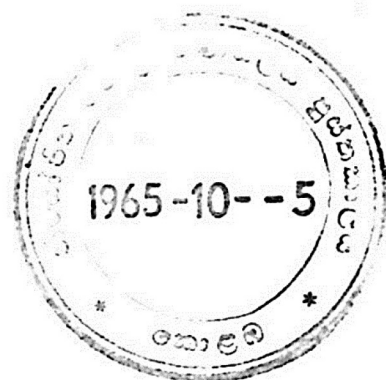


PARLIAMENT OF CEYLON

4th Session 1950



Industrial Disputes Act, No. 43 of 1950

Date of Assent : December 16, 1950

Printed on the Orders of Government

Printed at the CEYLON GOVT. PRESS, COLOMBO. To be purchased at the GOVT. PUBLICATIONS BUREAU, COLOMBO
Annual Subscription (including Bills) Rs. 25, payable in advance to the SUPERINTENDENT, GOVERNMENT PUBLICATIONS BUREAU, POST OFFICE BOX 500, Secretariat, Colombo 1

Price : 65 cents.

Postage : 15 cents.

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AN ACT TO PROVIDE FOR THE PREVENTION, INVESTIGATION AND SETTLEMENT OF INDUSTRIAL DISPUTES, AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO:

[*Date of Assent: December 16, 1950.*]

BE it enacted by the King'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:—

PART I.

PRELIMINARY.

1. This Act may be cited as the Industrial Disputes Act, No. 43 of 1950, and shall come into operation on such date (hereinafter referred to as the "appointed date"), as the Minister may appoint by Notification published in the *Gazette*.

Short title
and date of
operation.

PART II.

FUNCTIONS OF THE COMMISSIONER AND CIRCUMSTANCES
IN WHICH INDUSTRIAL DISPUTES WILL BE REFERRED
FOR SETTLEMENT BY CONCILIATION OR BY
ARBITRATION OR BY AN INDUSTRIAL COURT.

2. Where upon notice given to him or otherwise, the Commissioner is satisfied that any industrial dispute exists or is apprehended, it shall be the function of the Commissioner to make such inquiries into the matters in dispute, and to take such other steps, as he may think necessary with a view to promoting a settlement of the dispute, whether by means referred to in this Act or otherwise.

Functions of
Commissioner
in regard to
industrial
disputes.

3. Where any industrial dispute exists or is apprehended in any industry, and—

(a) arrangements for the settlement of disputes in that industry have not been made in pursuance of any agreement between organisations representative respectively of employers and workmen engaged in that industry; or

Circumstances
in which in-
dustrial
disputes will
be settled by
Commissioner
or referred
for settlement
to an authorised
officer or
arbitrator.

- (b) the dispute is not referred for settlement by means of any such arrangements which have been so made; or
- (c) there has been a failure to obtain a settlement of the dispute by means of any such arrangements which have been so made,

then the Commissioner—

- (i) if he is of opinion after inquiry made in that behalf that the dispute is likely to be settled by conciliation, may endeavour to settle such dispute by conciliation, or refer the dispute to an authorised officer for such settlement; or
- (ii) if he is not of such opinion or if there has been a failure to effect a settlement by conciliation, and if both the parties to the dispute or the representatives of each party to the dispute consent, may by an Order in writing, refer the dispute for settlement by arbitration to a person nominated jointly by the parties, or in the absence of such nomination to the District Judge of the district in which the dispute exists or is apprehended.

Circumstances in which industrial disputes will be referred for settlement to an Industrial Court.

4. Where any industrial dispute cannot be referred for arbitration under paragraph (ii) of section 3 by reason of the absence of the consent required by that section, the Minister may, by an Order in writing, if the dispute is in an essential industry, or if he is satisfied that the dispute is likely to prejudice the maintenance or distribution of supplies or services necessary for the life of the community, or if he thinks that it is necessary or expedient so to do, refer the dispute for settlement by an Industrial Court.

PART III.

COLLECTIVE AGREEMENTS, SETTLEMENTS, AWARDS AND EFFECT THEREOF.

(a) *Collective agreements.*

Definition of "collective agreement".

5. (1) In this Act, "collective agreement" means an agreement relating to the terms and conditions of employment of workmen in any industry to which the parties are—

firstly, an employer or two or more employers;
and

secondly, a trade union or trade unions consisting of workmen.

(2) Reference shall be made in the collective agreement to the parties and trade unions to which, and the employers and workmen to whom, the agreement relates.

6. Where a collective agreement relating to the terms and conditions of employment of any workmen in any industry in any district has been reduced to writing and signed by both the parties to the agreement or by the representative of each party thereto, any trade union or employer constituting or included in any such party may transmit the agreement to the Commissioner; and the Commissioner, if he is satisfied that those terms and conditions of employment are not less favourable than those applicable to any other workmen in the same or a similar industry in that district, shall forthwith cause the agreement to be published in the *Gazette*. For the purpose of this section, terms and conditions of employment set out in any other collective agreement shall not be deemed to be applicable to any workmen, unless the agreement has been published in the *Gazette* under this section and is for the time being in force.

Transmission of collective agreement to Commissioner, and publication of such agreement.

7. (1) Every collective agreement which is published in the *Gazette* under section 6 shall come into force on the date of such publication or on such date, if any, as may be specified in that behalf in the agreement.

Date on which collective agreement comes into force, and its duration.

(2) Where any collective agreement provides that the agreement shall have effect for any period or until any date specified therein, such agreement shall continue in force with effect from the date on which it comes into force as provided in sub-section (1) until the end of the period or until the date so specified, unless it ceases earlier to have effect as provided in section 9.

(3) Where no period or date is specified in any collective agreement as the period during which or the date until which the agreement shall have effect, the agreement shall continue in force with effect from the date on which it comes into force as provided in sub-section (1), until it ceases to have effect as provided in section 9.

Effect of a
collective
agreement.

8. Every collective agreement which is for the time being in force shall, for the purposes of this Act, be binding on the parties, trade unions, employers and workmen referred to in that agreement in accordance with the provisions of section 5 (2); and the terms of the agreement shall be implied terms in the contract of employment between the employers and workmen bound by the agreement.

Termination of
a collective
agreement.

9. (1) Any party, trade union or employer, bound by a collective agreement, may repudiate the agreement by written notice in the prescribed form sent to the Commissioner and to every other party, trade union and employer bound by the agreement:

Provided that any employer, who is a member of a trade union which is, or is included in, a party bound by the agreement, shall not be entitled to repudiate such agreement independently of such trade union; and any notice of repudiation given independently by any such employer shall not be a valid notice for the purposes of this Act.

(2) Where a valid notice of repudiation of a collective agreement is received by the Commissioner, then, subject as hereinafter provided—

(a) the agreement to which such notice relates shall terminate and cease to have effect upon the expiration of the month immediately succeeding the month in which the notice is so received by the Commissioner; and

(b) the Commissioner shall cause the notice of repudiation to be published in the *Gazette*, together with a declaration as to the time at which the agreement shall terminate as provided in paragraph (a):

Provided that where valid notice of repudiation of any agreement is given by one or some only, but not all, of the trade unions or employers included in a party to the agreement, such agreement shall cease to have effect only in relation to each trade union or employer giving such notice and to the members of any such union, but shall otherwise continue in force and have effect accordingly.

- (a) the parties to a collective agreement are, *firstly*, a trade union or two or more trade unions consisting of employers in any industry in any district, and *secondly* a trade union or two or more trade unions consisting of workmen in that industry in that district; and
- (b) the total number of such employers, who are members of the union or unions for the time being bound by the agreement, is not less than the prescribed percentage of the total number of employers engaged in that industry in that district; and
- (c) the total number of such workmen, who are members of the union or unions for the time being bound by the agreement, is not less than the prescribed percentage of the total number of workmen engaged in that industry in that district; and
- (d) such other conditions, if any, as may be prescribed are complied with in the case of the parties to the collective agreement,

then, every employer in that industry in that district who is not bound by that agreement as provided in section 8 shall observe either the terms and conditions set out in the agreement (hereinafter referred to as the "recognised terms and conditions") or terms and conditions which are not less favourable to workmen than the recognised terms and conditions:

Provided that the duty to observe such terms and conditions shall not so arise until the date of the publication of that agreement in the *Gazette* or such later date, if any, as may be specified therein as the date on which it shall come into force.

In the computation, for the purposes of this sub-section, of the number of employers or workmen who are members of a trade union, no account shall be taken of the membership of any trade union, unless that union had been registered under the Trade Unions Ordinance at least one year before the date of the signature of the agreement and unless the annual subscription payable by a member of such union is not less than one rupee.

Cap. 116.

(2) For the purposes of sub-section (1), terms and conditions of employment of workmen in any industry in any district shall not be deemed to be less favourable

than the recognised terms and conditions, if they are in accordance with the terms and conditions of employment applicable under—

- (a) any subsequent settlement by conciliation effected by the Commissioner or by an authorised officer under this Act in any industrial dispute concerning workmen in the same or a similar industry in the district; or
- (b) any subsequent award upon arbitration made by a District Judge under this Act in any industrial dispute concerning workmen in the same or a similar industry in that district; or
- (c) the Wages Boards Ordinance, No. 27 of 1941, or any subsequent decision made under that Ordinance, in respect of similar matters.

(3) If any question arises as to the nature, scope or effect of the recognised terms and conditions in any industry in any district or as to whether an employer is observing the recognised terms and conditions or is observing terms and conditions which are not less favourable than the recognised terms and conditions, that question shall be decided by the Commissioner, subject to an appeal within the prescribed time and in the prescribed manner to the Industrial Court, and the decision of that Court on that question shall be final, so, however, that in making any such decision the Commissioner and the Court shall have regard to any collective agreement, any settlement by conciliation, any award made under this Act, or any decision of a Wages Board under the Wages Boards Ordinance, No. 27 of 1941, relating to the same industry or a similar industry in the same district or a similar district.

(b) Settlement by conciliation.

Duties and powers of the Commissioner or an authorised officer for purposes of conciliation.

11. (1) Where, in accordance with the provisions of section 3, the Commissioner himself endeavours to settle an industrial dispute by conciliation or an industrial dispute is referred to an authorised officer for such settlement, it shall be the duty of the Commissioner or that officer to endeavour to effect a settlement after such investigation as he may consider necessary of the matters in dispute; and for the purpose aforesaid it shall be lawful for him to take all such steps as he may deem fit for inducing the parties to the dispute to come to a fair and amicable settlement of the dispute.

(2) Subject to such regulations as may be made under section 39 (1) (f) of this Act in respect of procedure, the Commissioner or an authorised officer conducting an inquiry into an industrial dispute under this Part may lay down the procedure to be observed by him in the conduct of such inquiry.

12. (1) If the Commissioner or an authorised officer succeeds in settling an industrial dispute, a memorandum setting out the terms of settlement shall be drawn up by the Commissioner or the officer and shall be signed by both the parties to the dispute or by the representatives of each party thereto.

Memorandum of settlement, report relating to the dispute, etc.

(2) Reference shall be made in every memorandum of settlement drawn up under sub-section (1) to the parties and trade unions to which, and employers and workmen to whom, such memorandum relates.

(3) Where the dispute has been settled by an authorised officer, he shall transmit forthwith to the Commissioner the memorandum setting out the terms of settlement.

(4) Where the Commissioner or an authorised officer, after endeavouring to effect a settlement of an industrial dispute, fails to effect such a settlement, such Commissioner or such officer shall, at the close of his investigation, prepare a full report regarding the dispute and shall set out in such report the steps taken by him for its investigation and settlement, and his recommendation for the settlement of the dispute.

(5) Where a report has been prepared by an authorised officer under sub-section (4), he shall forthwith transmit such report to the Commissioner.

(6) The Commissioner shall forthwith cause to be published in the *Gazette* every memorandum of settlement relating to an industrial dispute which in his opinion is a major dispute, and every report prepared under the preceding provisions of this section relating to such industrial dispute.

13. (1) Every memorandum of settlement which has been published in the *Gazette* under section 12 (6) shall come into force on the date of its publication in the *Gazette* or on such date, if any, as may be specified in that behalf in the memorandum. Every memorandum of settlement which has not been published in the *Gazette* under that section shall come into force on the date of the signing of that memorandum by the parties to the dispute or by their

Date on which a settlement comes into force and its duration.

representatives or on such date, if any, as may be specified in that behalf in the memorandum.

(2) Where any memorandum of settlement provides that the settlement shall have effect for any period or until any date specified therein, such settlement shall continue in force with effect from the date on which it comes into force as provided in sub-section (1), until the end of the period or until the date so specified, unless it ceases earlier to have effect as provided in section 15.

(3) Where no period or date is specified in any memorandum as the period during which or the date until which the settlement shall have effect, the settlement shall continue in force with effect from the date on which it comes into force as provided in sub-section (1) until it ceases to have effect as provided in section 15.

Effect of a
settlement.

14. Every settlement which is for the time being in force shall, for the purposes of this Act, be binding on the parties, trade unions, employers and workmen referred to in that settlement in accordance with the provisions of section 12 (2); and the terms of the settlement shall be implied terms in the contract of employment between the employers and workmen bound by the settlement.

Termination of
settlement.

15. (1) Any party, trade union, employer or workman, bound by a settlement under this Act, may repudiate the settlement by written notice in the prescribed form sent to the Commissioner and to every other party, trade union, employer and workman bound by the settlement:

Provided that—

(a) it shall not be necessary for any employer or any workman who is a member of a trade union which is, or is included in, a party bound by the settlement to be so notified independently of his trade union; and

(b) any employer or workman, who is a member of a trade union which is, or is included in, a party bound by the settlement, shall not be entitled to repudiate the settlement independently of such trade union, and any notice of repudiation given independently by any such employer or workman shall not be a valid notice for the purposes of this Act.

(2) Where a valid notice of repudiation of a settlement is received by the Commissioner, then, subject as hereinafter provided—

(a) the settlement to which such notice relates shall terminate and cease to have effect upon the expiration of the month immediately succeeding the month in which the notice is so received by the Commissioner;

(b) the Commissioner shall cause the notice of repudiation to be published in the *Gazette*, together with a declaration as to the time at which the settlement shall terminate as provided in paragraph (a) :

Provided, however, that where valid notice of repudiation of any settlement is given by one or some only, but not all, of the trade unions, employers or workmen included in a party to the settlement, such settlement shall cease to have effect only in relation to each trade union, employer or workman giving such notice and to the members of any such union, but shall otherwise continue in force and have effect accordingly.

(c) Settlement by arbitration.

16. Every Order of the Commissioner under section 3 referring a trade dispute to a District Judge or to any person jointly nominated under section 3 (ii) (such Judge or person being hereinafter referred to as an "arbitrator"), shall be accompanied by a statement prepared by the Commissioner setting out each of the matters which to his knowledge is in dispute between the parties.

Statement
specifying
matters in
dispute.

Nothing in the preceding provisions of this section shall be deemed to be in derogation of the power of the arbitrator to whom the dispute is referred to admit, consider and decide any other matter which is shown to his satisfaction to have been a matter in dispute between the parties prior to the date of the aforesaid Order, provided such matter arises out of, or is connected with a matter specified in the statement prepared by the Commissioner.

17. (1) When an industrial dispute has been referred under section 3 to an arbitrator for settlement by arbitration, he shall make all such inquiries into the dispute as he may consider necessary, hear such evidence as may be tendered by the parties to the

Duties and
powers of
arbitrator.

dispute, and thereafter make such award as may appear to him just and equitable. The arbitrator, if he is a District Judge, shall as far as may be give priority, over other matters pending in the Court, to the proceedings for a settlement of the dispute.

(2) Reference shall be made in every award of an arbitrator to the parties and trade unions to which, and the employers and workmen to whom, such award relates.

Publication of
award, date on
which it comes
into force and
its duration.

18. (1) The award of an arbitrator shall be transmitted to the Commissioner who shall forthwith cause the award to be published in the *Gazette*.

(2) Every award of an arbitrator shall come into force on the date of the award or on such date, if any, as may be specified therein, not being earlier than the date on which the industrial dispute to which the award relates first arose.

(3) Where any award of an arbitrator provides that the award shall have effect for any period or until any date specified therein, such award shall continue in force with effect from the date on which it comes into force as provided in sub-section (2) until the end of the period or until the date so specified, unless it ceases earlier to have effect as provided in section 20.

(4) Where no period or date is specified in any award as the period during which or the date until which the award shall have effect, the award shall continue in force with effect from the date on which it comes into force as provided in sub-section (2) unless it ceases to have effect as provided in section 20.

Effect of an
award of an
arbitrator.

19. Every award of an arbitrator made in an industrial dispute and for the time being in force shall, for the purposes of this Act, be binding on the parties, trade unions, employers and workmen referred to in the award in accordance with the provisions of section 17 (2); and the terms of the award shall be implied terms in the contract of employment between the employers and workmen bound by the award.

Termination of
arbitrator's
award.

20. (1) Any party, trade union, employer or workman, bound by an award made by an arbitrator under this Act, may repudiate the award by a written notice in the prescribed form sent to the Commissioner and to every other party, trade union, employer and workman bound by the award:

Provided that—

(a) it shall not be necessary for any employer or any workman who is a member of a trade union which is, or is included in, a party bound by the award to be notified independently of such trade union; and

- (b) any employer or workman who is a member of a trade union which is, or is included in, a party bound by the award, shall not be entitled to repudiate the award independently of such trade union, and any notice of repudiation given independently by any such employer or workman shall not be a valid notice for the purposes of this Act.

(2) Where a valid notice of repudiation of an award is received by the Commissioner, then, subject as hereinafter provided—

- (a) the award to which such notice relates shall cease to have effect upon the expiration of three months immediately succeeding the month in which the notice is so received by the Commissioner or upon the expiration of twelve months from the date on which the award came into force as provided in section 18 (2), whichever is the later; and
- (b) the Commissioner shall cause such notice to be published in the *Gazette*, together with a declaration as to the time at which the award shall cease to have effect as provided in paragraph (a):

Provided, however, that where valid notice of repudiation of any award is given by one or some only, but not all, of the trade unions, employers or workmen included in a party bound by the award, such award shall cease to have effect only in relation to each trade union, employer or workman giving such notice and to the members of any such union, but shall otherwise continue in force and have effect accordingly.

21. The provisions of the Arbitration Ordinance and the provisions relating to arbitration in the Civil Procedure Code shall not apply to proceedings before an arbitrator under this Act.

Provisions
relating to
arbitration
in other
written law
not to apply to
proceedings
before
arbitrator.
Cap. 83.
Cap. 86.

PART IV.

INDUSTRIAL COURT.

22. (1) For the purposes of this Act, the Governor-General may from time to time appoint a Panel, of not less than five persons, from which Industrial Courts shall be constituted as hereinafter provided.

Constitution.

No person, other than a person who has been or is a Judge of the Supreme Court, shall be appointed by the Governor-General under the preceding provisions of this section to be a member of such Panel.

(2) Every person appointed under sub-section (1) shall, unless he earlier vacates his office, hold office for such period not exceeding three years as the Governor-General may determine at the time of the appointment. Any person vacating office by effluxion of time shall be eligible for re-appointment.

(3) The Governor-General shall nominate one of the members of the Panel appointed under sub-section (1) to be the Chairman of the Panel.

(4) For the purposes of constituting an Industrial Court to exercise any power, perform any duty, or discharge any function, under this Act, the Chairman of the Panel shall, according as he may in his discretion determine, select from the Panel either one person or three persons to constitute the Industrial Court.

(5) Where an Industrial Court consists of three persons, the Chairman of the Panel, or, if he is not a member of the Court, such member as may be nominated by the Chairman, shall be the President of the Court.

(6) Regulations may be made prescribing the form and manner in which industrial disputes, applications and questions may be referred under this Act to Industrial Courts, and in which appeals under this Act may be preferred to such Courts.

Statement
for Industrial
Court
specifying
matters in
dispute.

23. Every Order of the Minister under section 4 referring a dispute for settlement by an Industrial Court shall be accompanied by a statement prepared by the Commissioner setting out each of the matters which to his knowledge is in dispute between the parties.

Nothing in the preceding provisions of this section shall be deemed to be in derogation of the power of the Industrial Court to which the dispute is referred to admit, consider and decide any other matter which is shown to the satisfaction of the Court to have been a matter in dispute between the parties prior to the date of the aforesaid Order.

Duties and
powers of
Industrial
Courts.

24. (1) It shall be the duty of an Industrial Court to which any dispute, application or question or other matter is referred or made under this Act, as soon as may be, to make all such inquiries and hear all such evidence, as it may consider necessary, and thereafter to take such decision or make such award as may appear to the Court just and equitable.

(2) Subject to such regulations as may be made under section 39 (1) (f) of this Act in respect of procedure, an Industrial Court conducting an inquiry under this part may lay down the procedure to be observed by such Court in the conduct of the inquiry.

(3) Reference shall be made in every award of an Industrial Court to the parties and trade unions to which, and the employers and workmen to whom, such award relates.

(4) Where an Industrial Court consists of more than one person, the opinion on any matter of the majority of the members of the Court shall prevail, and shall be deemed to be the decision of the Court on that matter.

25. (1) The award of an Industrial Court shall be transmitted to the Commissioner who shall forthwith cause the award to be published in the *Gazette*.

Publication of award, date on which it comes into force, and its duration.

(2) Every award of an Industrial Court shall come into force on the date of the award or on such date, if any, as may be specified therein, not being earlier than the date on which the industrial dispute to which the award relates first arose.

(3) Where any award of an Industrial Court provides that the award shall have effect for any period or until any date specified therein, such award shall continue in force with effect from the date on which it comes into force as provided in sub-section (2) until the end of the period or until the date so specified, unless it ceases earlier to have effect as provided by section 30.

(4) Where no period or date is specified in any award as the period during which or the date until which the award shall have effect, the award shall continue in force with effect from the date on which it comes into force as provided in sub-section (2), until it ceases to have effect as provided by section 30.

26. Every award of an Industrial Court made in an industrial dispute and for the time being in force shall, for the purposes of this Act, be binding on the parties, trade unions, employers and workmen referred to in that award in accordance with the provisions of section 24 (3); and the terms of the award shall be implied terms in the contract of employment between the employers and workmen bound by the award.

Effect of an award of an Industrial Court.

Applications
for reconsi-
deration of
awards of
Industrial
Courts.

27. Any party, trade union, employer or workman, bound by the award of an Industrial Court, who desires that such award be set aside or replaced by a new award, or that the terms and conditions be modified, or that any new terms or conditions be inserted in the award, may make application in that behalf to the Minister; and the Minister shall thereupon refer the application for consideration by an Industrial Court:

Provided, however, that—

- (a) where any application in respect of any award is made at any time within the period of twelve months from the date on which the award came into force as provided in sub-section (2) of section 25, the application shall not be entertained by the Minister unless it is supported by a certificate under the hand of the Commissioner to the effect that a change in the economic and labour conditions warrants the reconsideration of the findings in that award before the expiry of that period;
- (b) where a trade union is, or is included in, a party bound by an award, no application in respect of that award made independently of that trade union by any employer or workman who is a member of that trade union, shall be entertained by the Minister.

Duties and
powers of
Industrial
Courts in
relation to
applications
under
section 27.

28. (1) An Industrial Court to which an application under section 27 in relation to any award is referred may in its decision—

- (a) confirm the award;
- (b) set aside the award;
- (c) set aside the award and make a new award in place thereof; or
- (d) vary or modify the award in such manner as may appear necessary.

(2) Reference shall be made, in every new award under sub-section (1) and in every decision under that sub-section varying or modifying any award, to the parties and trade unions to which, and the employers and workmen to whom, such new award or such decision relates.

29. Every decision given under section 28 shall be transmitted to the Commissioner who shall forthwith cause the decision to be published in the *Gazette*.

Publication
of decision
given under
section 28.

30. (1) Every award which is set aside by a decision of an Industrial Court under section 28 (1) (b) shall cease to have effect on the date of that decision or on such later date as may be specified in the decision.

Effect of
decisions
given under
section 28.

(2) Every award which is varied or modified on an application made under section 27 by a decision of an Industrial Court shall, on and after the date of such decision or on and after such other date, if any, as may be specified in that decision, not being earlier than the date of such application, have effect and continue in force as so varied or modified.

(3) The variation or modification of any award as hereinbefore provided shall not effect the continuance in operation of that award as so varied or modified, in accordance with the provisions of sub-sections (3) and (4) of section 25, or the right to make a further application in respect thereof under section 27:

Provided, however, that no application under section 27, in respect of any matter dealt with in the decision by which such variation or modification was effected, may be made within the period of twelve months from the date of such decision, unless such application is supported by a certificate under the hand of the Commissioner to the effect that a change in the economic and labour conditions warrants a reconsideration of the findings set out in the decision before the expiry of that period.

(4) A new award made under section 28 (1) (c) on an application under section 27 shall come into force on the date of such award or on such other date, if any, as may be specified in that decision, not being earlier than the date of such application, and, such award, for the purposes of the application of the provisions of sub-sections (3) and (4) of section 25, and of the provisions of sections 26 to 29, shall be deemed to be an award made under section 24.

31. (1) Whenever an Industrial Court consists of more than one person and there is a vacancy in such Court, the Court may act notwithstanding such vacancy.

Vacancies.

(2) No act, proceeding or determination of an Industrial Court shall be called in question or invalidated by reason of any vacancy in the Court.

PART V.

ESSENTIAL INDUSTRIES.

Strikes and lockouts in essential industries.

32. (1) No employer shall commence, or continue, or participate in, or do any act in furtherance of, a lockout in connexion with any industrial dispute in any essential industry, unless written notice of intention to commence the lockout had, at least twenty-one days before the date of the commencement of the lockout, been given in the prescribed manner and form by the employer or on his behalf to the workmen who will be affected by the lockout.

(2) No workman shall commence, or continue, or participate in, or do any act in furtherance of, any strike in connexion with any industrial dispute in any essential industry, unless written notice of intention to commence the strike had, at least twenty-one days before the date of the commencement of the strike, been given in the prescribed manner and form by such workman or on his behalf to his employer.

PART VI.

GENERAL.

The terms of an award.

33. (1) Without prejudice to the generality of the matters that may be specified in any award under this Act, the award may contain decisions—

(a) as to wages and all other conditions of service, including decisions that any such wages and conditions shall be payable or applicable with effect from any specified date, which may, where necessary, be a date prior to the date of the award, and decisions that wages shall be payable in respect of any period of absence by reason of any strike or lockout;

(b) as to the reinstatement in service, or the discontinuance from service, of any workman whose dismissal or continuance in employment is a matter in dispute, or who was dismissed or ceased to be in service at the

commencement or in the course of any strike or lockout arising out of the industrial dispute;

(c) as to the extent to which the period of absence from duty of any workman, whom the arbitrator or Industrial Court has decided should be reinstated, shall be taken into account or disregarded for the purposes of his rights to any pension, gratuity or retiring allowance or to any benefit under any provident scheme;

(d) as to the payment by any employer of compensation to any workman as an alternative to his reinstatement, the amount of such compensation or the method of computing such amount, and the time within which such compensation shall be paid.

(2) Where decisions under sub-section (1) as to the payment of money by any employer to any workman, whether as wages in respect of any period prior to the date of the award or as compensation as an alternative to his reinstatement, are contained in any award, the Magistrate's Court having jurisdiction in the area where the workman is or was employed by such employer shall, if satisfied on the written petition of the workman supported by a certificate of the Commissioner that payment of such money has not been made within the time specified in that behalf in the award, make order that the amount specified in that certificate as payable shall be paid by such employer to such workman and that such amount, if not paid in compliance with the order, be recovered in like manner as a fine imposed by the Court; and the amount so recovered shall be paid to such workman.

(3) Where any award contains a decision under paragraph (b) of sub-section (1) as to the reinstatement in service of any workman in any employment, then, if the employment is in the capacity of personal secretary, personal clerk, personal attendant or chauffeur, to the employer, or of domestic servant, or in any other prescribed capacity of a description similar to those hereinbefore mentioned, the award shall also contain a decision, under paragraph (d) of that sub-section, as to the payment of compensation to the workman as an alternative to his reinstatement.

(4) For the purposes of the application of sub-section (3) in any case where the employer is a company, the references therein to the employer shall

be deemed to be references to the person (however designated) who is responsible for the general management of the business of the company.

(5) Where the arbitrator or Industrial Court considers that a decision should be made, under paragraph (b) of sub-section (1), for the reinstatement in service of any workman, then, if the workman so requests, the arbitrator or Industrial Court may, in lieu of making that decision, make a decision, under paragraph (d) of that sub-section, for the payment of compensation to that workman; and in any such case, the provisions of sub-section (2) shall apply as though the decision were for the payment of compensation as an alternative to reinstatement.

(6) The provisions of sub-sections (3) and (5) shall not be construed to limit the power of the Industrial Court or an arbitrator, under paragraph (d) of sub-section (1), to include in an award a decision as to the payment of compensation as an alternative to reinstatement, in any case where the Court or arbitrator thinks fit so to do.

Interpre-
tation of
an award.

34. (1) If any question arises as to the interpretation of any award made under this Act by an arbitrator or by an Industrial Court, the Commissioner or any party, trade union, employer or workman bound by the award may refer such question for decision to such arbitrator or the person or persons who constituted such Industrial Court, and if such reference is not possible for any reason whatsoever, may refer the question for decision to the District Judge for the time being of the district or, as the case may be, for decision by an Industrial Court; and the arbitrator or District Judge to whom, or the Industrial Court to which, the question has been referred shall decide such question after hearing the parties, or without such hearing if the consent of the parties has been first obtained.

(2) The decision on a reference made under sub-section (1) shall be transmitted to the Commissioner for publication in the *Gazette*, and shall be deemed to form part of and shall have the same effect in all respects as the original award.

Award of
arbitrator
or Industrial
Court
not to be less
favourable than
existing law.

35. Where any industrial dispute referred to any arbitrator or Industrial Court involves questions as to wages, or as to hours of work, or otherwise as to the terms or conditions of or affecting employment, which are regulated by any written law other than this Act,

the Court or arbitrator shall not make any award the terms of which are less favourable than the provisions of such law.

36. (1) For the purposes of this Act, any Industrial Court, arbitrator or authorised officer or the Commissioner shall have power, by order— Evidence, &c.

- (a) to require any person to furnish, in writing, such particulars as that Court, arbitrator or authorised officer or the Commissioner may consider necessary;
- (b) to require any person to give evidence on oath or otherwise before that Court, arbitrator or authorised officer or the Commissioner; and
- (c) to require any person to produce such documents as that Court, arbitrator or authorised officer or the Commissioner may consider necessary.

(2) (a) Where a person upon being required by an authorised officer under sub-section (1) to furnish any particulars or to produce any document, makes a declaration upon oath or affirmation or a declaration verified by affidavit to the effect that the disclosure of the information required by the authorised officer would be prejudicial to his business or interests, such person shall not be bound to comply with the requirements, unless he is required by the Commissioner to furnish such particulars or to produce such document to the Commissioner.

(b) Any person furnishing any particulars, giving evidence, or producing any documents, under sub-section (1), may make a written request that such particulars, evidence or documents should be treated as confidential, and where such a request is made, the Court, arbitrator, officer or Commissioner, as the case may be, shall, if satisfied—

- (i) that the disclosure of the information provided by the particulars, evidence or documents to which the request relates, would be prejudicial to the business or interests of that person; and
- (ii) that such information would not otherwise be available by other means,

make order prohibiting the disclosure of such information without the prior consent of that person.

Any person who contravenes any such order shall be guilty of an offence under this Act.

(3) Nothing in the preceding provisions of this section shall be deemed to require or authorise any person to disclose any information or to produce any document in any case where the disclosure or production by that person of such information or document is prohibited by or under the provisions of any written law other than this Act.

Cap. 11.

(4) In the conduct of proceedings under this Act, any Industrial Court, arbitrator or authorised officer or the Commissioner shall not be bound by any of the provisions of the Evidence Ordinance.

(5) The Industrial Court or arbitrator may, at any time after the commencement of any proceedings in respect of an industrial dispute, permit any party or any trade union, employer or workmen included in such party to raise any fresh matter relating to the dispute for the decision of such Court or arbitrator, if the Court or arbitrator is satisfied that such matter could not have been raised at the commencement of the proceedings :

Provided that no employer or workman who is a member of a trade union shall be permitted to raise such matter independently of his trade union.

(6) Where any fresh matter is raised under subsection (5) the party, trade union, employer or workman raising such matter shall give written notice of it to every other trade union, employer and workman included in such party and to the other party and to every trade union, employer and workman included in such other party :

Provided that it shall not be necessary for an employer or a workman who is a member of a trade union to be notified independently of his trade union.

Costs.

37. All costs incidental to any proceedings before an arbitrator or an Industrial Court shall, subject to regulations made under this Act, be in the discretion of such arbitrator or Court, as the case may be.

Appointment
of officers
and
servants.

38. There may be appointed such officers and servants as may be necessary for carrying out the provisions of this Act.

Regulations.

39. (1) The Minister may make regulations—
(a) in respect of all matters which are stated or required by this Act to be prescribed;

- (b) in respect of all matters for which regulations are required or authorised to be made by or under this Act;
- (c) in respect of the issue and service of notices of and orders in proceedings under this Act in relation to any industrial dispute or other matter, and for specifying the officers, parties or persons by whom and to whom such notices shall be issued;
- (d) in respect of the scales of costs which may be allowed in proceedings under this Act;
- (e) in respect of the amount of the fees payable to persons appointed for the purposes of this Act and to witnesses summoned for such purposes;
- (f) in respect of the procedure to be observed by the Industrial Court, an arbitrator, the Commissioner or an authorised officer when inquiring into an industrial dispute;
- (g) in respect of the powers of entry and inspection of the Commissioner and of authorised officers and other officers appointed under this Act; and
- (h) in respect of all matters necessary for carrying out the provisions of this Act or giving effect to the principles thereof.

(2) No regulation made by the Minister shall have effect until it is approved by the Senate and the House of Representatives and notification of such approval is published in the *Gazette*.

Every regulation so approved shall be as valid and effectual as though it were herein enacted.

40. (1) Any person who—

Offences.

- (a) being bound by a collective agreement or by a settlement under this Act or by an award of an arbitrator or an Industrial Court, does any act or aids, abets or incites the commission of any act in contravention of any of the terms or conditions of that agreement, settlement or award;
- (b) being an employer bound by a collective agreement or by a settlement under this Act or by an award of an arbitrator or an Industrial Court, keeps in his employment any workman on less favourable terms than those specified in that agreement, settlement or award;
- (c) being an employer, contravenes the provisions of section 10 or of sub-section (1) of section 32;

- (d) being a workman, contravenes the provisions of sub-section (2) of section 32;
- (e) being bound by a collective agreement or by a settlement under this Act or by an award of an arbitrator or an Industrial Court and being a workman or a person other than a workman, incites or induces a workman to strike or to discontinue employment or work, with a view to procuring the alteration of any of the terms and conditions of that agreement, settlement or award;
- (f) being bound by a collective agreement or by a settlement under this Act or by an award of an arbitrator or an Industrial Court and being a workman, takes part in a strike or discontinues employment or work, with a view to procuring the alteration of any of the terms and conditions of that agreement, settlement or award;
- (g) fails or refuses to furnish any particulars or to give evidence or to produce any document which he is required to furnish, give or produce under the provisions of section 36;
- (h) furnishes, for the purposes of this Act, any information or gives any evidence which to his knowledge is untrue or incorrect;
- (i) in any proceedings under this Act before the Commissioner or before any authorised officer, arbitrator or Industrial Court, intentionally offers any insult or causes any interruption to such Commissioner, officer, arbitrator or Court or any member thereof;
- (j) being an employer, dismisses or punishes in any other way any workman for the reason that the workman intends to give or has given evidence in any proceedings under this Act;
- (k) being an employer, without good cause dismisses or reduces to a lower grade or class any workman for the reason that he has become entitled to the benefit of any collective agreement, or any settlement or of any award of an arbitrator or an Industrial Court under this Act;
- (l) being an employer, commences, continues, or participates in, or does any act in furtherance of, a lockout in any essential industry

after an industrial dispute in that trade has been referred to an Industrial Court or after an application for a reconsideration of an award relating to such dispute has been referred to such Court under section 27, but before the Court has made an award in respect of such dispute or reached a decision on such application; or

- (m) being a workman, commences, continues, or participates in, or does any act in furtherance of, a strike in any essential industry after an industrial dispute in that industry has been referred to an Industrial Court or after an application for a reconsideration of an award relating to such dispute has been referred to such Court under section 27, but before the Court has made an award in respect of such dispute or reached a decision on such application,

shall be guilty of an offence under this Act.

(2) In any prosecution under the provisions of paragraphs (j) and (k) of the preceding sub-section the burden of proving that the dismissal, punishment or reduction of a workman by an employer was not in contravention of those provisions shall lie on the employer.

41. In the case of any offence under this Act committed by a body of persons—

Offences
by bodies
of persons.

- (a) where the body of persons is a body corporate, every director and officer of that body corporate shall be deemed to be guilty of that offence;
- (b) where the body of persons is a firm, every partner of the firm shall be deemed to be guilty of that offence; and
- (c) where the body of persons is a trade union, every officer of the trade union shall be deemed to be guilty of that offence:

Provided that no such person shall be deemed to be guilty of an offence under this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of the offence.

42. Where a person (hereinafter in this section referred to as "the accused") is charged with an offence against this Act, the accused shall, upon complaint duly made by him in accordance with the

Special
defence open
to a person
charged with
an offence.

Cap. 16.

provisions of section 148 of the Criminal Procedure Code and on giving to the prosecution not less than three days' notice of his intention, be entitled, subject to the provisions of Chapter XV of that Code, to have any other person whom he charges as the actual offender brought before the Court; and if, after the commission of the offence has been proved, the accused proves to the satisfaction of the Court, that he has used due diligence to enforce the provisions of this Act and that such other person has committed the offence without his knowledge, consent or connivance, such other person shall be convicted of the offence and the accused shall be acquitted of the offence.

Punishment
of offences.

43. (1) Without prejudice to the provisions of sub-section (2), every person who commits any offence under this Act shall be liable on conviction after summary trial before a Magistrate to a fine not exceeding five hundred rupees or to imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment.

(2) Any person who in any proceedings before an arbitrator or an Industrial Court offers any insult or causes any interruption to such arbitrator or Court or any member thereof, may be tried and punished under sub-section (1), or by such arbitrator or Court, and where such person is tried and punished by an arbitrator or an Industrial Court, such arbitrator or Court shall exercise the same powers and perform the same duties as a District Court exercises and performs in similar circumstances under section 381 of the Criminal Procedure Code.

Cap. 16.

No prosecution
without
sanction of
Commissioner.

44. No prosecution for an offence under this Act shall be instituted except by or with the written sanction of the Commissioner.

Expenses.

45. Any expenses incurred in carrying out the provisions of this Act, including the payment of all persons appointed for the purposes of this Act, shall be met out of moneys provided by Parliament.

Representation
and appearance.

46. (1) Any party to any proceeding under this Act taken by or before any authorised officer, arbitrator or Industrial Court or the Commissioner may, and shall if required so to do by such officer, arbitrator, Court or Commissioner, act through representatives of the party.

(2) Any party to any proceeding under this Act taken by or before any authorised officer, arbitrator or

Industrial Court or the Commissioner, or any representative of any such party, may appear at such proceeding by advocate or by proctor.

(3) The persons who shall represent a party for the purposes of this Act shall—

(a) where the party is a trade union, or consists of two or more trade unions, be two officers of the union or each such union, as the case may be, nominated by such union;

(b) where the party consists partly of any trade union or unions and partly of employers or workmen who are not members of any such union, be two officers of each union nominated by such union and a prescribed number of persons nominated in accordance with regulations by such employers or workmen; and

(c) where the party consists of employers or workmen, be a prescribed number of persons nominated by such employers or workmen.

(4) The Commissioner or any person authorised in writing by the Commissioner shall be entitled to be present and heard in any proceedings under this Act before an arbitrator or an Industrial Court.

47. In this Act, unless the context otherwise requires— Interpretation.

“ authorised officer ” means any person authorised in writing by the Commissioner to settle any industrial dispute by conciliation;

“ Commissioner ” means the person for the time being holding the office of Commissioner of Labour and includes—

(a) any person for the time being holding the office of Deputy or Assistant Commissioner of Labour; and

(b) in respect of any power, duty or function of the Commissioner under this Act, any person authorised in writing by the Commissioner to exercise such power, perform such duty or discharge such function;

Cap. 6.

“ district ” and “ District Judge ” have the same meanings as in the Courts Ordinance;

“ employer ” includes a body of employers (whether such body is a firm, company or trade union);

“ essential industry ” means any industry which is declared, by Order made by the Minister and published in the *Gazette*, to be an industry essential to the life of the community;

“ industry ” includes—

(a) trade, business, manufacture and agriculture, any undertaking or occupation by way of trade, business, manufacture or agriculture, and any branch or section of trade, business, manufacture or agriculture;

(b) service, work or labour of any description whatsoever performed by persons in the employment of a local authority; and

(c) every prescribed occupation, undertaking, calling or service;

“ industrial dispute ” means any dispute or difference between employers and workmen or between workmen and workmen connected with the employment or non-employment, or the terms of employment, or with the conditions of labour, of any person, and for the purposes of this definition “ workmen ” includes a trade union consisting of workmen;

Cap. 116.

“ lockout ” and “ strike ” have the same meanings as in the Trade Unions Ordinance;

Cap. 116.

“ trade union ” means any trade union (whether of employers or of workmen) registered under the Trade Unions Ordinance; and

“ workman ” means any person who has entered into or works under a contract with an employer in any capacity, whether the contract is expressed or implied, oral or in writing, and whether it is a contract of service or of apprenticeship, or a contract

personally to execute any work or labour, and includes any person ordinarily employed under any such contract whether such person is or is not in employment at any particular time.

48. Nothing in this Act shall apply to or in relation to the Crown or the Government in its capacity as employer, or to or in relation to a workman in the employment of the Crown or the Government.

Act not to apply to the Crown or Government or employees of Crown or Government.

49. The Industrial Disputes (Conciliation) Ordinance is hereby repealed with effect from the appointed date:

Repeals and savings.
Cap. 110.

Provided, however, that all settlements under that Ordinance and in force on the day immediately preceding the appointed date shall be deemed for all purposes to be settlements under this Act and shall have effect accordingly.