

BECHUANALAND PROTECTORATE.

No. 16 of 1942.

(Promulgated 2nd April, 1942.)

PROCLAMATION

By His Excellency the High Commissioner
Entitled the Bechuanaland Protectorate Trade Unions
and Trade Disputes Proclamation, 1942.

Whereas it is expedient to make provision for the registration and regulation of Trade Unions in the Bechuanaland Protectorate and for the orderly settlement of Trade Disputes:

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

PART I.

1. "Trade Union" means any combination whether temporary or permanent, the principal purposes of which are under its constitution the regulation of relations between workmen and masters, or between workmen and workmen, or between masters and masters, whether such combination would or would not if this Proclamation 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:

Meaning
of trade
union.

Provided that nothing in this Proclamation—

(a) shall affect—

- (1) any agreement between partners as to their own business;
- (2) any agreement between an employer and those employed by him as to such employment;
- (3) any agreement in consideration of the sale of the goodwill of a business or of instruction in any profession, trade or handicraft; or

(b) shall preclude any trade union from providing benefits for its members;

"registered" means registered under this Proclamation;

"Registrar" means the Registrar of Trade Unions.

Trade unions not criminal.

2. The purposes of any trade union shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful so as to render any member of such trade union liable to criminal prosecution for conspiracy or otherwise.

Trade union not unlawful for civil purposes.

3. The purposes of any trade union shall not, by reason merely that they are in restraint of trade, be unlawful so as to render voidable any agreement or trust.

Trade unions prohibited from carrying on business unless registered.

4. (1) No trade union or any member thereof shall perform any act in furtherance of the purposes for which it has been formed unless such trade union has first been registered.

(2) Any trade union or any officer or member thereof who contravenes the provisions of this section shall be guilty of an offence punishable with a fine not exceeding twenty-five pounds.

Registrar of trade unions.

5. The Resident Commissioner may appoint such person as he may think fit to be the Registrar of Trade Unions.

Registration of trade unions.

6. Any seven or more members of a trade union may, by subscribing their names to the rules of the union and otherwise complying with the provisions of this Proclamation with respect to registration, register such trade union under this Proclamation:

Provided that if any one of the purposes of such trade union be unlawful such registration shall be void.

Compulsory registration.

7. (1) Every trade union shall be registered in accordance with the provisions of this Proclamation or be dissolved within three months of the date—

- (a) of its formation, or
- (b) of any notification by the Registrar that he has refused under section *nine* to register the trade union, or
- (c) of the commencement of this Proclamation, whichever is the later date.

(2) Every trade union which is not registered or dissolved within the period prescribed in the preceding sub-section and every officer thereof shall be guilty of an offence punishable with a fine not exceeding five pounds for every day it remains unregistered after the expiration of such period.

8. With respect to the registry under this Proclamation of a trade union, and of the rules thereof, the following provisions shall apply:—

- (1) An application to register the trade union and its rules shall be sent to the Registrar with copies of the rules and a list of the titles and names of the officers of the trade union.
- (2) The Registrar upon being satisfied that the trade union has complied with the rules respecting registry in force under this Proclamation shall, subject to the provisions of section *nine*, register the trade union and rules.
- (3) No trade union shall be registered under a name identical with that by which any other existing trade union has been registered or so nearly resembling such name as to be likely to deceive the members or the public.
- (4) The Registrar upon registering a trade union shall issue a certificate of registration.

9. (1) If the Registrar is satisfied that—
- (a) the applicants have not been duly authorised to apply for registration;
 - or
 - (b) the purposes of the trade union are unlawful; or
 - (c) the application is not in conformity with the provisions of this Proclamation;

Refusal of registration.

he may refuse registration.

(2) When the Registrar refuses to register a trade union he shall forthwith inform the applicants in writing of the grounds of his refusal.

(3) An appeal shall lie to the High Court from a refusal of the Registrar to register a trade union, and on such appeal the High Court may make any such order as it thinks proper, including any directions as to the costs of the appeal. Any such order of the High Court shall be final.

(4) The High Court may make rules governing such appeals, providing for the method of giving evidence, prescribing the time within which such appeals shall be brought, the fees to be paid, the procedure to be followed and the manner of notifying the Registrar of the appeal.

(5) The Registrar shall be entitled to be heard on any appeal.

Cancellation of registration.

10. (1) It shall be lawful for the Registrar to cancel the registration of any trade union—

- (a) at the request of the trade union, to be evidenced in such manner as he may direct;
- (b) on proof to his satisfaction that a certificate of registration has been obtained by fraud or mistake, or that such trade union has wilfully, and after notice from the Registrar, violated any of the provisions of this Proclamation or has ceased to exist.

(2) Not less than two months' previous notice specifying briefly the grounds of the proposed cancellation, except where the trade union has ceased to exist, in which case notice of cancellation may be given forthwith, shall be given by the Registrar to the trade union before such cancellation is effected.

(3) An appeal from the decision of the Registrar under this section shall lie to the High Court subject to the same conditions as are provided for an appeal against the refusal of the Registrar to register a trade union, and the High Court may make rules providing for the same matters for which rules may be made in respect of such appeal. The decision of the High Court shall be final.

Officers of trade union to account.

11. (1) Every treasurer or other officer of a registered trade union at such times as by the rules thereof he should render such accounts as hereinafter mentioned, or having been required so to do, shall render to the members thereof, at a meeting of the trade union, a just and true account of all moneys received and paid by him since he last rendered the like account, and of the balance then remaining in his hands, and of all bonds and securities of such trade union.

(2) Such account shall be audited by some fit and proper person or persons to be appointed by the trade union.

(3) Upon the account being audited the treasurer or other officer, as the case may be, shall, if thereupon required, hand over to the trade union the balance which on such audit appeared to be due from him, and shall also, if required, hand over to the trade union all securities and effects, books, papers and property of the trade union in his hands or custody.

(4) If the treasurer or other officer fails to hand over such things and documents as in sub-section (3) required, the Committee of Management of the trade union or any member for and on behalf of the trade union may sue him in any competent court for the balance appearing to have been due from him upon the account last rendered by him, and for all moneys since received by him on account of such trade union and for the securities and effects, books, papers and property in his hands or custody, leaving him to set off in such action the sums, if any, which he may have since paid on account of such trade union; and in any such action the plaintiff shall be entitled to recover full costs of suit to be taxed as between attorney and client.

12. (1) Every registered trade union shall transmit to the Registrar the account prepared and audited in accordance with section eleven within one month of its submission to the members of the trade union. Audited accounts to be sent to Registrar.

(2) Every officer of a registered trade union which fails to comply with the provisions of this section shall be guilty of an offence punishable with a fine not exceeding twenty-five pounds.

13. With respect to the rules of a registered trade union, the following provisions shall have effect:— Rules of registered trade unions.

(1) The rules of every such trade union shall contain provisions in respect of the several matters mentioned in the Schedule;

(2) A copy of the rules shall be delivered by the trade union to any person on demand on payment of a sum not exceeding one shilling.

14. (1) Every alteration of the rules of a registered trade union shall be registered with the Registrar and shall take effect from the date of registration unless some later date is specified in the rules. Alteration of rules of trade unions.

(2) The rules of a registered trade union shall not be altered so that they cease to contain provisions in respect of the several matters in the Schedule.

Rules by
High Com-
missioner.

15. The High Commissioner may make rules respecting registry under this Proclamation, and in particular but without prejudice to the generality of the foregoing power with respect to—

- (a) the seal, if any, to be used by the Registrar for the purpose of registration under this Proclamation;
- (b) the forms to be used for such registry;
- (c) the inspection of registers and documents kept by the Registrar and the making of copies of any entries therein;
- (d) the fees to be charged for registration and inspection and any other service or matter prescribed or permitted by this Proclamation; and
- (e) generally for carrying this Part of this Proclamation into effect.

PART II.

Definitions. 16. In this part:—

“~~To 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;

“~~injury~~” includes ~~injury~~ to a person in respect of his business occupation, employment or other source of income, and includes any actionable wrong;

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

“workmen” means all persons employed in trade or industry, whether or not in the employment of the employer with whom a trade dispute arises.

Immunity
of trade
unions
from
actions
of tort.

17. (1) An action against a trade union, whether of workmen or masters, 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 shall not be entertained by any court.

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(2) Nothing in this section shall affect the liability of a trade union or any official thereof to be sued in any court touching or concerning the property or rights of a 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.

18. (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
disputes.

(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 exempt from punishment any person guilty of a conspiracy for which a punishment is awarded by any law in force in the Territory.

(4) Nothing in this section shall affect the law relating to riot, unlawful assembly, breach of the peace or sedition or any offence against the State or the Sovereign.

(5) 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.

(6) 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 on summary conviction, and is sentenced to imprisonment, the imprisonment shall not exceed three 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.

19. 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 right of some other person to dispose of his capital or his labour as he wills.

Removal of
liability
for
interfering
with
another
person's
business.

Intimidation or annoyance.

*to be crossed out
by
me*

~~20. (1) Every person who, with a view to compel 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; or~~
- ~~(b) persistently follows such other person about from place to place; or~~
- ~~(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; or~~
- ~~(d) watches or besets the house or other place where such other person resides or works or carries on business or happens to be on 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 punishable with a fine not exceeding twenty pounds or with imprisonment with or without hard labour for a term not exceeding three months.~~

~~(2) Attending at or near any house or place in such numbers or in such manner as is by sub-section (2) of section *twenty-one* declared to be unlawful shall be deemed to be a watching and besetting of that house or place within the meaning of this section.~~

Peaceful picketing and prevention of intimidation.

21. Notwithstanding anything contained in this Proclamation :—

- (1) It shall be lawful for one or more persons acting on their own behalf or on behalf of a 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.

(2) It shall not be lawful for one or more persons (whether acting on their own 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 inducing any person to work or 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; and any person who acts in contravention of this sub-section shall be guilty of an offence punishable with a fine not exceeding twenty pounds or with imprisonment with or without hard labour for a period not exceeding three months.

Picketing
in such
numbers,
etc., as
to be
calculated
to intimi-
date.

22. This Proclamation may be cited as the Short title.
Bechuanaland Protectorate Trade Unions and
Trade Disputes Proclamation, 1942.

GOD SAVE THE KING.

Given under my Hand and Seal at Cape Town this
Twenty-eighth day of March, One thousand Nine
hundred and Forty-two.

HARLECH,
High Commissioner.

By Command of His Excellency
the High Commissioner.

H. E. PRIESTMAN,
Administrative Secretary.

SCHEDULE.

(Section 13.)

1. The name of the trade union.
2. The whole of the objects for which the trade union is to be established, the purposes for which the funds thereof shall be applicable, and the conditions under which any member may become entitled to any benefit assured thereby and the fines and forfeitures to be imposed on any member of the trade union.

3. The manner of making, altering, amending and rescinding rules.

4. A provision for the appointment and removal of a general committee of management, of a treasurer and other officers.

5. A provision for the keeping of full and accurate accounts by the treasurer.

6. A provision for the investment of the funds or their deposit in a bank and for an annual or periodical audit of accounts.

7. The inspection of the books and names of the members of the trade union by every person having an interest in the funds of the trade union.

8. The manner of dissolving the trade union.