissioner or the Tribunal;
- (c) to give evidence on oath or otherwise;
- (d) to produce any relevant document.

(2) Any person who fails to obey an order given under subsection (1) of this section shall be guilty of an offence and liable to a fine not exceeding R100.

Appearance in Proceedings

8. Any interested person may appear in person or by his legal representative in any proceeding under this Act or under any rules made thereunder.

Proceedings to be Public or Private in Discretion of Authority holding them

9. (1) The Labour Commissioner or a Tribunal may, in his or its discretion, admit or exclude the public and representatives of the press from any proceeding under this Act under any rules made thereunder.

(2) Whenever any representative of the press is permitted to be present at any such proceeding, and not otherwise, a fair and accurate report or summary of such proceeding may be published: but until the award has been made and published no comment shall be published in respect of the proceeding or the evidence.

(3) Any person who contravenes any of the provisions of subsection (2) of this section shall be guilty of an offence and liable to a fine not exceeding R500.

PART IV

AWARDS

Award to be Made without Delay and may be Retrospective

10. (1) A Tribunal shall make its award or, as the case may be, furnish its advice on any matter referred to it under section 12 of this Act, without delay and, where practicable, within twenty-one days from the date of reference.

(2) An award on any matter referred to a Tribunal for settlement may be made retrospective.

Awards and Agreements to be Binding

11. (1) Any negotiated agreement or award made under section 5 shall be binding on the employers and workmen to whom the agreement or award relates, and, as from the date of such agreement or award or as from such date as may be specified therein pursuant to subsection (2) of section 10 it shall be an implied term of the contract between the employers and workmen to whom the agreement or award relates that the rate of wages to be paid and the conditions of employment to be observed under the contract shall be in accordance with such agreement or award until varied by a subsequent agreement or award.

(2) No application to vary any award shall, except with the permission in writing of the Minister, be made within six months of the promulgation of such award.

Reference in Tribunal for Advice

12. The Labour Commissioner may refer to a Tribunal for advice any matter relating to or arising out of a trade dispute in an essential service which, in his opinion, ought to be so referred.

Interpretation of Award

13. (1) If any question arises as to the interpretation of any award of a Tribunal, the Labour Commissioner or any party to the award may apply for a decision on such question, and the Tribunal shall decide the matter after hearing the parties, or without such hearing, if it thinks fit.

(2) The decision of the Tribunal shall be notified to the parties and shall be binding in the same manner as the decision in an original award.

Arbitration Proclamation not to Apply

14. The Arbitration Proclamation 1959 (Proclamation No. 75 of 1959) shall not apply to the proceedings of a Tribunal or to any award made by a Tribunal.

Vacancies in Tribunals

15. (1) Whenever a Tribunal consists of more than one arbitrator and any vacancy occurs in their number, the Tribunal may, in the discretion of the remaining arbitrators or arbitrator, act notwithstanding such vacancy.

(2) Whenever a Tribunal consists of an arbitrator, assisted by assessors, and any vacancy occurs in the number of assessors, the Tribunal may, in the discretion of the arbitrator, either act notwithstanding such vacancy or consent to another assessor being nominated and appointed to fill such vacancy.

(3) No act, proceeding or determination of a Tribunal shall be called in question or invalidated by reason of any such vacancy, provided that, in the cir-

cumstances referred to in subsection (1) of this section, the required consent has been first obtained.

Award to be Submitted to Minister

16. Every award shall be submitted to the Minister, who shall, as soon as possible thereafter, cause such award to be published in such manner as he may think fit.

PART V

PROHIBITION OF LOCK-OUTS AND STRIKES IN ESSENTIAL SERVICES

Prohibition of Lock-outs and Strikes in Essential Services

17. (1) An employer in any essential service shall not take part in a lock-out, and a workman in any essential service shall not take part in a strike, unless a trade dispute exists and has been reported to the Labour Commissioner in accordance with section 5 and twenty-one days or, if a further period has been allowed by the Minister under subsection (3) of that section, twenty-one days and such further period, have elapsed since the date of the report and the trade dispute has not during that time been settled or been referred to a Tribunal for settlement in accordance with that section.

(2) Any person who contravenes the provisions of subsection (1) of this section shall be guilty of an offence and liable to a fine not exceeding R200 or to imprisonment for a term not exceeding one month, or to both such fine and such imprisonment.

Counselling or Procuring Lock-out or Strike

18. (1) No person, whether an officer of a trade union or other association or not, shall declare, instigate, counsel, procure or abet a lock-out or strike in any essential service, unless a trade dispute exists and it has been reported to the Labour Commissioner in accordance with section 5 and twenty-one days or, if a further period has been allowed by the Minister under subsection (3) of that section, twenty-one days and such further period have elapsed since the date of such report and the dispute has not during that time been settled or been referred to a Tribunal by the Minister under that section.

(2) Any person who contravenes any of the provisions of subsection (1) of this section shall be guilty of an offence and liable to a fine not exceeding R500 or to imprisonment for a term not exceeding one year, or to both such fine and such imprisonment.

PART VI

MISCELLANEOUS

Sanction of Attorney-General

19. No prosecution for a contravention of section 17 or section 18 shall be instituted save by or with the consent of the Attorney-General.

Rules

20. The Minister may make rules for better carrying this Act into effect and in particular for regulating the procedure to be followed in any proceeding before a Tribunal.

Additions to and Deletions from Schedule

21. The President may by notice in the *Gazette*, add any service to, and delete any service from the Schedule.

SCHEDULE

Water services
Electricity services
Health services
Sanitary services
Air traffic control services
Civil aviation telecommunications services
Fire services of the Government, of Rhodesia Railways and of local authorities
Transport services necessary to the operation of any or the above mentioned services

Passed by the National Assembly this day, the 31st August, 1967.

G.T. MATENGE,
Clerk of the National Assembly.