

# THE TRADE DISPUTES ACT, 1969

No. 28



of 1969

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**AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF INDUSTRIAL ARBITRATION TRIBUNALS AND BOARDS OF INQUIRY ; TO MAKE PROVISION FOR THE SETTLEMENT OF TRADE DISPUTES; TO CONTROL AND REGULATE STRIKES AND LOCK-OUTS; AND FOR MATTERS INCIDENTAL THERETO.**

Date of Assent: 8.7.69.

Date of Commencement: 1.8.69.

ENACTED by the Parliament of Botswana.

## **PART I**

### **PRELIMINARY**

#### **Short Title**

1. This Act may be cited as the Trade Disputes Act, 1969.
2. (1) In this Act, unless the context otherwise requires —  
“Board of Inquiry” means any Board of Inquiry appointed by the Minister under section 12;  
“conciliator” means conciliator appointed under section 5;

- “employee” subject to the provisions of subsection (2) means any person who has entered into or works under contract with an employer, whether the contract is a contract for manual labour, clerical work or otherwise, is expressed or implied, oral or in writing, and whether it be a contract of service or apprenticeship or a contract personally to execute any work;
- “employer” includes the Government and any public or local government authority;
- “federation” means any trade union which is itself an association or combination of trade unions;
- “Industrial Arbitration Tribunal” or “Tribunal” means the Tribunal appointed under section 8;
- “lock-out” means the closing of a place of employment or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him in consequence of a dispute, done with a view to compelling those persons, or to aid another employer in compelling persons employed by him, to accept terms or conditions of or affecting employment;
- “organization” includes a trade union and a federation;
- “strike” means the cessation or reduction in the amount of work by a body of persons employed in any trade or industry acting in combination, or a concerted refusal, or a refusal under a common understanding of any number of persons who are, or have been so employed, to continue to work or to accept employment, and includes the forms of strike known as “go slow”, “work to rule” and “ban on overtime”;
- “trade dispute” means any dispute or difference between employers and employees, or between employees and employees, connected with the employment, or with the conditions of labour, of any person, and includes an apprehended trade dispute;
- “trade or industry” includes the carrying on of its activities by the Government or any public authority or local government authority;
- “trade union” means a trade union registered under the Trade Unions Act, 1969.

(2) For the purposes of this Act a public officer shall not be deemed an employee, but the provisions of this Act relating to employees and combinations and associations thereof shall apply to other employees of the State in the same manner as if they were employed by or under a private person.

## PART II

### REPORTING, CONCILIATION AND INVESTIGATION

#### Reporting and settlement of Trade Disputes by Agreement

3. (1) Any trade dispute, whether existing or apprehended, may be reported to the Commissioner of Labour by or on behalf of either of the parties to such dispute.

(2) Every report of a trade dispute shall be made in writing and shall sufficiently specify –

- (a) the employers and employees, or the classes and categories thereof, who are parties to the dispute;
- (b) the party or parties by whom or on whose behalf the report is made;
- (c) the nature of the authorization given by the party or parties desiring the dispute to be reported on their behalf; and
- (d) each and every matter over which the dispute has arisen or is apprehended.

(3) Every person reporting a trade dispute shall, without delay, furnish by hand or by registered post a copy of the report thereof to each party to the dispute:

Provided that in the case of any parties to a dispute who are members of the same organization of employers or organization of employees the furnishing of a copy of the report to such organization shall be a sufficient compliance with this subsection.

(4) If the Commissioner of Labour is unable to settle the dispute he shall report the dispute to the Minister.

#### Consideration and Action by the Minister

4. (1) The Minister shall consider any trade dispute reported to him and, after such enquiries as he may think fit, may take any one or more of the following steps as seem to him expedient for promoting a settlement –

- (a) inform the parties that any of the matters over which the trade dispute has arisen or is apprehended is not suitable to be dealt with under this section;
- (b) inform the parties that he accepts or rejects the report of the trade dispute, having regard to the sufficiency or otherwise of the particulars set out in the report, to the nature of the report, or to the endeavours made by any of the parties to achieve a settlement of the dispute, or having regard to any other matter which he considers to be relevant in the circumstances;
- (c) refer the matter back to the parties and, if he thinks fit, make proposals to the parties or to any of them upon which a settlement of the trade dispute may be negotiated;
- (d) endeavour to effect conciliation of the parties in accordance with the provisions of section 5;

- (e) cause an investigation of the trade dispute, or any matter connected therewith, to be made in accordance with section 6; or
- (f) recommend to the parties that the trade dispute be referred to an Arbitration Tribunal.

(2) The decision of the Minister under this section shall as soon as practicable be communicated in writing to the parties to the dispute or their representatives.

### **Methods of Conciliation**

5. (1) In endeavouring to secure, by means of conciliation of the parties, the settlement of a trade dispute reported to him under section 3, the Minister shall, if and in so far as he considers it appropriate to do so, make use of any machinery or arrangements for the settlement of disputes which exist by virtue of any agreement between the parties to the dispute, or between organizations representative respectively of a substantial proportion of the employers and employees engaged in or in any branch of the particular trade, industry, service or occupation in which the dispute arose.

(2) Subject to subsection (1) of this section, the Minister may, in relation to a trade dispute so reported, or in relation to any issue in such dispute, from time to time and as he deems expedient, take any one or more of the following steps -

- (a) appoint any person (who may be a public officer or any other person considered by the Minister to be suitable) to act as a conciliator and such conciliator shall, within seven days of his appointment, meet with both parties to the dispute.
- (b) appoint a conciliation panel consisting of an independent chairman (who may be a public officer or any other person considered by the Minister to be suitable), and of one or more persons selected by the Minister as being representative of employers and an equal number of persons selected by him as being representative of employees;
- (c) refer any matter, with the consent of the parties, to a conciliation panel composed in accordance with the wishes of the parties; or
- (d) withdraw or temporarily suspend the operation of any of the aforesaid conciliation measures.

(3) The terms of every settlement of a trade dispute effected under this section shall be set out in writing, shall be endorsed by or on behalf of the parties and, where appropriate, by the conciliator or the chairman of the conciliation panel, and a signed copy of the text shall be lodged with the Minister.

(4) In exercising his powers under this section the Minister shall have regard to the provisions of section 16(1) (e) of the Trade Unions Act, 1969.

### **Investigation of Matters Related to Trade Disputes**

6. (1) Where the Minister is satisfied that any trade dispute exists or is apprehended he may, whether or not the dispute has been reported to him under this Act, investigate any matter appearing to him to be relevant to the dispute, or refer any such matter for investigation by an investigator, or by a committee of investigation, appointed by him for the purpose.

(2) Any investigator and any member of a committee of investigation appointed under this section shall be a person who appears to the Minister to be independent and otherwise qualified for such appointment, and subject as aforesaid may be a public officer:

Provided that, if the parties to the dispute so agree and request, a committee of investigation shall include an additional member appointed by the Minister from among persons nominated by or on behalf of one of the parties concerned, and an additional member so appointed from among persons nominated by or on behalf of the other party concerned.

(3) Any investigator or committee to whom any matter is so referred by the Minister under this section shall investigate the matter without delay and report thereon to the Minister.

(4) Any investigator or committee of investigation acting under this section may formulate proposals upon which a settlement of the trade dispute may be negotiated by the parties, and may make such recommendations as are considered desirable or necessary:

Provided that the Minister shall not be precluded by any such recommendations from making any recommendations of his own to all or any of the parties to the dispute as he may think fit.

### **Agreements to be Lodged with Minister**

7. It shall be the duty of every party to any agreement or arrangement made between any employer or organization of employers and any organization of employees, to secure that a copy of the terms of such agreement or arrangement is lodged with the Minister as soon as practicable after it is made.

## **PART III**

### **REFERENCE OF DISPUTES FOR SETTLEMENT OR INQUIRY**

#### **Industrial Arbitration Tribunals**

8. (1) An Industrial Arbitration Tribunal shall be appointed by the Chief Justice on the request of the Minister where the Minister is satisfied that all the parties to be referred to an Industrial Arbitration Tribunal.

(2) In the case of an appeal under Part IV, an Industrial Arbitration Tribunal shall be appointed by the Chief Justice on the request of the appellant.

(3) An Industrial Arbitration Tribunal shall consist of either —

- (a) a sole arbitrator ; or
- (b) an arbitrator assisted by one or more assessors nominated by the employers concerned and an equal number of assessors nominated by the employees concerned ; or
- (c) one or more arbitrators selected from a panel nominated by the employers concerned and an equal number of arbitrators nominated by the employees concerned and an independent chairman as may be approved by the parties to the dispute or, in the case of a Tribunal appointed for the purpose of hearing an appeal under Part IV, as may be determined by the Chief Justice.

(4) The Chief Justice shall designate one of the members of the Industrial Arbitration Tribunal to be president thereof.

(5) Any award made by a Tribunal appointed under paragraph (a) or paragraph (b) of subsection (2) of this section shall be made by the arbitrator, and any award made by a Tribunal appointed under paragraph (c) of such subsection shall be made by all of the members of the Tribunal if they are in agreement, otherwise, by the chairman.

#### **Vacancies in Tribunals**

9. (1) Whenever a Tribunal consists of more than one arbitrator and any vacancy occurs in their number, the Tribunal may, with the consent of the parties, act notwithstanding such vacancy.

(2) Whenever a Tribunal consists of an arbitrator assisted by assessors and any vacancy occurs in the number of assessors, the Tribunal may, in the discretion of the arbitrator, either act notwithstanding such vacancy or consent to another assessor being nominated and appointed to fill such vacancy.

(3) No act, proceeding or determination of a Tribunal shall be called in question or invalidated by reason of any such vacancy, provided that, in the circumstances referred to in subsection (1) of this section, the required consent has been first obtained.

#### **Application and Interpretation of Awards**

10. (1) This section shall apply to every award made by an Industrial Arbitration Tribunal under this Act.

(2) Every award shall be submitted to the Minister who shall, if he considers it proper that effect should be given to such award, cause such award to be published in the *Gazette* and in such other manner as he may think fit.

(3) An award shall take effect on the date of such publication :

Provided that where an award is expressed to have effect on some other date it shall on the date of its publication have effect as from the date specified in the award.

(4) An award may specify the period during which it shall be binding.

(5) An award shall state to which parties, and to which employers and employees comprised in the parties, each of the provisions of the award relates.

(6) An award shall not contain any provision which is inconsistent with the provisions of any written law relating to the terms or conditions of or affecting employment or labour, and any award containing any such inconsistent provision shall have effect as if such inconsistent provision had not been included therein.

(7) If any question arises as to the interpretation of an award or as to an award being inconsistent with any written law, the Minister or any party to the award may apply to the Industrial Arbitration Tribunal which made the award for a determination of the question, and the Tribunal shall determine the matter after hearing the parties concerned, or without such hearing if the parties consent, and any such determination shall be deemed to be an award made under this Act:

Provided that where the question arises out of any clerical mistake, incidental error or omission, the Tribunal may rectify such mistake, error or omission, without hearing the parties concerned.

(8) Subject to the provisions of this section, an award shall, as from the date that the award has effect, be an implied term of every contract of employment between the employers and employees to whom the award relates, so that the rate of wages to be paid and the terms and conditions of employment to be observed under the contract shall be in accordance with the award until it is varied by a subsequent award, or by agreement, or, in the case of an award specified to be binding for a period, until the expiry of such period.

#### **Arbitration Proclamation not to Apply**

11. The Arbitration Proclamation, 1959 (No. 75 of 1959) shall not apply to any proceedings or award under this Act.

#### **Boards of Inquiry**

12. (1) The Minister may refer to a Board of Inquiry appointed by him for the purpose any matter which appears to him to be connected with or relevant to any trade dispute, or to trade disputes in general, or to trade disputes of any type or class, whether or not any such dispute has been reported under this Act, and where the Minister has referred any such matter to a Board of Inquiry, he may refer to the Board any other matter which in his opinion ought to be so referred.

(2) A Board of Inquiry shall consist of one person, or of two or more persons including a chairman, as the Minister sees fit to appoint, and the Minister may appoint a public officer to be the secretary of the Board.

(3) A Board of Inquiry consisting of two or more persons may act notwithstanding any vacancy in their number.

(4) Every appointment of a Board of Inquiry, and its terms of reference, shall be notified in the *Gazette*.

(5) A Board of Inquiry shall inquire into and report on any matter referred to it under this section, and may make interim reports, and any report of a Board, and any minority report, shall be submitted to the Minister.

(6) Subject to the provisions of section 15 the Minister may order the publication of any report made by a Board of Inquiry, in whole or in part, and in such manner and at such time as he thinks fit.

### **Regulation of Proceedings**

13. Save as expressly provided in this Act or as may be prescribed an Industrial Arbitration Tribunal, and any Board of Inquiry appointed under this Act, may regulate its own procedure and proceedings as it thinks fit.

### **Powers to obtain Evidence**

14. (1) An Industrial Arbitration Tribunal, and any Board of Inquiry appointed under this Act, shall not be bound by the rules of evidence in civil or criminal proceedings :

Provided that, if any witness objects to answering any question or to producing any relevant document on the ground that it will tend to incriminate him, or on any other ground on which he could lawfully object if the objection had been made in civil or criminal proceedings in the High Court, he shall not be required to answer such question or to produce such document, nor shall he be liable to any penalties for refusing so to do.

(2) For the purpose of dealing with any matter before it, an Industrial Arbitration Tribunal, and any Board of Inquiry appointed under this Act, may by order in writing signed by or on behalf of the Tribunal or Board, as the case may be, require any person –

- (a) to furnish, in writing or otherwise, such particulars in relation to such matter as it may require;
- (b) to attend before it;
- (c) to give evidence on oath or otherwise; and
- (d) to produce any relevant documents.

(3) Any order made under subsection (2) of this section may include a requirement as to the date on which or the time within which the order is to be complied with.

(4) Any order purporting to be signed by or under the authority of the president, chairman or other person conducting the proceedings of the Industrial Arbitration Tribunal or Board of Inquiry shall be presumed, until the contrary is proved, to have been given by the Tribunal or Board, as the case may be.

(5) Any person who without reasonable cause (the burden of proof of which shall be upon him) fails to comply with an order duly given under subsection (2) of this section shall be guilty of an offence and liable to a fine of R100.

(6) Any person who, being required by an order made under subsection (2) of this section to furnish information, makes any statement or furnishes any information which he knows, or has reasonable cause to believe, to be false or misleading in a material particular, shall be guilty of an offence and shall be liable to a fine of R100 or to imprisonment for a term not exceeding three months, or to both such fine and such imprisonment.

(7) Where an order made under subsection (2) of this section is directed to a firm or to a body corporate or to an organization representing employers or employees, it shall be the duty of every partner of such firm, and of every director and officer of such body corporate and every officer of such organization, as the case may be, to comply with the order as if it had been directed to him, and where an offence is committed in respect of such an order every such partner, director or officer shall be deemed to be guilty of the offence, unless he proves that the offence was committed without his consent or connivance and that he exercised all due diligence to prevent the commission of the offence.

#### **Restriction on Publication of Evidence**

15. (1) There shall not be included in any publication relating to any award, determination, finding, report or other statement made or authorized by the Industrial Arbitration Tribunal, or by any Board of Inquiry, or by the Minister, any information as to itself disclosed during the course of proceedings under this Act by any organization representing employers or employees or by any individual business (whether carried on by an individual person, a firm or a company), which was made known to the Tribunal or Board only by such disclosure, and in respect of which such organization, person, firm or company, as the case may be, has made a request during the proceedings that such information be withheld from publication, nor shall any member of the Industrial Arbitration Tribunal, or of any Board of Inquiry, or any person concerned in or present at any proceedings thereof, disclose any such information to any person except with the consent of such organization, person, firm or company, as the case may be.

(2) Any person concerned in or present at the proceedings of the Industrial Arbitration Tribunal, or of any Board of Inquiry appointed under this Act, who, without such consent as aforesaid, discloses any such information shall be guilty of an offence and liable to a fine of R100.

#### **Appearance of Legal Practitioner**

16. (1) Any interested party may appear by advocate or attorney before an Industrial Arbitration Tribunal or Board of Inquiry in any proceedings or inquiry under this Act.

(2) It shall be in the discretion of a conciliator or investigator to permit any interested party to appear by advocate or attorney in any proceedings or inquiry under this Act.

### **Proceedings either Private or Public**

17. (1) In any proceedings before an Industrial Arbitration Tribunal or under section 12 of this Act, the president, chairman or other person conducting the proceedings may in his discretion admit or exclude the public or any representative of the Press to or from the proceedings or any part thereof.

(2) Where representatives of the Press are permitted to be present at any of the proceedings referred to in subsection (1) of this section, and not otherwise, a fair and accurate report or summary of the proceedings may be published:

Provided that until the award, report or other result of such proceedings has been published in accordance with this Act, no comment shall be published in respect of the proceedings or the evidence.

(3) Any person who acts in contravention of subsection (2) of this section shall be guilty of an offence and liable to a fine of R100.

## **PART IV**

### **ADHERENCE TO AGREEMENTS AND AWARDS**

#### **Interpretation**

18. In this Part, except where the context otherwise requires –

“award” means an award made by an Industrial Arbitration Tribunal under this Act;

“section of industry” means any trade or industry or section of any trade or industry or, except in section 25, any undertaking;

“society” means any association of persons, corporate or unincorporate, which is established in accordance with the law;

“wages regulation order” means a wages regulation order made under the Regulation of Wages and Conditions of Employment Act, 1969, or under any law amending, extending or replacing that Act.

#### **Prohibition of Sympathetic Strikes and Lock-outs**

19. Where it appears to the Minister that there is an actual or a threatened strike or lock-out in any trade or industry and the Minister is of the opinion –

- (a) that the strike or lock-out has any object other than or in addition to the furtherance of a trade dispute within that trade or industry; and
- (b) that the strike or lock-out is designed or calculated to coerce any employer or employee in any other trade or industry in respect of his conduct in or in connection with that other trade or industry, either directly or by inflicting hardship on the community,

the Minister may by order in the *Gazette* declare any strike or lock-out (whether actual or threatened) in that trade or industry to be unlawful.

### **Prohibition of Strike Pending Secret Ballot**

20. (1) Where it appears to the Minister that there is an actual or apprehended strike or lock-out arising out of a trade dispute in any section of industry, and any organization or society alleges publicly that it is promoting such strike or lock-out or if it appears to the Minister, after making such inquiry as he may think fit, that such organization or society is promoting such strike or lock-out, the Minister may by order in the *Gazette* declare any strike or lock-out (whether actual or apprehended) in that section of the industry to be unlawful until such time as a secret ballot of the members of the organization or society in favour of the strike or lock-out has been conducted in accordance with the provisions of this section and has resulted in at least two thirds of the members of the organization voting in favour of the strike or lockout.

(2) The Minister may direct that only such members of the organization or society as are involved, whether actually or potentially, in the strike or lock-out shall take part in the ballot.

(3) Every ballot shall be supervised by the Commissioner of Labour or by some person authorised by him in that behalf.

(4) Where any secret ballot is to be held in more than one place in connection with any one matter, it shall be held in all such places on the same day or days and during the same hours:

Provided that the person supervising a ballot at any place may, if he is satisfied that every person who would be likely to cast his vote at such place has done so, thereupon close the ballot being held at that place.

(5) The Minister may prescribe rules governing the conduct of ballots and such rules may include provisions relating to the giving of notice to members of an organization or society in respect of such ballot.

### **Adherence to Agreed Procedures**

21. Where it appears to the Minister that there is an actual or a threatened strike or lock-out arising out of a trade dispute in any section of industry, and the Minister is of the opinion —

- (a) that there is machinery of negotiation or arbitration for the voluntary settlement of disputes in that section of industry; and
- (b) that a substantial proportion of the employers and a substantial proportion of the employees in that section of industry are, either directly or through their respective organizations of employers or employees, parties to any agreement or arrangement for the use of that machinery; and
- (c) that that machinery is suitable for the settlement of that dispute; and
- (d) that all practicable means of reaching a settlement of that dispute through that machinery have not been exhausted,

the Minister may by order in the *Gazette* -

- (i) require the parties to that dispute to make use of that machinery ; and
- (ii) declare any strike or lock-out (whether actual or threatened) in that section of industry to be unlawful.

**Adherence to Terms of Agreements and Awards**

22. (1) Where it appears to the Minister that there is an actual or a threatened strike or lock-out arising out of a trade dispute in any section of industry, and the Minister is of the opinion -

- (a) that the matters to which that trade dispute relates have been settled by an agreement or award ; and
- (b) that a substantial proportion of the employers and a substantial proportion of the employees in that section of industry, are either directly or through their respective organizations of employers or employees, parties to that agreement or award ; and
- (c) that that agreement or award is expressed to have effect until a date which has not been reached,

the Minister may by order in the *Gazette*

- (i) require the parties to that dispute to comply with that agreement or award ; and
- (ii) declare any strike or lock-out (whether actual or threatened) in that section of industry to be unlawful until a date specified in the order, being a date on which, in the opinion of the Minister, the agreement or award ceases to have effect.

(2) An award of an Industrial Arbitration Tribunal shall, for the purposes of subsection (1) (c) be deemed to cease to have effect -

- (a) in the case of an award specified to be binding for a period, on the expiry of such period ;
- (b) in the case of any other award, on the expiry of a period of twelve months from the date of its publication under section 10.

(3) For the purpose of this section -

- (a) a trade dispute shall not be deemed to be within a trade or industry unless it is a dispute between employers and employees, or between employees and employees, in that trade or industry, which is connected with the employment or non-employment or the terms of the employment, or with the conditions of labour, of persons in that trade or industry ;
- (b) employees shall be deemed to be within the same trade or industry if, and shall be deemed not to be within the same trade or industry unless, either

- (i) they are members of, or their interests are lawfully represented by, the same trade union ; or
  - (ii) their wages or conditions of employment are determined in whole or in part in accordance with the conclusions of the same joint industrial council or other similar body, or in accordance with the same agreement made with one employer or a group of employers ; or
  - (iii) their wages or conditions of employment are governed in whole or in part by the same wages regulation order; and
- (e) a strike or lock-out shall not be deemed to be calculated to coerce any person unless such coercion ought reasonably to be expected as a consequence thereof.

#### **Effect of Orders**

23. Any order made by the Minister under this Part shall come into force on the day following the day on which it is made and shall continue in force until it is revoked by the Minister, or by an Industrial Arbitration Tribunal under section 24 ;

Provided that where an order is varied by the Industrial Arbitration Tribunal under that section it shall continue in force as so varied until it is revoked or further varied.

#### **Appeals to an Industrial Arbitration Tribunal from Orders of Minister**

24. (1) Any employer or employee or organization of employers or employees to which any order made by the Minister under this Part applies may appeal against such order within twelve weeks of the making thereof to an Industrial Arbitration Tribunal, and on any such appeal an Industrial Arbitration Tribunal may confirm, vary or revoke the order and give such directions as to the costs of the appeal as the Tribunal thinks proper.

(2) Where an Industrial Arbitration Tribunal has determined an appeal in respect of any order made by the Minister under this Part of this Act, a Tribunal shall not entertain any further appeal from that order unless it is satisfied that such further appeal raises fresh facts or matters, or other facts or matters which could not with reasonable diligence have been raised on the first appeal.

(3) In any appeal to an Industrial Arbitration Tribunal under this section the Minister and such other parties as the Tribunal may direct shall be parties to the appeal and shall be entitled to be heard.

(4) Every determination of the Industrial Arbitration Tribunal in any proceedings under this section, shall be published in the Gazette in such form as the president of the Tribunal may decide.

#### **Settlement of Claims as to Recognized Terms or Conditions of Employment**

25. (1) Where a claim is duly reported to the Minister under this section -

- (a) that terms or conditions of employment are established in any section of industry, either generally or in any particular area, which have been settled by an agreement or award; and
- (b) that the parties to the agreement or to the proceedings in which the award was made, are or represent (generally or in the area in question, as the case may be) a substantial proportion of the employers and of the employees in the section of industry, being employees of the description (hereinafter referred to as the relevant description) to which the agreement or award relates; and
- (c) that as respects any employee of the relevant description an employer engaged in the section of industry (or, where the operation of the agreement or award is limited to a particular area, an employer so engaged in that area), whether represented as aforesaid or not, is not observing the terms or conditions (hereinafter referred to as the recognized terms or conditions),

the Minister may take any steps which seem to him expedient to settle, or to secure the use of appropriate machinery to settle, the claim and may, if the claim is not otherwise settled, refer it to an Industrial Arbitration Tribunal:

Provided that no claim shall be reported under this section as respects -

- (i) employees whose remuneration or minimum remuneration is regulated (in whole or in part) by a wages regulation order;

- (ii) terms or conditions of employment regulated as aforesaid.

(2) For the purposes of this section a claim, to be duly reported, must be reported to the Minister in writing by an employer, or an organization of employers or employees being, or represented by, one of the parties mentioned in paragraph (b) of the foregoing subsection; and if in the opinion of the Minister the report of a claim does not contain sufficient particulars he may require further particulars to be given, and if he does so the claim shall not be treated as having been duly reported until the Minister is satisfied that the particulars required have been given.

(3) If on a reference under this section the Industrial Arbitration Tribunal is satisfied that the claim is well founded, then unless the Tribunal is satisfied that the terms or conditions which the employer is observing are not less favourable than the recognized terms or conditions, the Tribunal shall make an award requiring the employer to observe the recognized terms or conditions as respects all employees of the relevant description from time to time employed by him.

(4) An award under this section shall have effect as an implied term of the contract of employment, and shall have effect from such date as the Tribunal may determine, being a date not earlier than the date on which, in the opinion of the Tribunal, the employer was first informed of the claim giving rise to the award by the party which reported the claim to the Minister; and an award under

this section shall cease to have effect on the coming into operation of an agreement or award varying or abrogating the recognized terms or conditions.

#### **Offences connected with Unlawful Strikes and Lock-outs**

26. (1) Any person who in connection with any strike or lock-out declared by or under this Act to be unlawful –

- (a) declares, instigates, or incites others to take part in, any such strike or lock-out; or
- (b) takes part in any such strike or lock-out, shall be guilty of an offence, and –
  - (i) in the case of an offence under paragraph (a) of this subsection, shall be liable to a fine of R500 or to imprisonment for a period of twelve months or to both such fine and such imprisonment; and
  - (ii) in the case of an offence under paragraph (b) of this subsection, shall be liable to a fine not exceeding R100 or imprisonment for a period of three months or to both such fine and such imprisonment.

(2) Any person who ceases work or refuses to continue work, being work which under his terms of employment he is bound to do, in circumstances which give rise to a reasonable suspicion that he is taking part in or acting in furtherance of an unlawful strike, and fails to satisfy the Tribunal that he ceased work, or refused to continue work, as the case may be, for causes wholly unconnected with that strike, shall be guilty of the offence of taking part in an unlawful strike.

(3) Where a person guilty of an offence under this section was at the time of the offence an officer of an organization of employers or employees, or was purporting to act as such an officer, it shall be presumed, until the contrary is proved, that such person committed the offence with the authority of that organization.

(4) Where any officer, or person purporting to act as an officer, of an organization of employers or employees commits an offence with the authority of that organization, every person who at the time of the offence was an officer of that organization shall likewise be guilty of that offence, unless he proves that the offence was committed without his consent or connivance and that he exercised all reasonable diligence to prevent the commission of the offence.

#### **Protection of Persons Refusing to take part in Unlawful Strikes or Lock-outs**

27. (1) No person refusing to take part or to continue to take part in any strike or lock-out which is by or under this Act declared to be unlawful, shall be, by reason of such refusal or by reason of any action taken by him under this section, subject to expulsion from any organization or society, or to any fine or penalty, or to deprivation of any right or benefit to which he or his legal personal representatives would otherwise be entitled, or liable to be placed in any respect either directly or indirectly under any disability or at any disadvantage as com-

pared with other members of the organization or society, anything to the contrary in the rules of an organization or society notwithstanding.

(2) No provisions of any law limiting the proceedings which may be entertained by any Tribunal, and nothing in the rules of any organization or society requiring the settlement of disputes in any manner shall apply to any proceeding for enforcing any right or exemption secured by this section, and in any such proceeding the Tribunal may, in lieu of ordering a person who has been expelled from membership of an organization or society to be restored to membership, order that he be paid out of the funds of the organization or society such sum by way of compensation or damages as the Tribunal thinks just.

## **PART V**

### **MISCELLANEOUS**

#### **Closed Shop**

28. Any strike for the reason that an employer has employed or is proposing to employ a person who is not a member of a trade union or is a member of any particular trade union shall be an unlawful strike for the purposes of this Act.

#### **Consent of Attorney-General**

29. A prosecution for an offence under this Act shall not be instituted except by, or with the written consent of, the Attorney-General:

Provided that a person may be arrested for and charged with an offence under this Act, and may be remanded in custody or on bail, notwithstanding that the consent of the Attorney-General to the institution of a prosecution for the offence has not been obtained; but no further or other proceedings shall be taken until that consent has been obtained.

#### **Liability of Persons Appointed under Act**

30. No person shall be personally liable for any act or default done or omitted to be done in good faith and without negligence by him in the performance of any functions conferred upon him by this Act or any rules or regulations made thereunder.

#### **Rules of Industrial Arbitration Tribunal**

31. (1) The Chief Justice may make rules for the purpose of regulating the procedure of an Industrial Arbitration Tribunal.

(2) The Minister may make rules –

- (a) prescribing anything which in terms of this Act may be prescribed; and
- (b) for the purpose of regulating the procedure of Boards of Inquiry;

(c) determining the allowances payable to members of an Industrial Arbitration Tribunal or a Board of Inquiry and to any other person appointed by him for the purposes of this Act;

(d) generally for the better carrying out of the provisions of this Act.

Passed by the National Assembly this day, the 14th May, 1969.

G.T. MATENGE,  
Clerk to the National Assembly.