

New Zealand.



ANALYSIS.

<p style="text-align: center;">Title.</p> <ol style="list-style-type: none"> 1. Short Title and commencement. 2. Interpretation. 3. Submission not to be discharged by death of party thereto. 4. Provisions in case of bankruptcy. 5. Power of Court where arbitrator is removed or appointment of arbitrator is revoked. 6. Provisions on the appointment of three arbitrators. 7. Provisions relating to umpires. 8. Arbitrators and umpires to use due dispatch. 9. Second Schedule to principal Act amended. 10. Additional powers of Court. 11. Statement of case by arbitrator or umpire. 	<ol style="list-style-type: none"> 12. Entry of judgment in terms of award. 13. Interest on awards. 14. Provision as to costs. 15. Taxation of arbitrator's or umpire's fees. 16. Power of Court to give relief where arbitrator is not impartial or dispute referred involves question of fraud. 17. Section 12 of principal Act amended. 18. Limitation of time for commencing arbitration proceedings. 19. Saving for pending arbitrations. 20. Application to statutory arbitrations. 21. Amendments of principal Act. Schedules.
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1938, No. 6.

Title.

AN ACT to amend the Arbitration Act, 1908.

[1st September, 1938.]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

Short Title and commencement. See Reprint of Statutes, Vol. I, p. 346

1. This Act may be cited as the Arbitration Amendment Act, 1938, and shall be read together with and deemed part of the Arbitration Act, 1908 (hereinafter referred to as the principal Act), and shall come into force on the first day of January, nineteen hundred and thirty-nine.

2. References in this Act and in the principal Act to an award shall be deemed to include references to an interim award.

3. (1) A submission shall not be discharged by the death of any party thereto, either as respects the deceased or any other party, but shall in such an event be enforceable by or against the personal representative of the deceased.

(2) The authority of an arbitrator shall not be revoked by the death of any party by whom he was appointed.

(3) Nothing in this section shall be taken to affect the operation of any enactment or rule of law by virtue of which any right of action is extinguished by the death of a person.

4. (1) Where it is provided by a term in a contract to which a bankrupt is a party that any differences arising thereout or in connection therewith shall be referred to arbitration, the said term shall, if the Official Assignee adopts the contract, be enforceable by or against him so far as relates to any such differences.

(2) Where a person who has been adjudged bankrupt had before the commencement of the bankruptcy become a party to a submission and any matter to which the submission applies requires to be determined in connection with or for the purposes of the bankruptcy proceedings, then, if the case is one to which subsection one of this section does not apply, any other party to the submission or the Official Assignee may apply to the Court having jurisdiction in the bankruptcy proceedings for an order directing that the matter in question shall be referred to arbitration in accordance with the submission, and that Court may, if it is of opinion that, having regard to all the circumstances of the case, the matter ought to be determined by arbitration, make an order accordingly.

5. (1) Where an arbitrator (not being a sole arbitrator) or two or more arbitrators (not being all the arbitrators) or an umpire who has not entered on the reference is or are removed by the Court, the Court may, on the application of any party to the submission, appoint a person or persons to act as arbitrator or arbitrators or umpire in place of the person or persons so removed.

Interpretation.

Cf. 24 & 25
Geo. V, c. 14,
s. 21 (3)

Submission
not to be
discharged by
death of party
thereto.

Ibid., s. 1

Provisions
in case of
bankruptcy.

Ibid., s. 2

Power of
Court where
arbitrator is
removed or
appointment
of arbitrator
is revoked.

Ibid., s. 3

(2) Where the appointment of an arbitrator or arbitrators or umpire is revoked by leave of the Court, or a sole arbitrator or all the arbitrators or an umpire who has entered on the reference is or are removed by the Court, the Court may, on the application of any party to the submission, either—

- (a) Appoint a person to act as sole arbitrator in place of the person or persons removed; or
- (b) Order that the submission shall cease to have effect with respect to the dispute referred.

(3) A person appointed under this section by the Court as an arbitrator or umpire shall have the like power to act in the reference and to make an award as if he had been appointed in accordance with the terms of the submission.

(4) Where it is provided (whether by means of a provision in the submission or otherwise) that an award under a submission shall be a condition precedent to the bringing of an action with respect to any matter to which the submission applies, the Court, if it orders (whether under this section or under any other enactment) that the submission shall cease to have effect as regards any particular dispute, may further order that the provision making an award a condition precedent to the bringing of an action shall also cease to have effect as regards that dispute.

6. (1) Where a submission provides that the reference shall be to three arbitrators, one to be appointed by each party and the third to be appointed by the two appointed by the parties, the submission shall have effect as if it provided for the appointment of an umpire, and not for the appointment of a third arbitrator, by the two arbitrators appointed by the parties.

(2) Where a submission provides that the reference shall be to three arbitrators to be appointed otherwise than as mentioned in the last preceding subsection, the award of any two of the arbitrators shall be binding.

7. (1) The Second Schedule to the principal Act (which sets out certain provisions which are to be implied in a submission unless the contrary intention is expressed therein) is hereby amended by repealing clause two, and substituting the following clause:—

“ 2. If the reference is to two arbitrators, the two arbitrators shall appoint an umpire immediately after they are themselves appointed.”

Provisions on
the appointment
of three
arbitrators.
24 & 25
Geo. V, c. 14.
s. 4

Provisions
relating to
umpires.
Ibid., s. 5

(2) Section six of the principal Act, as amended by the Arbitration Amendment Act, 1915, is hereby further amended by inserting, after the word "arbitrator" in paragraph (c) of subsection one, the words "or where two arbitrators are required to appoint an umpire".

(3) At any time after the appointment of an umpire, however appointed, the Court may, on the application of any party to the reference and notwithstanding anything to the contrary in the submission, order that the umpire shall enter on the reference in lieu of the arbitrators and as if he were a sole arbitrator.

8. (1) The Court may, on the application of any party to a reference, remove an arbitrator or umpire who fails to use all reasonable dispatch in entering on and proceeding with the reference and making an award.

Arbitrators
and umpires
to use due
dispatch.

24 & 25
Geo. V, c. 14,
s. 6

(2) An arbitrator or umpire who is removed by the Court under this section shall not be entitled to receive any remuneration in respect of his services.

(3) Subject to the provisions of subsection two of section eleven of the principal Act and to anything to the contrary in the submission, an arbitrator or umpire shall have power to make an award at any time.

(4) For the purposes of this section the expression "proceeding with a reference" includes, in a case where two arbitrators are unable to agree, giving notice of that fact to the parties and to the umpire.

9. The Second Schedule to the principal Act is hereby amended by adding the following new clauses:—

Second
Schedule
to principal
Act amended.
Ibid., s. 7

"10. The arbitrators or umpire shall have the same power as the Court to order specific performance of any contract other than a contract relating to land or any interest in land.

"11. The arbitrators or umpire may, if they think fit, make an interim award."

10. (1) The Court shall have, for the purpose of and in relation to a reference, the same power of making orders in respect of any of the matters set out in the First Schedule to this Act as it has for the purpose of and in relation to an action or matter in the Court:

Additional
powers of
Court.
Ibid., s. 8

Provided that nothing in the foregoing provision shall be taken to prejudice any power which may be vested in an arbitrator or umpire of making orders with respect to any of the matters aforesaid.

(2) Where relief by way of interpleader is granted and it appears to the Court that the claims in question are matters to which a submission to which the claimants are parties applies, the Court may direct the issue between the claimants to be determined in accordance with the submission.

(3) Where an application is made to set aside an award the Court may order that any money made payable by the award shall be brought into Court or otherwise secured pending the determination of the application.

11. (1) An arbitrator or umpire may, and shall if so directed by the Court, state—

(a) Any question of law arising in the course of the reference; or

(b) An award or any part of an award—
in the form of a special case for the decision of the Court.

(2) A special case with respect to an interim award or with respect to a question of law arising in the course of a reference may be stated, or may be directed by the Court to be stated, notwithstanding that proceedings under the reference are still pending.

(3) A decision of the Court under this section shall be deemed to be a judgment of the Court within the meaning of section sixty-six of the Judicature Act, 1908 (which relates to the jurisdiction of the Court of Appeal to hear and determine appeals from any judgment of the Court), but no appeal shall lie from the decision of the Court on any case stated under paragraph (a) of subsection one of this section without the leave of the Court or of the Court of Appeal.

12. Where leave is given under section thirteen of the principal Act to enforce an award in the same manner as a judgment or order, judgment may be entered in terms of the award.

13. A sum directed to be paid by an award shall, unless the award otherwise directs, carry interest as from the date of the award and at the same rate as a judgment debt.

14. (1) Any provision in a submission to the effect that the parties or any party thereto shall in any event pay the whole or any part of the costs of the reference or award shall be void; and the principal Act shall in

Statement of
case by
arbitrator or
umpire.
24 & 25
Geo. V, c. 14,
s. 9

See Reprint
of Statutes,
Vol. II, p. 80

Entry of
judgment in
terms of
award.
24 & 25
Geo. V, c. 14,
s. 10

Interest on
awards.
Ibid., s. 11

Provision as
to costs.
Ibid., s. 12

the case of a submission containing any such provision have effect as if that provision were not contained therein:

Provided that nothing herein shall invalidate such a provision when it is part of an agreement to submit to arbitration a dispute which has arisen before the making of such agreement.

(2) If no provision is made by an award with respect to the costs of the reference, any party to the reference may within fourteen days of the publication of the award, or such further time as the Court may direct, apply to the arbitrator for an order directing by and to whom such costs shall be paid, and thereupon the arbitrator shall, after hearing any party who may desire to be heard, amend his award by adding thereto such directions as he may think proper with respect to the payment of the costs of the reference.

15. (1) If in any case an arbitrator or umpire refuses to deliver his award except on payment of the fees demanded by him the Court may, on an application for the purpose, order that the arbitrator or umpire shall deliver the award to the applicant on payment into Court by the applicant of the fees demanded, and further that the fees demanded shall be taxed by the taxing officer and that out of the money paid into Court there shall be paid out to the arbitrator or umpire by way of fees such sum as may be found reasonable on taxation and that the balance of the money, if any, shall be paid out to the applicant.

Taxation of arbitrator's or umpire's fees. 24 & 25 Geo. V, c. 14, s. 13

(2) An application for the purposes of this section may be made by any party to the reference unless the fees demanded have been fixed by a written agreement between him and the arbitrator or umpire.

(3) A taxation of fees under this section may be reviewed in the same manner as a taxation of costs.

(4) The arbitrator or umpire shall be entitled to appear and be heard on any taxation or review of taxation under this section.

16. (1) Where an agreement between any parties provides that disputes which may arise in the future between them shall be referred to an arbitrator named or designated in the agreement and after a dispute has arisen any party applies, on the ground that the arbitrator so named or designated is not or may not

Power of Court to give relief where arbitrator is not impartial or dispute referred involves question of fraud.

Ibid., s. 14

be impartial, for leave to revoke the submission or for an injunction to restrain any other party or the arbitrator from proceeding with the arbitration, it shall not be a ground for refusing the application that the said party at the time when he made the agreement knew, or ought to have known, that the arbitrator by reason of his relation towards any other party to the agreement or of his connection with the subject referred might not be capable of impartiality.

(2) Where an agreement between any parties provides that disputes which may arise in the future between them shall be referred and a dispute which so arises involves the question whether any such party has been guilty of fraud, the Court shall, so far as may be necessary to enable that question to be determined by the Court, have power to order that the agreement shall cease to have effect and power to give leave to revoke any submission made thereunder.

(3) In any case where by virtue of this section the Court has power to order that an agreement shall cease to have effect or to give leave to revoke a submission, the Court may refuse to stay any action brought in breach of the agreement.

Section 12 of
principal Act
amended.

24 & 25
Geo. V, c. 14,
s. 15

17. Section twelve of the principal Act (which empowers the Court to remove an arbitrator and set aside an award) is hereby amended by inserting the words "or the proceedings" after the words "has misconducted himself" in both places where those words occur in the said section.

Limitation of
time for
commencing
arbitration
proceedings.
Ibid., s. 16

18. (1) The Statutes of Limitation shall apply to arbitrations as they apply to proceedings in the Court.

(2) Notwithstanding any term in a submission to the effect that no cause of action shall accrue in respect of any matter required by the submission to be referred until an award is made under the submission, a cause of action shall, for the purpose of the Statutes of Limitation both as originally enacted and as applying to arbitrations, be deemed to have accrued in respect of any such matter at the time when it would have accrued but for that term in the submission.

(3) In paragraph (b) of section twenty-six of the Mercantile Law Act, 1908 (which requires a sum deposited with a wharf or warehouse owner by an owner of goods to be repaid unless legal proceedings are instituted by the shipowner), the expression "legal proceedings" shall be deemed to include arbitration.

See Reprint
of Statutes,
Vol. VIII,
p. 473

(4) For the purposes of this section and for the purposes of the Statutes of Limitation as applying to arbitrations and of the said section twenty-six of the Mercantile Law Act, 1908, as affected by the last preceding subsection, an arbitration shall be deemed to be commenced when one party to the submission serves on the other party or parties a notice requiring him or them to appoint an arbitrator, or, where the submission provides that the reference shall be to a person named or designated in the submission, requiring him or them to submit the dispute to the person so named or designated.

(5) Any such notice as is mentioned in the last preceding subsection may be served either—

- (a) By delivering it to the person on whom it is to be served; or
- (b) By leaving it at the usual or last known place of abode in New Zealand of that person; or
- (c) By sending it by post in a registered letter addressed to that person at his usual or last known place of abode in New Zealand—

as well as in any other manner provided in the submission; and where a notice is sent by post in manner prescribed by paragraph (c) service thereof shall, unless the contrary is proved, be deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of post.

(6) Where the terms of an agreement to refer future disputes to arbitration provide that any claims to which the agreement applies shall be barred unless notice to appoint an arbitrator is given or an arbitrator is appointed or some other step to commence arbitration proceedings is taken within a time fixed by the agreement, and a dispute arises to which the agreement applies, the Court, if it is of opinion that in the circumstances of the case undue hardship would otherwise

be caused, and notwithstanding that the time so fixed has expired, may, on such terms, if any, as the justice of the case may require, but without prejudice to the foregoing provisions of this section, extend the time for such period as it thinks proper.

(7) Where the Court orders that an award be set aside or orders, after the commencement of an arbitration, that the submission shall cease to have effect with respect to the dispute referred, the Court may further order that the period between the commencement of the arbitration and the date of the order of the Court shall be excluded in computing the time prescribed by the Statutes of Limitation for the commencement of proceedings (including arbitration) with respect to the dispute referred.

(8) For the purposes of this section the expression "the Statutes of Limitation" includes any enactment limiting the time within which any particular proceeding may be commenced.

19. The provisions of this Act shall not affect any arbitration which has been commenced within the meaning of section eighteen of this Act before the date on which this Act comes into operation, but shall apply to any arbitration so commenced after the said date under a submission made before the said date.

20. This Act, except the provisions thereof set out in the Second Schedule to this Act, shall apply in relation to every arbitration under any other Act passed before or after the commencement of this Act as if the arbitration were pursuant to a submission and as if that other Act were a submission, except in so far as this Act is inconsistent with that other Act or with any rules or procedure authorized or recognized thereby:

Provided that this Act shall not apply to any arbitration to which the principal Act does not apply, and no provision of this Act which expressly amends a provision of the principal Act shall apply to any arbitration to which that provision of the principal Act does not apply.

21. The principal Act is hereby amended in the manner indicated in the Third Schedule hereto.

Saving for
pending
arbitrations.
24 & 25
Geo. V, c. 14,
s. 19

Application
to statutory
arbitrations.
Ibid., s. 20

Amendments of
principal Act.

SCHEDULES.

Schedules.

FIRST SCHEDULE.

MATTERS IN RESPECT OF WHICH THE COURT MAY MAKE ORDERS.

- (1) Security for costs.
- (2) Discovery of documents and interrogatories.
- (3) The giving of evidence by affidavit.
- (4) Examination on oath of any witness before an officer of the Court or any other person, and the issue of a commission or request for the examination of a witness out of the jurisdiction.
- (5) The preservation, interim custody, or sale of any goods which are the subject-matter of the reference.
- (6) Securing the amount in dispute in the reference.
- (7) The detention, preservation, or inspection of any property or thing which is the subject of the reference or as to which any question may arise therein, and authorizing for any of the purposes aforesaid any persons to enter upon or into any land or building in the possession of any party to the reference, or authorizing any samples to be taken or any observation to be made or experiment to be tried which may be necessary or expedient for the purpose of obtaining full information or evidence.
- (8) Interim injunctions or the appointment of a receiver.

SECOND SCHEDULE.

PROVISIONS OF ACT WHICH DO NOT APPLY TO STATUTORY
ARBITRATION.

- Subsection (1) of section 3.
 Section 4.
 Section 5.
 Subsection (2) of section 10.
 Subsection (1) of section 14.
 Section 16.
 Section 18.

THIRD SCHEDULE.

AMENDMENTS OF PRINCIPAL ACT.

Enactment affected.	Nature of Amendment.
Section 8 ..	By repealing paragraph (b) of this section.
Section 20 ..	By repealing this section.
Section 24 ..	By omitting from this section the words "or shall affect the law as to costs payable by the Crown".
Second Schedule	By repealing clauses 3 and 5 of this Schedule.
Second Schedule	By omitting from clause 4 of this Schedule the words "have allowed their time or extended time to expire without making an award, or".