

REPEALED: See Act, 1956 No.



ANALYSIS

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1959, No. 42

An Act to make provision for the protection of the employment of volunteers to Her Majesty's Armed Forces

[15 October 1959]

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

1. Short Title—This Act may be cited as the Volunteers Employment Protection Act 1959.

2. Interpretation—(1) In this Act, unless the context otherwise requires,—

“Apprentice” means an apprentice within the meaning of the Apprentices Act 1948; and includes any person employed in any employment the time served in

which is part of a qualifying period prescribed by or under any Act for any trade, profession, or calling; and "contract of apprenticeship" has a corresponding meaning:

"Armed Force" means the New Zealand Naval Forces, the New Zealand Army, or the Royal New Zealand Air Force, as the case may require:

"Inspector of Factories" means an Inspector of Factories appointed under the Factories Act 1946:

"Minister" means the Minister of Labour:

"Service Board" means the New Zealand Naval Board, or the Army Board, or the Air Board, as the case may require:

"Undertaking" includes any business, whether carried on by way of trade or not, and the activities of any body of persons, whether incorporated or not:

"Worker" means any person who is employed by any employer.

(2) Where any worker employed in any undertaking has been called up or summoned for any voluntary service or training in any Armed Force, and any change takes place in the person carrying on that undertaking or that undertaking becomes comprised in any other undertaking, references in this Act to the employer of that worker shall be construed as references to the person for the time being carrying on that undertaking or that other undertaking, as the case may be:

Provided that where the worker was employed in a branch or part of an undertaking which becomes, or becomes part of, some other undertaking, and either—

(a) He has as a consequence become employed in that other undertaking; or

(b) It is reasonable to suppose that he would as a consequence have been employed in that other undertaking if his employment had not been interrupted by his service or training—

this subsection shall have effect as if that branch or part were itself an undertaking.

Leave of Absence For Period of Service or Training

3. Worker deemed to have leave of absence from employment—(1) Where any worker volunteers for or performs or undergoes any voluntary service or training in any Armed Force or Armed Forces for any period or periods not exceeding in the aggregate three weeks in any calendar year, his employer shall be deemed to have granted him leave of absence for that period or those periods:

Provided that, where in any case the worker is prevented by his sickness or by any other reasonable cause from resuming his employment at the end of the period of leave of absence hereinbefore provided for, the leave of absence shall be deemed to have been extended for such further period as may be reasonable.

(2) Subject to the provisions of this Act as to holidays, the employer of any such worker shall not be obliged to pay him any remuneration for the period of leave of absence provided for by this section.

4. Resumption of employment after leave of absence—Where any worker presents himself to his employer at or before the end of any period of leave of absence to which he is entitled under section three of this Act, the employer shall forthwith resume the employment of the worker in the occupation in which he was last employed before the leave of absence and on terms and conditions not less favourable to him than those that would have been applicable to him if he had not performed or undergone the service or training:

Provided that in the case of employment of a temporary, seasonal, or casual nature this section shall not apply if, having regard to the general conditions applicable to the industry concerned, the employment of the worker would not normally have continued until the end of the period of leave of absence.

Prohibition of Dismissal of Workers

5. Workers not to be dismissed by reason of voluntary service or training—(1) The employer of any worker commits an offence against this section—

- (a) If the worker volunteers for any voluntary service or training in any Armed Force, and the employer terminates the worker's employment without his consent before the beginning of that service or training, and does so solely or mainly by reason of any duties or liabilities which the worker is or may become liable to perform or discharge by reason of his volunteering for service or training as aforesaid:
- (b) If the employment of the worker is terminated by the employer without the worker's consent solely or mainly by reason of any duties or liabilities which he is or may become liable to perform or discharge by reason of his volunteering for service or training as aforesaid:

(c) If the employment of the worker is terminated by the employer without the worker's consent during any period of leave of absence to which the worker is entitled under section three of this Act, solely or mainly by reason of any duties or liabilities which the worker is or may have become liable to perform or discharge by reason of his volunteering for service or training as aforesaid.

(2) If any employer commits an offence against this section he shall be liable on summary conviction to a fine not exceeding one hundred pounds; and the Court by which he is convicted may order him to pay to the worker whose employment has been terminated, as compensation for any loss suffered or likely to be suffered by him by reason of the termination, a sum not exceeding an amount equal to thirteen weeks' remuneration at the rate at which his remuneration was last payable to him by the employer.

(3) Where the employment of any worker is terminated in contravention of subsection one of this section, he shall be entitled to recover from the employer, as compensation for any loss suffered or likely to be suffered by him by reason of the termination of his employment, a sum not exceeding an amount equal to thirteen weeks' remuneration at the rate at which his remuneration was last payable to him by the employer.

(4) The awarding of compensation under subsection three of this section shall not affect the liability of the employer to proceedings for an offence under subsection two of this section, and, except to the extent to which compensation has been paid, shall not affect the power of the Court to order the payment of compensation under the said subsection two.

(5) If in any proceedings under this section the Court is of opinion that there is reasonable cause to believe that the duties or liabilities aforesaid caused or contributed to the termination of the employment, the employment shall be deemed to have been terminated solely or mainly by reason of those duties or liabilities unless the employer proves that the termination was for a reason unconnected therewith.

Rates of Remuneration

6. Workers' rates of remuneration to be computed as if period of service were time served—Where the rate of the remuneration of any worker is computed by reference to the length of the time served by him in any occupation, and the time so served by him is interrupted by any service or training

in any Armed Force, the period of leave of absence to which he is entitled under section three of this Act shall, for the purpose of computing the rate of his remuneration, be deemed to be time served by him in that occupation.

Holidays

7. Annual holidays—(1) For the purpose of ascertaining the rights of any worker to annual or periodical holidays or leave with pay, and the obligations of his employer in relation thereto, whether under the Annual Holidays Act 1944 or otherwise, where the time served by the worker in the employment of that employer is interrupted by the worker's voluntary service or training in any Armed Force, the period of the leave of absence to which he is entitled under section three of this Act in respect of that service or training shall be deemed to be time served in that employment.

(2) Where an employer is required to allow annual or periodical holidays or leave to any worker, the holidays or leave shall not, except at the request of the worker, be allowed at times comprised within any period of voluntary service or training in any Armed Force.

8. Other holidays—Where any worker who is employed by any employer performs or undergoes any voluntary service or training in any Armed Force, the rights of the worker to be allowed any day as a holiday on full pay during the period of that service or training, and the obligations of his employer in relation thereto, shall be ascertained as if the worker had ceased to be employed by the employer at the beginning of that service or training.

Apprentices

9. Apprentices—(1) Where the time served by any apprentice under his contract of apprenticeship is interrupted by any voluntary service or training in any Armed Force, his contract of apprenticeship shall be deemed to be suspended during the period of the leave of absence to which he is entitled under section three of this Act in respect of that service or training (in this section referred to as the period of leave), and the succeeding provisions of this section shall apply.

(2) Subject to the provisions of this Act as to holidays, the employer of any such apprentice shall not be obliged to pay him any remuneration for the period of leave, but the period of leave shall be deemed to be time served under the

contract of apprenticeship for the purpose of computing the period of apprenticeship and the rate of wages of the apprentice.

(3) In the case of any contract of apprenticeship under which the period of apprenticeship is fixed by reference to a number of working hours, the period of leave for the purposes of this section shall be deemed to be the number of hours that the apprentice would normally have worked under the contract of apprenticeship during the period of leave if he had continued to work under the contract during that period.

(4) Sections seven and eight of this Act shall apply to apprentices as well as to other workers.

Miscellaneous

10. Workers to notify employers before commencing service or training—(1) Where any worker is called up or summoned for any voluntary service or training in any Armed Force which will necessitate his absence from work, he shall forthwith notify his employer thereof.

(2) Every person who fails to comply in any respect with the foregoing provisions of this section commits an offence, and shall be liable on summary conviction to a fine not exceeding twenty pounds.

11. Postponement of liability for service or training—(1) Where any person is called up or summoned for any voluntary service or training in any Armed Force, he or any other person may apply to the appropriate Service Board, or to any officer of that Armed Force appointed for the purpose by the appropriate Service Board, for a postponement of that service or training upon the ground that his calling up or summoning for that service or training will cause undue hardship to himself or, as the case may be, to that other person.

(2) Where the Service Board or any such officer as aforesaid refuses the application, not being an application relating to a night or weekend parade, the Board or officer, as the case may be, shall refer the application for decision by a person appointed by the Minister under subsection three of this section.

(3) The Minister may from time to time appoint such persons as he thinks fit, being officers of the Department of Labour, for the purpose of determining applications for postponement under this section. Any such person may be appointed by name or as the holder for the time being of any specified office in the Department of Labour.

(4) The person to whom any application for postponement is referred under subsection three of this section may, after considering any documentary evidence or statement of facts supplied to him or any evidence otherwise obtained by him,—

- (a) Grant a postponement for such period as he thinks fit; or
- (b) Dismiss the application.

(5) Every determination by a person appointed under subsection three of this section shall be final.

12. Proceedings may be taken by Inspector of Factories— Without limiting the powers or remedies of any other person, it is hereby declared that—

- (a) Civil proceedings for the recovery of compensation from any employer under section five of this Act may be taken by any Inspector of Factories in the name and on behalf of the person entitled to payment in any case where the Inspector is satisfied that compensation is recoverable:
- (b) No Court fees shall be payable by the Inspector of Factories in any such proceedings, but the Court may in any case, if it thinks fit, order that the Court fees shall be paid by the defendant:
- (c) Where any such civil proceedings or any proceedings for an offence against this Act have been instituted by any Inspector of Factories, they may be continued and conducted by the same or any other Inspector of Factories.

13. Evidence—(1) A certificate of an authorised officer as to the duration of a person's service or training shall be conclusive for the purposes of any proceedings under or for the purposes of this Act.

(2) Every document purporting to be such a certificate as aforesaid or any other certificate authorised by this Act and to be signed by an authorised officer shall be received in evidence, and shall, in the absence of proof to the contrary, be deemed to be such a certificate of an authorised officer; and in any proceedings under or for the purposes of this Act the production of a document purporting to be certified by or on behalf of an authorised officer to be a true copy of any such certificate as is mentioned in this subsection shall, in the absence of proof to the contrary, be sufficient evidence of the certificate.

(3) In this section the term “authorised officer” means an officer of any Armed Force nominated as an authorised officer for the purposes of this Act by the appropriate Service Board.

14. Priority in bankruptcy or winding-up—(1) Subject to the provisions of this section,—

(a) There shall be included among the debts which, under section one hundred and twenty of the Bankruptcy Act 1908, are to be paid in the third priority in the distribution of the property of a bankrupt any sum ordered or adjudged to be paid under section five of this Act as compensation where the default or contravention by reason of which the order or judgment for compensation was made or given occurred before the date of the filing of a debtor’s petition, or the filing of a creditor’s petition on which an order of adjudication is made, whether or not the order or judgment for compensation was made or given before that date:

(b) There shall be included among the debts which, under section three hundred and eight of the Companies Act 1955, are to be paid in priority to all other debts in the winding-up of a company any sum ordered or adjudged to be paid under section five of this Act as compensation where the default or contravention by reason of which the order or judgment for compensation was made or given occurred before the relevant date within the meaning of that section, whether or not the order or judgment for compensation was made or given before that date.

(2) The sum to which priority is to be given under paragraph (a) or paragraph (b) of subsection one of this section, as the case may be, shall not in the case of any one claimant exceed one hundred pounds.
