



No. 3 of 2011

I assent,

(SIR COLVILLE N. YOUNG)

Governor-General

13th April, 2011.

AN ACT to amend the Labour Act, Chapter 297 of the Substantive Laws of Belize, Revised Edition 2000-2003; to provide for continuity of employment; to protect workers against unfair dismissal; to establish procedures for termination of contract in a fair and equitable manner; to establish a Labour Complaints Tribunal to hear and determine complaints from workers; to provide for greater benefits to workers, including better provisions in respect of severance pay; and to provide for matters connected therewith or incidental thereto.

(Gazetted 16th April, 2011.)

BE IT ENACTED, by and with the advice and consent of the House of Representatives and Senate of Belize and by the authority of the same, as follows:

1. This Act may be cited as the

Short title.

LABOUR (AMENDMENT) ACT, 2011,

CAP. 297.
42 of 2005.

and shall be read and construed as one with the *Labour Act*, which as amended, is hereinafter referred to as the principal Act.

Amendment
of section 2.

2. Section 2 of the principal Act is amended as follows:

(a) by inserting the following definitions in their proper alphabetical order

“collective agreement” means a written agreement between an employer, or an employers’ organization authorized by the employer, and a trade union concerning terms and conditions of employment and any other matter of mutual interest;

“commission agent” means an agent or employee who is remunerated by commission;

CAP. 91
Act 8/2001

“common law union” as used in this Act shall have the meaning assigned to it in section 148D of the *Supreme Court of Judicature Act*;

“continuous employment” means an employee’s period of uninterrupted employment with the same employer or the successor employer under section 184;

“contract of employment” or **“contract of service”** means any agreement between an employer and a worker, whether expressed or implied, oral or written, for a definite or indefinite period by which the worker works under the authority and directions of the employer even if not under his direct supervision, in return for remuneration fixed according to the hours of work or at piece or task rate, and includes a contract of apprenticeship or probation;

“contract worker” means a person who performs work for another person pursuant to a contract of employment;

“**dependent**” means wholly or substantially dependent on the employee;

“**disabled person**” means an individual whose prospects of securing, retaining, and advancing in suitable employment are substantially reduced as a result of a duly recognized physical or mental impairment;

“**employment**” includes part time employment and employment under a contract of employment;

“**employment agency**” means any person who, whether for payment or not, assists persons to find employment or assists employers to find employees;

“**family responsibilities**” in relation to an employee, means responsibilities of the employee to care for or support

- (a) a dependent child of the worker; or
- (b) any other immediate family member who is in need of care and support;

“**gross misconduct**” means misconduct that is such that the employer cannot reasonably be expected to take any course other than to terminate the employment of the worker;

“**immediate family member**” includes spouse of the worker or child, parent, or grandparent;

“**indefinite period**” means employment under a contract of employment where the period of service is not specified;

“**lockout**” means an employer’s

- (a) closing of an enterprise or place of business,
- (b) suspension of work,
- (c) refusal to continue to employ any number of workers,

with a view toward inducing or compelling workers directly or indirectly, through their bargaining agent, to accept conditions of employment which have been offered to the workers, and which have been rejected by them and includes the employer's action to induce or compel acceptance by the workers, or their bargaining agent, or another employer, of conditions of employment so offered and rejected;

“marital status” means the status or condition of being

- (a) single,
- (b) married,
- (c) married but living separately and apart from one's spouse,
- (d) divorced,
- (e) widowed,
- (f) the *common law union* spouse of another person;

“principal” means

- (a) in relation to a commission agent, a person for whom work is done by that commission agent;
- (b) in relation to a contract worker, a person for whom a contract worker performs work otherwise than under a contract of employment;

“probationary period” means the period not exceeding six months that may be designated as such by an employer pursuant to sections 29A;

“**redundancy**” means the loss of employment as defined in section 45;

“**redundancy benefit**” means the amount of money that an employee whose employment has been terminated on account of redundancy is entitled to receive from his employer pursuant to section 183;

“**strike**” means a partial or total withdrawal of services from an employer by two or more workers, in concert or pursuant to a common understanding, or at the request or upon the order of their bargaining agent, either

- (a) as a protest against a condition of work or employer action related thereto, or
- (b) as a device to induce or compel the employer, or his bargaining agent, to accept conditions of employment which they have requested and which request has been refused, and includes an action designed to induce or compel the acceptance by another employer, or his bargaining agent, of conditions of employment which his workers have requested and which request has been refused;

“**summary dismissal**” means termination of the contract of employment by the employer without notice or other termination benefits payable under section 183;

“**Tribunal**” means the Labour Complaints Tribunal established under section 200.

- (b) by repealing the definition of “worker” and substituting the following:

““**worker**” or “**employee**” means a person who has entered into or works under a contract with an employer under a contract of employment.”

Amendment
of section 4.

3. The principal Act is amended in section 4 thereof by renumbering that section as subsection (1) and adding the following as new subsections (2) and (3):

“ (2) The Labour Commissioner shall receive and investigate complaints from employees concerning employer’s action of unfair dismissal or wrongful termination with a view to settlement and conciliation.

(3) Subject to subsection (2),

(a) the Labour Commissioner may submit to the Tribunal, any matter under section 201, which the Tribunal has jurisdiction to hear;

(b) a worker may request the Labour Commissioner to submit his complaint to the Tribunal where the worker is not satisfied with the decision of the Labour Commissioner and the Labour Commissioner shall comply with the worker’s request if the matter falls within the jurisdiction of the Tribunal.”

Repeal and
replacement
of section 26.

4. The principal Act is amended by repealing section 26 and replacing it with the following:

“Continuous
employment.

26. Where one period of employment under a contract of employment for an indefinite period is followed by another period of similar employment with the same employer commencing within the next ensuing six

months from the last day of employment, the two periods shall be deemed to be one continuous period.”

5. The principal Act is amended by the addition of the following as new section 29A immediately after section 29:

Addition of
new section
29A.

“Probationary
period.

29A. (1) Notwithstanding any agreement to the contrary, the first two weeks of any employment under a contract of employment shall be deemed to be probationary employment and may be terminated at will by either party without notice.

(2) Notwithstanding any agreement to the contrary, where agreement is reached between the employer and the worker for a probationary period which exceed two weeks, the worker is entitled to any benefits which he may accrue during that probationary period if the employment is terminated by either party.”

6. The principal Act is amended by the repeal of Part VI titled “Oral Contract of Service” containing sections 36 to 48.

Repeal of
Part VI.

7. The principal Act is amended by the addition of the following new sections 36 to 48 immediately after section 35:

Addition of
new sections
36 to 48.

“Circumstances
in which
contract may
be
terminated.

36. (1) A contract shall be terminated
- (a) by the expiry of the period for which it was made; or
 - (b) by the death of the employer or worker; or

(2) If the worker is unable to fulfil a contract or if owing to sickness or accident the worker is unable to fulfil the contract, the contract may be terminated with the consent of the Commissioner subject to conditions safeguarding the right of the worker to wages earned, any deferred pay due to him, any compensation due to him in respect of accident or disease, and his right to repatriation.

(3) A contract may be terminated by agreement between the parties with the consent of the Commissioner subject to conditions safeguarding the worker from the loss of his right to repatriation unless the agreement for the termination of the contract otherwise provides and to the Commissioner being satisfied

(a) that the worker has freely consented to the termination and that his consent has not been obtained by coercion or undue influence or as the result of misrepresentation or mistake; and

(b) that all monetary liabilities between the parties have been settled.

Notice period
for voluntary
termination
of contract.

37. (1) The notice of the termination of a contract of employment for an indefinite period may be terminated either by the employer or by the worker, without assigning reason therefor, by giving to the other the notice for the period specified in subsection (2).

(2) Where the worker has been in the employment of the same employer continuously, the period of notice shall be as follows:

Period of Employment	Notice Period Required
For more than 2 weeks but not more than 6 months	One week
For more than 6 months but not more than 2 years	Two weeks
For more than 2 years but not more than 5 years	Four weeks
More than 5 years	Eight weeks

(3) The periods of notice under subsection (2) shall not apply where

- (a) periods of notice are regulated by a collective agreement,
- (b) the employer is entitled to summarily dismiss a worker under section 43,
- (c) an employer and a worker agree on a longer period of notice,

- (d) the employer or a worker, as the case may be, waives the right to receive notice.

(4) A notice of termination under subsection (1) shall not be given by an employer during an employee's period of absence on any lawful leave granted.

Beginning of period of notice and consequence of failure to give notice.

38. (1) A period of notice shall commence on the first day of the pay period next following that during which the notice was served:

Provided that the period of notice shall in no case run concurrently with any period of holiday to which the worker may be entitled.

(2) Instead of providing notice of termination in accordance with section 37 the employer may pay the worker a sum equal to the wages and other remuneration and confer on the worker all other benefits that would have been due to the worker up to the expiry of any required period of notice.

(3) Where a worker under a contract of employment for an indefinite period fails to give notice in accordance with section 37, he shall be liable to pay to the employer a sum equal to half the wages that would be payable in respect of the period of notice.

(4) Where the employer fails to give the said notice, he shall be liable to pay to such worker a sum equal to the wages that would be payable in respect of the required period of notice as defined in section 37.

Breach of employment where period of employment is defined.

39. (1) An employer who dismisses or wrongfully terminates an employee before the expiration of the time definitely specified by a contract of employment shall pay to the worker a sum equal to the wages that would have accrued to the worker in respect of the remainder of the time specifically agreed upon.

(2) A worker who abandons the service of his employer before the time definitely specified by a contract of service shall pay to his employer a sum equal to one-half of the full wages to which he would have become entitled if he had continued in employment for the remainder of the time specifically agreed upon.

Calculation of average earnings.

40. In the case of workers under a contract of service paid by the unit of work, or by a share in the profits, or by a commission on the sales or payments made or received by the employer, the amount payable in terms of sections 38 and 39 shall be calculated on the average earnings of the worker during the three months immediately preceding the day on which notice is given or the abandonment or termination of employment takes place.

Termination of contract for good and sufficient cause.

41. (1) Notwithstanding the foregoing provisions of this Part, an employer may dismiss the worker or the worker may abandon service of the employer, without giving notice and without any liability to make payment as provided in sections 37 to 40 or section 183 if there is good and sufficient cause for such dismissal or abandonment of service:

Provided that an employer may not set up as a good and sufficient cause that the worker at the time of the dismissal was a member of a trade union.

(2) For the purpose of subsection (1) good and sufficient cause for dismissal without giving notice shall include dismissal

- (a) when an employee is guilty of misconduct, whether in the course of his duties or not, inconsistent with the fulfilment of the express or implied conditions of his contract of employment;
- (b) for wilful disobedience to lawful orders given by the employer;
- (c) for lack of skill which the worker expressly or by implication warrants himself to possess;
- (d) for habitual or substantial neglect of his duties;
- (e) for absence from work without permission of the employer or without other reasonable excuse.

Unfair
dismissal.

42. (1) Notwithstanding anything to the contrary contained in any other law or agreement, the following reasons do not constitute good and sufficient cause for

dismissal or for the imposition of disciplinary action against a worker:

- (a) union membership or participation in union activities outside working hours or, with the consent of the employer, within working hours;
- (b) seeking office as, or acting or having acted in the capacity of, a worker's representative;
- (c) the filing of a complaint, petition or the participation in proceedings against an employer involving alleged violation of any law, or recourse to competent administrative authorities;
- (d) worker's race, colour, sex, marital status, ethnic origin, family responsibilities, religion, nationality, indigenous population or social origin;
- (e) political opinion of a worker where that opinion does not interfere with work performance;
- (f) worker's physical structure, disability or age; subject to any law or collective bargaining agreement regarding retirement;

- (g) a female worker's pregnancy or a reason connected with her pregnancy, or absence from work during maternity leave;
- (h) that was subjected to sexual harassment at the work place or by the employer or another worker of the same employer;
- (i) HIV status;
- (j) temporary absence from work because of illness or injury not caused by the worker's own negligence and certified by a registered medical practitioner;
- (k) compulsory military leave;
- (l) participation in industrial action;
- (m) any other reason which the Minister may by Order published in the Gazette, determine.

(2) For the purpose of this section, the term unfair dismissal includes any distinction, execution or preferences made on the basis of nullifying or impairing equality of opportunity or treatment in employment or occupation.

(3) A reference in subsection (1)(h) to the term "sexual harassment" is a reference

CAP. 107.

to sexual harassment as constituted in the *Protection Against Sexual Harassment Act*.

(4) A reference in subsection (1)(j) to the term "**temporary absence from work**" is a reference to a medically certified period of absence not extending beyond a twelve month period but which does not apply to workers:

- (a) engaged under a contract of employment for a specified period of time or for a specified task,
- (b) serving a period of probation or qualifying period of employment determined in advance and of reasonable duration,
- (c) engaged in employment of a casual nature.

Constructive
dismissal.

42A.(1) An employee is entitled to terminate the contract of employment without notice or with less notice than that to which the employer is entitled by any statutory provision or contractual term, where the employer's conduct has made it unreasonable to expect the worker to continue the employment relationship.

(2) Where the contract of employment is terminated by the employee pursuant to subsection (1), the employee shall be deemed to have been unfairly dismissed by the employer for the purposes of this Act.

**Summary
dismissal.**

43. (1) An employer is entitled to dismiss summarily without notice or without payment of any severance or redundancy allowance or terminal benefit, any worker who commits an act of gross misconduct.

(2) The gross misconduct referred to in subsection (1) is restricted to that conduct which is directly related to the employment relationship and has a detrimental effect on the business and is based on the operational requirements of the enterprise of such a nature that it would be unreasonable to require the employer to continue the employment relationship.

**Termination
for
misconduct,
etc.**

44. (1) The employer may give a written warning to a worker where that worker

- (a) breaches a condition of employment,
- (b) behaves in a manner which constitutes a misconduct, or
- (c) behaves in a manner which constitutes gross misconduct.

(2) If the worker after being warned pursuant to subsection (1) commits the same or similar misconduct, the employer may terminate the worker's contract of employment without notice.

(3) Where the employer acted pursuant to subsections (1) and (2), the employer shall be deemed to have waived any right to terminate

the employment of a worker for misconduct if the employer failed to terminate the employment after having knowledge of the misconduct or at the end of any investigation of the said misconduct.

(4) The employment of a worker shall not be terminated for unsatisfactory performance unless the employer has given the worker instructions as to how the worker should perform his duties and a written warning to adhere to the employer's instructions and the worker continues to perform any duty unsatisfactorily.

Termination
due to
redundancy
and
Minister's
Order on
closure or
sale of
business.

45. (1) The employer may terminate the employment of the worker by giving the required notice according to section 37, if the worker becomes redundant under the provisions of subsection (2).

(2) The worker becomes redundant under subsection (1) where, in relation to his employer's business where he is employed, his termination of employment is or part of a reduction in the work force that is a direct result of

- (a) the modernization, automation, or mechanization by the employer of all or part of the business,
- (b) the discontinuance by the employer to carry on all or part of the business,
- (c) the sale of or the disposition of all or part of the business,

- (d) subject to section 44(4), the reorganization of the business by the employer to improve efficiency,
- (e) the impossibility or impracticability for the employer to carry on the business at its usual rate or level or at all due to
 - (i) a shortage of materials,
 - (ii) a mechanical breakdown,
 - (iii) an act of God,
- (f) a reduced operation in the employer's business made necessary by economic conditions, including a lack of or change in markets, contraction in the volume of work or sales, reduced demand or surplus inventory,
- (g) any other circumstances which the Minister may by Order published in the *Gazette*, determine.

(3) Prior to terminating the employment of any worker pursuant to this section, the employer shall

- (a) inform as early as possible but not later than one month from

the date of the existence of any circumstances mentioned in subsection (2), the recognized trade union, or if none exists, the workers' representative, and in any case with the Labour Commissioner of

- (i) the existence of any of the circumstances mentioned in subsection (2),
- (ii) the reasons for the contemplated termination of employment,
- (iii) the names, numbers and categories of the persons likely to be affected,
- (iv) the period over which such terminations are likely to be carried out,
- (v) a list of existing or expected claims of the workers employed by the employer arising from or in context with the employment (such as compensation, benefits or other payments due), and

(vi) any other matter as may be relevant.

(b) consult as early as possible but not later than one month from the date of the existence of any of the circumstances mention in subsection (2), with the recognized trade union or if none exists, the workers' representative and in any case with the Labour Commissioner, on

(i) the possible measures that could be taken to avert or minimize the adverse effects of such situations on employment,

(ii) the planned settlement of the workers claims, and

(iii) the possible measures that could be taken to mitigate the adverse effects of any terminations on the workers concerned.

(4) The Minister may by written order, prior to a change of name, or sale, or transfer, or closure of an enterprise request the employer to provide financial security in the amounts he sees fit to satisfy the existing claims from workers and the employer shall

comply with such order within one month from the date of receipt of the Minister's order.

(5) The financial security made by order under subsection (3) shall be made with the Commissioner in an account set up for that purpose.

(6) Where an employer fails to comply with an order under subsection (3), the Commissioner shall recover the amount due in a civil suit.

(7) Notwithstanding subsection (4), a new employer planning to take over an employment relationship from the current employer may agree with the current employer and the worker to take over part or all of the claims of the worker concerning the previous employment relationship.

**Disciplinary
action.**

46. (1) An employer may take disciplinary action other than dismissal where it is reasonable to do so.

(2) For the purposes of this section, disciplinary action other than dismissal, includes in order of least severity:

- (a) a written warning; **or**
- (b) stoppage of annual bonus (in businesses which operate a bonus scheme); **or**
- (c) suspension with half pay for a period not exceeding 30 days;
or

- (d) demotion to a lower rank (in industries where there is a grading scheme).

(3) In deciding what is reasonable under the circumstances pursuant to subsection (1), the employer shall have regard to the following:

- (a) nature of the violation;
- (b) terms of the employment contract;
- (c) worker's duties;
- (d) penalty imposed by the employer;
- (e) pattern and practice of the employer in similar situations;
- (f) procedure followed by the employer;
- (g) nature of any damage incurred; and
- (h) previous conduct and the circumstances of the worker.

(4) A complaint that disciplinary action is unreasonable may be made in writing to the Labour Commissioner who shall review the complaint and submit to the Tribunal within 5 working days a matter which falls within the jurisdiction of the Tribunal under section 201 for determination of the complaint.

Termination
of contract
during period
of worker's
incapacity.

CAP. 303
CAP. 44

47. A contract of employment shall not, except with the consent of the worker, be terminated by the employer during any period of incapacity for work of the worker caused by personal injury by accident arising out of and in the course of employment or by any of the occupational diseases in respect of which compensation is payable under the *Workmen's Compensation Act* or injury benefit is payable under the *Social Security Act*, in each case occurring in the service of that employer.

Certificate of
employment.

48. (1) Where a contract of service for a period lasting over one month is terminated, the employer shall at the worker's request, give to the worker a certificate stating the duration of the employment, the nature of the work or services performed and, the rate of wages paid under the contract.

(2) A certificate under subsection (1) shall be in such form as the Commissioner may prescribe by notice published in the *Gazette*.

(3) Any employer who fails to comply with this section commits an offence and is liable on summary conviction to a fine of not less than five hundred dollars yet not more than one thousand dollars or to imprisonment for a term not exceeding two months."

8. The principal Act is amended by the repeal of section 57.

Repeal of
section 57.

9. The principal Act is amended in section 117 by repealing subsections (3) and (4) and replacing the same by the following:

Amendment
of section
117.

“(3) All work done on public holidays other than Christmas Day, Good Friday and Easter Monday, which fall on a scheduled work day, that is to say, a day on which the worker would have worked but for the public holiday, shall be paid for at one and one-half times his ordinary rate of pay.

(4) All work done on Christmas Day, Good Friday and Easter Monday, which fall on a scheduled work day, that is to say, a day on which the worker would have worked but for the public holiday, shall be paid for at double his ordinary rate of pay.”

Insertion of
new section.

10. The principal Act is amended by inserting after section 149 the following new section:

“Duty of
employer to
provide
drinking
water and
sanitary
facilities.

149A (1) Every employer shall provide clean drinking water and appropriate sanitary facilities to his workers at every work site.

(2) The employer shall maintain the sanitary facilities provided pursuant to subsection (1) in good working condition and shall ensure that the premises are kept clean and hygienic.

(3) An employer who without reasonable cause (the burden whereof shall be on him) fails to comply with subsections (1) and (2) above may be fined up to \$1,000.00 by the Labour Commissioner, provided that if the default continues for more than two months after the initial fine, a further fine not exceeding \$50.00 per day may be imposed by the Labour Commissioner.

(4) All fines imposed under subsection (3) may be recovered as a civil debt owing to the Government from the employer.”

11. Section 183 of the principal Act is repealed and the following is substituted:

Repeal and
replacement
of section
183.

“Severance
pay to be
paid.

183. (1) Where an employee who has been continuously employed by any employer for a period of

- (a) five to ten years and
 - (i) his employment is terminated by the employer, or
 - (ii) the worker retires on or after attaining the age of sixty years or on medical grounds,

that worker shall be paid a severance pay of one week's wages in respect of each complete year of service; or

- (b) over ten years and his employment is
 - (i) terminated by the employer for reasons, which do not amount to dismissal, or
 - (ii) abandoned by the worker pursuant to section 41, or
 - (iii) contracted for a definite period and the employment is termi-

nated on the expiration of such period and the contract either makes no provision for or makes less favourable provisions for severance pay, or

- (iv) ended because the worker retires on or after attaining the age of sixty years or on medical grounds,

that worker shall be paid a severance pay of two weeks' wages in respect of each complete year of service.

(2) An employee with a minimum of ten years' continuous service who resigns his employment shall be eligible for a gratuity equal to severance pay computed in accordance with this section.

(3) Notwithstanding subsection (1) (b) above, where an employee has completed over ten years of continuous employment, the severance pay shall be computed as follows:

- (i) for the period served before the commencement of this Act

- at the rate of one week's pay for each complete year of service;

(ii) for the period served
after the commencement
of this Act

- at the rate of two
weeks' pay for each
complete year of
service."

12. Section 184 of the principal Act is amended by renumbering that section as subsection (1) and inserting the following new subsections

Amendment
of section
184.

"(2) Where one period of employment is less than six months but is followed by another period of employment commencing within the next following six months from the last date of employment, the two periods, shall for the purpose of determining terminal benefits, be deemed to be one continuous period.

(3) The employment of a person with an employer is deemed continuous whether or not the person remains in the same post within that job.

(4) An employee's continuous employment shall not be treated as interrupted if the employee is absent from work due to

- (a) annual leave, maternity leave, sick leave or any other leave in accordance with the provision of any law, contract or agreement,
- (b) that worker's suspension, with or without pay, in accordance with

any law or any contract or agreement,

- (c) that worker's termination of employment prior to being reinstated or re-engaged in, his previous employment in accordance with this Act, or any other law or under any contract or agreement,
- (d) having been temporarily laid-off by the employer for a period not exceeding six months,
- (e) a lockout, or
- (f) non-fulfillment of the contract of employment or agreement of the employer.

(5) Any period of time elapsing in the circumstances referred to in subsection (4) shall count for the purpose of calculating the continuous period of employment.

(6) Any period of time elapsing between the end of a probationary period and the commencement of employment with the same employer shall count for the purpose of calculating the continuous period of employment.

(7) Any period during which an employee is absent from work because of his participation in a lawful strike shall not interrupt the continuity of employment.

(8) Periods of short term contracts granted in succession with less than thirty-day intervals shall count for the purpose of calculating the continuous period of employment.

(9) Acceptance of severance pay by an employee shall terminate the continuous period of employment.”

13. The principal Act is amended by the addition of new Part XX immediately after Part XIX as follows:

Insertion of
new Part XX.

“PART XX

LABOUR COMPLAINTS TRIBUNAL

Establishment
of Tribunal.

200. (1) A Labour Complaints Tribunal shall be established for the purpose of providing a fair and impartial appeal process arising from complaints of unfair dismissal or wrongful termination.

First
Schedule.

(2) The organization and constitution of the Labour Complaints Tribunal shall be as set out in the *First Schedule*.

Powers and
functions of
the Tribunal.

201. (1) The functions of the Tribunal shall be to:

- (a) receive employee complaints in accordance with section 4 and hear appeals from employees regarding that complaint,
- (b) to perform such other functions and to hear such other appeals as are specified in this Act or as may be prescribed by Regulations made under this Act.

(2) An employee who is aggrieved by a decision of an employer falling under subsection (1) may appeal to the Tribunal through the Commissioner in the manner prescribed by the Tribunal pursuant to subsection (3).

(3) The Tribunal may establish procedures for the performance of its functions generally and for receiving complaints and hearing appeals pursuant to subsection (1).

**Independence
of the
Tribunal.**

202. In the exercise of its functions under this Act, the Tribunal shall not be subject to the direction or control of any other person or authority.

**Complaints
of unfair
dismissal.**

203. (1) Within twenty-one days of the date of dismissal or wrongful termination, an employee shall have the right to file a complaint to the Tribunal, through the Commissioner whether notice has been given or not.

(2) The right of an employee to make a complaint under this section is without prejudice to any right the employee may enjoy under a collective agreement.

(3) Subsection (1) does not apply to a contract of employment, which is terminated pursuant to section 37(1) unless, in the case of a worker, the worker is able to give evidence to the satisfaction of the Tribunal that a reason under section 42 may be the cause of termination of the contract of employment.

Standard of Proof. 204. In any claim or complaint arising out of the dismissal or termination of a worker, the standard of proof required of the worker shall be on a balance of probabilities (civil standard).

Remedies. 205. (1) If the worker's complaint of unfair dismissal or wrongful termination is proved, the Tribunal shall award the worker one or more of the following remedies

- (a) an order for reinstatement whereby the worker is to be treated in all respects as if that worker had never been dismissed or terminated;
- (b) an order for re-engagement whereby the worker is to be engaged in work comparable to that in which that worker was engaged prior to dismissal or termination, or other reasonable suitable work, from such date and on such terms of employment as may be specified in the order or agreed by the parties;
- (c) an award of compensation as specified in subsection (4); or
- (d) such other remedies as the Tribunal may order.

(2) In deciding which remedy to award, the Tribunal shall first consider the possibility of making an award of

reinstatement or re-engagement, taking into account in particular the wishes of the worker and employer and the circumstances in which the dismissal took place, including the extent, if any, to which the worker caused or contributed to the dismissal.

(3) Where the Tribunal finds that the worker engaged in misconduct notwithstanding the unlawful nature of the dismissal or termination, it may include disciplinary penalty as a term of the order for reinstatement or re-engagement.

(4) An award of compensation shall be such amount as the Tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the worker in consequence of the dismissal in so far as that loss is attributable to action taken by the employer, and the extent, if any, to which the worker caused or contributed to the dismissal.”

Commencement.

14. This Act shall come into force on a day to be appointed by the Minister by Order published in the *Gazette*.

FIRST SCHEDULE

[Section 200]

Constitution of Tribunal**Composition of Tribunal**

1. (1) The Tribunal shall consist of the following five persons:
 - (a) an Attorney-at-law nominated by the Chief Justice;
 - (b) one representative of the workers nominated by the National Trade Union Congress of Belize;
 - (c) one representative of the employers nominated by the Belize Chamber of Commerce and Industry;
 - (d) one representative nominated by the Minister;
 - (e) the Commissioner of Labour, *ex officio* without the right to vote.
- (2) The members shall be appointed by the Minister by instrument in writing for such period not exceeding [three] years as the Minister may specify in the instrument of appointment and each member shall be eligible for reappointment.

Chairman

2. The Minister shall appoint one of the members of the Tribunal to be chairman of the Tribunal.

Acting appointments

3. If the chairman or any other member of the Tribunal is absent or unable to act, the Minister may appoint any person to act in the place of the chairman or other member and in the case of paragraph 1(1) (a), (b) and (c), on the recommendation of the nominating entities.

Resignations

4. (1) A member other than the chairman may at any time resign his office by instrument in writing addressed to the Minister and transmitted through the chairman, and upon fourteen days from the date of the confirmation of receipt by the Minister of that instrument, that member shall cease to be a member of the Tribunal.

(2) The chairman may at any time resign his office by instrument in writing addressed to the Minister, and such resignation shall take effect as thirty days from the date on which the Minister confirms receipt of that instrument.

Revocation

5. The Minister may revoke the appointment of any member if such member
 - (a) becomes permanently unable to perform his functions by reason of a physical or mental infirmity;
 - (b) is convicted and sentenced to a term of imprisonment;
 - (c) fails without reasonable excuse to carry out any of his functions under this Act;
 - (d) engages in such activities as are reasonably considered prejudicial to the Tribunal's interest.

Gazetting of appointments

6. The names of all members of the Tribunal as first constituted and every change of membership shall be published in the *Gazette*.

Leave of absence

7. The Minister may, on the application of a member, grant leave of absence to the member.

Procedure and meetings

8. (1) The Tribunal shall meet as often as may be necessary or expedient for the transaction of its business and such meetings shall be held at such places and times and on such days as the Tribunal may determine.
- (2) The chairman may at any time call a special meeting of the Tribunal, and shall call a special meeting to be held within seven days of a written request for that purpose addressed to him by any two members.
- (3) The chairman shall preside at all meetings of the Tribunal and if the chairman is absent from a meeting, the members present and constituting a quorum shall elect one of their number to preside at that meeting.
- (4) The quorum of the Tribunal shall be three.
- (5) The Tribunal's decisions shall be by a majority of votes, and in addition to an original vote, the chairman or other person presiding at a meeting shall have a casting vote in any case in which the voting is equal.
- (6) Minutes of each meeting shall be kept in proper form and shall be confirmed as soon as practicable thereafter at a subsequent meeting.
- (7) Subject to the provisions of this Schedule the Tribunal may regulate its own proceedings.

Disclosure of interest

9. A member who is directly or indirectly interested in any matter which is being dealt with by the Tribunal shall disclose the nature of his interest at a meeting of the Tribunal and shall not take part in any deliberation or decision of the Tribunal with respect to that matter.

Protection of Tribunal

10. No act done or proceeding taken under this Act shall be questioned on the ground of

- (a) the existence of any vacancy in the membership of; or any defect in the constitution of the Tribunal; or
- (b) any omission, defect or irregularity not affecting the merits of the case.

Protection of members

11. (1) No action, suit or other proceedings shall be brought or instituted personally against any member in respect of any act done *bona fide* the course of carrying out the provisions of this Act.
(2) Where any member is exempt from liability by reason only of the provisions of this paragraph, the Tribunal shall be liable to the extent that it would if that member were a servant or agent of the Tribunal.

Remuneration of members

12. The chairman and other members of the Tribunal shall be paid a fixed remuneration, whether by way of honorarium, salary or fees, and such allowances as the Minister may determine.
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