

CHAPTER 289

THE PUBLIC SERVICE (NEGOTIATING MACHINERY) ACT.

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CHAPTER 289

THE PUBLIC SERVICE (NEGOTIATING MACHINERY) ACT.

Commencement: 1 May, 1964.

An Act to make provision for the establishment of a Joint Staff Council for the public service, for the settlement of disputes between the Government and public officers, for other matters concerning the relationship between the Government and the public service, and for matters incidental to and connected with the matters aforesaid.

PART I—INTERPRETATION.

1. Interpretation.

In this Act, unless the context otherwise requires—

- (a) “award” means an award made by the Minister under section 12;
- (b) “board” means a board of inquiry constituted under section 18;
- (c) “council” means the Joint Staff Council established under section 2;
“dispute” means any matter relating to the terms and conditions of
- (d) service of public officers which has been considered by the council without agreement having been reached on it and which has been reported to the Minister under section 7; “Permanent
- (e) Secretary” means any person appointed by the President as Permanent Secretary under article 174 of the Constitution designated by the Minister by statutory order to be the Permanent Secretary for the purposes of this Act; “public
- (f) officer” does not include a public officer who under the Trade Unions Act is not eligible for membership in a trade union or an employees association affiliated to a trade union; “strike”
- (g) means the cessation of work by a body of employed persons acting in combination or a concerted refusal under a common understanding of any number of employed persons to continue to work for an employer, done as a means of compelling their employer or any employed person or body of employed persons or as a means of aiding other employed persons to compel their employer or any employed person or body of employed persons to accept or not to accept terms or conditions of or affecting employment;

- (h) “terms and conditions of service” does not include any matters relating to pensions;
- (i) “trade union” means any registered trade union as defined in the Trade Unions Act designated by the Minister by statutory order to be the trade union for the purposes of this Act.

PART II—JOINT STAFF COUNCIL.

2. Establishment of the Joint Staff Council.

(1) There shall be established for the purposes of this Act a Joint Staff Council which shall consist of a chairperson, a vice chairperson and such number of other members, being not less than ten and not more than twenty, as the Minister may prescribe.

(2) The members of the council shall be appointed by the Minister from persons who have been nominated by the Permanent Secretary or the trade union, as the case may be, and who are either public officers or officers of the trade union.

(3) The chairperson of the council shall be one of the persons nominated by the Permanent Secretary, and the vice chairperson shall be one of the persons nominated by the trade union.

(4) Subject to this Act, the Minister may prescribe the number of members of the council who shall be appointed from persons nominated by the Permanent Secretary and the number of members who shall be appointed from persons nominated by the trade union, and may by regulations provide for the terms of office of members of the council, the filling of vacancies on the council, the procedure to be adopted by the council at its meetings (including, but without prejudice to the generality of the foregoing, the number of members required to make up a quorum), the procedure for the reporting of disputes and for such other matters as seem to the Minister necessary, expedient or desirable in relation to the council or to the carrying out of its functions.

3. Objects of the council.

The objects of the council shall be, within the limits of its functions, to secure the greatest measure of cooperation between the Government, in its capacity as an employer, and public officers, to provide machinery for dealing with

the grievances of public officers and to enable consultation to take place in matters affecting the efficiency and well-being of the public service.

4. Functions of the council.

- (1) The functions of the council shall be—
 - (a) to negotiate on matters relating to the terms and conditions of service of public officers or any class, grade or group of public officers;
 - (b) to discuss and submit advice to the Government on any matter on which the Government seeks the advice of the council;
 - (c) to discuss and make recommendations to the Government on any matter concerning the interests, well-being and efficiency of public officers; and
 - (d) generally to assist in the furtherance of good relations between the Government and public officers.

(2) Nothing in this section shall empower the council to consider, offer advice on or make recommendations relating to any matter concerning the appointment or nonappointment, disciplinary control or removal from office of any individual public officer.

5. Meetings of the council.

- (1) The council shall meet at least twice every year.
- (2) Subject to this Act, the council may regulate its own procedure.

PART III—DISPUTE PROCEDURE.

6. Arrangements reached in the council.

(1) Where agreement is reached within the council on any matter relating to the terms and conditions of service of public officers or any class, grade or group of public officers, the agreement shall be recorded in writing and shall be signed by the chairperson and the vice chairperson of the council.

(2) Any agreement recorded and signed in accordance with subsection (1) and approved by the Minister shall be binding upon the Government and those public officers to whom the agreement relates for

twelve months from the date of signing of the agreement, and no application to vary the agreement or matter which involves the variation of the agreement shall, except with the prior written permission of the Minister, be placed upon the agenda of or discussed within the council until the expiration of twelve months.

(3) Every agreement recorded and signed in accordance with subsection (1) shall be reported to the Minister who may, if he or she considers it desirable, cause the agreement to be published in such manner as he or she may think fit.

7. Report to Minister where no agreement in the council.

Where the council is unable to reach agreement on any matter relating to the terms and conditions of service of public officers or any class, grade or group of public officers, either the chairperson or the vice chairperson of the council may, in accordance with any procedure laid down by regulations made under section 2(3), report the matter on which no agreement has been reached to the Minister, and on the report being made a dispute shall exist as to the matter.

8. Powers of Minister.

Where a report is made to him or her under section 7, the Minister may either—

- (a) if he or she is of opinion that further efforts should be made to settle the dispute by negotiation within the council, refer the dispute back to the council; or
- (b) refer the dispute to a board.

9. Reference back to the council.

Where, under section 8(a), the Minister refers a dispute back to the council, the council shall again consider the matters in dispute and endeavour to reach agreement on them, and section 6 shall apply to any agreement reached in the council after such reference back.

10. Reference to the board.

Where, under section 8(b), the Minister refers a dispute to a board, the board shall consider the causes and circumstances of the dispute and shall report on

them to the Minister.

11. Time for reference and report.

(1) Reference under section 8 of a dispute back to the council or to a board shall be made by the Minister within twenty-one days from the date on which the report was made to him or her under section 7 unless, in the opinion of the Minister, the special circumstances of the case make it necessary or desirable to postpone the reference for such further period or periods as the Minister may in writing allow.

(2) A board to which a dispute is referred under section 8 shall submit its report to the Minister without delay and, where practicable, within twenty-one days from the date of reference.

12. Powers of Minister when report submitted.

(1) Where the report of a board as to the causes and circumstances of a dispute is submitted to the Minister, the Minister may, after considering the report, make an award on the dispute.

(2) Any award made by the Minister under this section may be expressed to have retrospective effect and shall be made within twenty-one days from the date on which the report of the board was submitted to the Minister unless, in the opinion of the Minister, the special circumstances of the case make it necessary or desirable to postpone the making of the award for such further period or periods as the Minister may in writing allow.

13. Publication of award.

(1) Every award made by the Minister under section 12 shall be published in the Gazette and shall not take effect until the date of that publication.

(2) Where an award is expressed to have retrospective effect, it shall on the date of its publication in the Gazette have effect from the date specified in the award.

14. Awards to be laid before Parliament.

Every award made by the Minister under section 12 shall, together with the

report of the board which relates to the dispute on which the award was made, be laid before Parliament.

15. Awards to be binding.

Every award made by the Minister under section 12 shall be binding upon the Government and those public officers to whom the award relates for twelve months from the date of its publication in the Gazette, and no application to vary the award or matter which involves the variation of the award shall, except with the prior written permission of the Minister, be placed upon the agenda of or discussed within the council until the expiration of the twelve months.

PART IV—STRIKES.

16. Conditions to be fulfilled before strike takes place.

(1) No public officer shall take part in a strike unless the conditions specified in subsection (2), insofar as they are applicable to the occasion, have been fulfilled.

(2) The conditions to be fulfilled for the purposes of subsection (1) are as follows—

- (a) a report has been made to the Minister under section 7;
- (b) twenty-one days or, if a further period or periods have been allowed by the Minister under section 11(1), twenty-one days and such further period or periods, have elapsed since the date of the report to the Minister; and
- (c) either— (i) during the period referred to in paragraph (b) the dispute has not been settled, referred back to the council or referred to a board; or (ii) if the dispute has been referred to a board, the report of the board has been received by the Minister, twenty-one days or, if a further period or periods have been allowed by the Minister under section 12(2), twenty-one days and such further period or periods, have elapsed since the receipt of the report by the Minister and no award has been made by the Minister under section 12.

(3) Any public officer who contravenes subsection (1) shall, for the

purpose of the regulations for the time being in force providing for the discipline of the public service, be deemed to be guilty of misconduct justifying his or her summary dismissal.

(4) The provisions of this section are additional to and not in derogation of the provisions of section 17.

17. Prohibition of strikes in essential services.

(1) No public officer shall take part in a strike which causes or is likely or calculated to cause a cessation of work in any of the essential services specified in the Schedule to this Act.

(2) Any public officer who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding one thousand shillings or to imprisonment for a period not exceeding three months or to both such fine and imprisonment.

(3) The Minister may amend the Schedule to this Act by statutory order.

(4) Any order made under subsection (3) shall be laid before Parliament as soon as may be after it has been made and may be annulled by a resolution of Parliament passed within ninety days after the date of its being so laid, without prejudice to the validity of anything previously done under it or to the making of any further order or orders.

PART V—CONSTITUTION AND PROCEDURE OF BOARDS.

18. Constitution of a board.

(1) A board of inquiry shall consist either of a single member appointed by the Minister or of a chairperson and one or more other members all of whom shall be appointed by the Minister.

(2) A board, other than a board consisting of a single member, may act notwithstanding any vacancy in its membership but where such vacancy occurs the Minister may appoint another person to fill the vacancy.

19. Procedure of a board.

Except as is otherwise provided by or under this Act, a board may regulate its own procedure.

20. Evidence.

(1) A board, for the purpose of making its report on any dispute referred to it under this Act, shall be entitled to elicit all such information as in the circumstances may be considered necessary without being bound by the rules of evidence in civil or criminal proceedings and may require any person—

- (a) to furnish, in writing or otherwise, such particulars in relation to any matter as may be required;
- (b) to attend before the board and give evidence on oath or otherwise; and
- (c) to produce any documents.

(2) Notwithstanding subsection (1), if any witness refuses to furnish any particulars or to answer any question or produce any document on any ground which is lawful under the Evidence Act or any other written law in relation to civil or criminal proceedings, he or she shall not be required to furnish the particulars or to answer the question or to produce the document nor shall he or she be liable to any penalty for refusing to do so.

(3) Any person who fails to comply with a requisition made under subsection (1), otherwise than in a case to which subsection (2) applies, commits an offence and is liable on conviction to a fine not exceeding five hundred shillings.

21. Appearance by advocate.

Except with the permission of the board, no advocate shall appear for any person in any proceedings before a board.

22. Proceedings to be private.

The proceedings of a board shall not be open to the public.

PART VI—MISCELLANEOUS.

23. Arbitration and Conciliation Act not to apply.

The Arbitration and Conciliation Act shall not apply to any proceedings, agreement or award under this Act.

24. Expenses.

Members of a board shall be paid out of monies provided by Parliament such remuneration, expenses and allowances as the Minister may from time to time determine.

25. Regulations and directions.

- (1) The Minister may make regulations—
 - (a) prescribing anything that is to be or may be prescribed under this Act;
 - (b) establishing the procedure to be followed in any proceedings before a board under this Act; and
 - (c) providing for any other administrative or procedural matter for which it is in his or her opinion necessary or desirable to provide in order to facilitate the operation of this Act.

(2) Without prejudice to subsection (1)(b), the Minister may give directions, not inconsistent with any regulations made under that subsection, relating to the scope, method and conduct of any specific proceedings before a board.

Schedule.

s. 17.

Essential services.

1. Water services
2. Electricity services
3. Health, sanitary and hospital services
4. Transport services necessary or ancillary to any of the services mentioned in items 1, 2 and 3 of this Schedule
5. Fire services
6. Supply and distribution of fuel petrol and oil services
7. Public transport services
8. Teaching services

History: Cap. 278; Act 24/1968; Statute 10/1993, ss. 8, 9, 10.

Cross References

Arbitration and Conciliation Act, Cap. 4.
Constitution of 1995. Evidence Act, Cap. 6.
Trade Unions Act. Cap. 223.