

# INDUSTRIAL CONCILIATION AND ARBITRATION AMENDMENT BILL.

## MEMORANDUM.

This Bill deals with four matters:—

- (1.) Strikes and lock-outs;
- (2.) The enforcement of awards and industrial agreements;
- (3.) Conciliation;
- (4.) Miscellaneous amendments of the Act.

### *1. Strikes and Lock-outs.*

(a.) Any strike or lock-out, whether an award or industrial agreement is in force or not, is made an offence punishable in the same manner as a breach of award, that is to say, by civil action and civil process only, without imprisonment.

(b.) In certain specified industries it is made an offence punishable by fine and imprisonment to strike without giving at least twenty-one days' notice to the employer. The industries so selected are those which are of such a nature that a sudden stoppage would cause serious loss or inconvenience to the public or the destruction of the employer's property. This principle is already in force under the Conspiracy Law Amendment Act, 1894, in respect of the public supply of gas, water, and electricity, and the present Bill proposes to extend the rule to certain other industries.

(c.) A strike or lock-out is made a continuing offence, with a separate penalty for each week of its continuance.

(d.) Instigating, aiding, and abetting a strike or lock-out (including contributions of money and the public expression of approval or sympathy) is made an offence punishable in the same manner as the strike itself.

(e.) A union convicted of instigating a strike may have its registration suspended for three years, and in the meantime its members lose the benefit of all awards.

### *2. Enforcement of Awards.*

(a.) The penalty for a breach of award is made recoverable by action in a Magistrate's Court, and not, as at present, by application to the Court of Arbitration. The judgment in any such action is enforceable in the same manner as any other judgment in the Magistrate's Court.

(b.) Any penalty so imposed upon a worker is to be deducted by instalments from all wages subsequently earned by him.

### *3. Conciliation.*

(a.) Conciliation Boards are abolished.

(b.) No dispute can be referred to the Court until it has been first referred to a Council of Conciliation, consisting of a Stipendiary Magistrate exercising jurisdiction in the industrial district and two assessors. The assessors are nominated by the parties to the dispute and must be actually engaged or employed in the industry in which the dispute arises.

(c.) Unless the parties so agree beforehand, the recommendation of the Council has no binding force, operating merely as a suggestion for amicable settlement, and as a public notification of the opinion of the Council as to the merits of the dispute.

(d.) The Council is not to sit as a formal tribunal or to hear evidence in a formal manner or hear addresses, except so far as it thinks it advisable so to do.

### *4. Miscellaneous Amendments of the Act.*

The most important of these are the following:—

(a.) Limitation of the right to recover arrears of wages;

(b.) Voting-power of unions in nominating members of the Court to be proportionate to their membership;

(c.) Jurisdiction of the Court, with the consent of the parties, to award an exertion-wage in addition to a needs-wage;

(d.) Jurisdiction of the Court to extend an industrial agreement to bind a dissenting minority of employers.

(e.) Two assessors engaged or employed in the particular industry, and appointed on the recommendation of the parties, are to be added to the Court of Arbitration on the hearing of any dispute.

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## INDUSTRIAL CONCILIATION AND ARBITRATION AMENDMENT.

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## A BILL INTITULED

Title.

AN ACT to amend the Industrial Conciliation and Arbitration Act, 1905.

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

Short Title.

1. This Act may be cited as the Industrial Conciliation and Arbitration Amendment Act, 1908, and shall be read together with and deemed to form part of the Industrial Conciliation and Arbitration Act, 1905 (hereinafter referred to as the principal Act).

Commencement of Act.

2. This Act shall come into operation on the first day of January, nineteen hundred and *nine*.

## PART I.

## STRIKES AND LOCK-OUTS.

Definition of "strike."

3. (1.) In this Act the term "strike" means the act of any number of workers who are or have been in the employment whether of the same employer or of different employers, in discontinuing that employment, whether wholly or partially, or in breaking their contracts of service, or in refusing or failing after any such discontinuance to resume or return to their employment, the said discontinuance, breach, refusal, or failure being due to any combination, agreement, or common understanding, whether express or implied, made or entered into by the said workers—

(a.) With intent to compel or induce their said employers, or any of them, to agree to terms of employment, or comply with any demands made by the said or any other workers;

or

(b.) With intent to aid, abet, instigate, or procure any other strike; or

(c.) With intent to assist workers in the employment of any other employer to compel or induce that employer to agree to terms of employment or comply with any demands made upon him by any workers.

(2.) In this Act the expression "to strike" means to become a party to a strike, and the term "striker" means a party to a strike.

Definition of "lock-out."

4. In this Act the term "lock-out" means the act of any number of employers in closing their respective places of employment, or suspending work therein, or dismissing any of the workers respectively employed by them, or refusing or failing after any such dismissal to employ any worker so dismissed, the said closing, suspension, dismissal, refusal, or failure being due to any combination, agreement, or common understanding, whether express or implied, made or entered into by the said employers—

(a.) With intent to compel or induce any workers to agree to terms of employment, or comply with any demands made upon them by the said or any other employers ; or

5 (b.) With intent to aid, abet, instigate, or procure any other lock-out ; or

(c.) With intent to assist any other employer to compel or induce any workers to agree to terms of employment or comply with any demands made by him.

10 5. (1.) When a strike takes place in any industry, whether an award or industrial agreement is in force in respect of that industry or not, every worker who is a party to that strike shall be guilty of an offence, and shall be liable to a penalty of *ten* pounds, together with a further penalty of *one* pound for every week during which the strike continues, and during which he remains a party thereto.

Penalties on parties to strike or to lock-out.

15 (2.) When a lock-out takes place in any industry, whether an award or industrial agreement is in force in respect of that industry or not, every employer who is a party to that lock-out shall be guilty of an offence, and shall be liable to a penalty of *two hundred* pounds, together with a further penalty of *fifty* pounds for every week during  
20 which the lock-out continues, and during which he remains a party thereto.

6. (1.) Every person who incites, instigates, aids, or abets a strike or lock-out, or the continuance of a strike or lock-out, or who incites, instigates, or assists any person to become a party to a strike  
25 or lock-out, shall be guilty of an offence, and shall be liable, if a worker, to a penalty of *ten* pounds, and if an industrial union, industrial association, trade-union, employer, or any person other than a worker, to a penalty of *two hundred* pounds.

Offences in connection with strike or lock-out by persons not parties thereto.

(2.) Every person who makes any gift of money or other valuable  
30 thing to or for the benefit of any person who is a party to a strike or lock-out, or to or for the benefit of any industrial union, industrial association, trade-union, or other society or association of which any such person is a member, shall be deemed to have aided or abetted the strike or lock-out within the meaning of this section, unless he  
35 proves that he so acted without the intent of aiding or abetting the strike or lock-out.

(3.) While any strike or lock-out is taking place or impending, any person who publishes in any newspaper any expression of approval, whether by himself or by any other person, of the unlawful  
40 action of any person in relation to that strike or lock-out shall be deemed to have incited, instigated, aided, or abetted, as the case may be, the strike or lock-out.

(4.) When a strike or lock-out takes place, and a majority of the members of any industrial union or industrial association are at any  
45 time parties to the strike or lock-out, the said union or association shall be deemed to have instigated the strike or lock-out.

7. Every penalty hereinbefore referred to shall be recoverable at the suit of an Inspector of Awards in the same manner as a penalty for a breach of an award and not otherwise, and all the provisions  
50 hereinafter in this Act contained with respect to the enforcement of an award shall, so far as applicable, apply accordingly.

Recovery of Penalties

8. Section fifteen of the Industrial Conciliation and Arbitration Amendment Act, 1905, is hereby repealed.

Repeal.

al penalties  
in respect to  
striking without  
due notice  
by workers  
employed in certain  
specified industries.

9. (1.) If any person employed in any of the industries to which this section applies strikes without having given to his employer, within one month before so striking, not less than twenty-one days' notice in writing, signed by him, of his intention to strike, the striker shall be liable on summary conviction before a Magistrate to a fine of *ten* pounds or to imprisonment for *three* months. 5

(2.) This section applies to the following industries:—

(a.) The manufacture or supply of coal-gas :  
(b.) The manufacture or supply of electricity for light or power :  
(c.) The supply of water to the inhabitants of any borough or 10  
other place :

(d.) The manufacture or supply of bread :

(e.) The supply of milk for domestic consumption :

(f.) The slaughtering or supply of meat for domestic consumption : 15

(g.) The retail sale or delivery of coal, whether for domestic or industrial purposes :

(h.) The working of any tramway or railway used for the public carriage of goods or passengers :

(i.) Any industry or occupation of such a nature that any danger 20  
to the public health or safety, or any injury or destruction of the property of the employer, has resulted from the strike.

(3.) Every person who incites, instigates, aids, or abets any offence against this section, or who incites, instigates, or assists any person who has struck in breach of this section, to continue to be a party to the strike shall be liable, on summary conviction before a Magistrate, to imprisonment for three months, or to a fine not exceeding in the case of a worker *ten* pounds, or in the case of an industrial union, industrial association, trade-union, employer, or any person other than a worker, *two hundred* pounds. 25

(4.) Nothing in this section shall affect any liability under section *five* of this Act, save that when a judgment or conviction has been obtained against any person under one of the said sections no further proceedings shall be taken or continued against him under 35  
the other in respect of the same act.

Suspension of  
registration of  
union convicted of  
certain offences.

10. (1.) When an industrial union or industrial association of workers is convicted under section *nine* of this Act of having incited, instigated, aided, or abetted the commission by any of its members of an offence against that section, or when judgment is obtained 40  
under section *five* of this Act against an industrial union or industrial association of workers for a penalty incurred by it for inciting, instigating, aiding, or abetting a strike by any of its members, the Court in which the conviction or judgment is obtained shall in the said conviction or judgment order that the registration of the union or 45  
association shall be suspended for such period as the Court thinks fit, not exceeding three years.

(2.) During any such period of suspension the said union or association shall be incapable of instituting or continuing or of being a party to any conciliation or arbitration proceedings under the principal Act or this Act, or of entering into any industrial agreement, or of taking or continuing any proceedings for the enforcement of an 50

award or industrial agreement, or of making any application for the cancellation of its registration.

5 (3.) During any such period of suspension the operation of any award or industrial agreement in force at any time during that period shall be suspended so far as the award or industrial agreement applies to persons who are members of that union or association, or who were members thereof at the time when the said judgment or conviction was given or obtained, and also so far as the award or industrial agreement applies to the employers of any such persons.

10 (4.) During any such period of suspension no new industrial union or industrial association of workers shall be registered in the same industrial district in respect of the same industry.

15 (5.) Every such order of suspension shall be subject to the same right of appeal as the judgment or conviction in respect of which it is made.

## PART II.

### ENFORCEMENT OF AWARDS AND INDUSTRIAL AGREEMENTS.

11. Sections thirty, one hundred and one, and one hundred and two of the principal Act are hereby repealed. Repeal

20 12. This Part of this Act applies to all awards and industrial agreements whether made before or after the commencement of this Act, and to all breaches of awards or industrial agreements whether committed before or after the commencement of this Act, save that all proceedings for the enforcement of any award or industrial agreement which are pending at the commencement of this Act may be continued in the same manner as if this Act had not been passed. Application of provisions as to enforcement of awards and agreements.

25 13. (1.) Every industrial union, industrial association, or employer who commits a breach of an award or industrial agreement shall be liable to a penalty of one hundred pounds in respect of every such breach. Penalties for breach of award or industrial agreement.

(2.) Every worker who commits a breach of an award or industrial agreement shall be liable to a penalty of five pounds in respect of every such breach.

30 14. (1.) Every such penalty shall be recoverable by action in a Magistrate's Court, and not otherwise. Recovery of penalties.

(2.) Every such action may be brought in any Magistrate's Court in any industrial district in which the award or industrial agreement is in force or in which the cause of action or any part thereof arose, and shall be heard and determined by a Magistrate only.

40 (3.) Every such action may be brought at the suit of an Inspector of Awards or at the suit of any party to the award or industrial agreement.

45 (4.) A claim for two or more penalties against the same defendant may be joined in the same action, although the aggregate amount so claimed may be in excess of the jurisdiction of the Magistrate's Court in an ordinary action for the recovery of money.

(5.) No Court fees shall be payable in respect of any such action.

50 (6.) No industrial union or industrial association shall be capable of bringing any such action until a resolution to that effect has been

- passed at a meeting of the members of the union or association in accordance with the rules thereof.
- Defendant to give notice of intention to defend. 15. Unless within two clear days before the day of the hearing of any such action the defendant delivers to the plaintiff, or to the Clerk of the Magistrate's Court, a notice of his intention to defend the action, he shall not be entitled to defend the same except with the leave of the Magistrate, and the Magistrate may without hearing evidence give judgment for the plaintiff. 5
- Powers of Magistrate hearing action. 16. In any such action the Magistrate may give judgment for the total amount claimed (not exceeding in respect of any one breach the maximum penalty hereinbefore prescribed), or for any less sum as he thinks fit, or if he is of opinion that the breach proved against the defendant is trivial or excusable the action may be dismissed, and in any case he may give such judgment as to costs as he thinks fit. 15
- Application of penalties recovered. 17. (1.) Every penalty recovered in any such action shall be recovered by the plaintiff to the use of the Crown, and the amount thereof shall when received by the plaintiff be paid into the Public Account. (2.) When the plaintiff is any person other than an Inspector of Awards the amount of the penalty shall be paid into Court or to an Inspector of Awards and not to the plaintiff, and shall thereupon be paid by the Clerk of the Court or by the said Inspector into the Public Account. 20
- Magistrate may state case for Court of Arbitration. 18. In any such action the Magistrate may, if he thinks fit, before giving judgment, state a case for the opinion of the Court of Arbitration, and may thereupon adjourn the hearing or determination of the action. 25
- Appeal from Magistrate to Court of Arbitration. 19. (1.) No appeal shall lie from any judgment in any such action to the Supreme Court or District Court; but an appeal shall lie to the Court of Arbitration in the same cases and in the same manner as in the case of an appeal to the Supreme Court under the Magistrate's Court Act, 1893. 30 (2.) On any such appeal the Court of Arbitration shall have the same powers as the Supreme Court in respect of an appeal from the Magistrate's Court, and the determination of the Court of Arbitration shall be final. 35 (3.) In respect of any such appeal sections one hundred and fifty-nine to one hundred and sixty-four, and sections one hundred and sixty-six and one hundred and sixty-seven of the Magistrate's Court Act, 1893, shall be applicable, and shall be read as if the references therein to the Supreme Court were references to the Court of Arbitration. 40
- Enforcement of judgment. 20. Subject to the provisions of the *next succeeding* section, the judgment in any such action shall be enforceable in the same manner as a judgment for debt or damages in the Magistrate's Court, and in no other manner. 45
- On notice from Inspector of Awards, amount of judgment to be deducted by employer from moneys due to defendant. 21. (1.) When in any action judgment has been obtained against a defendant under the foregoing provisions of this Act, and the defendant refuses or fails to satisfy the judgment, any Inspector of Awards may at any time, and from time to time, so long as the judgment remains unsatisfied, give notice in writing to any employer 50

by whom the defendant is for the time being employed, requiring the employer to deduct from all wages or other remuneration thereafter becoming payable by him to the defendant in respect of his employment such proportion of the said wages or remuneration as the Inspector thinks fit, not exceeding one-fourth part thereof, until the full amount for which the defendant is liable under the judgment has been so deducted or has been otherwise paid.

(2.) Any such notice may be given from time to time by the same or different Inspectors of Awards to the successive employers by whom the defendant may be employed at any time while the judgment remains unsatisfied.

(3.) No such notice shall be invalidated by any error or omission, or defect of form or substance, unless the employer has been thereby misled as to the identity of the defendant.

(4.) Any such notice may be either served personally upon the employer or may be sent to him through the post by a registered letter.

(5.) At all times after the receipt of any such notice, until it has been withdrawn by an Inspector of Awards or until the total sum named therein has been deducted, the employer receiving the same shall, so often as any money becomes payable by him to the defendant in respect of any employment, deduct therefrom the proportion mentioned in the notice, and pay the amount so deducted to the Inspector of Awards by whom the notice was given or to any other Inspector of Awards.

(6.) All moneys which are or ought to have been so deducted shall be a debt due by the employer to the Crown, and may be recovered by action against the employer in a Magistrate's Court or any other Court of competent jurisdiction at the suit of any Inspector of Awards.

(7.) All sums so deducted by an employer shall to the extent thereof be deemed to have been paid by the defendant in satisfaction of the judgment.

(8.) All moneys to be deducted from any wages or remuneration in pursuance of any such notice shall constitute a charge on such wages or remuneration, and shall prevail over and have priority to any assignment or charge made or created by the defendant, whether before or after the receipt of the notice by his employer, and every such notice shall in all respects have the same force and effect as if no such assignment or charge had been made or created.

(9.) Every such notice shall have effect with respect to all wages or remuneration becoming payable to the defendant after the receipt of the notice by the employer, whether the contract of employment in which they are earned existed when that notice was received or not, and whether any moneys were due or accruing due to the defendant at the time of the receipt of the said notice or not.

22. The Governor may, by Order in Council, make regulations consistent with this Act prescribing the procedure in actions brought under the foregoing provisions of this Act, and in appeals to the Court of Arbitration.

23. When an order for the payment of money is made by the Court of Arbitration, and no other provisions for the enforcement of

Moneys so to be deducted to have priority over assignment or other charge upon wages, &c.

Governor may make regulations as to procedure.

Enforcement of certificate of Court of Arbitration.



that order are contained in this Act or in the principal Act, a certificate under the hand of the Registrar of the said Court, specifying the amount payable and the person to whom it is payable, may be filed in any Magistrate's Court, and shall thereupon be enforceable in the like manner as a judgment given by the last-mentioned Court in an action for the recovery of a debt. 5

In default of industrial union or association, amount of judgment may be recovered from members thereof

24. If in any action judgment is given under the foregoing provisions of this Act against an industrial union or industrial association, and is not fully satisfied within one month thereafter, all persons who were members of the said industrial union or industrial association at the time when the judgment was given shall be jointly and severally liable on the judgment in the same manner as if it had been obtained against them personally, and all proceedings in execution or otherwise in pursuance of the judgment may be taken against them or any of them accordingly, save that no person shall be liable under this section for a larger sum than *five pounds*. 10 15

### PART III.

#### CONCILIATION.

No further reference of disputes to Conciliation Boards.

25. (1.) After the commencement of this Act no industrial dispute shall be referred to any Board of Conciliation under the principal Act. 20

(2.) In the case of an industrial dispute which at the commencement of this Act has already been referred to a Board of Conciliation further proceedings for the settlement of that dispute shall be taken in the same manner as if this Act had not been passed. 25

(3.) After the commencement of this Act no person shall be elected or appointed as a member of a Board of Conciliation; and all persons theretofore so elected or appointed shall retire from office on the expiration of the term for which they were elected or appointed.

In first instance, disputes to be referred to Councils of Conciliation.

26. (1.) After the commencement of this Act no industrial dispute shall be referred to the Court until it has been first referred to a Council of Conciliation in accordance with the provisions hereinafter contained. 30

(2.) The parties to every dispute so referred to a Council of Conciliation shall be industrial unions, industrial associations, or employers. 35

Industrial union or association may make application to Magistrate to have dispute referred to Council of Conciliation.

27. (1.) Any industrial union or industrial association which is a party to an industrial dispute may make application in writing in the prescribed form to any Magistrate exercising for the time being the jurisdiction of any Magistrate's Court in the industrial district in which the dispute has arisen that the dispute may be heard by a Council of Conciliation. 40

(2.) No such application shall be made by an industrial union or industrial association unless the proposed application has been approved by the members in manner provided by section one hundred and five of the principal Act. 45

(3.) Two or more industrial unions or industrial associations may join in making a joint application in respect of the same dispute.

(4.) Every application made under this section shall state—

(a.) The name of the union or association making the application (hereinafter termed "the applicants") :

5 (b.) The name of all industrial unions, industrial associations, and employers whom the applicants desire to be made parties to the proceedings (hereinafter termed "the respondents") :

(c.) A general statement of the nature of the dispute :

(d.) A detailed statement of the claims made by the applicants against the respondents in the matter of the dispute :

10 (e.) The name of one person whom the applicants recommend as an assessor to sit with the Magistrate in the hearing and settlement of the dispute.

(5.) The person so recommended as an assessor must be actually and *bona fide* engaged or employed either as an employer or as a worker in the industry, or in any one of the industries, in respect of which the dispute has arisen (whether in the same or in another industrial district). Qualifications and appointment of assessor on behalf of applicants.

20 (6.) The person so recommended as an assessor may be one of the parties to the dispute or may be a member of an industrial union or industrial association which is a party to the dispute.

(7.) If the Magistrate to whom the application is made is not satisfied that the person so recommended is duly qualified in accordance with this Act he shall reject the recommendation, and the applicants shall then recommend some other qualified person in his place. The decision of the Magistrate as to the qualification of any person recommended as an assessor shall be final.

30 (8.) If and as soon as the Magistrate is satisfied that a qualified person has been so recommended by the applicants, he shall by writing under his hand appoint him as an assessor for the purpose of the said application.

28. So soon as an assessor has been nominated in manner aforesaid the Magistrate shall appoint a day and place for the hearing of the dispute, and shall in the prescribed form and manner cite the respondents to attend at the hearing thereof and in the meantime to recommend some qualified person for appointment as an assessor at the said hearing. Magistrate to appoint date for hearing dispute, and to cite respondents to attend.

29. (1.) The foregoing provisions as to the qualification of an assessor recommended by the applicants shall also apply to an assessor recommended by the respondents. Qualification and appointment of assessor on behalf of respondents.

40 (2.) If the Magistrate is not satisfied that the person so recommended by the respondents is duly qualified he shall reject the recommendation and shall require the respondents to recommend some other qualified person, and so also in the case of any such subsequent recommendation, and the decision of the Magistrate as to the qualification of any person so recommended shall be final.

45 (3.) If and as soon as the Magistrate is satisfied that a qualified person has been recommended by the respondents he shall by writing under his hand appoint him as an assessor for the purposes of the application.

50 (4.) Unless the respondents recommend some qualified person as an assessor at least one clear day before the day appointed for

the hearing of the dispute, the Magistrate shall forthwith appoint as an assessor such qualified person as he thinks fit.

(5.) The recommendation of an assessor by the respondents shall be in writing, signed by or on behalf of the respondents. If they cannot agree in the recommendation of an assessor, separate recommendations may be made by the several respondents, and in that case the Magistrate may appoint as an assessor such one of the qualified persons so recommended as he thinks fit. 5

Magistrate and two assessors to constitute Council of Conciliation.

30. (1.) On the appointment of two assessors in accordance with the foregoing provisions the Magistrate, together with the said assessors, shall be and constitute a Council of Conciliation (hereinafter referred to as "the Council"), having the powers and functions hereinafter provided. 10

(2.) The assessors shall be entitled to receive out of the Consolidated Fund such fees as are prescribed by regulations. 15

Powers and duties of Council with respect to dispute.

31. (1.) It shall be the duty of the Council to endeavour to bring about a settlement of the dispute, and to this end the Council shall, in such manner as it thinks fit, expeditiously and carefully inquire into the dispute and all matters affecting the merits and the right settlement thereof. 20

(2.) In the course of the inquiry the Council shall make all such suggestions and do all such things as it deems right and proper for inducing the parties to come to a fair and amicable settlement of the dispute.

(3.) If the Council is of opinion that the matter of any application is trivial, it may dismiss the application without making any further inquiry or making any recommendation, and may make an order requiring the applicants to pay to the respondents, or to any of them, such costs, not exceeding in the whole the sum of *ten* pounds, as the Council thinks fit. Any costs so ordered to be paid shall constitute a debt recoverable in any Court of competent jurisdiction. 25 30

(4.) The procedure of the Council shall in all respects be absolutely in the discretion of the Council, and the Council shall not be bound to proceed with the inquiry in any formal manner, or formally to sit as a tribunal, or to hear any addresses or evidence save such as the Council deems necessary or desirable. 35

(5.) The Council may on the inquiry hear any evidence that it thinks fit, whether such evidence would be legally admissible in a Court of law or not. 40

(6.) The inquiry shall be either public or private, as the Council thinks fit.

Meetings of Council.

(7.) Meetings of the Council shall be held from time to time at such times and places as the Magistrate appoints.

(8.) No such meeting shall be duly constituted unless the Magistrate is present thereat, but the absence of either or both of the assessors shall not prevent the exercise by the Council of any of its powers or functions. 45

(9.) The decision of a majority of the members present at any meeting shall be deemed to be the decision of the Council. 50

(10.) A record of the proceedings of every Council of Conciliation shall be made and preserved in manner prescribed by regulations, or,

in default of such regulations, in such manner as the Magistrate thinks fit.

(11.) The Magistrate shall have the same power of summoning witnesses and of taking evidence on oath, and of requiring the production of books and papers, as if the inquiry were the hearing of a complaint heard before him in the exercise of his jurisdiction as a Justice of the Peace, and all evidence given on oath before the Council shall for all purposes be deemed to have been given in a judicial proceeding before a Court of competent jurisdiction.

(12.) No person shall be bound at any inquiry before the Council to give evidence with regard to trade secrets, profits, losses, receipts, or outgoings in his business, or with respect to his financial position, or to produce the books kept by him in connection with his business.

(13.) If any person desires to give any such evidence as is mentioned in the *last preceding* subsection, or to produce any such books as aforesaid, he may, if the Magistrate thinks fit, do so in the presence of the Magistrate alone sitting without the assessors; and in such case the Magistrate shall not disclose to the assessors, or to any other person, the particulars of the evidence so given, or of the books so produced, but may inform the assessors whether or not, in his opinion, any claim or allegation made by the applicants or respondents in the inquiry is substantiated by the said evidence or the said books.

32. (1.) An employer, being a party to the dispute, may appear before the Council in person, or by his agent duly appointed in writing in that behalf, or (subject to the conditions hereinafter expressed) by a barrister or solicitor.

Parties to dispute may appear before Council.

(2.) An industrial union or industrial association, being a party to a dispute, may appear before the Council by its chairman or secretary, or by any number of persons (not exceeding three) appointed in writing by the chairman or appointed in such other manner as its rules prescribe, or (subject to the conditions hereinafter expressed) by a barrister or solicitor.

(3.) No barrister or solicitor, whether acting under a power of attorney or otherwise, shall be allowed to appear or be heard before the Council unless all the parties to the dispute expressly consent thereto, or unless he is a *bona fide* employer or worker in the industry to which the dispute relates.

33. If any or all of the applicants or respondents fail or refuse to attend or to be represented at the inquiry, the Council shall nevertheless proceed with the inquiry in the same manner so far as practicable as if all the said parties were present or represented.

Council to proceed with inquiry notwithstanding absence of applicants or respondents.

34. The Council may at any time before making its recommendation make an order joining any industrial union, industrial association, or employer as an applicant or respondent, or striking out the name of any industrial union, industrial association, or employer as an applicant or respondent.

Council may join or strike out parties as applicants or respondents.

35. If a settlement of the dispute is arrived at by the parties in the course of the inquiry, the terms of the settlement shall be set forth as an industrial agreement, which shall be duly executed by all the parties or their attorneys, but not by their representatives, and all the provisions of the principal Act and of this Act with respect to industrial agreements shall apply to any such agreement accordingly.

Terms of settlement to form industrial agreement.

settlement arrived at, Council to make recommendation as to settlement.

36. (1.) If no settlement of the dispute is arrived at by the parties in the course of the inquiry, the Council shall make such recommendation for the settlement of the dispute according to the merits and substantial justice of the case as the Council thinks fit, and shall state in its recommendation whether the failure of the parties to arrive at a settlement was due to the unreasonableness or unfairness of any of the parties to the dispute. 5

(2.) Every such recommendation shall state the period during which the proposed settlement should continue in force, being not less than six months or more than three years, and also the date from which it should commence, being not sooner than one month or later than three months after the date of the recommendation. 10

Provisional arrangement where no settlement arrived at.

37. If no settlement of the dispute is arrived at by the parties in the course of the inquiry, the Council shall, in addition to making the said recommendation, endeavour to induce the parties to agree to some temporary and provisional arrangement until the dispute can be referred to and determined by the Court of Arbitration; and if no such arrangement can be come to, the Council shall set forth in its recommendation the arrangement suggested, and shall indicate whether the failure to accept that arrangement was due to the unreasonableness or unfairness of any of the parties. 15 20

Recommendation of Council to be submitted to Clerk of Awards and published.

38. (1.) Every recommendation so made by the Council shall be in writing, signed by the Magistrate, and shall be delivered to the Clerk of Awards for the industrial district in which the dispute arose. 25

(2.) The Clerk of Awards shall forthwith publish the recommendation in such manner as is prescribed by regulations.

Parties may bind themselves by memorandum of consent to accept recommendation of Council.

39. (1.) At any time before the Council's recommendation is delivered to the Clerk of Awards, all or any of the applicants and respondents may, by memorandum of consent in the prescribed form, executed by themselves or their attorneys (but not by their representatives), and delivered to the Magistrate, agree to accept the recommendation of the Council; and in such case the recommendation, when delivered to the Clerk of Awards together with the said memorandum of consent, shall operate and be enforceable in the same manner in all respects as an industrial agreement duly executed and filed by the parties by or on whose behalf the memorandum of consent has been so executed. 30 35

Such memorandum of consent not generally binding.

(2.) Save as between those parties by or on whose behalf a memorandum of consent has been executed in accordance with this section, the recommendation of the Council shall in no case have any binding force or effect, but shall operate merely as a suggestion for the amicable settlement of the dispute by mutual agreement, and as a public announcement of the opinion of the Council as to the merits of the dispute. 40 45

Council may state case for Court of Arbitration.

40. The Council may at any time before making its recommendation state a case for the advice or opinion of the Court.

Parties not bound by memorandum of consent may refer dispute to Court.

41. At any time within one month after the delivery of the Council's recommendation to the Clerk of Awards any of the applicants or respondents (other than those by or on whose behalf any memorandum of consent has been executed as aforesaid) may, by application in the prescribed form, delivered to the said Clerk of 50

Awards, refer the dispute to the Court for settlement, and thereupon the dispute shall be deemed to be before the Court.

42. If no recommendation of the Council is delivered to the Clerk of Awards within one month after the first day appointed by the Magistrate for the hearing of the dispute under the provisions hereinbefore contained, any of the applicants or respondents may, within two months after the said day (unless the dispute has been settled by an industrial agreement or the application to the Council has been dismissed as trivial under the provisions hereinbefore contained), by application in the prescribed form, delivered to the Clerk of Awards of the industrial district in which the dispute arose, refer the dispute to the Court for settlement, and thereupon the dispute shall be deemed to be before the Court.

On failure, for one month, of Council to make recommendation, parties may refer dispute to Court.

43. (1.) When an industrial dispute has been referred to the Court in pursuance of this Act the Court shall have the same jurisdiction in the matter of that dispute as if the same had been referred to the Court in pursuance of the principal Act after a reference to a Board of Conciliation, and all the provisions of the principal Act shall so far as applicable apply accordingly.

Powers of Court with respect to dispute.

(2.) Subject to the provisions of the principal Act as to the joinder or striking-out of parties, the parties to the proceedings before the Court shall be the same as in the proceedings before the Council.

44. The Governor may from time to time by Order in Council make such regulations as he deems necessary for carrying this Part of this Act into effect.

Regulations.

#### PART IV.

##### MISCELLANEOUS.

45. Section five of the principal Act is hereby amended by omitting the word "two" where it first occurs in that section, and substituting the word "seven"; and by omitting the word "seven" where it first occurs in that section, and substituting the word "twenty-five."

Section 5 of principal Act amended.

46. Section twenty-two of the principal Act is hereby amended by omitting the words "of the one industry."

Section 22 of principal Act amended.

47. Section sixty-six of the principal Act is hereby amended by inserting, after paragraph (b), the following paragraph:—

Section 66 of principal Act amended.

"(bb.) In so appointing the members and acting members of the Court on the recommendation of the industrial unions, the Governor shall take into account the voting-power of each such union, as determined in manner following, that is to say:—

"(i.) Every union having not more than fifty members shall be deemed to have one vote:

"(ii.) Every union having more than fifty members shall be deemed to have one vote for every fifty of its members."

48. Section one hundred of the principal Act is hereby amended by omitting the words "section seven" in subsection three, and substituting therefor the words "sections seven and eight."

Section 100 of principal Act amended.

Recovery by worker of difference between wages paid and wages fixed by award.

49. When any payment of wages has been made to and accepted by a worker at a less rate than that which is fixed by any award or otherwise by law, no action shall be brought by the worker against his employer to recover the difference between the wages so actually paid and the wages legally payable, save within three months after the day on which the wages claimed in the action became due and payable. 5

Certificate of Labour Department to be proof of age of young workers.

50. Where by any award or industrial agreement the age at which young persons may be employed is limited, or the wages payable to young persons of certain ages are fixed, then, in so far as the employer is concerned, it shall be sufficient proof of the age of any young person desiring employment if he produces to the employer a certificate of age granted by an official of the Labour Department. 10

Copy of award to be conspicuously placed in factory or shop affected thereby.

51. (1.) In the case of any factory or shop to which any award relates, a printed or typewritten copy of the award shall at all times be kept affixed in some conspicuous place at or near the entrance of the factory or shop in such a position as to be easily read by the persons employed therein. 15

(2.) For any breach of the provisions of this section the occupier of the said factory or shop shall be liable to a fine not exceeding five pounds. 20

(3.) In this section the terms "factory" and "shop" have the same meanings as in the Factories Act, 1901, and the Shops and Offices Act, 1904, respectively.

Apprentices to be not more than twenty-five years.

52. No person over the age of twenty-five years shall be deemed to be an apprentice within the meaning of any award or industrial agreement, whether made before or after the commencement of this Act. 25

Issue by Inspector of Factories of permits to workers to accept less than ordinary wage.

53. (1.) Where an award, whether made before or after the commencement of this Act, provides for the issue of a permit to any worker to accept a wage below that prescribed for ordinary workers in the industry to which the award relates, all applications for such permits shall be made to an Inspector of Factories appointed under the Factories Act, 1901, and exercising his powers as such Inspector within the district in which the award is in force or in any part of that district. 30

(2.) The Inspector, in granting a permit, shall proceed in manner provided in section thirteen of the Industrial Conciliation and Arbitration Amendment Act, 1905.

(3.) A permit shall be valid only for the period for which it is granted, but may on application be renewed in the same manner in which it was granted. 35

Extension of application of industrial agreement on application by party thereto.

54. Whenever it is proved to the Court that an industrial agreement (whether made before or after the commencement of this Act) is binding on employers who employ a majority of the workers in the industry to which it relates in the industrial district in which it was made, the Court may, if it thinks fit on the application of any party to that agreement or of any person bound thereby, make an order extending the operation of that agreement to all employers who are or who at any time after the making of the said order become engaged in the said industry in the said district, and all such employers shall thereupon be deemed to be parties to the said agreement, and shall be bound thereby so long as it remains in force. 40 45 50

55. If any thing which is required or authorised to be done by the principal Act or by this Act is not done within the time limited for the doing thereof, or is done informally, the Court of Arbitration may, if it thinks fit, in its discretion, on the application of any person interested, make an order extending the time within which the thing may be done, or validating the thing so informally done.

Validation of informal proceedings, &c.

56. Every award shall prevail over any contract of service or apprenticeship in force on the coming into operation of the award, so far as there is any inconsistency between the award and the contract, and the contract shall thereafter be construed and have effect as if the same had been modified, so far as necessary, in order to conform to the award.

Awards to prevail over contracts of service in cases of conflict.

57. (1.) In any award respecting the wages of workers it shall be lawful for the Court, so far as it thinks fit, having regard to the nature of the industry concerned, to provide for the payment to any class of workers of a needs-wage, and also of an exertion-wage, as herein defined.

Court may in certain cases fix a "needs-wage" and an "exertion-wage."

(2.) A needs-wage is such wage as the Court deems a fair and reasonable remuneration for work which conforms in amount and quality to a standard fixed by the award.

Definition of terms, and standard of work.

(3.) The standard to be so fixed by the Court shall be work which is equal in amount and quality to that which in the opinion of the Court is capable of being done by a worker of average skill and energy.

(4.) An exertion-wage is such wage as the Court deems a fair and reasonable remuneration (in addition to the needs-wage) for any work which in amount or quality exceeds the standard so fixed.

(5.) The exertion-wage may be calculated either as a fixed proportion of the value to the employer of the work so done so far as it exceeds the said standard, or may be calculated in any other manner which the Court thinks fit.

(6.) Any award containing such provisions for a needs-wage and an exertion-wage may reserve power to the Court, on the application of any industrial union, industrial association, or employer bound by the award, to vary those provisions from time to time as the Court thinks fit.

(7.) The jurisdiction conferred by this section shall not be exercisable except with the antecedent consent of all parties to the reference, given either by themselves, their attorneys, or their representatives.

(8.) Nothing in this section shall be so construed as to take away or restrict any power or jurisdiction that would otherwise be possessed by the Court.

58. When an industrial dispute has been referred to the Court, the Court may, if it considers that for any reason an award ought not to be made in the matter of that dispute, refuse to make an award therein, and may, if it thinks fit, make an order directing any party to the reference to pay costs in respect thereof.

Court may in certain cases refuse to make award.

59. (1.) Notwithstanding anything in section twenty of the principal Act, the cancellation under that section of the registration of an industrial union shall not be prevented by the pendency of any conciliation or arbitration proceedings, if the application for cancellation has been made to the Registrar before the commencement of the said proceedings.

Cancellation of registration of industrial unions.



(2.) The said section and this section shall extend and apply to conciliation proceedings before a Council of Conciliation under this Act.

(3.) For the purposes of this section, conciliation proceedings before a Council of Conciliation shall be deemed to have commenced so soon as the Magistrate has appointed an assessor on the recommendation of the applicants, and shall be deemed to have ceased so soon as the recommendation of the Council has been delivered to the Clerk of Awards, or so soon as the application has been dismissed by the Council or the dispute has been settled by an industrial agreement.

(4.) For the purposes of the said section and this section arbitration proceedings shall be deemed to be pending and in progress in the interval between the delivery of the Council's recommendation to the Clerk of Awards and the expiry of the time within which the dispute may be referred to the Court in accordance with the Act.

Assessors to be added to the Court of Arbitration.

60. (1.) When the Court of Arbitration sits to hear any industrial dispute, there shall be added to the Court as constituted under the principal Act two assessors, to be appointed in accordance with this section.

(2.) The said assessors shall be persons who are or have been *bona fide* engaged or employed either as workers or employers in the industry in which the dispute has arisen, whether in the same or in another industrial district.

(3.) The said assessors shall not be parties to the dispute or members or officials of any industrial union or industrial association which is a party to the dispute.

(4.) Neither of the said assessors shall have been a member of any Council of Conciliation to which the dispute has been referred.

(5.) The said assessors shall be appointed by the Judge of the Court of Arbitration on the recommendation of the parties to the dispute.

(6.) One of the said assessors shall be recommended by the parties whose interests are with the employers in the dispute, and the other shall be recommended by the parties whose interests are with the workers in the dispute.

(7.) If default is made by any parties in the recommendation of a qualified person as assessor, the Judge of the Court shall appoint as the assessor of those parties such qualified person as he thinks fit.

(8.) If any assessor resigns or dies, or refuses or fails to act as such, or to continue to act as such, before the award of the Court is made, another qualified assessor shall be appointed in accordance with the foregoing provisions of this section.

(9.) The assessors shall, before entering upon their office, make the same oath or affirmation as is required from the other members of the Court by section seventy-three of the principal Act.

(10.) The assessors shall for all purposes be deemed to be members of the Court in respect of the hearing and determination of the dispute in respect of which they have been appointed.

(11.) So soon as any award has been made by the Court the said assessors shall go out of office, and all subsequent proceedings in respect of the award may be taken without assessors.

(12.) All the powers of the Court or of the Judge thereof as to the joinder of parties, and as to any other matter preliminary to the actual hearing of the dispute and the making of the award, may be exercised without the appointment of assessors.

5 (13.) The recommendation of assessors shall be made in such manner as is prescribed by regulations made by the Governor in Council, or in default of any such regulations, or so far as they do not extend, then in such manner as the Judge of the Court directs.

10 (14.) The assessors shall be entitled to receive out of the Consolidated Fund such fees as are prescribed by regulations.

(15.) No award, order, or other proceedings of the Court shall be questioned or invalidated on the ground of any error or defect in the appointment of assessors under this section.

15 (16.) Nothing in this section shall apply to any dispute which is referred to the Court before the commencement of this Act.

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