



BERMUDA
1992 : 52

LABOUR DISPUTES ACT 1992

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[7 July 1992]

WHEREAS it is expedient to make provision for the establishment of a Labour Disputes Tribunal to settle certain labour disputes:

[*words of enactment omitted*]

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[NB formerly "Trade Disputes Act" 1992. Title amended by 2007:14 s.2 effective 29 March 2007]

Short title

1 This Act may be cited as the Labour Disputes Act 1992.

[section 1 amended by 2007:14 s.4 effective 29 March 2007]

Interpretation

2 In this Act, unless the context otherwise requires —

"irregular industrial action short of a strike", "labour dispute", "lock-out", "procedure agreement", "strike" and "trade union" have the meanings assigned to them in the Labour Relations Act 1975 [*title 18 item 1*];

"Minister" means the Minister charged with responsibility for labour;

"Tribunal" means the Labour Disputes Tribunal;

"workman" means an individual who works or normally works or seeks to work under a contract of employment.

[section 2 "specified trade or industry" deleted, "Tribunal" amended, by 2007:14 s.5 effective 29 March 2007]

Application

3 Notwithstanding any other law to the contrary, this Act applies to any labour dispute specified in the notice under section 4.

[section 3 amended by 2007:14 s.6 effective 29 March 2007]

Notice to be published

4 (1) The Minister may by notice published in the Gazette declare that a labour dispute exists or is apprehended.

(2) Section 6 of the Statutory Instruments Act 1977 [*title 1 item 3*] shall not apply to a notice under subsection (1).

[section 4 subsection (1) amended by 2007:14 s.7 effective 29 March 2007]

Tribunal and composition

5 (1) After a notice is published under section 4, the Minister may appoint persons, that is to say, three appointed members one of whom shall be Chairman and two other members, to form a tribunal to be called the Labour Disputes Tribunal.

(2) The Chairman shall be a person in possession of legal qualifications.

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(3) Before exercising his powers to select members other than the Chairman the Minister shall consult with the employer and with a representative of workmen.

(4) The members of the Tribunal shall hold office until the Tribunal makes a decision or an award.

(5) The Tribunal shall be reconstituted in accordance with this section to hear any complaint under the Act and the members thereof shall hold office until the Tribunal makes an award.

(6) Where the Tribunal is reconstituted for the purposes of sections 17 and 18 a notice under subsection (1) is not required.

[section 5 subsection (1) amended by 2007:14 s.8 effective 29 March 2007]

Officers and servants of tribunal

6 The Minister may appoint such officers and servants as he may consider necessary.

Incapacity or resignation of member

7 If at any time the Chairman or any member of the Tribunal is by reason of absence from Bermuda, ill health or other cause unable to perform his duties as such, or resigns the Minister may appoint another person to act in the place of the Chairman or the member and the appointment of the Chairman or the member shall be in accordance with section 5.

Tribunal autonomous

8 The Tribunal in the exercise of the powers conferred upon it by this Act shall not be subject to the direction or control of any other person or authority.

Tribunal to regulate procedure and proceedings

9 The Tribunal may regulate its procedure and proceedings as it thinks fit.

Fees and allowances

10 The Chairman and the other members of the Tribunal are entitled to receive out of the funds appropriated by the Legislature for the purposes such fees and allowances as the Minister may determine.

Labour dispute referred to Tribunal

11 If any labour dispute exists or is apprehended, if not otherwise determined, the Minister may, if he thinks fit, refer the matter for settlement to the Tribunal.

[section 11 amended by 2007:14 s.9 effective 29 March 2007]

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Tribunal's powers

12 (1) For the purpose of dealing with any matter referred to it, the Tribunal may, by writing under the hand of the Chairman thereof —

- (a) require any person to furnish in writing or otherwise, such particulars in relation to the matter as the Tribunal may specify; and
- (b) require any person to attend before the Tribunal and give evidence on oath or otherwise or produce documents,

and subject to this Act, shall not be bound by any rule of evidence in civil or criminal proceedings.

(2) Any person who —

- (a) fails without reasonable excuse to furnish particulars in compliance with a requirement under subsection (1);
- (b) fails without reasonable excuse to attend before the Tribunal in compliance with such a requirement; or
- (c) when in attendance before the Tribunal, refuses to take an oath, or to produce a document or give evidence, in compliance with such a requirement,

is guilty of an offence.

(3) Any person who —

- (a) threatens, intimidates or restrains;
- (b) uses violence to or inflicts injury on;
- (c) causes or procures violence, damage, loss or disadvantage to;
- (d) causes or procures the punishment of or the loss of employment of; or
- (e) penalizes or otherwise discriminates against,

a person for or on account of his having appeared or being about to appear, before the Tribunal is guilty of an offence.

(4) A person guilty of an offence under this section is liable on summary conviction to a fine of five thousand dollars or to imprisonment for six months or both; however a person shall not be guilty of an offence for refusing to answer any question or to produce any document which he could not be required to answer or produce in proceedings before a

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court of law in Bermuda, or for failing or refusing to answer any question or produce any document which is not relevant to the matters in issue.

(5) For the removal of doubt it is declared that the powers conferred on the Tribunal by this section can be exercised either on its own volition or on the application of a party.

Parties may be represented

13 Any person or party to the proceedings before the Tribunal may appear personally or be represented by counsel or such other person appointed by the person or party to such proceedings.

Decision or award of Tribunal

14 (1) The Tribunal shall examine and inquire into any labour dispute referred to it and shall make its decision or award as soon as practicable.

(2) A decision or an award on any labour dispute referred to the Tribunal may be made retrospective to such date as the Tribunal decides not being earlier than the date on which the labour dispute to which the decision or award relates first arose.

(3) The decision of the Tribunal as to such date shall be conclusive.

Additional powers of Tribunal

15 (1) In addition to the powers conferred upon it by this Act, the Tribunal may —

- (a) proceed to hear and determine a labour dispute in the absence of any party who has been duly summoned to appear before the Tribunal and has failed to do so;
- (b) award to any party to the labour dispute such costs and expenses as are specified in the award and such costs and expenses may be sued for and be recoverable by the party as a civil debt in the Supreme Court or in a Court of Summary Jurisdiction; or
- (c) generally give all such directions and do all such things as are necessary or expedient for the expeditious and just hearing and determination of the labour dispute before the Tribunal.

(2) Without prejudice to the generality of its powers under subsection (1), the Tribunal may award the payment of compensation to a workman where the workman cannot be re-instated or re-employed in his former position and the compensation may be sued for and be recoverable by the workman as a civil debt in the Supreme Court or in a Court of Summary Jurisdiction.

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Binding decision or award

16 Any decision or award made by the Tribunal shall be binding on the employer or any person succeeding (whether by virtue of a sale or other disposition or by operation of law) to the ownership or control of the business, the trade union and the workmen to whom the decision or award relates and as from the date of the decision or the award or from such date as may be specified in the decision or the award not being earlier than the date on which the labour dispute to which the decision or the award relates first arose, it shall be an implied term of the contract of employment between the employer and the workmen to whom the decision or award relates that the terms and conditions of employment to be observed under the contract shall be in accordance with such decision or award until varied by a subsequent decision or award or by agreement between the employer and workmen or the workmen's representative.

Question as to interpretation of decision or award

17 (1) If any question arises as to the interpretation of any decision or award of the Tribunal, then the Minister, upon being so notified by any party, shall appoint members in accordance with section 5 to form the Tribunal.

(2) Any party to the award may apply to the Tribunal for a decision on the question mentioned in subsection (1) and the Tribunal shall decide the matter after hearing the parties, or without such hearing provided the consent of the parties has first been obtained.

(3) 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 decision or award.

(4) The members of the Tribunal shall hold office until the Tribunal decides the matter.

Non-compliance with decision or award

18 (1) Where an employer, a trade union or a workman fails to comply with a decision or an award of the Tribunal of any part thereof, a person or a trade union that is directly concerned in or affected by the non-compliance (hereafter referred to as an "aggrieved person") or the Minister may and without prejudice to any remedy or relief to which any person may be entitled apart from this section make a complaint to the Tribunal.

(2) If on a complaint made under this section the Tribunal finds that the complaint is wholly or partly well-founded, it may grant one or both of the following:

- (a) an award of compensation to be paid to the employer, the workman, the trade union or the Minister;

(b) a general award of such sum to be paid to the employer, the workman, the trade union or the Minister as the Tribunal thinks fit.

(3) The amount of the compensation awarded under this section shall be such amount as the Tribunal considers just and equitable.

(4) Where the Tribunal finds that the non-compliance was to any extent caused or contributed to by any action of the aggrieved person it may not award any compensation or sum or it may reduce the amount of compensation or sum by such proportion as it considers just and equitable having regard to that finding.

(5) An award under this section may within a period of thirty days after the award has been made be recovered as a civil debt in the Supreme Court or in a Court of Summary Jurisdiction by the person or party to whom the compensation or sum is awarded.

(6) Where a person fails to pay the costs, expenses, compensation or other sum awarded by the Tribunal, the person to whom such award was given may on written application to the Attorney-General seek the assistance of the Attorney-General to recover same.

(7) The Attorney-General may designate on such terms as the Attorney-General thinks fit any person to recover for or on behalf of the applicant the costs, expenses, compensation or other sum.

Unlawful conduct

19 (1) At any time after the notice mentioned in section 4 is published or at any time after a labour dispute is referred to the Tribunal and the dispute in either case is not otherwise determined, a lock-out, strike or irregular industrial action short of a strike is unlawful.

(2) It is unlawful to commence or continue or to apply any sums in furtherance or support of, any lock-out, strike or irregular industrial action short of a strike that is unlawful under subsection (1).

(3) Any person who takes part in, incites or in any way encourages, persuades or influences any person to take part in, or otherwise acts in furtherance of, a lock-out, strike or irregular industrial action short of a strike that is unlawful under this section is guilty of an offence and is liable —

(a) on conviction on indictment to a fine of five thousand dollars or to imprisonment for two years, or both;

(b) on summary conviction to a fine of one thousand dollars or to imprisonment for three months:

Provided that no person shall commit an offence under this section by reason only of his having ceased work or refused to continue to work or accept employment.

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Certain provisions of Labour Relations Act 1975 to apply

20 (1) Sections 37 to 39 (inclusive) of the Labour Relations Act 1975 [*title 18 item 1*] shall apply *mutatis mutandis*.

(2) Subject to section 37 of the Labour Relations Act 1975 [*title 18 item 1*] and to the modification set out in subsection (3), section 5Y of the Labour Relations Act 1975 shall apply *mutatis mutandis*.

(3) [*amending provision omitted as spent*]

[*Amended by:*

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