

**TRADE DISPUTES
LAWS OF BRUNEI,
CHAPTER 129,
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CHAPTER 129

TRADE DISPUTES

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TRADE DISPUTES ACT

An Act to regulate trade disputes

6 of 1961

Commencement: 21st January 1962 S.26/62

PART I

PRELIMINARY

1. This Act may be cited as the Trade Disputes Act. Short title

2. In this Act —

Interpreta-
tion

“intimidate” means to cause in the mind of a person a reasonable apprehension of injury to him or to any member of his family or to any of his dependants or of violence or damage to any person or property, and the expression “injury” includes injury to a person in respect of his business, occupation, employment or other source of income, and includes any actionable wrong;

“lock-out” means the closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him in consequence of a dispute, done with a view to compelling those persons, or to aid another employer in compelling persons employed by him, to accept terms or conditions of or affecting employment;

“registered” means registered under the Trade Unions Act;

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“strike” means the cessation of work by a body of persons employed, acting in combination, or a

concerted refusal or a refusal under a common understanding of any number of persons employed to continue work for an employer in consequence of a dispute, done as a means of compelling their employer or any person or body of persons employed, or to aid other workers in compelling their employer or any person or body of persons employed, to accept or not to accept terms or conditions of or affecting employment;

“trade dispute” means any dispute between employers and workers, or between workers and workers connected with the employment or non-employment, or the terms of the employment or with the conditions of any person;

“trade union” means any combination whether temporary or permanent the principal purposes of which are under its constitution the regulation of the relations between worker and employers, or between workers and workers or between employers and employers, whether such combination would or would not if this Act had not been enacted have been deemed to have been an unlawful combination by reason of some one or more of its purposes being in restraint of trade;

“tribunal” means a tribunal appointed and constituted in accordance with the provisions of section 19;

“worker” means any person who has entered into or works under a contract with an employer in any capacity, whether the contract is express or implied, oral or in writing and whether it is a contract of service or of apprenticeship or a contract personally to execute any work or labour and includes any person ordinarily employed under any such contract whether such person is or is not in employment at any particular time.

PART II

TRADE DISPUTES

3. (1) An action against a registered trade union, whether of workers or employers, or against any members or officials thereof on behalf of themselves and all other members of the trade union in respect of any tortious act alleged to have been committed by or on behalf of the trade union in contemplation or in furtherance of a trade dispute shall not be entertained by any court.

Immunity of
trade unions
from actions
of tort

(2) Nothing in this section shall affect the liability of a registered trade union or any official thereof to be sued in any court touching or concerning the property or rights of a registered trade union, except in respect of any tortious act committed by or on behalf of the union in contemplation or in furtherance of a trade dispute.

4. (1) An agreement or combination of two or more persons to do or procure to be done any act in contemplation or furtherance of a trade dispute shall not be triable as a conspiracy if such act committed by one person would not be punishable as a crime.

Conspiracy in
relation to
trade dis-
putes.

(2) An act done in pursuance of an agreement or combination by two or more persons shall, if done in contemplation or furtherance of a trade dispute, not be actionable unless the act, if done without any such agreement or combination, would be actionable.

(3) Nothing in this section shall affect the law relating to riot, unlawful assembly, breach of the peace or sedition or any offence against the Government, or His Majesty the Sultan and Yang Di-Pertuan.

(4) A crime for the purposes of this section means an offence for the commission of which the offender is liable to

be imprisoned either absolutely or at the discretion of the court as an alternative for some other punishment.

(5) Where a person is convicted of any such agreement or combination as aforesaid to do or procure to be done an act which is punishable by a Court of a Magistrate and is sentenced to imprisonment, the imprisonment shall not exceed 3 months, or such longer time, if any, as may have been prescribed by the law for the punishment of the said act when committed by one person.

Removal of
liability for
interfering
with another
person's busi-
ness

5. An act done by a person in contemplation or furtherance of a trade dispute shall not be actionable on the ground only that it induces some other person to break a contract of employment or that it is an interference with the trade, business or employment of some other person, or with the rights of some other person to dispose of his capital or his labour as he wills.

Intimidation
or annoyance

6. (1) Every person who, with a view to compelling or inducing any other person to abstain from doing or to do any act which such other person has a legal right to do or abstain from doing, wrongfully and without legal authority —

(a) uses violence to or intimidates such other person or his wife or children, or injures his property;

(b) persistently follows such other person about from place to place;

(c) hides any tools, clothes or other property owned or used by such other person, or deprives him of or hinders him in the use thereof;

(d) watches or besets the house or other place where such other person resides or works or car-

ries on business or happens to be or the approach to such house or place; or

(e) follows such other person with two or more other persons in a disorderly manner in or through any street or road,

shall be guilty of an offence: Penalty, imprisonment for 3 months or with a fine of \$3,000.

(2) Attending at or near any house or place in such numbers or in such manner as is by subsection (2) of section 14 declared to be unlawful shall be deemed to be watching or besetting of that house or place within the meaning of subsection (1).

7. (1) Every person employed in an essential service who wilfully breaks, or terminates, his contract of service, knowing or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others, will be to deprive the public, wholly or to a great extent, of that service, shall be guilty of an offence: Penalty, imprisonment for 3 months and a fine of \$6,000.

Breach of
contract in
essential ser-
vices

Provided that where any collective withdrawal of labour from an essential service is contemplated, whether in pursuance of a trade dispute or otherwise, and notice in writing of their intended participation in such withdrawal is given either individually by persons employed in that service or on their behalf by a registered trade union or registered trade unions of which such persons are members, any such person shall not be liable under this subsection unless he breaks or terminates his contract of service before the expiration of the period of 28 days next following delivery of that notice.

(2) His Majesty in Council may make regulations prescribing the form and manner in which the notice referred to in the preceding subsection shall be rendered.

(3) Every person who incites or instigates or in any way encourages, persuades or influences a person employed in an essential service to break or terminate his contract of service, knowing or having reasonable cause to believe that the probable consequences of that employed person so doing, either alone or in combination with others, would be to deprive the public, wholly or to a great extent, of the service, shall be guilty of an offence: Penalty, imprisonment for 3 months and with a fine of \$6,000.

(4) Every employer in an essential service shall cause to be posted up on all premises used for the purposes of that service, a printed copy of this section in some conspicuous place where the same may conveniently be read by persons employed therein, and as often as such copy becomes defaced, obliterated, destroyed or removed, shall cause it to be replaced with all reasonable despatch.

(5) Every employer, other than the Government, who fails to comply with the provisions of the immediately preceding subsection shall be guilty of an offence: Penalty, a fine of \$500 for every day during which he fails to comply.

(6) Every person who unlawfully injures, defaces, obliterates, destroys or removes any printed copy of this section posted up as required by subsection (3) hereof shall be guilty of an offence punishable with a fine of \$3,000.

(7) For the purposes of this section —

(a) the following public services shall each be an essential service, namely, electricity, fire, gas, health, hospital, sanitary, water, together with any other service to which His Majesty in Council has declared that this Act applies;

(b) save as is otherwise provided in this Act, "employer" includes the Government and the

term "person employed" or "employed person" includes a person employed by the Government.

8. (1) Any person who wilfully breaks or terminates a contract of service or hiring, knowing or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others, will be to endanger human life or cause serious bodily injury, or to expose valuable property, whether real or personal, to destruction or serious injury, shall be guilty of an offence: Penalty, imprisonment for 3 months and with a fine of \$3,000.

Breach of contract endangering life or property

(2) Every person who incites or instigates, or in any way encourages, persuades or influences another to break or terminate a contract of service or hiring, knowing or having reasonable cause to believe that the probable consequences of that other person so doing would be to endanger human life or cause serious bodily injury, or to expose valuable property, whether real or personal, to destruction or serious injury, shall be guilty of an offence: Penalty, imprisonment for 3 months and with a fine of \$3,000.

9. A strike or lock-out shall be deemed to be illegal if it is commenced, declared or continued in contravention of any provision of sections 7 or 8 of this Act, or of any provision of any other written law:

Illegal strikes and lock-outs

Provided that a lock-out declared in consequence of an illegal strike or a strike declared in consequence of an illegal lock-out shall not be deemed to be illegal.

10. (1) Any workman who commences, continues or otherwise acts in furtherance of a strike which is illegal under this Act shall be guilty of an offence: Penalty, a fine of \$600 and imprisonment for one month.

Penalty for illegal strikes and lock-outs

(2) Any employer who commences, continues or otherwise acts in furtherance of a lock-out which is illegal under this Act shall be guilty of an offence: Penalty, a fine of \$6,000 and imprisonment for one month.

Penalty for giving financial aid to illegal strikes and lock-outs

11. Any person who knowingly expends or applies any money in direct furtherance or support of an illegal strike or lock-out shall be guilty of an offence: Penalty, a fine of \$6,000 and imprisonment for one month.

Prosecutions

12. (1) No prosecution for an offence under sections 7, 8, 10 or 11 shall be commenced without the written consent of the Attorney General.

(2) No person shall be prosecuted for an offence under sections 7, 8, 10 or 11 where the Government, being the employer, has failed to comply with the duties required of an employer under subsection (3) of section 7 of this Act.

Protection of persons refusing to take part in illegal strikes or lock-outs

13. (1) No person refusing to take part or to continue to take part in any strike or lock-out which is by this Act or by any other written law declared to be illegal, shall be, by reason of such refusal or by reason of any action taken by him under this section, subject to expulsion from any trade union or society, or to any fine or penalty, or to deprivation of any right or benefit to which he or his legal personal representatives would otherwise be entitled, or liable to be placed in any respect either directly or indirectly under any disability or at any disadvantage as compared with other members of the union or society, anything to the contrary in the rules of a trade union or society notwithstanding.

(2) Nothing in any written law limiting the proceedings which may be entertained by any court, and nothing in the rules of a trade union or society requiring the settlement of disputes in any manner shall apply to any proceeding for enforcing any right or exemption secured by this section,

and in any such proceeding the court may, in lieu of ordering a person who has been expelled from membership of a trade union or society to be restored to membership, order that he be paid out of the funds of the trade union or society such sum by way of compensation or damages as the court thinks just.

14. (1) Notwithstanding anything contained in this Act it shall be lawful for one or more persons acting on their own behalf or on behalf of a registered trade union or of an individual employer or firm in contemplation or furtherance of a trade dispute to attend at or near a house or place where a person resides or works or carries on business or happens to be, if they so attend merely for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any person to work or abstain from working.

Peaceful
picketing and
prevention of
intimidation

(2) It shall not be lawful for one or more persons, whether acting on their behalf or on behalf of a trade union or of an individual employer or firm and notwithstanding that they may be acting in contemplation or furtherance of a trade dispute, to attend at or near a house or place where a person resides or works or carries on business or happens to be, for the purpose of obtaining or communicating information or of persuading or including any person to work or to abstain from working, if they so attend in such numbers or otherwise in such manner as to be calculated to intimidate any person in that house or place, or to obstruct the approach thereto or egress therefrom, or to lead to a breach of the peace.

(3) Any person who acts in contravention of this section shall be guilty of an offence: Penalty, imprisonment for 3 months and with a fine of \$3,000.

PART III

ARBITRATION AND INQUIRIES

Application **15.** (1) This Part shall not apply to any member of the Armed Forces, the Police Force or the Prison Service.

(2) Subject to the provisions of subsection (1), this Part shall apply to workers employed by or under the Government in the same manner as if they were employed by or under a private person.

Use of existing machinery for settlement of disputes

16. If there are existing in any trade or industry arrangements for settlement by conciliation or arbitration of disputes in such trade or industry, or any branch thereof, made in pursuance of an agreement between organisations of employers and organisations of workers representative respectively of substantial proportions of the employers or workers engaged in that trade or industry —

(a) the Minister shall not, unless and until there has been a failure to obtain settlement by means of these arrangements, refer the matter for settlement in accordance with the provisions of section 19; and

(b) the Commissioner of Labour shall not, unless and until there has been a failure to obtain settlement by means of these arrangements, exercise his powers under paragraph (c) of subsection (1) of section 17.

Conciliation and inquiry

17. (1) Where a trade dispute exists or is apprehended the Commissioner of Labour, with the object of promoting settlement by conciliation, shall —

(a) enquire into the causes and circumstances of the dispute;

(b) take such steps as to him may seem expedient for the purpose of enabling the parties to the dispute to meet together by themselves, or their representatives, with a view to the amicable settlement of the dispute; and

(c) subject to the provisions of section 16, to appoint a person to act as conciliator, such person being, if possible, a person mutually agreed upon by both the employers and the workers interested.

(2) When a conciliator has been appointed under the provisions of subsection (1) such person shall enquire into the causes and circumstances of such trade dispute and by negotiation with the parties endeavour to bring about a settlement and shall report his progress to the Commissioner of Labour, and, where a settlement is reached, shall forward to the Commissioner of Labour a memorandum of the terms thereof signed by the representatives of the parties.

(3) Where the Commissioner of Labour exercises any of his powers under this section he shall report the matter to the Minister.

18. Any trade dispute whether existing or apprehended may be reported to the Minister by or on behalf of either of the parties to the dispute, and the Minister shall thereupon take the matter into his consideration and take such steps as seem to him expedient for promoting a settlement thereof.

Disputes may be reported to the Minister for consideration and settlement

19. (1) Subject to the provisions of section 16 the Minister may, where a trade dispute exists or is apprehended, refer the matter with the consent of both parties to an arbitration tribunal.

Arbitration. Reference of disputes to arbitration tribunal and constitution of tribunal

(2) The tribunal shall be constituted of either —

(a) a sole arbitrator appointed by His Majesty;

(b) an arbitrator appointed by His Majesty, assisted by one or more assessors nominated by or on behalf of the employers concerned and an equal number of assessors nominated by or on behalf of the workmen concerned, all of whom shall be appointed by His Majesty; but the award shall be made and issued by the arbitrator only; or

(c) one or more arbitrators nominated by or on behalf of the employers concerned and an equal number of arbitrators nominated by or on behalf of the workmen concerned, and an independent chairman, all of whom shall be appointed by His Majesty:

Provided that where all members of the tribunal are unable to agree as to their award, the matter shall be decided by the chairman as sole arbitrator.

Vacancies on
the tribunal

20. (1) Whenever the tribunal consists of an arbitrator, assisted by assessors and any vacancy occurs in the numbers of assessors, the tribunal may in the discretion of the arbitrator either act notwithstanding such vacancy or consent to another assessor being nominated and appointed to fill such vacancy. Any such new assessor shall be nominated by the party whose original nominee had vacated his office as an assessor.

(2) No act, proceeding or determination of the tribunal shall be called in question or invalidated by reason of any such vacancy.

Publication
of award

21. (1) Any award of a tribunal shall be submitted to the Minister who shall as soon as possible thereafter cause the same to be published in such manner as he thinks fit.

(2) Whenever the public or the press shall have been excluded from any sitting of a tribunal there shall not be included in any award, report or any other publication what-