

- "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, done in consequence of a trade dispute, 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;
- "Minister" means the Minister for the time being responsible for labour matters;
- "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 understanding 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 employees 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 between an employer and employees in the employment of that employer connected with the employment or non-employment, or the terms of the employment, or with the conditions of labour, of any of those employees;
- "Tribunal" means an Arbitration Tribunal appointed in accordance with section 18.

PART II

PROCEDURE FOR THE SETTLEMENT OF TRADE DISPUTES

Trade
disputes
may be
reported
to Labour
Commissioner

3.-(1) Any trade dispute, whether existing or apprehended, if not otherwise determined, may be reported to the Labour Commissioner by notice in writing given either by or on behalf of the employer or, on behalf of the employees, by the general secretary of a registered trade union of which the employees are members.

(2) Where a trade dispute has been reported to him in accordance with subsection (1), the Labour Commissioner shall appoint a Labour Officer or such other person as he may think fit to be the conciliator for such dispute:

Provided that where the Labour Commissioner considers that any machinery for the settlement of trade disputes which exists in the trade or industry or branch thereof in which the dispute has arisen has not been made use of by the parties to the dispute, he may, with the prior approval of the Minister, refer the dispute back to the parties thereto for negotiation and settlement.

(3) If, in the opinion of the Labour Commissioner, no or no sufficient machinery for the settlement of trade disputes exists in any trade or industry or branch thereof he shall so inform the Minister and the Minister may, on being so informed and after consultation with the employers and the trade unions concerned in that trade or industry or branch thereof, establish, by order published in the Gazette, machinery for the settlement of trade disputes within that trade or industry or branch thereof.

4. In any proceedings under, or for an offence against, this Act, a certificate purporting to be under the hand of the Labour Commissioner as to whether a trade dispute has been reported to him or not and as to whether a trade dispute has been referred back to the parties thereto or a conciliator appointed shall be admissible without further proof as evidence of the facts stated therein.

Evidence

5. (1) Where, under section 3, a conciliator is appointed for any trade dispute, he shall use his best endeavors to conciliate the parties to the dispute and effect a settlement thereof and shall for this purpose make use of any machinery for the settlement of trade disputes which may exist in the trade or industry or branch thereof in which the dispute has arisen.

Conciliator to make use of existing machinery

(2) Any settlement effected as provided for in subsection (1) shall be recorded in writing by the parties thereto and on being endorsed by the Labour Commissioner shall be known, and is in this Act referred to, as a negotiated agreement and shall be deemed to be an award.

(3) The Labour Commissioner shall cause every negotiated agreement to be published in the *Gazette* as soon as possible after his endorsement of such agreement.

6.-(1) Where a conciliator appointed under section 3 is unable to effect a settlement of the trade dispute he shall report the fact to the Labour Commissioner.

Further reference to Labour Commissioner

(2) On receipt of a report under subsection (1), the Labour Commissioner shall either—

- (a) if he is of opinion that further efforts should be made to settle the dispute by negotiation between the parties thereto, refer the dispute back to the conciliator; or
- (b) report the dispute to the Minister.

7.-(1) Where, under paragraph (a) of subsection (2) of section 6, the Labour Commissioner has referred a trade dispute back to a conciliator, the conciliator shall again endeavour, in accordance with subsection (1) of section 2 to effect a settlement of the dispute and the provisions of subsections 5, (2) and (3) of section 5 shall apply to any settlement so effected.

Reference back to conciliator

(2) If after a trade dispute has been referred back to him the conciliator remains unable to effect a settlement of the dispute he shall report the fact to the Labour Commissioner and the Labour Commissioner shall, on receipt of such report, report the dispute to the Minister.

8.-(1) Where a trade dispute is reported to the Minister under paragraph (b) of subsection (2) of section 6 or under subsection (2) of section 7, the Minister may—

Reference to Tribunal

- (a) whether or not the trade dispute is in an essential service, if the parties to the dispute consent to it being so referred, refer the dispute to a Tribunal for settlement,
- (b) if the trade dispute is in an essential service, whether or not the parties to the dispute consent to it being so referred, refer the dispute to a Tribunal for settlement; or
- (c) if the trade dispute is not in an essential service and the parties to the dispute do not consent to it being referred to a Tribunal under paragraph (a), appoint, in accordance with section 10, a Board of Inquiry to inquire into the causes and circumstances

of the dispute, and, after considering the report of the Board, the Minister may then refer the dispute to a Tribunal for settlement.

(2) Reference of a trade dispute to a Tribunal under paragraph (a) or paragraph (b) of subsection (1), or to a Board of Inquiry under paragraph (c) of that subsection, shall be made by the Minister within twenty-one days from the date on which the dispute was reported to the Minister under paragraph (b) of subsection (2) of section 6 or under subsection (2) of section 7, as the case may be, unless in the opinion of the Minister, the special circumstances of the case make it necessary or desirable to postpone such reference for such further period or periods as the Minister may in writing allow.

(3) Reference of a trade dispute to a Tribunal under paragraph (c) of subsection (1) shall be made by the Minister within twenty-one days from the receipt by the Minister of the final report of the Board of Inquiry appointed under that paragraph unless, in the opinion of the Minister, the special circumstances of the case make it necessary or desirable to postpone such reference for such further period or periods as the Minister may in writing allow.

(4) In any proceedings under, or for an offence against, this Act, a certificate purporting to be under the hand of the Minister that he has or has not made a reference to a Tribunal or a Board under subsection (1) on or by a date specified therein, or that he has or has not postponed the period for reference to a Tribunal or a Board under subsection (2) or subsection (3) and, where he has postponed such period, specifying the further period within which such reference shall be made, shall be admissible in evidence without further proof and shall be conclusive evidence of the matters stated therein.

(5) A Tribunal to which a trade dispute is referred under this section shall consider such dispute and make an award thereon.

Inquiry
into trade
disputes
industrial
conditions

9.(1) Where any trade dispute exists or is apprehended, the Labour Commissioner may, whether or not the trade dispute is reported to him under the provisions of this Act, inquire into the causes and circumstances of such trade dispute and, with the approval of the Minister, refer any matters appearing to him to be connected with or relevant to such trade dispute to a Board of Inquiry and the Board shall inquire into the matters referred to it and report thereon to the Labour Commissioner:

Cap. 300

Provided that where such dispute relates to a matter in connection with which a minimum wage board or a wages council or any other body for the inquiry into or regulation of wages or terms of employment has been appointed under the provisions of the Regulation of Wages and Terms of Employment Ordinance or any other law for the time being in force, such dispute shall be referred to such minimum wage board, wages council or other body.

(2) The Minister may at any time, where a trade dispute exists or is apprehended, direct the Labour Commissioner to refer any matter connected with the economic or industrial conditions of the Territory to a Board for inquiry and report.

Appointment
of Board

10.(1) A Board of Inquiry shall consist either of a single member or of a chairman and such other members as the Minister may appoint.

(2) A Board, other than a Board consisting of a single member, may act notwithstanding any vacancy in the membership thereof.

11.-(1) A Board may, if it thinks fit, make interim reports.

Reports
of Board

(2) Any report of a Board and any minority reports shall be submitted to the Minister.

(3) The Minister may cause to be published from time to time in such manner as he thinks fit any information obtained or conclusions arrived at by a Board as the result of or in the course of an inquiry:

Provided that there shall not be included in any report by a Board or publication by the Minister any information obtained by the Board in the course of an inquiry as to any trade union or as to any individual business (whether carried on by a person, firm or company) which is not available otherwise than through evidence given at the inquiry, except with the consent of the secretary of the trade union or of the person, firm or company concerned, nor shall any individual member of the Board or any person concerned in the inquiry, without such consent, disclose any such information.

(4) Any member of a Board or any person concerned in an inquiry who, without such consent, discloses any such information shall be guilty of an offence and liable on conviction to a fine not exceeding two thousand shillings.

12. Without prejudice to the other provisions of this Act, the Labour Commissioner may, where a trade dispute exists or is apprehended, refer to a Tribunal for advice on any matter relating to or arising out of the trade dispute which, in his opinion, ought to be so referred.

Reference
to Tribunal
for advice

PART III

LOCK-OUT AND STRIKES

13.-(1) No employer shall take part in a lock-out and no employee shall take part in a strike unless the conditions specified in subsection (2) and which are applicable to the occasion have been fulfilled.

certain
conditions
to be
fulfilled
before
lock-out
or strike
takes place

(2) The conditions to be fulfilled for the purposes of subsection (1) are as follows: -

- (a) a trade dispute exists between that employer and his employees or between those employees and their employer and the dispute has been reported to the Labour Commissioner in accordance with subsection (1) of section 3; and
- (b) the Labour Commissioner has appointed a conciliator for the trade dispute in accordance with subsection (2) of section 3; and
- (c) the conciliator has been unable to effect a settlement of the trade dispute and the Labour Commissioner has reported the trade dispute to the Minister under paragraph (b) of subsection (2) of section 6 or under subsection (2) of section 7; and
- (d) twenty-one days, or if a further period or periods has been allowed by the Minister under subsection (2) of section 8, twenty-one days and such further period or periods, have elapsed since the date of the report to the Minister; and

(e) either-

- (i) during the period referred to in paragraph (d) the trade dispute has not-
 - (a) been settled; nor
 - (b) been referred to a Tribunal for settlement; nor
 - (c) been referred to a Board of Inquiry; or
- (ii) the trade dispute has been referred to a Board of Inquiry and-
 - (a) the final report of the Board has been received by the Minister; and
 - (b) twenty-one days, or if a further period or periods has been allowed by the Minister under subsection (3) of section 8, twenty-one days and such further period or periods, have elapsed since the receipt by the Minister of such report; and
 - (c) during such period the trade dispute has neither been settled nor referred to a Tribunal for settlement.

(3) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding five hundred shillings or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.

Incitement to take part in lock-out or strike in contravention of section 13

14. Any person who procures or incites another to take part in a lock-out or strike in contravention of the provisions of section 13 shall be guilty of an offence and liable on conviction to a fine not exceeding two thousand shillings or to imprisonment for a period of twelve months or to both such fine and imprisonment.

Powers of arrest

15. Any police officer may arrest without a warrant any person whom he reasonably suspects of having committed an offence against section 13 or section 14.

Sanction of Director of Public Prosecutions

16. No prosecution for a contravention of section 13 or section 14 shall be instituted save by, or with the consent of, the Director of Public Prosecutions.

PART IV

PROVISIONS GOVERNING THE CONSTITUTION OF TRIBUNALS, AND PROCEEDINGS AND AWARDS IN THE COURSE OF ARBITRATION AND INQUIRY IN TRADE DISPUTES

Application of Part IV

17. In this Part-

- (a) the provisions of sections 18, 19 and 20 shall apply to every Tribunal provided for in this Act;
- (b) the provisions of sections 21, 22, 23, 24 and 25 shall apply to every award provided for by this Act;
- (c) the provisions of sections 26, 27, 28, 29, 30 and 31 shall apply to every consideration, hearing, inquiry or other proceedings in connection with a trade dispute provided for by this Act whether such consideration, hearing, inquiry or other proceedings be undertaken by a conciliator, a Tribunal or a Board.

- 18.**-(1) A Tribunal shall consist of either-
- (a) a sole arbitrator appointed by the Minister; or
 - (b) an arbitrator appointed by the Minister, assisted by one or more assessors nominated by or on behalf of the employers concerned and an equal number of assessors nominated by or on behalf of the employees 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 employees concerned, and an independent chairman, all of whom shall be appointed by the Minister.

Constitu-
tion of
Tribunal

(2) Any award made by a Tribunal appointed under the provisions of paragraph (a) or (b) of subsection (1) shall be made by the arbitrator, and any award made by a Tribunal appointed under the provisions of paragraph (c) of that subsection shall, if they are in agreement, be made by all the members of the Tribunal and otherwise by the chairman.

19.-(1) Where a Tribunal consists of more than one arbitrator and a vacancy occurs in their number the Tribunal may, in the discretion of the remaining arbitrator or arbitrators, continue to act notwithstanding such vacancy.

Vacancies
in member-
ship of a
Tribunal

(2) Where a Tribunal consists of an arbitrator assisted by assessors and a 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 circumstances referred to in subsection (1) or subsection (2) the required discretion has been first exercised.

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

Award to
be made
without
delay
Awards, etc...,
may be
retro-
spective

21. Any award or other settlement concerning a trade dispute which is made or effected by a conciliator, a Tribunal or otherwise may be made retrospective.

22.-(1) Every award shall be submitted to the Minister.

(2) On the submission of an award to him the Minister shall either-

- (a) confirm the award; or
- (b) refer the award back to the Tribunal.

(3) Where the Minister confirms an award he shall as soon as possible thereafter cause the same to be published in the *Gazette* and such newspapers or other media of publication as he may deem advisable.

Submission
of awards
to Minister,
confirma-
tion and
reference
back

(4) Where the Minister does not confirm an award he shall refer the award back to the Tribunal together with a written statement of his objections to the award and the Tribunal shall, within fourteen days of such reference back, after taking into account such objections, prepare a new award and submit the same to the Minister.

- (5) On receipt of the new award the Minister shall either-
- (a) confirm the new award and cause it to be published in accordance with subsection (3); or
 - (b) if his objections to the award have not been met by the new award, reject the new award.

(6) Where the Minister under subsection (5) rejects an award he shall revoke the appointment of the Tribunal which made the award and appoint a new Tribunal to consider the dispute.

(7) A Tribunal appointed under subsection (6) shall consider the dispute and act in relation thereto as if it had been referred to such Tribunal for settlement under subsection (1) of section 8 and all the provisions of this Act shall apply to such Tribunal, to the proceedings before it and to any award made by it as if it had been seized of the dispute by virtue of the provisions of that subsection.

(8) In this section "award" does not include a negotiated agreement.

Publication of awards

23. No award shall take effect until the date of its publication in the *Gazette*:

Provided that where an award is expressed to have retrospective effect it shall on the date of its publication in the *Gazette* have effect from the date specified in the award.

Interpretation of awards, etc. of

24.-(1) If any question arises as to the interpretation of any award of a Tribunal, the Minister or the Labour Commissioner or any party to the award may apply to the Tribunal for a decision on such question, and the Tribunal shall decide the matter after hearing the parties or without such hearing as it thinks fit. The decision of the Tribunal shall be notified to the parties and shall be deemed to form part of and shall have the same effect in all respects as the award.

(2) If any question arises as to the interpretation of any negotiated agreement or other settlement made or effected by a conciliator, the provisions of subsection (1) shall apply thereto in every respect except that the conciliator shall perform the functions assigned by that subsection to the Tribunal.

Awards to be binding

25.-(1) Any award provided for by this Act shall be binding on the employers and employees to whom the same relates and as from the date of the publication in the *Gazette* of such award or, where the award is made retrospective, as from such date as may be specified therein pursuant to section 21, it shall be an implied term of the contract between the employers and employees to whom the 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 award until varied by a subsequent award, or by agreement,

(2) No application to vary any award shall, except with the written permission of the Minister, be made within twelve months of the date of publication in the *Gazette* of such award and no trade dispute in connection with the terms of any award shall, within such period, be reported to the Labour Commissioner under section 3.

Non-application of Arbitration Ordinance Cap. 15

26. The Arbitration Ordinance shall not apply to any proceedings or award under this Act.

27. Save as is otherwise expressly provided in this Act or in rules made hereunder, a conciliator, a Tribunal or a Board, as the case may be, may regulate the procedure in any proceedings under this Act as he or it shall think fit.

28.-(1) A conciliator, a Tribunal or a Board, for the purpose of dealing with any matter referred to him or it under this Act, shall be entitled to elicit all such information as in the circumstances may be considered necessary, without being bound by the rules of evidence in civil or criminal proceedings, and may by order require any person-

- (a) to furnish, in writing or otherwise, such particulars in relation to any matter as may be required; and
- (b) to attend before the conciliator, the Tribunal or the Board and give evidence on oath or otherwise; and
- (c) to produce any documents:

Provided that if any witness refuses to furnish any particulars or to answer any question or to produce 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, nor shall he be liable to any penalty for refusing so to do.

(2) Any person who, without such lawful excuse as aforesaid, fails to obey an order given under the provisions of subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding five hundred shillings.

29. It shall be in the discretion of a conciliator, a Tribunal or a Board, as the case may be, to permit or not to permit any interested person to appear by advocate in any proceedings under this Act before such conciliator, Tribunal or Board.

Appearance
of advocate

30. It shall be in the discretion of a conciliator, a Tribunal or a Board, as the case may be, to admit or exclude the public or representatives of the Press from any proceedings under this Act.

Sittings
may be
public or
private

31.-(1) Where any representatives of the Press are allowed to be present at any proceedings under this Act, and not otherwise, a fair and accurate report or summary of the proceedings including the evidence adduced thereat may be published:

Publication
of proceed-
ings

Provided that until the award or the result of the inquiry has been published by order of the Minister or, in the case of a negotiated agreement, by the Labour Commissioner, no comment shall be published in respect of the proceedings or any evidence adduced thereat:

And provided that the terms of any award or negotiated agreement or the result of any inquiry shall not be published until the award or the result of the inquiry has been published by order of the Minister or the negotiated agreement has been published by the Labour Commissioner,

(2) Any person who, before an award or negotiated agreement or the result of an inquiry has been published by order of the Minister or the Labour Commissioner, as the case may be, publishes-

- (a) the terms of the award or negotiated agreement or the result of the inquiry; or
- (b) any comment on the proceedings or any evidence adduced thereat, shall be guilty of an offence and liable on conviction to a fine not exceeding five thousand shillings.

PART V

MISCELLANEOUS

Rules and directions

32.-(1) The Minister may make rules-

- (a) for establishing the procedure to be followed in any proceedings before a Tribunal or Board or otherwise under this Act;
- (b) prescribing such abstracts of this Act and such notices in such language or languages as he may think fit and providing for the publication, display and dissemination of the same by employers and trade unions; and
- (c) generally for the better carrying into effect of the purposes of this Act.

(2) Without prejudice to the provisions of paragraph (a) of subsection (1) the Minister may give directions, not inconsistent with any rules made under that paragraph, relating to the scope, method and conduct of any specific proceedings.

Expenses

33. Arbitrators, assessors and members of a Board shall be paid out of moneys provided by Parliament such remuneration, expenses and allowances as the Minister may from time to time determine.

Minister may amend Schedule

34.-(1) The Minister may, by notice in the Gazette, make additions to or removals from or may otherwise vary the list of essential services contained in the Schedule to this Act.

(2) Any notice issued under subsection (1) shall be laid before the National Assembly.

Extension of awards

35.-(1) Subject to the provisions of subsection (2), the Minister may, by order, extend any award effected under the provisions of this Act in any branch of any trade or industry to any other branch of that trade or industry and where such order is made the award shall have effect within the branch of the trade or industry to which it is extended as if it had been effected in and in relation to that branch.

(2) No order shall be made under subsection (1) except after consultation with the employers and employees concerned in the branch of the trade or industry to which the award is to be extended.

Repeal of Cap. 296 and saving

36.-(1) The Trade Disputes (Arbitration and Settlement) Ordinance is hereby repealed.

(2) Notwithstanding the provisions of subsection (1), any award made under the Ordinance thereby repealed shall be deemed to be an award made under the provisions of this Act.

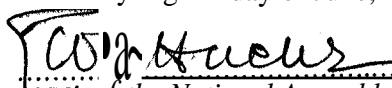
SCHEDULE

(Section 2)

ESSENTIAL SERVICES

1. Water Services.
 2. Electricity Services.
 3. Health, Hospital and Sanitary Services.
 4. Fire Services.
 5. Air Traffic Control and Civil Aviation Telecommunications.
 6. Meteorological Services of the East African Meteorological Department.
 7. Transport Services necessary to the operation of the foregoing services Nos. 1-6 inclusive or any of them.
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Passed in the National Assembly on the twenty-eighth day of June, 1962.


Clerk of the National Assembly