

THE INDUSTRIAL RELATIONS ACT
(Chapter 321)
THE INDUSTRIAL RELATIONS (TRIBUNAL PROCEDURE)
RULES 2010

In exercise of the powers conferred by section 66 of the Industrial Relations Act ("the Act"), the Industrial Tribunal ("the Tribunal") hereby replaces The Industrial Relations (Tribunal Procedure) Rules 1997 as follows:

Citation. 1. These Rules may be cited as the Industrial Relations (Tribunal Procedure) Rules, 2010.

**Interpret-
ation.** 2. (1) In these Rules -

"Applicant" means a person by whom, or on behalf of whom, a trade dispute within an essential service or a non-essential service has been reported under section 68 of the Act;

"Judge" means the President or the Vice-President of the Tribunal presiding at a Hearing;

"Full Tribunal" has the meaning assigned to that expression by section 56 of the Act;

"Hearing" means a sitting of the Tribunal duly constituted for the purpose of

receiving evidence, hearing addresses and witnesses or doing anything lawfully requisite to enable the Tribunal to reach a Decision on any question;

"party" means the Applicant or the Respondent;

"President" means the member appointed under section 54(3)(a) of the Act as President of the Tribunal;

"Register" means the Register kept by the Secretary pursuant to Rule 11(3);

"Respondent" means a person against whom relief is sought by or on behalf of an Applicant;

"Secretary" means the person appointed, under paragraph 19 of the Fourth Schedule to the Act, as the Secretary of the Tribunal;

"sexual offence" means any offence under section 6 to 14 or section 16 of the Sexual Offences and Domestic Violence Act, 1991;

"Tribunal" means the Industrial Tribunal and includes a Full Tribunal;

"Vice-President" means a member appointed under section 54(3)(b) of the Act as Vice-President of the Industrial Tribunal.

Mode of Addressing Members of the Tribunal. (2) The members of the Tribunal shall be addressed orally as, "Your Honour" and in correspondence shall be addressed as, "His Honour" or "Her Honour" followed by their names as appropriate.

Originating Application. 3.(1) Where the Minister has referred a dispute to the Tribunal pursuant to sections 72 or 73 of the Act, the Applicant shall within fourteen days of receiving notice of the referral present to the Secretary an Originating Application in **Form A** in the Schedule, which shall be signed by the Applicant.

(2) The Originating Application shall contain -

- (a) the name and address of the Applicant;
- (b) the name and address of the Respondent;
- (c) the relief sought; and
- (d) the grounds, with particulars

thereof, upon which the relief is sought.

(3) Where the judge having carriage of a trade dispute is of the opinion that any of the matters specified under paragraph (2) are not sufficiently particularised in the Originating Application, he may give Notice in **Form B** in the Schedule to that effect to the Applicant stating the reasons for his opinion and requiring the Applicant within fourteen days of receipt of the Notice, to furnish in writing to the Secretary sufficient particulars in support of the Originating Application.

(4) If the requirement under paragraph (3) is not complied with, the Tribunal may strike out the whole or part of the Originating Application.

(5) If a party to the proceedings is represented by counsel or other representative pursuant to section 57(3) of the Act a Brief or skeleton arguments may be submitted by the said counsel or representative to the Secretary of

the Tribunal and a copy thereof served on the other parties to the proceedings no later than seven days prior to the commencement of the Hearing.

(6) If an unrepresented party wishes to submit representations in writing for consideration by the Tribunal at the Hearing of the Originating Application he shall present his representations to the Secretary no later than seven days before the commencement of the Hearing and shall at the same time serve a copy thereof on the other parties to the proceedings.

**Action upon receipt
of Originating
Application.**

4. Upon receiving an Originating Application, the Secretary shall send to the Respondent -

- (a) a copy of the Application;
- (b) a copy of any additional particulars required to be furnished by the Applicant; and
- (c) a Notice in **Form C** in the Schedule which includes information, as appropriate to the case, about the means

and time for entering an Appearance and Defence, the consequences of failure to do so, and the right to receive a copy of the Decision.

Appearance by Respondent.

5. (1) A Respondent shall within seven days of receiving the copy of the Originating Application enter an Appearance to the proceedings by presenting to the Secretary a written Notice of Appearance in **Form D** in the Schedule -

(a) setting out his full name and address; and

(b) stating whether or not he intends to resist the Application.

(2) Upon receipt of a Notice of Appearance the Secretary shall send a copy of it to the Applicant.

(3) A Respondent who has not entered an Appearance shall not be entitled to take part in the proceedings except -

- (a) to apply under Rule 14 for an extension of the time appointed by this Rule for entering an Appearance;
- (b) to make an application under Rule 7(1)(a); or
- (c) to be called as a witness.

Defence.

6. A Respondent who intends to resist the Application shall within fourteen days of entering an Appearance to the proceeding, present to the Secretary in writing a Defence in **Form E** in the Schedule setting out sufficient particulars to show on what grounds he intends to resist the Application.

Power to require further particulars, etc.

7. (1) The Tribunal may, on the application of a party made by Notice in **Form F** in the Schedule to the Secretary or at the Hearing of the Originating Application, or of its own motion -

- (a) require a party to furnish in writing to the person specified by the Tribunal, further particulars of the grounds upon which that party relies and of any facts and

contentions relevant thereto,
or

- (b) require one party to grant to another such discovery or inspection (including the taking of copies) of documents as might be granted by the Supreme Court,

and may appoint the time at or within which and the place at which any act required in pursuance of this Rule is to be done.

(2) The Tribunal may, on the application of a party made either by notice in **Form G** in the Schedule to the Secretary or at the Hearing of the Originating Application, or of its own motion

- (a) require the attendance of any person including a party, as a witness; and
- (b) if it does so require the attendance of a person, require him to produce any document relating to the matter to be determined,

and may appoint the time and place at which the person is to attend and, where appropriate, the time at or within which and the place at which any such document is to be produced.

(3) The Tribunal may on the application of a party made by notice in **Form H** in the Schedule to the Secretary or of its own motion, require a party in writing to furnish to the Tribunal a written answer to any question if it considers -

- (a) that the answer of the party to that question may help to clarify any issue likely to arise for determination in the proceedings; and
- (b) that it would be likely to assist the progress of the proceedings for that answer to be available to the Tribunal before the Hearing,

and may appoint the time within which the written answer is to be furnished.

(4) Upon the imposition of a requirement under paragraph (3), the Secretary shall send a copy of the requirement and a copy of the answer to each other party.

(5) The Tribunal shall take account of a written answer furnished pursuant to paragraph (3) in the same way as it takes

account of representations in writing presented by a party pursuant to Rule 3(5) and (6).

(6) Where a requirement has been imposed under paragraph (1), (2) or (3) -

- (a) on a party in his absence; or
- (b) on a person other than a party,

that party or person may make an application to the Tribunal to vary or set aside the requirement by Notice in **Form I** in the Schedule to the Secretary given before the time at which or, as the case may be, the expiration of the time within which the requirement is to be complied with; and the Secretary shall give notice of the application to each party or, where applicable, to each party other than the party making the application.

(7) If a requirement under paragraph (1) or (3) is not complied with, the Tribunal, before or at the Hearing, may strike out the whole or part of the Originating Application, or, as the case may be, of the Notice of Appearance, and where appropriate, direct that a Respondent shall be debarred from defending altogether.

**Time and place
of Hearing.**

8. (1) The judge shall instruct the Secretary to fix the date, time and place of the Hearing of the Originating Application and the Secretary shall send to each party a Notice of Hearing in **Form J** in the Schedule together with information and guidance as to attendance at the Hearing, witnesses and the bringing of documents, representation by another person and the making of written representations.

(2) The Secretary shall send the Notice of Hearing to every party not less than fourteen days before the date fixed for the Hearing except where the Secretary has agreed a shorter time with the parties.

**Entitlement to
bring or contest
the proceedings.**

9. (1) The Tribunal may at any time before the Hearing of an Originating Application, on the application of a party made by Notice to the Secretary or of its own motion, determine any issue relating to the entitlement of any party to bring or contest the proceedings

to which the Originating Application relates.

(2) The Tribunal shall not determine such an issue unless the Secretary has sent notice to each of the parties giving them an opportunity to submit representations in writing and to advance oral argument before the Tribunal.

The Hearing.

10. (1) Any Hearing of an Originating Application shall be heard by the Tribunal composed pursuant to sections 54 or 56 of the Act.

(2) Any Hearing of or in connection with an Originating Application shall take place in public except where the Minister has directed the Tribunal to sit in private on grounds of national security.

(3) Notwithstanding paragraph (2), the Tribunal may sit in private for the purpose of -

(a) hearing evidence which in the opinion of the Tribunal relates to matters of such a

nature that it would be against the interest of national security to allow evidence to be given in public; or

- (b) hearing evidence from any person which in the opinion of the Tribunal is likely to consist of -
 - (i) information which he could not disclose without contravening a prohibition imposed by or under any written law; or
 - (ii) any information which has been communicated to him in confidence, or which he has otherwise obtained in consequence of the confidence reposed in him by another person.

**Decision of
the Tribunal**

11. (1) The Decision of the Tribunal, which may be given orally at the end of a Hearing or reserved, shall be recorded in a document signed by the judge.

(2) The Tribunal shall give reasons for its Decision in a document signed by the judge and where the Tribunal makes an award of compensation, the document shall also contain a statement of the amount of compensation awarded, followed either by a table showing how the amount or sum has been calculated or by a description of the manner in which it has been calculated.

(3) The Secretary shall keep a Register at the office of the Tribunal and the Register shall be open to the inspection of any person without charge at all reasonable hours.

(4) The Secretary shall enter the documents referred to in paragraphs (1) and (2) in the Register and shall send a copy of the entry to each of the parties and to the Minister.

(5) The document referred to in paragraph (2) shall be

omitted from the Register in any case in which -

- (a) the Minister has directed the Tribunal to sit in private on grounds of national security; or
- (b) evidence has been heard in private and the Tribunal so directs.

(6) Clerical mistakes in the documents referred to in paragraphs (1) and (2), or errors contained in those documents from an accidental slip or omission, may at any time be corrected by the judge by certificate under his hand.

(7) If a document is corrected by certificate under paragraph (6), the Secretary shall alter any entry in the Register which is affected to conform with the certificate and send a copy of any entry so altered to each of the parties and to the Minister.

(8) Where a document omitted from the Register pursuant to

paragraph (5) is corrected by certificate under paragraph (6), the Secretary shall send a copy of the corrected document to each of the parties and to the Minister.

(9) Where this Rule requires a document to be signed by the judge having carriage of the matter but by reason of death or incapacity he or she is unable to sign it, the document shall be signed by another judge of the Tribunal who shall certify that the judge having carriage of the matter is unable to sign.

Miscellaneous powers.

12. (1) The Tribunal may -

(a) if the Applicant at any time gives Notice of the withdrawal of his Originating Application in **Form K** in the Schedule, deem the proceedings to have been dismissed.

(b) if both or all of the parties agree in writing upon the terms of a Decision to be made by the Tribunal, decide accordingly;

- (c) consider representations in writing which have been submitted by or on behalf of a party to the Secretary pursuant to Rule 3(5) and 3(6) but less than seven days before the Hearing;
- (d) at any stage of the proceedings, order to be struck out or amended any Notice of Appearance or Defence on the grounds that it is scandalous, frivolous or vexatious;
- (e) at any stage of the proceedings, order to be struck out any Originating Application, Notice of Appearance or Defence, on the grounds that the manner in which the proceedings have been conducted by or on behalf of the Applicant or, as the case may be, the Respondent has been scandalous, frivolous or vexatious; and
- (f) on the application of the Respondent, or of its own motion, order an Originating Application to be struck out for want of prosecution.

(2) The Tribunal may, before determining an Application under Rule 7 or Rule 16, require the party making the Application to give notice of it to every other party; and such notice shall give particulars of the Application and indicate the address to which and the time within which any objection to the Application shall be made, being an address and time specified for the purposes of the Application by the Tribunal.

(3) The judge may postpone the day or time fixed for, or adjourn any Hearing and vary such postponement or adjournment.

(4) Any function of the Secretary may be performed by a person acting with the authority of the Secretary.

**Restricted
reporting
orders.**

13. (1) In any case which involves allegations of sexual misconduct the Tribunal may at any time before the promulgation of its Decision in respect of an

Originating Application, either on the application of a party made by notice to the Secretary or of its own motion, make a restricted reporting order.

(2) Where the Tribunal makes a restricted reporting order -

- (a) it shall specify in the order the persons who may not be identified;
- (b) the order shall remain in force until the promulgation of the Decision of the Tribunal on the Originating Application to which it relates unless revoked earlier; and
- (c) the Secretary shall ensure that a notice of that fact is displayed on the door to the Court in which the relevant proceedings are taking place.

(3) For the purposes of this Rule "promulgation" occurs on the date recorded as being the date on which the document recording the determination of the Originating Application was

sent to the parties.

**Extension of
time.**

14. (1) The judge may on the application of a party or of his own motion extend the time for doing any act appointed by or under these Rules (including this Rule) and may do so whether or not the time so appointed has expired.

(2) An application under paragraph (1) shall be made by presenting to the Secretary a Notice of Application in **Form L** in the Schedule which shall state the title of the proceedings and shall set out the grounds of the Application.

(3) The Secretary shall give Notice to each of the parties of any extension of time granted under this Rule.

Directions.

15. (1) The Tribunal may at any time on the application of a party or of its own motion, give directions on any matter arising in connection with the proceedings.

(2) An application under paragraph (1) shall be made by presenting to the Secretary a Notice of Application , which shall state the title of the proceedings and set out the grounds of the Application.

**Joinder and
representative
Respondents.**

16. (1) The Tribunal may at any time on the application of any person made by Notice to the Secretary in **Form M** in the Schedule or of its own motion, direct any person against whom any relief is sought to be joined as a party, and give such consequential directions as it considers necessary.

(2) The Tribunal may likewise, on such application or of its own motion, order that any Respondent named in the Originating Application or subsequently added, who appears to the Tribunal not to have been, or to have ceased to be directly interested in the subject of the Originating Application, be dismissed from the proceedings.

(3) Where a number of persons have the same interest in an Originating Application, one or more of them may be cited as the person or persons against whom relief is sought, or may be authorised by the Tribunal before or at the Hearing, to defend on behalf of all the persons so interested.

**Combined
proceedings.**

17. (1) Where, in relation to two or more Originating Applications pending before the Tribunal, it appears to the Tribunal on the application of a party made by Notice to the Secretary in **Form N** in the Schedule or of its own motion, that -

- (a) a common question of law or fact arises in some or all of the Originating Applications;
- (b) the relief claimed in some or all of those Originating Applications is in respect of or arises out of the same set of facts; or
- (c) for any other reason it is desirable to make an order under this Rule,

the Tribunal may order that some (as specified in the order) or all of the Originating Applications shall be considered together, and may give such consequential directions as may be necessary.

(2) The Tribunal shall only make an order under this Rule if -

(a) each of the parties concerned has been given an opportunity at a Hearing to show cause why such an order should not be made; or

(b) it has sent notice to all of the parties concerned giving them an opportunity to show such cause.

(3) The Tribunal may, on the application of a party made by Notice to the Secretary in **Form O** in the Schedule or of its own motion, vary or set aside an order made under this Rule but shall not do so unless it has given each party an opportunity to make either oral or written representations before the order is varied or set aside.

Notices, etc.

18. (1) Any notice given under these Rules shall be in writing.

(2) All notices and documents required by these Rules to be presented to the Secretary may be presented at the Office of the Tribunal or such other office as may be notified by the Secretary to the parties.

(3) All notices and documents required or authorised by these Rules to be sent or given to any person hereinafter mentioned may be sent by post (subject to paragraph (5)) or delivered to or at -

(a) in the case of a notice or document directed to a party

(i) the address specified in his Originating Application or Notice of Appearance to which notices and documents are to be sent, or in a notice under paragraph (4), or

(ii) if no such address has been specified, or if a notice sent to such an a

address has been returned, to any other known address or place of business in The Bahamas or, if the party is a corporate body, the body's registered or principal office in The Bahamas, or, in any other case, such address or place outside of The Bahamas as the judge may allow; or

(b) in the case of a notice or document directed to any person (other than a party to the proceedings), his address or place of business in The Bahamas or, if the person is a corporate body, the body's registered or principal office in The Bahamas;

and a notice or document sent or given to the authorised representative of a party shall be deemed to have been sent or given to that party.

(4) A party may at any time by Notice to the Secretary in **Form P** in the Schedule and to the other party or parties change the address to which

notices and documents are to be sent to him.

(5) The registered postal service shall be used instead of the ordinary post -

(a) when a second set of notices or documents is sent to a Respondent who has not entered an Appearance under Rule 5(1); and

(b) for service of an order under Rule 7(2).

(6) The judge may direct that there shall be substituted service in such manner as he may deem fit in any case he considers appropriate.

SCHEDULE

The forms contained in this Schedule may be adapted as the circumstances of each case may require.