

PARLIAMENT OF CEYLON

2nd Session 1961-62



12 DEC 1961

Port (Cargo) Corporation (Amendment) Act, No. 67 of 1961

Date of Assent : December 7, 1961

Printed on the Orders of Government

Printed at the GOVERNMENT PRESS, CEYLON. To be purchased at the GOVERNMENT PUBLICATIONS BUREAU, COLOMBO

Annual Subscription (including Bills) Rs. 30 (Local), Rs. 40 (Foreign), payable to the SUPERINTENDENT, GOVERNMENT PUBLICATIONS BUREAU, P. O. Box 500, Colombo 1, before 20th December each year in respect of the year following. Late subscriptions will be accepted on the condition that Bills issued before the date of payment will not be supplied.

Price : 40 cents.

Postage : 10 cents

*Port (Cargo) Corporation (Amendment) Act,
No. 67 of 1961*

L. D.—O. 16/60.

AN ACT TO AMEND THE PORT (CARGO) CORPORATION
ACT, NO. 13 OF 1958.

[Date of Assent: December 7, 1961]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Representatives of Ceylon in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Port (Cargo) Corporation (Amendment) Act, No. 67 of 1961.

Short title.

2. Section 5 of the Port (Cargo) Corporation Act, No. 13 of 1958, hereafter in this Act referred to as the "principal Act", is hereby amended, by the substitution, in paragraph (g) of sub-section (1) of that section, for the words "perform all", of the words "perform, directly or through any officer or agent authorised in that behalf by the Corporation, all".

Amendment of
section 5 of
Act No. 13 of
1958.

3. Section 7 of the principal Act is hereby amended as follows:—

Amendment of
section 7 of
the principal
Act.

(1) by the substitution, for sub-section (1) of that section, of the following new sub-section:—

"(1) The Corporation shall have a Board of Directors consisting of an officer of the General Treasury, an officer of the Customs, an officer of the Port Commission, and four other members, all of whom shall be appointed by the Minister.";

(2) by the substitution, for sub-section (3) of that section, of the following new sub-section:—

"(3) Where a Director is, by reason of illness or other infirmity or absence from Ceylon, temporarily unable to perform the duties of his office, then, if he is not the Director who is an officer of the General Treasury or the Customs or the Port Commission, the Minister may appoint another person to act in his place, and, if he is a Director who is an

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officer of the General Treasury or the Customs or the Port Commission, the Minister may appoint an officer of the General Treasury, or the Customs, or the Port Commission, as the case may be, to act in his place. ”.

Amendment
of section
22 of the
principal
Act.

4. Section 22 of the principal Act is hereby amended, in sub-section (1) of that section, by the substitution in paragraph (a) of that sub-section, for the words “ Corporation; and ”, of the words “ Corporation, and to meet liabilities arising under the Workmen’s Compensation Ordinance; and ”.

Amendment
of section
42 of the
principal
Act.

5. Section 42 of the principal Act is hereby amended, by the substitution, for the words “ payable under this Act ”, of the words “ payable, less any deductions that may be made from such compensation under this Act ”.

Amendment
of section
47 of the
principal
Act.

6. Section 47 of the principal Act is hereby amended as follows:—

(1) in sub-section (1) of that section, by the substitution, for paragraph (a) of that sub-section, of the following paragraph:—
“ (a) any sum—

(i) which is certified in writing by a Labour Tribunal constituted under this Act to the Chairman of the Board of Directors to be due from such person under section 55, section 56, or section 57; or

(ii) which is admitted by such person to be due from him under section 55, section 56, or section 57, and is certified in writing by the Chairman of the Board of Directors to that Board to have been admitted by such person to be so due to an employee of the Corporation, or is certified in writing by the Commissioner of Labour to the Chairman of the Board of Directors to have been admitted by such person to be so due to anyone who is not an employee of the Corporation; or

(iii) which is neither admitted nor denied by such person to be due from him under section 55, section 56, or section 57, and is certified in writing by the Chairman of the Board of Directors to that Board to have been neither so admitted nor so denied by such person and to be so due from such person to any employee of the Corporation, or is certified in writing by the Commissioner of Labour to the Chairman of the Board of Directors to have been neither so admitted nor so denied by such person and to be due from such person to anyone who is not an employee of the Corporation;” and

(2) by the insertion, at the end of that section, of the following new sub-section:—

‘ (3) For the purposes of this section, the expression “compensation” includes any interest which has accrued due on such compensation. ’.

7. Section 55 of the principal Act is hereby amended as follows:—

Amendment of
section 55 of
the principal
Act.

(1) in sub-section (2) of that section, by the substitution, for paragraphs (a) and (b) of that sub-section, of the following new paragraphs:—

“ (a) where such employee was employed under such employer during the relevant period for twelve months or more and was remunerated by such employer at a monthly rate, be calculated at the rate of one-half of one month’s salary for every twelve months of such employment and one and one-fourth days’ wages for every complete month in any outstanding period of such employment,

(b) where such employee was employed under such employer during the relevant period for less than twelve months and was remunerated by

such employer at a monthly rate, be calculated at the rate of one and one-fourth days' wages for every complete month in the period of such employment,

- (c) where such employee was employed under such employer during the relevant period for twelve months or more and was remunerated by such employer at a daily rate, be calculated at the rate of fifteen days' wages for every twelve months of such employment and one and one-fourth days' wages for every complete month in any outstanding period of such employment, and
 - (d) where such employee was employed under such employer during the relevant period for less than twelve months and was remunerated by such employer at a daily rate, be calculated at the rate of one and one-fourth days' wages for every complete month of such employment: ”;
- (2) in sub-section (3) of that section, by the omission of the expressions “ one month's ” and “ the fifteen days' ” occurring therein;
 - (3) in sub-section (4) of that section, by the substitution, for the words “ to that entrepreneur. ”, of the words “ to any employee of that entrepreneur who is not employed by the Corporation. ”; and
 - (4) by the addition, at the end of that section, of the following new sub-section:—

“ (6) For the purposes of this section, an employee shall be deemed to be remunerated at a daily rate if his remuneration is calculated by the day, whether or not such remuneration is paid by the month. ”.

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8. Section 58 of the principal Act is hereby amended, by the addition, at the end of that section, of the following proviso:—

Amendment of
section 58 of
the principal
Act.

“ Provided that—

(a) any sum referred to in paragraph (c) or paragraph (e) of this section which is paid to the Corporation in respect of an employee of the Corporation, or

(b) where any sum referred to in paragraph (d) of this section which is transferred to the Corporation in respect of an employee of the Corporation includes the amount of any contributions referred to in the proviso to sub-section (2) of section 55, that amount out of such sum or, if paragraph (b) of that proviso applies in the case of such employee, that amount out of such sum less any sum by which that amount exceeds the gratuity which would be payable in respect of such employee under that sub-section but for the application of the said paragraph (b),

shall, if a written request in that behalf is made by such employee to the Chairman of the Board of Directors, be paid to such employee instead of being disposed of according to the preceding provisions of this section. ”.

9. The following new section is hereby inserted immediately after section 58, and shall have effect as section 58A, of the principal Act:—

Insertion of
new section 58A
in the principal
Act.

“ Obligation
to furnish
certain
information
in respect
of payments
due under
section 55,
section 56, and
section 57.

58A. (1) Every port entrepreneur of the Port of Colombo shall, before the expiration of the prescribed period, furnish to the Chairman of the Board of Directors a statement specifying—

(a) the name of every person in respect of whom that entrepreneur is liable to make a payment under section 55 or section 57; and

(b) the amount of such payment and details of the mode of the computation of that amount.

(2) The administrators of every provident fund to which any employee of a port entrepreneur of the Port of

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Colombo has been a contributor, other than the provident fund referred to in section 54, shall, before the expiration of the prescribed period, furnish to the Chairman of the Board of Directors a statement specifying—

(a) the name of every person in respect of whom such administrators are liable to make a payment under section 56; and

(b) the amount of such payment and details of the mode of the computation of that amount.

(3) Any person who, without reasonable cause, fails to comply with the provisions of sub-section (1) or sub-section (2) shall be guilty of an offence and shall, on conviction after summary trial before a Magistrate, be liable to imprisonment of either description for a period not exceeding one year or to a fine not exceeding one thousand rupees, or to both such imprisonment and fine. ”.

Amendment of
section 59 of
the principal
Act.

10. Section 59 of the principal Act is hereby amended as follows:—

(1) in sub-section (1) of that section, by the substitution, for the word “ disputes ”, of the word “ claims ”;

(2) in sub-section (3) of that section, by the substitution, for the word “ dispute ”, of the word “ claim ”;

(3) by the insertion, immediately after sub-section (5) of that section, of the following new sub-sections:—

“ (5A) The proceedings at an inquiry by a Labour Tribunal shall as far as possible be free from the formalities and technicalities of the rules of procedure and evidence applicable to a court of law, and may be conducted by such Tribunal in any manner, not inconsistent with the principles of natural justice and any regulations made in that behalf under this Act, which to such Tribunal

may seem best adapted to elicit proof concerning the matters that are investigated.

(5B) Where any person fails or is unable to comply with—

(a) a direction given to him under sub-section (4) of section 55 to furnish information in regard to any such matter concerning any other person as is referred to in that sub-section; or

(b) the provisions of sub-section (1) or sub-section (2) of section 58A requiring such person to furnish a statement in regard to any such matter concerning any other person as is referred to in that sub-section,

an affidavit of such other person in regard to that matter shall be admissible in any proceedings before a Labour Tribunal constituted under this Act as sufficient evidence of the facts stated therein.”; and

(4) in the marginal note to that section, by the substitution, for the word “disputes.”, of the word “claims.”.

11. Section 60 of the principal Act is hereby amended as follows:—

Amendment of
section 60 of
the principal
Act.

(1) by the substitution, for sub-sections (1) and (2) of that section, of the following new sub-sections:—

“ (1) Any claim made to the Board of Directors by any person that he is a person to whom the Board of Directors shall offer employment under section 52 shall be referred in writing by such Board for determination to a Labour Tribunal established under this Act.

(2) Any claim made to any person that any sum is payable by that person to or in respect of any other person under section 55, section 56, or section 57, shall

be referred in writing by the person to whom such claim is made for determination to a Labour Tribunal established under this Act. ”;

(2) in sub-section (3) of that section—

(a) by the substitution, for the word “disputes”, wherever that word occurs in that sub-section, of the word “claims”; and

(b) by the addition at the end of that sub-section, of the following:—

“ In making such regulations particular regard shall be had to the provisions of sub-section (5A) of section 59. ”; and

(3) in the marginal note to that section, by the substitution, for the word “Disputes”, of the word “Claims”.

Insertion of
new sections
62A and 62B
in the
principal Act.

12. The following new sections are hereby inserted in Part V, immediately after section 62, and shall have effect as section 62A and section 62B, of the principal Act:—

“ Certification
of amount
that cannot
be paid out
of compensa-
tion under
section
47 (1) (a).

62A. Where the compensation to which a person is entitled in respect of any property vested in or requisitioned for the Corporation is inadequate to pay the whole or any part of any sum payable out of that compensation under section 47 (1) (a), then, if that sum is due to an employee of the Corporation, the Chairman of the Board of Directors, or, if that sum is due to anyone who is not an employee of the Corporation, the Commissioner of Labour, shall certify in writing the amount due from that person which cannot be paid out of that compensation.

Recovery
of amount
that
cannot be
paid out
of compen-
sation under
section
47 (1) (a).

62B. (1) Upon the production of a certificate issued by the Chairman of the Board of Directors or the Commissioner of Labour under section 62A before the District Court or the Court of Requests within whose jurisdiction the person from whom the sum specified in the

certificate is due resides, according as that sum exceeds or does not exceed three hundred rupees, the Court shall direct a writ of execution to issue to the Fiscal authorising and requiring him to seize and sell all or any of the property movable and immovable of that person or such part thereof as may be necessary for the recovery of that sum; and the provisions of sections 226 to 297 of the Civil Procedure Code shall, *mutatis mutandis*, apply to the execution of such writ and to such seizure and sale.

(2) Where the Chairman of the Board of Directors or the Commissioner of Labour issues the certificate referred to in sub-section (1), he shall in writing notify that fact to the person specified in the certificate as the person from whom any sum so specified is payable, but the non-receipt of such notification by such person shall not invalidate the proceedings under this section.

(3) Nothing in the preceding provisions of this section shall affect or be deemed or construed to affect the right of any person to recover in any other manner any sum payable to him under section 55, section 56, or section 57. ”.

13. (1) Section 63 of the principal Act is hereby amended by the insertion at the end of that section of the following new sub-section:—

Amendment of
section 63 of
the principal
Act.

“ (6) The charges that may be made by the Corporation as harbour dues or warehouse rents shall not be fixed or revised except with the concurrence of the Minister of Finance. All sums paid to, or recovered by, the Corporation as harbour dues or warehouse rents shall be paid by the Corporation to the Secretary to the Treasury and shall be credited to the Consolidated Fund of Ceylon. ”.

(2) The amendment made in the principal Act by sub-section (1) of this section shall not come into force until such date as may be appointed by the Minister by Order published in the *Gazette*.

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Amendment of
section 65 of
the principal
Act.

14. Section 65 of the principal Act is hereby amended as follows:—

(1) in sub-section (1) of that section, by the substitution, for the expression “ if within the period specified in the notice published in respect of those goods under sub-section (3), the charges payable to the Corporation in respect of those goods are not paid and those goods are not removed by the owners thereof from the premises of the Corporation,”, of the following:—

“ if the requirements of any notice published in respect of those goods under sub-section (3) are not complied with within the period specified in that notice, ”;

(2) in sub-section (6) of that section—

(a) by the omission in paragraph (a) of that sub-section of the words “ or warehouse rent ”;

(b) by the substitution, for paragraphs (b), (c) and (d) of that sub-section, of the following new paragraphs:—

“ (b) secondly, in payment of freight, primage, or general average, payable in respect of the goods to a shipowner if notice of a lien on the goods for such freight, primage, or general average has been given by or on behalf of the shipowner in accordance with the law for the time being in force relating to merchant shipping;

(c) thirdly, in payment of warehouse rent in respect of the goods;

(d) fourthly, in payment of the expense of the sale of the goods; ”;

(c) by the addition, immediately after paragraph (d) of that sub-section, of the following new paragraphs:—

“ (e) fifthly, in payment of the charges due to the Corporation in respect of the goods;

(f) sixthly, in payment of the charges, other than those referred to in paragraph (b), payable in respect of the goods to a shipowner if notice of a lien on the goods for such charges has been given by or on behalf of the shipowner in accordance with the law for the time being in force relating to merchant shipping ”;

(d) by the substitution, for the words “ shall pay ”, of the words “ shall, if the goods are not perishable goods, pay ”; and

(e) by the substitution, for the words “ goods, such balance ”, of the words “ goods, or if the goods are perishable goods, such balance ”.

15. Section 79 of the principal Act is hereby amended as follows:—

Amendment of
section 79 of
the principal
Act.

(a) in sub-section (1) of that section, by the substitution,—

(i) for the words “ goods lodged ”, of the words “ goods which are lodged ”;

(ii) for the words “ Government shall ”, of the words “ Government, or which are carried in any lighter or barge of the Corporation, shall ”; and

(iii) for the words “ importer or ”, of the words “ importer, exporter, shipper or ”; and

(b) by the substitution, for the marginal note to that section, of the following:—

“ Certain goods to be at the risk of the owner, importer, exporter, shipper, or consignee thereof.”.