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CHAPTER 162

TRADE DISPUTES

Act 3 of 1983
Act 10 of 1995

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TRADE DISPUTES

To make provision for settlement of trade disputes by conciliation or arbitration and for matters incidental thereto.

PART 1 – PRELIMINARY

1. Interpretation

In this Act, unless the context otherwise requires –

"arbitration proceedings" means proceedings taken before a board, under this Act, with a view to bringing about a settlement of a trade dispute by arbitration between the parties;

"board" means a board of arbitration set up under section 12;

"Commissioner" means the person holding the office of the Commissioner of Labour under the Employment Act [Cap. 160];

"conciliation proceedings" means proceedings taken before a conciliator under this Act with a view to bringing about a settlement of a trade dispute by conciliation between the parties;

"conciliator" means a person appointed by the Commissioner under section 8 with a view to bringing about a settlement of a trade dispute by conciliation between the parties;

"irregular industrial action short of a strike" means any concerted course of conduct (other than a strike) which, in contemplation or furtherance of a trade dispute –

(a) is carried on by a group of workers with the intention of preventing, reducing or otherwise interfering with the production of goods or the provision of services; and

(b) in the case of all or some of them, is carried on in breach of their contracts of employment;

"labour officer" means a person holding the office of a labour officer under the Employment Act [Cap. 160];

"Labour Advisory Board" means the Labour Advisory Board appointed under the Employment Act [Cap. 160];

"lock-out" means action which, in contemplation or furtherance of a trade dispute, is taken by one or more employers, whether parties to the dispute or not, and which consists in the exclusion of workers from one or more factories, offices or other places of employment or in the suspension of work in one or more such places or in the collective, simultaneous or otherwise connected termination or suspension of employment of a group of workers;

"registered trade union" means a trade union registered under the Trade Unions Act [Cap. 161];

"strike" means a concerted stoppage of work by a group of workers in contemplation or furtherance of a trade dispute, whether they are parties to the dispute or not, and whether (in the case of all or any of those workers) it is or is not in breach of their contracts of employment;

"trade dispute" means a dispute between employers and workers or between workers and workers, which is connected with one or more of the following –

(a) the terms and conditions of employment, or the physical conditions in which any workers are required to work;

(b) engagement or non-engagement, or termination or suspension of employment or the duties of employment, of one or more workers;

(c) allocation of work or the duties of employment as between workers or groups of workers;

(d) matters of discipline;

(e) the membership or non-membership of a trade union on the part of a worker;

(f) facilities for officials of trade unions;

(g) machinery for negotiation or consultation, and other procedures relating to any of the foregoing matters, including the recognition by employers or employers' associations of the right of a trade union to represent workers in any such negotiation or consultation or in the carrying out of such procedures;

"worker" means a person who works or normally works or seeks to work –

(a) under a contract of employment; or

(b) under any other contract (whether express or implied, and if express, whether oral or in writing) whereby he undertakes to perform personally any work or services for another party to the contract who is not a professional client of his.

2. Trade unions etc. as parties to disputes

A trade dispute to which a registered trade union or an employers' association is a party shall be treated for the purposes of this Act as a trade dispute to which workers or, as the case may be, employers are parties.

PART 2 – INDIVIDUAL DISPUTES BETWEEN EMPLOYERS AND WORKERS

3. Conciliation in individual disputes

Where a dispute other than a trade dispute as defined in section 1, between a worker and his employer arises from, or in connection with, the terms and conditions of a contract of employment or the manner of its performance, either party may request a labour officer to assist with a view to bringing about a settlement of the dispute by conciliation.

4. Labour officer to promote settlement

Where a request referred to in section 3 is made to a labour officer, and the labour officer considers that he can act upon such request with a reasonable prospect of success, it shall be his duty without delay to endeavour to promote a settlement of the dispute without its being determined by a Court.

5. Power of labour officer in a dispute

(1) For the purposes of the exercise of his functions under section 4 a labour officer may–

(a) require the parties to the dispute and any other person whom he has reason to believe can give information relevant to the matter in dispute, to appear before him at an appointed time and place;

(b) require any person to produce any documents or records touching upon the matter in dispute in the possession or under the control of such person.

(2) A person who –

(a) fails to comply with any requirement of a labour officer under subsection (1); or

(b) knowingly gives to a labour officer information false in any material particular;

shall be guilty of an offence.

6. Memorandum of conciliation

A memorandum recording the terms of the conciliation or default thereof shall be drawn by the labour officer before whom the conciliation proceedings have taken place, and shall be signed by him and by the parties. The terms of such memorandum shall be binding on the parties to the dispute.

PART 3 – CONCILIATION AND ARBITRATION IN TRADE DISPUTES

7. Commissioner to offer assistance towards settlement

(1) Where a trade dispute exists or is apprehended the Commissioner may, at the request of one or more parties to the dispute or otherwise, offer the parties to the dispute assistance with a view to bringing about a settlement of the dispute.

(2) The Commissioner shall consider the likelihood of the dispute being settled otherwise than under the provisions of this Act and, where there exist appropriate agreed procedures for negotiation of the settlement of disputes, shall not take any action with a view to instituting conciliation or arbitration proceedings under this Act, unless those procedures have been used and have failed to result in a settlement or unless, in the opinion of the Commissioner there is a special reason which justifies conciliation or arbitration under this Act as an alternative to those procedures.

8. Appointment of conciliator

If the Commissioner considers that there is a reasonable prospect of bringing about a settlement of a trade dispute by conciliation he may appoint a person to be a conciliator in the dispute.

9. Duties of conciliator

(1) It shall be the duty of the conciliator without delay to endeavour to promote a settlement of the dispute by conciliation and, for this purpose, he shall have the powers of a labour officer set out in section 5 and may require all or any of the parties to submit to him a report in writing –

(a) setting out the matters in issue between them; and

(b) stating the efforts if any, that have been made by any party or other person with a view to bringing about a settlement.

(2) Section 5(2) shall apply in relation to proceedings before a conciliator as it applies in relation to proceedings before a labour officer.

10. Effects of conciliation

(1) If the conciliator succeeds in bringing about a settlement of a trade dispute, in full or in part, he shall prepare a memorandum setting out the terms and conditions of the settlement. The memorandum shall be signed by all the parties to the dispute and shall be endorsed by the conciliator, and thereupon the terms of the settlement shall have the effect of an award made by a board.

(2) If the conciliator fails to bring about a settlement of a trade dispute within 21 days of the date of his appointment, or such further period as the Commissioner may allow, he shall prepare and furnish to the Commissioner a full report on the subject matter of the dispute, the process of conciliation and such matters, if any, as may have been settled between the parties in the course or as a result thereof.

11. Commissioner may recommend arbitration

If the Commissioner considers that there is a reasonable prospect of bringing about a settlement of a dispute, in whole or in part, by arbitration, he may, subject to a written consent of all the parties to the dispute, recommend to the Minister that the dispute, or any outstanding part thereof, be referred to a board of arbitration.

12. Minister may set up board of arbitration

Upon the receipt of the Commissioner's recommendation under section 11 the Minister may refer the dispute, or any outstanding part thereof, to a board of arbitration which shall consist of –

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

(b) a chairman and an equal number of members experienced in industrial relations as representatives of employers and representatives of workers, respectively, all appointed by the Minister.

13. Board to make award without delay

The board shall make its award without delay and, in any case, not later than 21 days from the date of the reference of a dispute thereto:

Provided that the Minister may, if in his opinion it is necessary or desirable to do so, extend such period as he may think fit.

14. Matters to be considered by board

In making an award or other decision with a view to a settlement of a trade dispute the board shall, in addition to the rights and interests of the parties to the dispute, consider the effects such award or decision may be likely to have on the social and economic development of Vanuatu.

15. The making of an award

Any award or other decision of a board constituted under section 12(b) must be made unanimously by all the members of the board or, if the members cannot reach a unanimous decision, by the chairman.

16. Vacancies on board not to invalidate proceedings

Whenever a board consists of more than one person and a vacancy occurs in their number the board may, with the consent of all the parties to the trade dispute, continue to act notwithstanding such vacancy, and if such consent has been obtained, no award or other decision of the board shall be called in question or held invalid by reason of any such vacancy.

17. Board may correct mistakes etc.

(1) The board may correct in any award any clerical mistake or error arising from an accidental slip or omission.

(2) If any question arises as to the interpretation of an award any party to the award may apply to the board for a decision on that question.

(3) The board shall decide any such question after hearing the parties or, if the parties consent, without a hearing, and shall notify the parties of the decision.

18. Effects of awards and settlements

An award or settlement resulting from any arbitration or conciliation proceedings shall be binding upon the parties to the trade dispute for such period, not being less than 1 year, as may be specified in the award or settlement, and may be made with retrospective effect.

19. Awards and settlements not to conflict with law

No award or settlement resulting from any arbitration or conciliation proceedings shall be made which is inconsistent with any written law.

20. Communications in arbitration and conciliation privileged

Anything communicated to a board or to any person conducting or presiding over any conciliation or arbitration proceedings, shall not be admissible in evidence in any proceedings before a court, except with the consent of the party who communicated it to such board or person.

21. Admission of legal practitioners, etc.

In any conciliation or arbitration proceedings it shall be in the discretion of the person conducting or presiding over such proceedings –

(a) to permit or refuse to permit any interested party to appear by a legal practitioner, and, in the case of a worker, by, or with the assistance of, an officer of a registered trade union of which he is a member; and

(b) to admit or to exclude members of the public or representatives of the press from attending such proceedings.

22. Evidence

(1) Any person or board acting in the exercise of their functions shall be entitled to elicit all such information as may be required for that purpose without being bound by the rules of evidence applicable in civil or criminal proceedings, and may require any person –

(a) to furnish, in writing or otherwise such particulars in relation to any matter as may be required;

(b) to attend and give evidence on oath or otherwise:

Provided that if any person objects to furnishing any such particulars or to answering any question or to producing any document on the ground that it will tend to incriminate him, or on any other lawful ground, he shall not be required to furnish such particulars or to answer such question or to produce such document, and shall not be liable to any penalty for refusing to do so.

(2) Any person who –

(a) without lawful excuse fails to comply with any requirement made of him under subsection (1); or

(b) knowingly gives information or produces a document which is false in any material particular;

shall be guilty of an offence.

Penalty: fine not exceeding VT 100,000 and imprisonment for a term not exceeding 3 years.

23. Expenses of conciliation or arbitration

Where a settlement of a trade dispute is brought about by way of conciliation or arbitration proceedings, the conciliator or the board, as the case may be, may order all or any of the parties to the dispute (other than the Government) to contribute towards the expenses of the proceedings, in full or in part, as the conciliator or the board thinks fit, and the amount of such contribution shall be a civil debt owing by the party concerned to the Government and may be enforced as such.

24. Remuneration of conciliators and board members

There shall be paid to the conciliators and to the chairman and members of a board of arbitration such travelling and other allowances, including compensation for loss of remunerative time, as the Minister may by regulation, or by an Order made in any particular case determine.

PART 4 – TRADE DISPUTES AFFECTING ESSENTIAL SERVICES

25. Definition of "essential service"

In this Part the expression "essential services" means –

(a) any of the following services or facilities ordinarily available to the public –

(i) air traffic control;

(ii) fire fighting;

(iii) generation and supply of electricity;

(iv) health and sanitary services;

(v) lighthouses or other navigational safety devices;

(vi) meteorological services;

(vii) rescue services (land, sea and air);

(viii) postal and telecommunication services;

(ix) water and sewerage;

(b) any activity concerned with supplying anything necessary for maintaining any service or facility specified in paragraph (a);

(c) any other service, facility or activity declared by the Minister by Order to be an essential service for the purposes of this Part.

26. Conciliation or arbitration to commence forthwith

Where a trade dispute, which, in the opinion of the Minister, constitutes a threat of a serious disruption of, or interference with, the proper and orderly maintenance or management of an essential service, exists or is apprehended, the Minister shall forthwith take such action and issue such directives as may appear to him necessary or conducive to bringing about a settlement of the dispute by conciliation or arbitration in accordance with the provisions of Part 3.

27. President may proclaim emergency pending settlement

Pending a settlement of a trade dispute refereed to in section 26, the President on the advice of the Prime Minister, may issue a proclamation of emergency in relation to the essential service in question.

28. Proclamation of emergency

(1) A proclamation of emergency in relation to any essential service may be limited as to time, place and circumstance.

(2) The President may determine that any Minister nominated in the proclamation of emergency shall have, in respect of the essential service to which the proclamation relates all or any of the powers specified n section 29.

(3) A proclamation of emergency shall be in force for a period specified therein not exceeding 1 month, but the President may, by further proclamation, extend its operation for a further period which shall not exceed 1 month.

29. Powers of Minister

(1) The Minister nominated under section 28(2) may provide, operate, maintain, control and regulate the essential service, in respect of which he is nominated, during the period of emergency and for that purpose may exercise all the rights of an employer of labour in that essential service.

(2) Without limiting the generality of subsection (1), the Minister nominated under section 28(2) may, for the purpose of exercising the powers under that subsection, by Order –

(a) prohibit persons employed in the essential service from commencing a strike, or direct persons ordinarily employed in or in connection therewith who are engaged in a strike, to terminate such strike;

(b) direct what activities shall be performed for the purposes of the essential service and the terms and conditions upon which that essential service shall be provided;

(c) direct at what times and places and upon what terms and conditions and in what manner the essential service may be used;

(d) prohibit the provision, operation or maintenance of the essential service except with his consent first had and obtained;

(e) authorize any person to enter upon any land, building or structure used in, or in connection with, the provision, operation or maintenance of the essential service;

and may provide by Order for any matter incidental to the exercise of the powers conferred by this section.

(3) A person authorized by the Minister under subsection (2)(e) shall be entitled to enter upon the land, building or structure specified in the authority and therein to do –

(a) all such acts and things as he is directed under subsection (2) to do;

(b) all such acts and things as, in his opinion, shall be done for the provision, operation and maintenance of the essential service for the purposes of which the land, building or structure is used.

(4) A person who is required to perform any activity for the purpose of complying with a direction given under subsections (2) and (3) shall be deemed to have entered into a contract of service with the Government to perform that activity in the course of his employment.

(5) Any person who fails to comply with any direction or prohibition under this section shall be guilty of an offence.

30. Protection for administering proclamation of emergency

No person shall incur any liability on account of anything done under this Part without negligence and in good faith in a belief on reasonable grounds that it is authorized under section 29 to be done.

31. Government may recover cost of providing essential service

Any expenses incurred by the Government in, or in connection with, the provision, operation or maintenance of an essential service in pursuance of an Order under section 29 may be recovered from the person ordinarily responsible for the provision, operation or maintenance of that service, as a civil debt owing by him to the Government:

Provided that the amount of the expenses recoverable under this section shall not exceed the amount of the expenses which would have been incurred by that person in, or in connection with, the provision, operation or maintenance of that service if an Order under section 29 had not been made in respect thereof.

32. Presumptive provision in awards applicable to essential services

During a period of emergency existing in relation to an essential service every award or agreement applicable to work in that service shall be deemed to contain a provision that requires all workers engaged therein to work on the terms and conditions of the award or agreement and to perform the work in a manner customarily required of workers under that award or agreement.

33. Prohibition of strike and lock-outs during emergency

Without prejudice to section 34 any person who –

(a) engages or continues to engage in a strike;

(b) institutes a lock-out against workers who ordinarily work in the provision, operation or maintenance of an essential service;

contrary to an Order made by the Minister under section 29, shall be guilty of an offence.

PART 5 – PROVISIONS WITH RESPECT TO STRIKES, LOCK-OUTS, ETC.

33A. Notice of strike or other industrial action

(1) Where any strike or other industrial action is contemplated by a trade union or workers the following procedure shall be followed –

(a) at least 30 days' notice of the proposed strike or other industrial action shall be given in writing to the Commissioner and to the employer of every worker who may be involved in the action;

(b) the notice shall be signed by the person or persons giving it and if given by a trade union, shall specify the name of such trade union and, if not given by a trade union, shall specify the names, addresses and employment of all persons by or on behalf of whom it is given;

(c) the notice shall state the date on or after which the strike or other industrial action is contemplated; and

(d) the notice shall be delivered by hand or by forwarding the same by registered post.

(2) Any person contravening or failing to comply with any of the requirements of subsection (1) shall be guilty of an offence:

Provided that no prosecution in respect of such offence shall be instituted except with the written consent of the Attorney General.

(3) The immunity against liability in tort conferred on a registered trade union or any other person by, or in pursuance of, sections 18 of 19 of the Trade Unions Act [Cap. 161] shall not apply with respect to any action taken without complying with the provisions of subsection (1).

34. Minister may order industrial action to be discontinued or deferred

(1) Where it appears to the Minister –

(a) that in contemplation or furtherance of a trade dispute, industrial action, consisting in a strike, or irregular industrial action short of a strike, or a lock-out, has begun or is likely to begin; and

(b) that the condition stated in subsection (2) is fulfilled; and

(c) that it would –

(i) be conducive to a settlement of the dispute by conciliation or arbitration under this Act; or

(ii) assist in the exercise of its functions by a Commission of Inquiry set up in pursuance of section 38;

if the industrial action were discontinued or deferred;

the Minister may make an Order directing that during the period for which the Order remains in force, no person or a member of a class of persons specified in the Order shall –

(i) call, organise, procure or finance a strike, or any irregular industrial action, or threaten to do so;

(ii) institute, carry on, organise, procure or finance a lock-out or threaten to do so.

(2) The condition referred to in subsection (1)(b) is that the industrial action in question has caused or would cause an interruption in the supply of goods or in the provision of services of such a nature, or on such a scale, as to be likely –

(a) to be gravely injurious to the national economy, to imperil national security or to create a serious risk of public disorder; or

(b) to endanger the lives of a substantial number of persons, or expose a substantial number of persons to serious risk of disease or personal injury.

(3) An Order under this section shall specify –

(a) the industry, undertaking (or a part thereof), and the description of workers in respect of which the Order is to have effect, or all or any of these matters;

(b) the persons or description of persons who are to be bound by the Order;

(c) the date on which the Order is to take effect and the period, not exceeding 60 days, for which the Order, unless revoked earlier, shall remain in force.

(4) Any person contravening or failing to comply with any of the directions contained in an Order under this section shall be guilty of an offence:

Provided that no prosecution in respect of such offence shall be instituted except by, or at the instance of, or with the written consent of the Attorney General.

(5) The immunity against liability in tort conferred on a registered trade union or any other person by, or in pursuance of, section 18 or 19 of the Trade Unions Act [Cap. 161] shall not apply with respect to any act which constitutes an offence under this section.

35. Peaceful picketing

(1) It shall be lawful for a person acting in contemplation or furtherance of a trade dispute to attend –

(a) at or near his own place of work; or

(b) if he is an official of a registered trade union, at or near the place of work of a member of that union whom he is accompanying,

for the purpose of peacefully obtaining or communicating information, or peacefully persuading any person to work or abstain from working.

(2) If a person works or normally works –

(a) at more than 1 place; or

(b) at a place the location of which is such that attendance there for a purpose mentioned in subsection (1) is impracticable;

his place of work, for the purpose of that subsection, shall be any premises of his employer from which he works or from which his work is administered.

(3) In the case of a worker who is not currently in employment and whose last employment was terminated in connection with a trade dispute, the reference to his place of work in subsection (1) shall be taken as a reference to his last place of work.

(4) Notwithstanding anything in section 18 or 19 of the Trade Unions Act [Cap. 161] the immunity conferred by those sections shall not prevent any act done in the course of picketing from being actionable in tort unless such act is done in the course of attendance declared lawful by subsection (1) above.

(5) Nothing in this section shall be taken to confer on any person the right to enter upon private property against the will of the owner.

36. Secondary action

(1) The immunity conferred by sections 18 and 19 of the Trade Unions Act [Cap. 161] shall not apply where a person induces a breach of contract, other than a contract of employment, by means of secondary action which does not satisfy the conditions set out in subsection (3).

(2) For the purpose of this section there is secondary action in relation to a trade dispute when, and only when, a person –

(a) induces another to break a contract of employment or interferes or induces another to interfere with its performance; or

(b) threatens that a contract of employment will be broken or interfered with or that he will induce another to do so,

if the employer under the contract of employment is not a party to the trade dispute.

(3) The conditions referred to in subsection (1) are –

(a) that the purpose or principal purpose of the secondary action is directly to prevent or disrupt the supply during a trade dispute of goods or services between an employer who is a party to the dispute and an employer whose workers are taking the action, and the action is likely to achieve that purpose; or

(b) where the secondary action involves workers of associated employers of the employer in dispute or workers of their customers, that the purpose or principal purpose of the secondary action is directly to prevent or disrupt the supply during the dispute of goods or services from the associated employer to the customer, which but for the dispute would have been supplied by the employer in dispute, and the action is likely to achieve that purpose; or

(c) where the secondary action involves workers of associated employers of the employer in dispute or workers of their suppliers, that the purpose or principal purpose of the secondary action is directly to prevent or disrupt the supply during the dispute of goods or services to the associate employer from the supplier, which but for the dispute would have been supplied to the employer in dispute, and the action is likely to achieve that purpose; or

(d) that the secondary action is taken in the course of peaceful picketing declared lawful by section 35.

(4) For the purpose of subsection (3)(b) and (c), any two employers are to be treated as associated if one is a company of which the other (directly or indirectly) has control, or if both are companies of which a third person (directly or indirectly) has control.

37. Intimidation or annoyance

Every person who, with a view to compelling any other person to do or to abstain from doing any act which such other person has a right to do or abstain from doing, wrongfully and without legal authority –

(a) uses violence to or intimidates such other person or his wife or children, or damages his property; or

(b) persistently follows such other person about from place to place; or

(c) hides any tools, clothes or other property owned or used by such other person, or deprives him of or hinders him in the use thereof; or

(d) watches or besets the house or other place where such person resides or works or carries on business or happens to be or the approach to such house or place; or

(e) follows such other person in disorderly manner in or through any street or road,

shall be guilty of an offence.

Penalty: a fine not exceeding VT 100,000 and imprisonment for a term not exceeding 3 years.

PART 6 – MISCELLANEOUS

38. The President may set up Commissions of Inquiry into trade disputes

(1) Where a trade dispute exists or is apprehended and –

(a) the dispute raises, in the opinion of the President, issues of grave importance to the national economy or any sector thereof or to the wellbeing of the community or any section thereof; and

(b) (i) all steps to bring about a settlement of such dispute by conciliation or arbitration under this Act, or by other means, have failed; or

(ii) there is no reasonable prospect, in the opinion of the President, of bringing about a settlement of the dispute by such conciliation, arbitration or other means,

the President may, on the advice of the Prime Minister, tendered after consultation with the Labour Advisory Board, set up a Commission of Inquiry to consider, and report to him, on the causes of the dispute and the circumstances in which it arose, and to make recommendations in respect thereof.

(2) A Commission of Inquiry referred to in subsection (1) shall be set up, and proceed in accordance with, and have all the powers conferred upon it by, the law relating to the setting up, procedure and powers of Commissions of Inquiry.

39. Conspiracy in trade disputes

(1) An agreement or combination by two or more persons to do or procure to be done any act in contemplation or furtherance of a trade dispute shall not be punishable as a conspiracy if such act committed by one person would not be punishable as a crime.

(2) Nothing in subsection (1) shall affect the law relating to riot, unlawful assembly, breach of the peace, or sedition, or any offence against the State.

40. Application of the Act to Government and public service

(1) Except as provided in subsection (3) and subject to the modifications set out in subsection (2), the provisions of this Act shall apply in relation to –

(a) the Government and members of the public service of Vanuatu, and

(b) any registered trade union the majority or a substantial number of members of which consists of members of the public service of Vanuatu,

as they apply to any other employer, person or registered trade union.

(2) The modifications mentioned in subsection (1) are as follows –

(a) except in sections 28, 29 and 33, the references to the Minister shall be taken as references to the Minister responsible for matters relating to public service;

(b) the functions of the Labour Advisory Board shall be exercised by the Public Service Commission;

(c) the powers and duties of the Commissioner of Labour shall vest in the Director of the Public Service Department;

(d) the powers and duties of a labour officer shall vest in the Director of the Public Service Department or an officer appointed by him for that purpose.

(3) Nothing in this Act shall apply in relation to members of the armed forces, police force or prison service.

Table of Amendments (since the Revised Edition 1988)

33A Inserted by Act 10 of 1995