

EMPLOYMENT RELATIONS ACT 2008
Act No. 32 of 2008

Dispute Resolution Machinery under the Employment Relations Act

The Employment Relations Act, *Act No. 34 of 2008* which has come into operation on 2 February 2009 establishes two important Industrial Relations institutions namely the Commission for Conciliation and Mediation and the Employment Relations Tribunal. The Act lays emphasis on the peaceful settlement of labour disputes and the exhaustion of all dispute resolution processes before industrial action is undertaken.

Establishment of Commission for Conciliation and Mediation

The Industrial Relations Commission established under Sec 41 of the Industrial Relations Act is deemed to have been established under the Employment Relations Act and is renamed as the Commission for Conciliation and Mediation.

The commission shall consist of:

- (a) a President
- (b) a Vice-President and
- (c) not more than 6 members appointed after consultation with the most representative organisations of workers and employers and
- (d) not more than 2 independent members appointed by the Minister.

Functions of the Commission:

- (a) to provide a conciliation or mediation service on any labour dispute referred to it.
- (b) to investigate into any labour dispute reported to it.
- (c) enquire and report on any reference made by the Minister relating to employment relations generally or in any particular industry.
- (d) provide a conciliation or mediation service for the assistance of workers, trade unions and employers.

Establishment of Employment Relations Tribunal

The Permanent Arbitration Tribunal established under Section 39 of the Industrial Relations Act is deemed to have been established under the Employment Relations Act and is renamed as the Employment Relations Tribunal.

The Tribunal shall consist of:

- (a) a President and 2 Vice-Presidents
- (b) not more than 10 other members appointed for a period of 3 years after consultation with the most representative organizations of workers and employers.
- (c) not more than 3 independent members who shall be appointed for a period of 3 years by the Minister.

Functions of the Tribunal:

- (a) to make awards
- (b) to make orders relating to:
 - (i) recognition
 - (ii) check off agreement
 - (iii) agency shop order
 - (iv) minimum service
 - (v) any other issues under the Act
- (c) to interpret collective agreements, awards and orders
- (d) to publish on or before 31 March of every year an annual report providing summaries of cases and meetings.

The Tribunal may make an order:

- (a) requiring the parties to make use of the procedures and remedies available under the procedure agreement or under the Act
- (b) where any party to a matter relating to terms and conditions of employment fails to follow the procedures and remedies spelt out in the procedure agreement or the Act.

The Tribunal may make an order declaring any existing or threatened strike or lock out to be unlawful where any party fails to follow the procedure under a procedure agreement or the Act with regard to an existing or threatened strike or lock out.

Reporting of Labour Disputes

Any labour dispute may be reported in writing to the President of the Commission for Conciliation and Mediation specifying the following:

- (a) the parties to the dispute
- (b) the party by whom or in whose behalf the report is made
- (c) every issue giving rise to the dispute
- (d) a brief indication regarding the period of negotiations and the reasons why the dispute has remained unresolved.

A copy of the report of the dispute shall be served upon every other party to the dispute.

No dispute shall be referred except after meaningful negotiations have taken place for a period not exceeding 90 days from the start of the negotiations or such longer period as agreed in writing between the parties.

During the period of negotiations any party may seek the assistance of the conciliation service provided by the Ministry of Labour, Industrial Relations & Employment not later than 20 days before the expiry of the period of 90 days or such longer period as agreed by the parties.

Rejection of Labour Disputes

A report of a labour dispute may be rejected by the President of the Commission when:

- (a) The dispute is not a labour dispute.
- (b) The report is made by a party not entitled to be party to the labour dispute.
- (c) The report does not contain sufficient particulars of the issues giving rise to the labour dispute.
- (d) Dispute procedures specified in the Act or provided for in a procedure agreement have not been complied by the party reporting the dispute.
- (e) The dispute relates to a collective agreement which is in force.
- (f) The dispute relates to any issue within the exclusive jurisdiction of the Industrial Court.

Any party aggrieved by a rejection of a dispute may within 21 days appeal against the rejection to the Tribunal.

The Tribunal shall make an order within 60 days of receipt of the application of the appeal, confirming or revoking the decision of the President of the Commission.

Limitation on Report of Dispute

No party to a dispute may report any other labour dispute between the same parties within a period of 6 months immediately following the date on which the original report was made.

No party to a dispute may report a labour dispute on the same issue between the same parties within a period of 24 months following the date of the determination of the dispute.

Conciliation Service by Ministry of Labour, Industrial Relations and Employment

The Ministry of Labour, Industrial Relations and Employment may provide a conciliation service with a view to conciliating the parties to a dispute not yet reported to the Commission for Conciliation and Mediation.

Where the dispute is resolved by an agreement, the agreement shall:

- (a) be recorded in writing
- (b) be signed by the parties
- (c) be registered by the Ministry and the Tribunal
- (d) have the effect of a collective agreement.

Notwithstanding the Conciliation Service of the Ministry of Labour, Industrial Relations and Employment any labour dispute may be reported to the Commission for Conciliation and Mediation.

Conciliation and Mediation

The Commission for Conciliation and Mediation may with a view to promoting a settlement of the dispute:

- (a) make proposals to the parties
- (b) conciliate the parties
- (c) mediate and make recommendations to the parties or
- (d) make such investigation it thinks fit.

Where a dispute has been resolved through conciliation or mediation, the agreement shall:

- (a) be recorded in writing
- (b) be signed by the parties
- (c) be registered with the Ministry Labour, Industrial Relations and Employment and the Tribunal
- (d) have the effect of a collective agreement.

The Commission shall complete its proceedings within 30 days of the date of receipt of the labour dispute or such longer period as requested by the parties to the dispute.

When no agreement is reached after 30 days or after the expiry of such extended period as agreed the Commission shall:

- (a) Submit a report to the parties of the dispute within 7 days.
- (b) Advise the parties to refer the labour dispute for voluntary arbitration.

Where parties decline to refer the dispute for voluntary arbitration, the party reporting the dispute may have recourse to strike or lock-out as the case may be within 45 days of the submission of the report by the President of the Commission.

In the case of a labour dispute reported by an individual worker, where no agreement has been reached, the Commission may within 7 days with the consent of the worker refer the labour dispute for arbitration.

Voluntary Arbitration

The parties to a labour dispute may jointly refer such dispute for voluntary arbitration to the Tribunal or to an arbitrator appointed by them.

Arbitration

Where a labour dispute is referred to the Tribunal:

- (a) jointly by parties to the labour dispute
- (b) by the Commission for Conciliation and Mediation in the case of a labour dispute reported by an individual worker with his consent.

The Tribunal shall enquire into the dispute and make an award thereon within 90 days or such longer period as consented by the parties to the dispute.

An award of the Tribunal shall be published in the Gazette and shall inter alia:

- (a) state the parties to whom the award applies
- (b) state the reasons for the award
- (c) be binding on all the parties to whom the award applies
- (d) take effect on the date of its publication in the Gazette or a specified in the award.

Right to Strike and Recourse to Lock Out

- (a) Every worker has the right to strike and every employer may have recourse to lock out where:
 - (i) a labour dispute has been reported to the Commission for Conciliation and no agreement has been reached.
 - (ii) parties to the dispute have not elected to refer the dispute for voluntary arbitration.
 - (iii) a strike ballot has been successfully taken.
 - (iv) a notice of the strike or lock out has been given to the Minister and the other party.
- (b) A worker shall have the right to strike where:
 - (i) the strike relates to a major health and safety issue that may jeopardize the life and safety of any worker; or
 - (ii) more than 50 per cent of the workers of an enterprise have not been paid remuneration within the prescribed period.

and the Minister has been notified and remedial action has not been taken by the employer within a reasonable delay fixed by the Minister.

Limitation on Right to Strike or Recourse to Lock Out

A person shall not take part in strike or lock out where:

- (a) Conditions and procedures application to the resolution of disputes have not been followed.
- (b) The strike or lock out occurs on an issue which is already covered in a collective agreement or an award in force.
- (c) The labour dispute is reported by an individual worker.
- (d) The minimum service required under the Section 81 of the Act has not been organised and put in place.
- (e) The Supreme Court makes an order prohibiting the continuation of the strike or lock out.

Strike Ballot

- (a) Where following a report from the Commission for Conciliation and Mediation that no agreement has been reached regarding a labour dispute, the trade union of workers decide to recourse to strike, a strike ballot should be organised and the Commission shall be notified accordingly.
- (b) The Vote shall be taken by secret ballot and in the presence of a representative of the Commission.
- (c) A ballot shall be successful where it obtains an absolute majority of the workers concerned by dispute in the bargaining unit.

Notice of Strike or Lock Out

When a strike ballot has been successful or an employer proposes to have recourse to lock out either party as the case may be shall give not less than 10 days' notice in writing of the start of the strike or lock out to the Minister of Labour, Industrial Relations and Employment.

Minimum Service

Before proceeding on a strike or a lock out, every trade union or employer concerned as the case may be shall ensure that the minimum service specified in the procedure agreement has been organised and put in place.

Picketing

Any worker or a group of workers or an officer or negotiator has the right to picketing in furtherance of a lawful strike by being present at entrance of a workplace or near a workplace for the purpose of peacefully communicating information or peacefully persuading any worker to participate in the strike.

Acute National Crisis

- (a) Where the duration of a lawful strike or lock out is likely to seriously affect an industry or service or employment is threatened or where the Prime Minister is of opinion that the continuance of the strike or lock out may result in a real danger to life, health or personal safety of the whole or part of the population, the Prime Minister may:
 - (i) apply to the Tribunal for an order for the establishment of a minimum service
 - (ii) apply to the Supreme Court for an order prohibiting the continuation of the strike or lock out.
- (b) The Tribunal shall within 48 hours make an order for the establishment of a minimum service.
- (c) The Supreme Court shall hear the case *de die in diem* and make an award within 30 days of the referral.
- (d) When the Supreme Court makes an order it shall refer the parties to the dispute giving rise to the strike or lock out to the Tribunal for arbitration.

Legal Effect of Strike on Contract of Employment

- (a) A worker shall not be entitled to any remuneration while he is on strike unless agreed by the parties.
- (b) Where a worker participates in a lawful strike his continuous employment shall not be deemed to have been interrupted and his contract shall not be broken.
- (c) Where a worker participates in an unlawful strike for the first time there will be no break in his continuous employment.
- (d) A worker who participates in an unlawful strike shall commit an offence and on conviction be liable to a fine not exceeding Rs5000.

Prevention of Intimidation

Any person who without lawful excuse attends at, or near a place where a person works or carries on business, otherwise than in contemplation or furtherance of an industrial dispute or for a purpose other than peacefully obtaining or communicating information or of peacefully persuading any other person to work or abstain from working shall commit an offence.

On conviction the person shall be liable to a fine not exceeding Rs500 and to imprisonment for a term not exceeding 3 months.

Principles to be applied by Industrial Relations Institutions

The Tribunal, the Commission or the Board may in the exercise of their functions in relation to a matter before them have regard inter alia to:

- (a) the interests of the persons immediately concerned and the community as a whole;
- (b) the need to promote decent work and decent living;
- (c) the need to promote gender equality and to fix wages on the basis of job content;
- (d) the principles of natural justice;
- (e) the need for Mauritius to maintain a favourable balance of trade and balance of payments;
- (f) the need to ensure the continued ability of the Government to finance development programmes and recurrent expenditure in the public sector;
- (g) the need to increase the rate of economic growth and to protect employment and to provide greater employment opportunities;
- (h) the need to preserve and promote the competitive position of local products in overseas market;
- (i) the capacity to pay of enterprises;
- (j) the need to develop schemes for payment by results and, as far as possible, to relate increased remuneration to increased labour productivity;
- (k) the need to prevent gains in the wages of workers from being adversely affected by price increases;
- (l) the need to establish and maintain reasonable differentials in rewards between different categories of skills and levels of responsibility;
- (m) the need to maintain a fair relation between the incomes of different sectors in the community; and
- (n) the principles and best practices of good employment relations.

4 February 2009