

BECHUANALAND PROTECTORATE,

No. 52 of 1949.

(Promulgated 23rd December, 1949.)

PROCLAMATION

BY HIS EXCELLENCY THE HIGH COMMISSIONER
Entitled the Bechuanaland Protectorate Wages Boards
Proclamation, 1949.

Whereas it is expedient to make provision for the Establishment of Wages Boards and otherwise for the Regulation of the Terms and Conditions of Employment of Workers in the Bechuanaland Protectorate;

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

1. This Proclamation may be cited as the Bechuanaland Protectorate Wages Boards Proclamation, 1949, and shall have force and take effect from the date of its publication in the *Gazette*.
Short title and commencement.

PART I.—PRELIMINARY.

2. (1) The “Commissioner of Labour” and “Labour Officer” mean respectively, the Commissioner of Labour and any Labour Officer, appointed by the Resident Commissioner under section *four* of this Proclamation.
Interpretation.

(2) “Joint Industrial Council” means a wage negotiating body, other than a Wages Board established under this Proclamation, to which the parties are organisations of employers and trade unions, representative respectively of substantial proportions of the employers of any workers or groups of workers and of such workers.

3. Fixation of Wages (Bechuanaland Protectorate), Proclamation, 1936 (No. 20 of 1936), is hereby repealed.
Repeal of Proclamation No. 20 of 1936.

4. The Resident Commissioner may appoint a suitable person to be the Commissioner of Labour and such number of other persons, as may be necessary, to be known as Labour Officers, for the purposes of this Proclamation.
Appointment of Commissioner of Labour and other Labour Officers.

Delegation
of powers.

5. In relation to any particular matters or class of matters, or to any particular area or district, the Commissioner of Labour may, by writing under his hand and with the consent of the Resident Commissioner, delegate any of his powers under the provisions of this Proclamation (except this power of delegation), so that delegated powers may be exercised by the person to whom they are delegated with respect to the matters or class of matters specified or in the area, district or place specified in the instrument of delegation.

PART II.—WAGES BOARDS.

Proclama-
tion may
by High
Commis-
sioner be
applied to
specified
workers or
groups of
workers.

6. (1) The High Commissioner if satisfied that the conditions of employment or other circumstances of any workers or groups of workers are such as to render expedient the application of this Proclamation, may, by notice in the *Gazette* apply this Proclamation to any specified workers or groups of workers.

(2) The High Commissioner, before issuing such notice shall cause the Resident Commissioner to notify in the *Gazette* the intention of the High Commissioner to issue such notice. Such notification shall specify a place where copies of the proposed draft notice may be inspected, and the time, which shall not be less than forty days from the date of the publication, within which any objection made with respect to the draft notice, must be sent to the Government Secretary.

(3) Every objection must be in writing and must state the specific grounds of objection, and the High Commissioner shall consider any such objection sent within the time specified in the notice, but he shall not be bound to consider any other objection.

(4) If there are no objections to consider, or, if in the opinion of the High Commissioner, the objections are frivolous he may forthwith issue the notice.

(5) If in the opinion of the High Commissioner the objections are of such a nature as to render it inadvisable to issue the notice, he shall publish a notice in the *Gazette* to the effect that the issuing of the notice will not be proceeded with.

Establish-
ment of
Wages
Boards.

7. (1) Upon the application of this Proclamation to any specified workers or group of workers by the High Commissioner, the Resident Commissioner shall by notice in the *Gazette* establish such number of Wages Boards as he shall think necessary. Each such Board shall consist, in equal proportions of such number of members

representing employers and employees (hereinafter referred to as representative members), and of such number of appointed members as the Resident Commissioner shall in the notice establishing the Board direct.

(2) Every member of a Wages Board shall have one vote. If at any meeting of the Board the numbers of members present representing employers and employees are unequal it shall be open to the side which is in the majority to arrange that one or more of its members shall refrain from voting so as to preserve equality. Failing such an arrangement the Chairman, or in his absence, the Deputy-Chairman, may, if he thinks it desirable, adjourn the voting on any question to another meeting of the Board.

8. Representative members of a Wages Board shall be appointed by the Resident Commissioner from persons elected by the employers and employees respectively, in relation to whom the Wages Board has been established.

Representative members.

Provided that, on the failure of employers or employees respectively to elect the required number of representatives for appointment, it shall be lawful for the Resident Commissioner to appoint fit and proper persons to make up such required number.

9. The Resident Commissioner shall appoint such persons chosen by him as being fit and proper as may be necessary, to be appointed members of Wages Boards, and the appointed members of any Wages Board shall be such of the persons aforesaid as the Resident Commissioner shall, by notice in the *Gazette*, direct: Provided that the number of appointed members on any Wages Board shall be less than one-half of the total representative members on such Board.

Appointed members.

Provided further that a person in the employ of Government shall not be eligible to be an appointed member of a Board.

10. The Resident Commissioner shall appoint one of the appointed members of a Wages Board to be the Chairman of the Board, and another appointed member to be the Deputy-Chairman, and in the absence of the Chairman from any meeting of the Board the Deputy-Chairman shall preside.

Chairman and Deputy-Chairman of Wages Board.

Secretary of Wages Board. 11. The Secretary of a Wages Board shall be a Labour Officer appointed by the Commissioner of Labour and such officer may be the Secretary of one or more Wages Boards.

Proceedings of a Wages Board not invalidated by any defect in the appointment of any member. 12. The proceedings of a Wages Board shall not be invalidated by any defect in the appointment of any member.

Power of High Commissioner to make rules. 13. (1) The High Commissioner may make rules for the following purposes:—

- (a) Prescribing the manner in which representative members shall be elected.
- (b) Prescribing the term for which representative members and appointed members may hold office as members of Wages Boards.
- (c) Prescribing the number of members necessary to constitute a quorum at any meeting of a Wages Board;
- (d) The filling of vacancies on any Wages Board, caused by the death, resignation, removal, or absence from the Territory, of any member of a Wages Board.
- (e) Authorising the Resident Commissioner to terminate the appointment of any member of a Wages Board and prescribing under what circumstances and subject to what conditions an appointment may be so terminated.
- (f) Regulating, subject to the provisions of subsection (2) of this section, the proceedings at meetings of Wages Boards;
- (g) Prescribing the records to be kept, the returns, reports and information to be rendered or supplied to the Commissioner of Labour by Wages Boards.
- (h) Prescribing the conditions under which those workers to whom a Wages Board relates may be recruited by their employers.
- (i) Prescribing the notice to be given of any matter under this Proclamation with a view to bringing such matter, so far as practicable, to the knowledge of persons affected.
- (j) Prescribing the mode of displaying in his premises by an employer, of any notice which is required by this Proclamation or by any rules thereunder to be given by him to employees.

(k) Fixing the rates of remuneration and expenses to be paid to appointed members of Wages Boards.

(l) Declaring what expenses incurred by them in the performance of their duties as members shall be allowed to representative members of Wages Boards.

(2) Subject to the provisions of any rules made under paragraph (f) of the immediately preceding sub-section, Wages Boards may regulate their proceedings at meetings in such manner as they think fit.

(3) Any rules made under this section may be so made as to apply generally to all Wages Boards, or specially to any particular Wages Board or any particular class of Wages Boards.

(4) Any person acting in contravention of any rule made under paragraphs (h) and (j) of sub-section (1) of this section shall be guilty of an offence, and shall on conviction be liable to a fine of ten pounds or to imprisonment for a period of three months.

14. (1) A Wages Board for any workers or groups of workers shall consider, as occasion requires, any matter referred to it by the Commissioner of Labour with reference to their industrial conditions, and shall make a report upon the matter to the Commissioner of Labour.

General duties and powers of Wages Boards.

(2) A Wages Board for any workers or groups of workers, may, if it thinks it expedient so to do, make a recommendation to the Commissioner of Labour or to any Government Department with reference to the industrial conditions of any specified workers or groups of workers, and the Commissioner of Labour, or the department to whom the recommendation is made, shall forthwith take it into consideration.

(3) A Wages Board may make recommendations to the Commissioner of Labour in relation to the recruitment of workers in respect of whom the Wages Board has been established.

15. (1) Subject to and in accordance with the provisions of this section, any Wages Board shall have power to fix the minimum rate of wages to be paid, either generally or for any particular work, by their employers to all or any of the workers in relation to whom the Board operates.

Duties and powers of Wages Boards with respect to minimum rates of wages.

Provided that such minimum rate shall not be payable to any workers or group of workers, in respect of whom wages have been fixed by any other Wages Board or whose terms and conditions of employment have been agreed upon by a Joint Industrial Council.

The Board shall publish in the *Gazette* the rate of wages so fixed together with a statement setting out the reasons of the Board for fixing such rate.

The power to fix a minimum rate of wages shall include the power to fix holidays with pay to be allowed to workers by their employers. During any holiday so fixed, no worker shall receive from his employer less than the minimum rate of wages prescribed by the Board for such worker.

The power to fix a minimum rate of wages shall also include the power to fix overtime rates of wages in respect of hours in any week or on any day by all or any of the workers in relation to whom the Wages Board operates in excess of the number of hours declared by the Board to be the normal number of hours of work per week or for that day of such workers.

(2) A Wages Board may, if it thinks it expedient, cancel or vary any minimum rate of wages fixed under this section, and shall reconsider any such minimum rate if the Commissioner of Labour directs it so to do, whether an application is made for the purpose or not.

(3) Where a Wages Board fixes a minimum rate so as to apply to any class of workers which consists of persons who are learning an occupation, it may, if it thinks it expedient so to do, attach to the fixing of the minimum rate such conditions as it thinks necessary for securing the effective instruction of those persons in their occupation, and, if any such condition so attached is not complied with in the case of any worker, he shall be deemed not to be a member of the class.

(4) Before fixing, cancelling or varying any minimum rate of wages, the Wages Board shall give notice of the rate which it proposes to fix, or of its proposal to cancel the rate, or of the proposed variation in the rate, as the case may be, and shall consider any objections to the proposal which may be lodged with it within one month from the date of the notice.

Provided that where a rate has not been in operation for a period of at least six months, the Wages Board shall not, without the consent of the Commissioner of Labour, to be given on an application made to him by the Board for the purpose, give notice of a proposal to vary the rate, and the Commissioner of Labour shall not give his consent to such an application, unless he is satisfied that the special circumstances of the case render it desirable that such notice should be given immediately.

16. (1) Where a Wages Board has fixed any minimum rate of wages, or has cancelled or varied any such rate, it shall forthwith send notification thereof to the Commissioner of Labour, and the notification may include a statement as to the date from which the Board suggests that the rate, or the cancellation or variation of the rate should come into operation.

Provisions as to orders for confirming minimum rate or cancellation or variation of rate.

(2) The Commissioner of Labour, on receipt of a notification under this section with respect to any matter, shall forthwith take the matter into his consideration, and, unless he thinks it necessary to refer the matter back to the Wages Board for consideration, shall, as soon as may be, issue a direction in writing confirming the rate, or the cancellation or variation of the rate, as the case may be.

In any case where a direction is to be issued by the Commissioner of Labour under the foregoing provision he shall, unless in his opinion the special circumstances of the case make it necessary or desirable to postpone the issue of the direction, issue the direction within one month from the date on which the notification from the Wages Board is received.

(3) The Commissioner of Labour shall as soon as may be after he has issued any direction under this section, send notification thereof to the Wages Board concerned, and the Wages Board shall, as soon as may be after receiving the notification, give notice of the issue of the direction and of the contents thereof.

(4) Any such minimum rate as aforesaid, on the cancellation or variation of any such rate, shall become effective as from the date specified in that behalf in the direction by which it is confirmed.

17. (1) Where any minimum rate of wages has been confirmed by direction of the Commissioner of Labour under this Proclamation an employer shall, in cases to which the minimum rate is applicable, pay wages to the worker at not less than the minimum rate clear of all deductions, and, if he fails to do so, shall be liable, on conviction, in respect of each offence to a fine not exceeding twenty pounds and to a fine not exceeding five pounds for each day on which the offence is continued after conviction therefor.

Penalty for not paying wages in accordance with minimum rate which has been confirmed.

In the foregoing provision, the expression "deduction" includes deductions for or in respect of any matter whatsoever other than in respect of contributions to provident or pension funds or schemes agreed to by the workers, and approved by the Commissioner of Labour.

(2) Where an offence for which an employer is liable to a fine under sub-section (1) has in fact been committed by some agent of the employer or by some other person, that agent or other person shall be liable to be proceeded against for the offence in the same manner as if he were the employer, and either together with, or before or after the employer, and shall be liable on conviction to the same punishment as that to which the employer is liable.

(3) Where an employer who is charged with an offence against this section proves to the satisfaction of the Court that he has used due diligence to enforce the execution of this section, and that the offence was in fact committed without his knowledge, consent or connivance, he shall, in the event of the conviction of that agent or other person for the offence, be exempt from any fine in respect of the offence without prejudice, however, to the power of the Court under sub-section (1) of section *eighteen* of this Proclamation, to adjudge him to pay any sum which appears to the Court to be due to the worker an account of wages.

(4) Where the immediate employer of any worker to whom a minimum rate of wages applies, is himself in the employment of some other person, and the worker is employed on the premises of that other person, that other person shall, for the purposes of the provisions of this Proclamation relating to the penalty for not paying wages in accordance with the minimum rate, be deemed to be the employer of the worker jointly with the immediate employer.

(5) If a Wages Board is satisfied that any person employed, or desiring to be employed, in any occupation to which a minimum rate of wages fixed by the Wages Board is applicable, is affected by any infirmity or physical injury or disablement, the Wages Board may if it thinks fit, issue to such person, subject to such conditions if any, as it may prescribe, a permit exempting the employment of the person from the provisions of this Proclamation relating to the payment of a minimum rate of wages, and, while the permit is in force, an employer shall not be liable to any penalty for paying wages to the person employed at a rate less than the minimum rate, so long as any conditions prescribed by the Wages Board on the grant of the permit are complied with.

A Wages Board may, if it thinks fit, delegate its power under this sub-section to a committee consisting of such number of persons, being members of the Board, as the Board may think

fit, so, however, that the members of the Board on the committee representing employers and the members of the Board on the committee representing employees shall be in equal proportions.

18. (1) Where an employer has been convicted under section *seventeen* for failing to pay wages at not less than the minimum rate to any worker the Court may—

Recovery of arrears and provisions with respect to legal proceedings.

- (a) on conviction, order the employer convicted to pay, in addition to any fine, such sum as appears to the Court to be due to the worker on account of wages for the period during which the offence is alleged and found to have been committed, the wages being calculated on the basis of the minimum rate; or
- (b) notwithstanding the foregoing provisions of paragraph (a) if notice of intention so to do has been served with the summons, warrant or complaint, permit evidence to be given of any failure on the part of the employer to pay wages at not less than the minimum rate to that worker at any time during the year immediately preceding the date on which the complaint was made, and, on proof of failure, order the employer to pay such sum as in the opinion of the Court, represents the difference between the amount which ought properly to have been paid to the worker by way of wages during that year, and the amount actually so paid.

(2) Nothing in sub-section (1) of this section shall derogate from any right of the worker to recover wages by any other proceedings.

(3) Where it appears to the Commissioner of Labour that any sum is due by an employer to a worker by reason of the fact that wages have been paid to that worker at less than the minimum rate applicable, and that it is not possible to recover the sum so appearing to be due, or some part of that sum, by means of proceedings under paragraph (a) of sub-section (1) of this section, the Commissioner of Labour may, if it appears expedient so to do by reason of the refusal or neglect of the worker to take necessary proceedings, on behalf of and in the name of the worker, institute civil proceedings before any Court of competent jurisdiction for the recovery of the said sum:

Provided that the Court before which any such civil proceedings are instituted, shall have the same power to make an order for the payment of

costs by the Commissioner of Labour, as if the Commissioner of Labour were a party to the proceedings.

Prevention
of evasion

19. Any shopkeeper, dealer or trader, who by way of trade makes any arrangement, express or implied, with any person, in pursuance of which that person performs any work for which a minimum rate of wages has been fixed under this Proclamation, shall be deemed for the purposes of this Proclamation, to be the employer of that person, and the net remuneration obtainable by that person in respect of the work, after allowing for his necessary expenditure in connection with the work, shall be deemed to be wages.

Employer
not to
receive
premium
where
minimum
rate is in
force.

20. (1) Where a worker in any occupation, being a person to whom a minimum rate of wages fixed by a Wages Board applies, is an apprentice or learner, it shall not be lawful for his employer to receive directly or indirectly from him, or on his behalf or on his account, any payment by way of premium:

Provided that nothing in this sub-section shall apply to any such payment made in pursuance of any instrument of apprenticeship not later than four weeks after the commencement of the employment.

(2) If any employer acts in contravention of this section he shall be liable, on conviction, in respect of each offence, to a fine not exceeding twenty pounds, and the Court may, by the conviction, in addition to imposing a fine, adjudge him to repay to the worker or other person by whom the payment was made the sum improperly received by way of premium.

Considera-
tion by
Commis-
sioner of
Labour or
complaints
as to
infraction of
minimum
rates.

21. Any worker, or any person authorised by a worker, may complain to the Commissioner of Labour that the wages paid to the worker by the employer in any case to which any minimum rate fixed by the Wages Board is applicable, are at a rate less than the minimum rate, and the Commissioner of Labour shall consider the matter and may, if he thinks fit, take any proceedings authorised under this Proclamation, on behalf of the worker.

Employers
to keep
records.

22. Every employer who employs persons to whom a minimum rate of wages fixed by a Wages Board is applicable, shall keep such records of wages as are necessary, to show that the provisions of this Proclamation are being complied with in relation to such persons, and if he fails so to do, he shall be liable on conviction for each

offence to a fine of two pounds, and to a further fine of one pound for every day during which the default continues after such conviction.

23. Any agreement for the payment of wages in contravention of any of the provisions of this Proclamation shall be void.

Void agreements

24. Where a minimum rate of wages has been fixed in respect of any person or persons by a Wages Board, any Labour Officer authorised in that behalf by the Commissioner of Labour shall have power—

Power of Labour Officers.

- (a) to order the production of the records of wages required to be kept by employers, and to inspect and examine the same, and copy any material part thereof;
- (b) at all reasonable times to enter upon any land or premises where any such person or persons as aforesaid, is or are employed; and
- (c) to examine, either alone or in the presence of any other person, as he, in his discretion thinks fit, any person, whom he has reasonable cause to believe to be or to have been, a person to whom this Proclamation applies, in connection with any matter for securing the due observance of this Proclamation.

25. Any person who fails to furnish the means required by a Labour Officer as necessary for any entry or inspection in the exercise of any of the powers given by section *twenty-four* of this Proclamation, or hinders or molests any such Labour Officer in the exercise of such powers, or refuses to produce any document or give any information which any officer requires him to produce or give under the power given by the said section *twenty-four*, shall be liable on conviction, in respect of each offence to a fine not exceeding five pounds.

Penalty for failure to allow inspection or hindering officers.

26. Any person who—

- (a) makes, or causes to be made, or knowingly allows to be made any wages sheet or any record of wages or payments, which is false in any material particular; or
- (b) produces or causes to be produced, or knowingly allows to be produced, any such record to any Labour Officer in exercise of the powers given by section *twenty-four*, knowing the same to be false, or
- (c) furnishes any information to any such Labour Officer, knowing the same to be false,

Penalty for false records.

shall be liable on summary conviction, to a fine not exceeding one hundred pounds or to imprisonment for a period not exceeding three months.

Officers to produce certificates when required.

27. Every Labour Officer appointed under this Proclamation to whom any authorisation is given, or to whom any power is delegated by the Commissioner of Labour under the provisions of this Proclamation, shall be furnished by the Commissioner of Labour with a certificate of his appointment, authorisation or delegation, as the case may be, and, when acting under or exercising any of the powers conferred upon him by reason of such appointment, authorisation or delegation, shall if so required, produce the said certificate to any person or persons affected.

Disclosure of information.

28. Any Labour Officer who discloses any information obtained by him in the exercise of his powers under this Proclamation, except to persons acting in the execution of this Proclamation, and except so far as such information may be necessary for the execution thereof, shall be liable, on conviction to a fine not exceeding one hundred pounds.

PART III.—OTHER MACHINERY FOR THE REGULATION OF TERMS AND CONDITIONS OF EMPLOYMENT.

Publication of Terms and Conditions of Employment.

29. Where any Joint Industrial Council has agreed upon any terms and conditions of employment for any specified workers or groups of workers, such body shall request the Commissioner of Labour to publish such terms and conditions of employment by notice in the *Gazette* as constituting the recognised terms and conditions of employment applicable to all such specified workers or groups of workers, and the Commissioner of Labour shall publish such notice accordingly.

Duty of employers to observe the recognised terms and conditions of employment.

30. Where a notice has been published in the *Gazette* under section *twenty-nine* of this Part, all employers of the workers or groups of workers specified therein shall, after the expiration of one month from the date of such notice, observe the recognised terms and conditions of employment or such terms and conditions of employment as are not less favourable than such recognised terms and conditions:

Provided, however, that where any worker or group of workers in respect of whom a Joint Industrial Council has agreed upon terms and conditions of employment is employed as a worker or group of workers in respect of whom wages have already been fixed by a Wages Board in

accordance with Part II of this Proclamation, the wages payable to such worker or group of workers shall be the wages fixed by such Wages Board.

31. On the coming into operation of the terms and conditions of employment agreed upon by any Joint Industrial Council under this Part of this Proclamation, the provisions of sections *seventeen to twenty-eight* of Part II of this Proclamation relating to penalties for failure to pay any minimum wage prescribed, the recovery of arrears, the prevention of evasion, the prohibition on the receipt of a premium, the consideration of complaints by the Commissioner where minimum rates of wages are not paid, void agreements, the keeping of records, and the penalties for keeping false records, the powers and duties of Labour Officers, and the penalties for hindering Labour Officers, shall apply in respect of such terms and conditions as they apply in the respect of wages fixed by a Wages Board.

Application
of sections
17 to 28
relating to
penalties,
etc.

PART IV.—LEGAL PROCEEDINGS.

32. Any proceedings arising under the provisions of this Proclamation—

Institution
of prosecution
proceedings.

- (i) shall be instituted in the name of the Commissioner of Labour;
- (ii) may be taken before a subordinate court of the first class where the person concerned is for the time being; and
- (iii) may be prosecuted or conducted before any such court by a Labour Officer although he is not a legal practitioner.

GOD SAVE THE KING.

Given under my Hand and Seal at Pretoria this Twelfth day of December, One thousand Nine hundred and Forty-nine.

WALTER HARRAGIN,
High Commissioner.

By Command of His Excellency
the High Commissioner.

W. A. W. CLARK,
Chief Secretary.