



ANALYSIS

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1973, No. 25

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

[2 October 1973]

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 1973*.

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 described

by or under any Act for any trade, profession, or calling; and “contract of apprenticeship” has a corresponding meaning:

“Armed Forces” means the Armed Forces within the meaning of the Defence Act 1971; and includes any branch, corps, command, formation, unit, or other part of the Armed Forces; but does not include any part of the cadet forces:

“Inspector of Factories” means an Inspector of Factories appointed under the Factories Act 1946:

“Minister” means the Minister of Labour:

“Protected voluntary service or training”—

(a) Means voluntary service or training in the Armed Forces for a period or periods of:

(i) Whole-time service in the form of one or more periods of continuous training not exceeding in the aggregate 3 months with the Armed Forces; and

(ii) Part-time service in the form of annual, special, weekend, and evening training, not exceeding in the aggregate 3 weeks in any training year:

(b) Includes—

(i) Any period or periods spent in travelling to and from any place of service or training:

(ii) Any period or periods during which a volunteer is prevented from resuming employment after service or training because of sickness or any reasonable cause attributable to the service or training:

“Secretary” means the Secretary of Labour appointed under the Labour Department Act 1954; and includes any person for the time being authorised to exercise or perform any of the Secretary’s powers or functions:

“Training year” means the period commencing on the 1st day of April in one year and ending with the 31st day of March in the following year, both dates inclusive:

“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 volunteered for service or training, 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.

Cf. 1961, No. 116, s. 59

3. Act to bind the Crown—This Act shall bind the Crown.

4. Worker deemed to have leave of absence from employment—(1) Where any worker who is employed by any employer performs or undergoes any protected voluntary service or training for any period or periods, his employer shall be deemed to have granted him leave of absence for the period or periods:

Provided that, in the case of the worker's whole-time service, the leave of absence shall be deemed to extend for such further period from the end of that service, not exceeding 7 days, as the worker may require:

Provided also 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 any period or extended 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.

Cf. 1961, No. 116, s. 60

5. 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 4 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 protected voluntary 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.

Cf. 1961, No. 116, s. 61

6. Workers not to be dismissed by reason of protected voluntary service or training—(1) Every employer commits an offence against this section if, by reason of the worker volunteering for, or performing or undergoing, any protected voluntary service or training, the employer terminates the employment of the worker without the consent of the worker.

(2) In any prosecution for an offence against this section in respect of the termination of the employment of any worker, the onus shall be on the employer to prove that he has not acted contrary to subsection (1) of this section in terminating the employment.

(3) Every employer who commits an offence against this section is liable on summary conviction to a fine not exceeding \$500; 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 16 weeks' remuneration at the rate at which his remuneration was last payable to him by the employer.

(4) Where the employment of any worker is terminated in contravention of subsection (1) 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 16 weeks' remuneration at the rate at which his remuneration was last payable to him by the employer.

(5) The awarding of compensation under subsection (4) of this section shall not affect the liability of the employer to be charged with an offence against 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 subsection (3) of this section.

Cf. 1961, No. 116, s. 62

7. Workers' rates of remuneration to be computed as if protected period 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 protected voluntary service or training, the period of leave of absence to which he is entitled under section 4 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.

Cf. 1961, No. 116, s. 63

8. 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 protected voluntary service or training, the period of the leave of absence to which he is entitled under section 4 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 protected voluntary service or training.

Cf. 1961, No. 116, s. 63

9. Other holidays—Where any worker who is employed by any employer performs or undergoes any protected voluntary service or training, 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.

Cf. 1961, No. 116, s. 65

10. Apprentices—(1) Where the time served by any apprentice under his contract of apprenticeship is interrupted by any protected voluntary service or training, his contract of apprenticeship shall continue in force during the period of the leave of absence to which he is entitled under section 4 of this Act in respect of that service or training (in this section referred to as the period of leave):

Provided that the succeeding provisions of this section shall apply in relation to him during that period, and to that extent his contract of apprenticeship shall be deemed to be suspended.

(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 that contract during the period.

(4) Sections 8 and 9 of this Act shall apply to apprentices as well as to other workers.

Cf. 1961, No. 116, s. 66

11. Workers to notify employers before commencing protected voluntary service or training—(1) Where any worker volunteers for any protected voluntary service or training which will necessitate his absence from work, he shall notify his employer thereof not less than 14 days before undertaking that service or training.

(2) Every person who fails to comply in any respect with the foregoing provisions of this section shall not have his then current employment protected under this Act.

Cf. 1961, No. 116, s. 67

12. Applications for postponement of service or training—(1) Where any worker volunteers for any protected voluntary service or training in the Armed Forces, the employer may apply to a person appointed by the Secretary under subsection (2) of this section for a postponement of that service or training upon the ground that the worker's volunteering for that service or training will cause undue hardship to the employer.

(2) The Secretary may from time to time appoint such person or persons as he thinks fit, whether or not an officer or officers of the Department of Labour, for the purpose of determining applications for postponement under this section. Any such person who holds no other appointment as an officer or employee of the State services within the meaning of the State Services Act 1962 may be paid, out of money appropriated by Parliament for the purpose, remuneration by way of fees, salary, or allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly as if he were a member of a statutory Board within the meaning of that Act.

(3) The person to whom any application for postponement is made under subsection (1) of this section may, after considering any statement of fact or any documentary or other evidence supplied to him or obtained by him,—

(a) Grant a postponement for such period as he thinks fit;

or

(b) Dismiss the application.

(4) Every determination by a person appointed under subsection (1) of this section shall be final.

Cf. 1961, No. 116, s. 22

13. 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 6 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.

Cf. 1961, No. 116, s. 68

14. Evidence—(1) A certificate of an authorised officer as to the duration of a person's protected voluntary 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 the Armed Forces nominated as an authorised officer for the purposes of this Act by the appropriate Chief of Staff.

Cf. 1961, No. 116, s. 69

15. Priority in bankruptcy or winding up of compensation ordered to be paid by employer—(1) Subject to the provisions of this section,—

- (a) There shall be included among the debts which, under section 104 of the Insolvency Act 1967, are to be paid in the fourth priority in the distribution of the property of a bankrupt any sum ordered or adjudged to be paid under section 6 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 308 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 6 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 (1) of this section, as the case may be, shall not in the case of any one claimant exceed \$200.

Cf. 1961, No. 116, s. 70

16. Cancellation of existing liability for service—Upon the commencement of this Act no person shall be under any further liability to perform or undergo compulsory military training or service, or to register, or to submit to medical examination, by reason of any liability that arose under the National Military Service Act 1961.

17. Consequential repeals and amendments—(1) The enactments specified in the Schedule to this Act are hereby consequentially repealed.

(2) The Labour Department Act 1954 is hereby amended—

(a) By omitting from the First Schedule (as set out in the First Schedule to the Labour Department Amendment Act 1970) the words “The National Military Service Act 1961”:

(b) By inserting in the first-mentioned First Schedule, in their appropriate alphabetical order, the words “The Volunteers Employment Protection Act 1973”.

(3) Subsection (1) of section 2 of the Accident Compensation Act 1972 is hereby amended by omitting from the definition of the expression “part-time member of the Armed Forces of New Zealand” the words “who is undergoing any period of training under the National Military Service Act 1961, or”.

- (4) The Defence Act 1971 is hereby amended—
- (a) By omitting from subsection (1) of section 39 the words “the National Military Service Act 1961 and to”:
 - (b) By repealing subsection (1) of section 41:
 - (c) By omitting from section 43 the words “the National Military Service Act 1961 and of”:
 - (d) By repealing so much of the Second Schedule as relates to the National Military Service Act 1961.

SCHEDULE

Section 17 (1)

ENACTMENTS REPEALED

- 1961, No. 116—The National Military Service Act 1961.
1964, No. 25—The National Military Service Amendment Act 1964.
1968, No. 9—The National Military Service Amendment Act 1968.
1969, No. 60—The National Military Service Amendment Act 1969.

This Act is administered in the Department of Labour.
