

BECHUANALAND PROTECTORATE

No. 39 of 1934.

(Promulgated 21st September, 1934.)

PROCLAMATION

By His Excellency The High Commissioner

Entitled the Native Labourers Compensation (Bechuanaland Protectorate) Proclamation, 1934.

Whereas it is expedient to make provision for the payment of compensation to native labourers employed in the Bechuanaland Protectorate (hereinafter called "the Territory") who suffer an injury or death in the course of their employment:

Now therefore under and by virtue of the powers in me vested I do hereby declare, proclaim and make known as follows:—

1. In this Proclamation unless inconsistent with the context—

"dependants" shall in the case of the deceased native labourer, being a native of the Territory, mean such person or persons as the Resident Commissioner, after consultation with the Chief of the tribe to which the said native labourer belongs, may decide to be his next-of-kin;

"employer" shall mean any person or body of persons, corporate or unincorporate, hiring or contracting, before or after the taking effect of this Proclamation with any native labourer (as in this section defined) for the performance of any work (as in this section defined);

"mine" shall mean any working made for the purpose of prospecting for or winning minerals;

"native labourer" shall mean any aboriginal native belonging to any native tribe, or any half caste or person of mixed race living as a member of any native community, tribe, kraal, or location, who is engaged by an employer to perform work as defined herein under agreement of service or apprenticeship or otherwise whether such agreement be expressed or implied, oral or in writing, and whether payment be made by time or calculated on work done;

"work" shall mean employment of any kind whatsoever but does not include domestic service nor employment in agriculture unless such employment be in connection with any engine driven or machine worked by mechanical power.

2. (1) There shall be payable by the employer of any native labourer employed by him compensation in respect of any personal injury caused by accident arising out of or in course of his work whereby such native labourer has become totally or partially incapacitated or has met his death.

(2) Whenever such accident occurs the said employer shall pay compensation upon the following scale:—

(a) In the event of permanent partial incapacitation (which shall mean inability, owing to the injury, to resume work similar to that at which he was employed at the time of the injury, or for which he was fitted by trade or calling), a sum being not less than one pound and not more than fifteen pounds.

(b) In the event of permanent total incapacitation for work, a sum being not less than ten pounds and not more than fifty pounds.

(c) In the event of death, a sum of thirty pounds;

Provided that no compensation shall be payable under this Proclamation in respect of an injury to a native labourer which was due to his own serious and wilful misconduct, which shall include drunkenness, wilful contravention of any law or statutory regulation made for the purpose of ensuring the safety of or preventing accidents to workmen, or any other act or omission which a Court of Law, having regard to all the circumstances of an accident causing injury, may declare to be serious and wilful misconduct.

(d) In the event of temporary disablement a native labourer shall receive as compensation periodical payment at the rate of sixty per cent. of his monthly earnings for a period not exceeding six months; provided that he shall not be entitled to any such payment if the period of disablement lasts for less than one week, and provided further that where such labourer receives from his employer food, quarters and medical aid, he shall not be entitled to any such payments during the first six weeks of such disablement, and in respect of any period thereafter he shall be entitled only to compensation not exceeding twenty-five per cent. of his earnings.

3. If any employer dispute that compensation is payable to a native labourer, or fail to pay any amount due under section two, or if any native labourer is dissatisfied with the amount offered by the employer in satisfaction of his claim for compensation, the matter shall be determined by the Resident Magistrate of the District sitting in his judicial capacity and having all the powers conferred on Magistrates by the Proclamation of the 10th June, 1891, or any amendment thereof.

4. In the case of death the compensation shall be paid to the Resident Magistrate of the District, who shall thereupon take steps to ascertain whether there are dependants of the deceased or not. If there are no dependants the compensation shall be returned to the employer. If there are dependants the compensation shall, in the case of the deceased being a native of the Territory, be paid by such Resident Magistrate to any such dependants; or, if the deceased was a native of any other State or Territory, then the compensation shall be paid by the Resident Magistrate to the Administration of such State or Territory, to be paid to any such dependant; provided that the form in which payment shall be made in each case shall be in the discretion of the said Resident Magistrate or Administration.

5. No sum payable to any dependant shall be liable to attachment for any debt due by the deceased native labourer, nor shall the amount of any compensation recovered or recoverable on behalf of the dependant form part of the deceased labourer's estate for the purpose of any law for the time being relating to the administration of or the duty on the estates of deceased persons.

6. (a) Where it shall appear from a certificate granted by a Government Medical Officer that a native is suffering from a disease mentioned in the Schedule to this Proclamation causing disablement or that the death of a native was caused by any such disease, and that such disease was due to the nature of the native's employment as set out in the Schedule at any time within the twelve months previous to the date of such disablement or death, the native, or if he be deceased, his dependants, shall be entitled to claim compensation under

this Proclamation as if such disablement or death had been caused by an accident, and the provisions of this Proclamation shall, subject to the provisions of this section, *mutatis mutandis* apply, unless at the time of entering into the employment the native wilfully and falsely represented to the employer in reply to a specific question that he had not previously suffered from the disease, provided that where the native was not, at the date of the disablement or death, employed in the occupation to the nature of which the disease is due, the earnings of the native shall be calculated on the basis of his earnings when he was last employed in such occupation.

(b) Compensation shall be payable by the employer who last employed the native during the period of twelve months referred to in this section unless that employer proves that the disease was not contracted while the native was in such employment.

(c) The native or his dependants, if so required, shall furnish to the employer from whom compensation is claimed, such information as he or they may possess, as to the names and addresses of all other employers who, during the said twelve months, employed the native in the occupation to the nature of which the disease is due.

(d) If the employer alleges that the disease was in fact contracted whilst the native was in the employment of some other employer and not whilst in his employment, he may join such other employer as a party to any application for compensation, and if the allegation is proved, that other employer shall be the employer from whom the compensation is to be recoverable.

(e) If the disease is of such a nature as to be contracted by a gradual process, any other employers who during the said twelve months employed the native in the occupation to the nature of which the disease is due shall be liable to make to the employer from whom compensation is recoverable such contributions as in default of agreement may be determined by the Resident Magistrate on application.

(f) The date of the certificate referred to in this section or of the death of the native, as the case may be, shall be treated for the purposes of this Proclamation as the date of the happening of the accident.

(g) Notice in writing shall be given to the employer who last employed the native during the said twelve months in the occupation to the nature of which the disease is due, setting out all particulars of the case, as soon as reasonably possible.

(h) If a native who becomes disabled by or dies of any disease mentioned in the Schedule was within the period of twelve months immediately preceding the disablement or death employed in any occupation mentioned in such Schedule opposite such disease, it shall be presumed unless or until the contrary is proved, that the disease was contracted in the course of such employment.

(i) Nothing in this section contained shall be construed as preventing compensation being recovered from any employer who employed the native during the twelve months referred to if the employer who last employed the native during the period proves that the disease was not contracted while the native was in his employment, in which case the provisions of sub-section (d) hereof shall apply.

(j) The Resident Commissioner may carry out an investigation as to whether any disease should be included in the Schedule as an Industrial Disease, and the High Commissioner may by notice in the *Gazette* amend the Schedule either by the addition of any disease or the deletion of any disease or otherwise.

7. Nothing in this Proclamation shall be taken to debar any native labourer from claiming compensation under his rights at common law, but no action for compensation shall be maintained unless such action shall have been commenced within six months from the date of the injury, or in the case of death resulting therefrom within six months from the date of such death. If the employer shall in either case have admitted his liability to pay compensation, then such action shall be commenced within six months from the date of such admission.

8. This Proclamation shall be cited as the "Native Labourers Compensation (Bechuanaland Protectorate) Proclamation 1934", and shall have force and take effect from the date of its publication in the *Gazette*.

GOD SAVE THE KING.

Given under my Hand and Seal at Pretoria this Nineteenth day of September One thousand Nine hundred and Thirty-four.

H. J. STANLEY,
High Commissioner.

By Command of His Excellency
the High Commissioner.

SHIRLEY EALES,
Administrative Secretary.

SCHEDULE.

<i>Description of Disease.</i>	<i>Description of Work.</i>
Silicosis	In mining carried on underground.
Tuberculosis	Ditto.
Ankylostomiasis (hookworm)	Ditto.
Cyanide rash	The handling of cyanide or any work involving the use of cyanide.
Lead poisoning or its sequelae	The handling of lead or its preparations or compounds or any work involving the use of lead or its preparations or compounds.
Mercury poisoning or its sequelae	Any work involving the use of mercury or its preparations or compounds.