

TRADE DISPUTES ACT, 1982

No. 19



of 1982

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SCHEDULE

An Act to provide for the settlement of trade disputes generally and for the settlement of trade disputes in essential services, for the control and regulation of industrial action and for matters incidental thereto

Date of Assent: 11.10.82

Date of Commencement: On Notice

ENACTED by the Parliament of Botswana.

PART I *Preliminary*

1. This Act may be cited as the Trade Disputes Act, 1982, and shall come into operation on such date as the Minister may, by notice published in the Gazette, appoint.

Short title
and
commence-
ment

2. (1) In this Act, unless the context otherwise requires, —
“action short of a strike” means any method of working (other than the method of working commonly known as working to rule) undertaken by a body of employees in any trade or industry acting in combination or under a common understanding, which method of working slows down normal production or the execution of the normal function under their contracts of employment of the employees undertaken such method of working;

Inter-
pretation

“award of the Permanent Arbitrator” means an award of the Permanent Arbitrator in connexion with a trade dispute referred to him under this Act;

“board of inquiry” means a board of inquiry appointed under section 11;

“collective labour agreement” means a written agreement relating to the terms and conditions of employment concluded between one or more registered trade unions or branches thereof or, where no such organization exists, the representatives of the employees concerned duly elected and authorized by them and one or more employers or registered employers' organizations;

“commissioner of inquiry” means a sole commissioner of inquiry appointed under section 11;

“Commissioner of Labour” means the person for the time being holding, acting in or lawfully performing the functions of the public office of Commissioner of Labour;

“committee of investigation” means a committee of investigation appointed under section 10;

“contract of employment” means an agreement, whether oral or in writing, expressed or implied, whereby one person agrees for a wage or other benefit or both to let his labour to and to perform it under the orders of another person who agrees to hire it and includes a contract of apprenticeship and an indenture to learn;

“employee” means any person who has entered into a contract of employment for the hire of his labour:

Provided that the expression shall not include any officer or servant of the Government unless he belongs to a category of such officers or servants the members of which are declared by the Minister under the principal Act for the time being regulating employment, by notice published in the Gazette, to be employees for the purposes of that Act;

“employer” means any person who has entered into a contract of employment to hire the labour of any person and includes –

(a) the Government in respect of any of its officers or servants who belong to a category of such officers or servants the members of which are declared by the Minister under the principal Act for the time being regulating employment, by notice published in the Gazette, to be employees for the purposes of that Act;

(b) a public authority; and

(c) the person who owns or is carrying on for the time being or is responsible for the management of the undertaking, business or enterprise of whatever kind in which the employee is engaged;

“employment” means the performance by an employee of a contract of employment;

“essential service” means any of the services specified in the Schedule;

“industrial action” means a lock-out, strike or action short of a strike in furtherance of a trade dispute;

“industrial relations officer” means a labour officer designated as an industrial relations officer under section 3;

“investigator” means a sole investigator appointed under section 10;

“labour officer” means any person appointed under the principal Act for the time being regulating employment to be a labour officer;

“lock-out” means the closing of a place of employment by an employer in any trade or industry or the suspension of work by such an employer or the refusal by such an employer to continue to employ any number of his employees in that trade or industry;

“officer”, where it is used with reference to an organization, includes any member of the executive committee thereof;

“organization” means a trade union or other organization registered under the Act for the time being providing for the registration of trade unions or any branch thereof;

“Permanent Arbitrator” means the person appointed under section 7 to be the Permanent Arbitrator or a person appointed under that section to perform the functions of the Permanent Arbitrator;

“prescribed” means prescribed by regulations made by the Minister under section 48;

“public authority” includes every local authority and every land board;

“secret ballot” means a secret ballot such as is referred to in section 43 (3) (b);

“strike” means the cessation of work by a body of employees in any trade or industry acting in combination or under a common understanding or a concerted refusal or a refusal under a common understanding by such a body of employees to continue to work;

“trade dispute” means any dispute or difference between an employer or employers and employees or between employees and employees in any trade or industry which is connected with the employment of those employees in that trade or industry or with the terms or conditions of or affecting that employment;

“trade or industry” includes –

- (a) any business, trade, manufacture, undertaking or calling of employers;
- (b) any calling, service, employment, handicraft or industrial occupation or vocation of employees;
- (c) a branch or section of any trade or industry or a group of trades or industries; and
- (d) the carrying on of its activities by the Government or any public authority;

“trade union” means a trade union registered under the Act for the time being providing for the registration of trade unions;

“unlawful industrial action” means any industrial action declared by this Act or by the Minister under this Act to be unlawful or any lock-out, strike or action short of a strike deemed to be unlawful industrial action by virtue of section 36.

(2) Any reference in this Act to employees shall not, unless the context otherwise requires, include a reference to a sole employee.

Power of
Minister to
designate
industrial
relations
officers
Mediation
by
Commis-
sioner of
Labour or
authorized
persons in
trade
disputes

3. The Minister may designate any labour relations officer as an industrial relations officer for the purposes of this Act.

PART II *Procedure for settlement of trade disputes generally*

4. (1) Where the Commissioner of Labour is satisfied that a trade dispute exists or is apprehended, he may, whether the dispute has or has not been reported to him under section 5, mediate between the parties to the dispute or authorize some other person so to mediate.

(2) Mediation under this section shall be directed towards helping the parties to the dispute to reach a settlement of the dispute principally by their own efforts and, where such a settlement is reached, advising them as to the incorporation of the terms of the settlement in a collective labour agreement.

(3) Where the settlement of the trade dispute is not achieved following mediation under this section and the dispute has not been reported to him under section 5, the Commissioner of Labour shall use his best endeavours to persuade each party to the dispute or the organization representing that party for the purposes of the dispute to report the dispute to him under section 5.

Reporting
of trade
disputes
to
Commis-
sioner of
Labour

5. (1) Any trade dispute, whether existing or apprehended, may be reported to the Commissioner of Labour by or by an organization acting on behalf of a party to the dispute.

(2) Every report of a trade dispute made under this section shall be in writing, in such form as may be prescribed, and shall sufficiently specify –

- (a) the employer or employers and the employees or the classes or categories of employees that are parties to the dispute;
- (b) the party or parties by whom or on whose behalf the report is made;
- (c) where the report is made on behalf of a party, the nature of the authority given by that party; and
- (d) where the information is known, whether, in the case of each party to the dispute, the party consents or does not consent to the referral of the dispute to the Permanent Arbitrator in the event of a settlement of the dispute not being reached by other means:

Provided that this paragraph shall not apply where there is annexed to the report a written requirement such as is referred to in section 8.

(3) Where the report of a trade dispute made under this section specifies that a party to the dispute consents to the referral of the dispute to the Permanent Arbitrator in the event of a settlement of the dispute not being reached by other means, the report shall have annexed to it the written consent of the party, signed by or on behalf of the party, to that effect.

(4) The party or organization acting on behalf of a party reporting a trade dispute under this section shall forthwith serve a copy of the report on every other party to the dispute or, where any such parties are members of the same organization, on that organization.

(5) If any question arises as to whether a trade dispute has or has not been reported to the Commissioner of Labour under this section or as to the day on which such a dispute was so reported, the question shall be determined by the Commissioner of Labour whose determination shall be conclusive of the question.

6. (1) The Commissioner of Labour shall consider every trade dispute reported to him under section 5 and, where he is of the opinion that suitable means for reaching a settlement of the dispute exist by virtue of a collective labour agreement, he shall refer the dispute for settlement by those means unless he is satisfied that there has already been a failure to reach a settlement of the dispute by those means.

Steps to be taken by Commissioner of Labour following report of trade disputes

(2) Where the Commissioner of Labour does not refer the dispute for settlement under subsection (1) or where, following such a reference, there is a failure after what, in his opinion, is a reasonable time to reach a settlement of the dispute, the Commissioner of Labour shall —

- (a) inquire into the causes and circumstances of the dispute and, in performance of this duty, request every party to the dispute to attend before him, either in person or by a representative, at such time and place as he shall designate; and
- (b) take such steps as may appear to him necessary or expedient to reach a settlement of the dispute, which steps, without prejudice to the generality of the foregoing, may include —
 - (i) acting as conciliator of the parties to the dispute or nominating an industrial relations officer so to act subject to his directions; and
 - (ii) requesting the parties to the dispute to authorize representatives to negotiate a settlement of the dispute and to require them to inform the parties of the terms of any settlement so negotiated.

(3) This section shall be without prejudice to the powers of the Commissioner of Labour under section 4 to mediate between the parties to the dispute or to authorize some other person so to mediate; and mediation under section 4 may take place before, after or concurrently with any step taken in accordance with this section.

Steps to be taken by Commissioner of Labour on failure to reach settlement of reported trade dispute

7. (1) Where there is a failure after what, in the opinion of the Commissioner of Labour, is a reasonable time to reach a settlement of a trade dispute following his intervention in accordance with section 6, the Commissioner shall –

- (a) where there has been lodged with him the written consent of every party to the dispute, signed by or on behalf of the party, to the referral of the trade dispute to the Permanent Arbitrator in the event of a settlement of the dispute not being reached by other means, whether that written consent was annexed to the report of the trade dispute in accordance with section 5 (3) or has subsequently been lodged with the Commissioner, refer the dispute to the Permanent Arbitrator; or
- (b) where such written consent of every party to the dispute has not been lodged with him, report the failure to reach a settlement of the trade dispute to the Minister,

and, in either case, forthwith serve notice in writing on each party to the dispute that he has done so.

(2) Where –

- (a) failure to reach a settlement of a trade dispute has been reported to the Minister by the Commissioner of Labour in accordance with subsection (1) (b); and
- (b) the Minister has not, prior to the service of notice on each party to the dispute in accordance with subsection (1), decided to take steps under section 9 (1), 10 (1) or 11 (1) and served on each such party the notice required by section 9 (2), 10 (10) or 11 (10), as the case may be,

the Minister shall decide whether to take or not to take steps under section 9 (1), 10 (1) or 11 (1) and, where he decides to take such steps, he shall, in the case of each party to the dispute, serve on the party the notice required by section 9 (2), 10 (10) or 11 (10), as the case may be, within 7 days immediately after the day on which notice was served on the party in accordance with subsection (1).

(3) Where, in the circumstances described by subsection (2) (a) and (b), any party to the dispute is not served with notice under section 9 (2), 10 (10) or 11 (10) within 7 days immediately after the day on which notice was served on the party in accordance with subsection (1), all practicable means for reaching a settlement of the trade dispute shall be deemed, for the purposes of this Act, to be exhausted.

8. Notwithstanding sections 6 and 7, where a trade dispute has been reported to the Commissioner of Labour under section 5 and there is lodged with him a written requirement, signed by or on behalf of every party to the dispute, that the Commissioner refer the dispute to the Permanent Arbitrator, whether that requirement is annexed to the report of the trade dispute or is subsequently lodged with the Commissioner, the Commissioner shall forthwith so refer the dispute and serve notice in writing on each party to the dispute that he has done so.

Commissioner of Labour to refer reported trade dispute to Permanent Arbitrator on being required by parties to do so

9. (1) Where the Minister is satisfied that a trade dispute exists or is apprehended and where –

Power of Minister to refer certain trade disputes to Permanent Arbitrator without consent of parties

- (a) any industrial action, whether actual or declared, in furtherance of the trade dispute has been declared by the Minister under this Act to be unlawful;
- (b) the dispute involves an essential service; or
- (c) the Minister is satisfied that the dispute has or may jeopardize the essentials of life or the livelihood of the people of Botswana or a significant section thereof or may endanger the public safety or the life of the community,

the Minister may, whether the dispute has or has not been reported to the Commissioner of Labour under section 5 and whether the parties consent or do not consent to his doing so, refer the dispute to the Permanent Arbitrator.

(2) Where the Minister decides to take steps under subsection (1), he shall forthwith serve notice in writing of his decision on each party to the dispute.

10. (1) Where the Minister is satisfied that a trade dispute exists or is apprehended, he may, whether the dispute has or has not been reported to the Commissioner of Labour under section 5, investigate any matter appearing to him to be relevant to the dispute or refer any such matter for investigation by a sole investigator or by a committee of investigation appointed by the Minister for that purpose.

Power of Minister to investigate or refer for investigation matters relevant to trade disputes

(2) An investigator or a member of a committee of investigation shall be a person who appears to the Minister to be independent and otherwise qualified to be appointed as such and may be a public officer.

(3) A committee of investigation shall consist of such number of persons as the Minister shall determine and the Minister shall appoint one of the members of the committee to be the chairman thereof:

Provided that the Minister shall not appoint an additional member appointed to a committee of investigation under subsection (6) to be the chairman thereof.

(4) The Minister may appoint a public officer to be the secretary to an investigator or to a committee of investigation.

(5) An investigator may, if all the parties to the trade dispute so request, be assisted by 2 assessors appointed by the Minister –

- (a) one of whom shall be appointed from among persons nominated by or on behalf of the party or parties on one side of the dispute; and
- (b) the other of whom shall be appointed from among persons nominated by or on behalf of the party or parties on the other side of the dispute.

(6) Notwithstanding subsection (2), the Minister may, if all the parties to the trade dispute so request, appoint to a committee of investigation 2 additional members thereof –

- (a) one of whom shall be appointed from among persons nominated by or on behalf of the party or parties on one side of the dispute; and
- (b) the other of whom shall be appointed from among persons nominated by or on behalf of the party or parties on the other side of the dispute.

(7) An investigator or a committee of investigation shall forthwith proceed to investigate the matter referred under this section for investigation by him or it and shall, having completed the investigation to his or its satisfaction, forthwith submit a report thereon to the Minister, which report may contain –

- (a) proposals upon which a settlement of the trade dispute may, in the opinion of the investigator or of the committee of investigation, be negotiated by the parties to the dispute; and
- (b) such recommendations as the investigator or the committee of investigation may think fit to make.

(8) The Minister shall not be precluded by any recommendations contained in a report under subsection (7) from making such recommendations of his own to all or any of the parties to the dispute as he may think fit.

(9) Subject to this Act, an investigator or a committee of investigation shall regulate his or its own procedure.

(10) Where the Minister decides to take steps under subsection (1), he shall forthwith serve notice in writing of his decision on each party to the dispute and any industrial action taken in furtherance of the dispute by such a party within 30 days, or within such lesser period as the Minister may specify in the notice, immediately after the day on which service of the notice was effected on that party shall be unlawful:

Provided that, where such industrial action is taken after all practicable means for reaching a settlement of the dispute are deemed, by virtue of section 7 (3), to be exhausted, that industrial action shall not be unlawful by virtue of this subsection alone.

11. (1) Where the Minister is satisfied that a trade dispute exists or is apprehended, he may, whether the dispute has or has not been reported to the Commissioner of Labour under section 5, refer any matter appearing to him to be relevant to the dispute to be inquired into by a sole commissioner of inquiry or by a board of inquiry appointed by the Minister for that purpose.

Power of
Minister
to refer
trade
disputes
to sole
commis-
sioners or
boards of
inquiry

(2) Where any matter is referred under subsection (1) to be inquired into by a commissioner of inquiry or by a board of inquiry, the Minister may, at the same time or subsequently, refer any other matter to be inquired into by the commissioner or by the board which, in his opinion, ought to be so referred and, without prejudice to the generality of the foregoing, he may so refer any matter appearing to him to be relevant to trade disputes in general or to such classes of trade disputes as he may specify.

(3) A commissioner of inquiry or a member of a board of inquiry shall be a person who appears to the Minister to be independent and otherwise qualified to be appointed as such and may be a public officer.

(4) A board of inquiry shall consist of such number of persons as the Minister shall determine and the Minister shall appoint one of the members of the board to be the chairman thereof.

(5) The Minister may appoint a public officer to be the secretary to a commissioner of inquiry or to a board of inquiry.

(6) Every appointment of a commissioner of inquiry or of a board of inquiry, together with his or its terms of reference, and every appointment of a member of a board of inquiry to be the chairman thereof or of a public officer to be the secretary to a commissioner of inquiry or to a board of inquiry shall be notified by the Permanent Secretary by notice published in the Gazette.

(7) A commissioner of inquiry or a board of inquiry shall forthwith proceed to inquire into every matter referred under this section to be inquired into by him or it and, having completed the inquiry to his or its satisfaction, shall forthwith submit a report thereon to the Minister, together, in the case of a board of inquiry, with any minority report there may be.

(8) Pending the submission of his or its final report under subsection (7), a commissioner of inquiry or a board of inquiry may, from time to time, submit such interim reports to the Minister as he or it may think fit.

(9) Subject to this Act, a commissioner of inquiry or a board of inquiry shall regulate his or its own procedure.

(10) Where the Minister decides to take steps under subsection (1), he shall forthwith serve notice in writing of his decision on every party to the dispute and any industrial action taken in furtherance of the dispute by such a party within 30 days, or within such lesser period as the Minister may specify in the notice, immediately after the day on which service of the notice was effected on that party shall be unlawful:

Powers of
sole commis-
sioners and
boards of
inquiry to
obtain
evidence

Provided that, where such industrial action is taken after all practicable means for reaching a settlement of the dispute are deemed, by virtue of section 7 (3), to be exhausted, that industrial action shall not be unlawful by virtue of this subsection alone.

12. (1) In inquiring into any matter referred under section 11 to be inquired into by him or it, a commissioner of inquiry or a board of inquiry shall not be bound by any rule of evidence:

Provided that, where any witness objects to answering a question or to producing a document on the ground that to do so might tend to incriminate him or on any other ground on which he could lawfully object to doing so if the objection had been made in civil or criminal proceedings in the High Court, he shall not be required to answer the question or to produce the document and shall not be liable to any penalty for refusing to do so.

(2) For the purpose of inquiring into any matter referred under section 11 to be inquired into by him or it, a commissioner of inquiry or a board of inquiry may, by order in writing signed by the commissioner or by the chairman of the board on behalf of the board, require any person —

- (a) to furnish, in writing or otherwise, such particulars in relation to that matter as may be specified in the order;
- (b) to attend before him or it;
- (c) to give evidence on oath or otherwise; and
- (d) to produce any document relevant to the inquiry,

and the order may include a requirement as to the date on or the time within which the order is to be complied with.

(3) Any person who, without reasonable excuse, fails to comply with an order under subsection (2) shall be guilty of an offence and liable to a fine of ₱500 and to imprisonment for 6 months; and in any proceedings for an offence under this subsection the court shall presume —

- (a) the absence of a reasonable excuse on the part of the person charged; and
- (b) that any document purporting to be an order under subsection (2) is such an order,

unless the contrary is proved.

(4) Any person who, being required by order under subsection (2) (a) to furnish specified particulars, furnishes particulars which he knows to be false or misleading or does not believe to be true and complete shall be guilty of an offence and liable to a fine of ₱1 500 and to imprisonment for 18 months.

(5) Where an order under subsection (2) is directed to a body corporate, partnership or organization, every director or officer of the body corporate, partner of the partnership or officer of the organization, as the case may be, shall use his best endeavours to ensure compliance with the order and, where an offence is

committed in respect of such an order, every such director, officer or partner shall be deemed, for the purposes of this Act, 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.

13. (1) The Minister may order the publication of any report submitted to him by a commissioner of inquiry or by a board of inquiry under or in accordance with section 11; but no part of such a report shall be published which contains any information about an organization or business disclosed to the commissioner or to the board during the course of the inquiry on behalf of that organization or business if —

Publication of reports submitted to Minister by sole commissioners and boards of inquiry

- (a) the information was made known to the commissioner or to the board solely by reason of such disclosure; and
- (b) a request has been made to the commissioner or to the board in the course of the inquiry, on behalf of that organization or business, that the information should not be published.

(2) No commissioner of inquiry or member of a board of inquiry or any person concerned in or present at any proceedings before such a commissioner or board shall disclose to another person any information such as is referred to in subsection (1) except with the consent of the organization or business concerned, unless it is his duty so to disclose the information.

(3) Any person who publishes any part of a report in contravention of subsection (1) or who discloses any information in contravention of subsection (2) shall be guilty of an offence and liable to a fine of P100.

14. In any proceedings before a commissioner of inquiry or a board of inquiry, the commissioner or the chairman or other person for the time being presiding may admit or exclude the public, including any representatives of the news media, to or from the proceedings or any part thereof.

Proceedings before sole commissioners or boards of inquiry may be held in public or private

15. (1) Where the public is excluded under section 14 from proceedings before a commissioner of inquiry or a board of inquiry or from any part of such proceedings, no person shall publish any report or summary of the proceedings or of that part of the proceedings, as the case may be.

Restriction of publication of reports of proceedings before sole commissioners or boards of inquiry

(2) Where the public is admitted under section 14 to proceedings before a commissioner of inquiry or a board of inquiry or to any part of such proceedings, no person shall publish any report or summary of the proceedings or of that part of the proceedings, as

Legal
represent-
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proceedings
before
sole
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sioners or
boards of
inquiry
Power of
President
to appoint
Permanent
Arbitrator

the case may be, unless the report or summary is fair and accurate.

(3) No person shall publish any comment on proceedings before a commissioner of inquiry or a board of inquiry unless a report arising out of those proceedings has been published in compliance with an order of the Minister under section 13 (1) and the comment is restricted to that part of the proceedings to which the report relates.

(4) Any person who contravenes this section shall be guilty of an offence and liable to a fine of P100.

16. Any person may appear and be represented by a legal practitioner in any proceedings before a commissioner of inquiry or a board of inquiry if the commissioner or the chairman of the board consents thereto.

PART III *Arbitration by Permanent Arbitrator*

17. (1) The President may, after consulting the Minister, appoint a person in accordance with this section to be the Permanent Arbitrator for the purposes of this Act.

(2) The President shall not appoint a person to be the Permanent Arbitrator unless that person —

- (a) is qualified to be appointed as a judge of the High Court; or
- (b) is, in the opinion of the President, a person of integrity with extensive experience in industrial relations, preferably in a similar capacity, and a sound knowledge of economics:

Provided that, where he is of the opinion that circumstances render it necessary to do so, the President may, after consulting the Minister, appoint as the Permanent Arbitrator any person qualified to practise as an advocate or attorney in a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in any country outside the Commonwealth that may be prescribed by Parliament for the purposes of section 96 of the Constitution or in a court having jurisdiction in appeals from such a court.

(3) In carrying out his functions under this Act, the Permanent Arbitrator shall have the same privileges, immunities and protection as a judge.

(4) The Permanent Arbitrator shall hold office as such for 2 or 3 years, as the President shall determine, but shall be eligible for reappointment at the expiry of his term of office:

Provided that, where a trade dispute has been referred to the Permanent Arbitrator under this Act and he has commenced the hearing of the dispute but the proceedings have not been determined by the date on which his term of office would

otherwise expire, his term of office shall extend to such time as the proceedings are determined by him.

(5) If the office of the Permanent Arbitrator becomes vacant or he is for any reason unable or not readily available to perform the functions of his office, the President may, after consulting the Minister, appoint any person he is empowered to appoint as the Permanent Arbitrator to perform the functions of the Permanent Arbitrator.

(6) A person appointed under subsection (5) to perform the functions of the Permanent Arbitrator shall perform those functions for such period as the President may specify or, if no such period is specified, until his appointment is revoked by the President after consulting the Minister:

Provided that, where a trade dispute has been referred to such a person under this Act and he has commenced the hearing of the dispute but the proceedings have not been determined by the date on which any period for which he was appointed would otherwise expire, the period for which he was appointed shall extend to such time as the proceedings are determined by him.

(7) Where a trade dispute is referred to the Permanent Arbitrator under this Act, he may, if all the parties to the dispute so request, be assisted by 2 assessors appointed by him –

- (a) one of whom shall be appointed from among persons nominated by or on behalf of the party or parties on one side of the dispute; and
- (b) the other of whom shall be appointed from among persons nominated by or on behalf of the party or parties on the other side of the dispute.

(8) The registry of the Permanent Arbitrator shall be that of the High Court and the records and other documents of the Permanent Arbitrator shall be kept therein.

18. (1) Where a trade dispute is referred to the Permanent Arbitrator under this Act, he may, in connexion therewith, –

- (a) by order in writing signed by him –
 - (i) require any party to the dispute to attend and continue to attend before him, either in person or by a representative, at such time and place as shall be specified in the order;
 - (ii) require any person to furnish, in writing or otherwise, such particulars in relation to the trade dispute as shall be specified in the order; and
 - (iii) require any person to attend before him, to give evidence on oath or otherwise and to produce any document relevant to the proceedings;
- (b) make an interim award relating to all or any of the matters in dispute;

Powers of
Permanent
Arbitrator
in
connexion
with trade
disputes
referred
to him
under Act

- (c) give directions for the purpose of the hearing or the determination;
 - (d) refrain from further hearing of or determining the dispute or any part thereof if it appears to him that –
 - (i) the dispute or the part thereof in question is trivial; or
 - (ii) further proceedings in respect of the dispute or the part thereof in question are neither necessary nor desirable in the public interest;
 - (e) hear and determine the dispute in the absence of any party who has been required to attend the hearing and determination of the dispute and has failed so to attend;
 - (f) sit at any place;
 - (g) adjourn the proceedings to any time or place;
 - (h) refer any matter to an expert and accept his report as evidence in the proceedings;
 - (i) direct that parties be joined in the proceedings or struck out;
 - (j) amend any defect or error in the proceedings and make all necessary amendments in order that he may determine the essential question or issue raised by or depending on the proceedings;
 - (k) allow the amendment, on such terms as he may think fit, of the proceedings; and
 - (l) generally give all such directions and do all such things as may be necessary or expedient for the expeditious and just hearing and determination of the dispute.
- (2) Any person who, without reasonable excuse, fails to comply with an order under subsection (1) (a) shall be guilty of an offence and liable to a fine of P500 and to imprisonment for 6 months; and in any proceedings for an offence under this subsection the court shall presume –
- (a) the absence of a reasonable excuse on the part of the person charged; and
 - (b) that any document purporting to be an order under subsection (1) (a) is such an order,
- unless the contrary is proved.
- (3) Any person who, on being required by order under subsection (1) (a) (11) to furnish specified particulars, furnishes particulars which he knows to be false or misleading or does not believe to be true and complete shall be guilty of an offence and liable to a fine of P1 500 and to imprisonment for 6 months.
- (4) Where an order under subsection (1) (a) is directed to a body corporate, partnership or organization, every director or officer of the body corporate, partner of the partnership or officer of the organization, as the case may be, shall use his best endeavours to ensure compliance with the order and, where an

offence is committed in respect of such an order, every such director, officer or partner shall be deemed, for the purposes of this Act, 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.

(5) In proceedings before him under this Act, the Permanent Arbitrator shall not be bound by any rule of evidence:

Provided that, where any witness objects to answering a question or to producing a document on the ground that to do so might tend to incriminate him or on any other ground on which he could lawfully object to doing so if the objection had been made in civil or criminal proceedings in the High Court, he shall not be required to answer the question or to produce the document and shall not be liable to any penalty for refusing to do so.

19. Pending an award of the Permanent Arbitrator, any industrial action in furtherance of the trade dispute in question shall be unlawful.

Industrial
action
pending
award of
Permanent
Arbitrator
unlawful

20. (1) Every award of the Permanent Arbitrator shall be binding upon every party to the dispute in question, whether that party did or did not appear or was or was not represented at the hearing and determination of the dispute.

Awards of
Permanent
Arbitrator
to be
binding

(2) Every award of the Permanent Arbitrator shall –

- (a) be made as expeditiously as is reasonably practicable in the circumstances;
- (b) come into operation on such date, which may be retrospective, as the Permanent Arbitrator shall appoint;
- (c) remain in force for such period not exceeding 2 years from the date of its commencement as the Permanent Arbitrator shall specify; and
- (d) not be inconsistent with any written law or be less favourable to employees than any provision made thereunder by which they are affected or fail to take into account the social and economic policies of the Government as the same are, from time to time, made known.

21. (1) An application to have the terms of an award of the Permanent Arbitrator varied may be made by or on behalf of any party bound by the award and shall be lodged, in writing, with the Permanent Arbitrator.

Variation
of awards
of
Permanent
Arbitrator

(2) Where an application is lodged with the Permanent Arbitrator in accordance with subsection (1), the provisions of section 18 which apply in respect of a trade dispute referred to him under this Act shall apply, with all necessary modifications,

in respect of such an application and the Permanent Arbitrator shall give every party bound by the award the opportunity of being heard on the application.

(3) The Permanent Arbitrator shall consider every application lodged with him in accordance with subsection (1), taking into account the submissions, if any, made by or on behalf of the parties bound by the award, and may by order vary the terms of the award:

Provided that –

- (i) where the Permanent Arbitrator is of the opinion, having considered the application, that the terms of the award ought to be varied to remove any doubt or uncertainty arising therefrom, he shall by order vary the terms of the award to such extent as is, in his opinion, necessary to remove the doubt or uncertainty; and
- (ii) the Permanent Arbitrator shall not vary the terms of an award within the period of 12 months immediately after the day the award came into force unless he does so to remove a doubt or uncertainty in accordance with paragraph (i) or it is, in his opinion, desirable to do so by reason of exceptional circumstances.

(4) An order under this section shall come into force on such date, which may be retrospective, as the Permanent Arbitrator shall appoint.

Inter-
pretation of
awards of
Permanent
Arbitrator

22. (1) If any question arises as to the interpretation of an award of the Permanent Arbitrator, an application for a ruling on the question may be made by the Minister or by or on behalf of any party bound by the award and shall be lodged, in writing, with the Permanent Arbitrator.

(2) Where an application is lodged with the Permanent Arbitrator in accordance with subsection (1), he shall give every party bound by the award the opportunity of being heard on the question.

(3) The Permanent Arbitrator shall consider every application lodged with him in accordance with subsection (1), taking into account the submissions, if any, made by or on behalf of the parties bound by the award, and may give his ruling on the question.

(4) A ruling given under this section shall be binding upon every party bound by the award as if the ruling formed part of that award.

23. (1) The Permanent Arbitrator shall forthwith cause every award of the Permanent Arbitrator, every order of the Permanent Arbitrator varying the terms of such an award and every ruling of the Permanent Arbitrator on a question as to the interpretation of such an award to be transmitted to the Permanent Secretary who shall, on receipt of the same, forthwith cause it to be published in the Gazette and a copy thereof to be served on every party bound by the award; but failure to comply with this subsection in respect of any such award, order or ruling shall not affect the validity thereof.

Awards etc. of Permanent Arbitrator to be transmitted to Permanent Secretary and published in Gazette and copies thereof to be served on parties

(2) The Permanent Secretary may cause a copy of any award, order or ruling such as is referred to in subsection (1) to be served on any organization or other person affected thereby.

24. (1) No publication relating to an award of the Permanent Arbitrator or to any other decision or report or other statement of or authorized by the Permanent Arbitrator shall include any information about an organization or business disclosed to the Permanent Arbitrator during the course of proceedings before him under this Act on behalf of that organization or business if –

Restriction of publication of certain information disclosed to Permanent Arbitrator

(a) the information was made known to the Permanent Arbitrator solely by reason of such disclosure; and

(b) a request was made to the Permanent Arbitrator in the course of such proceedings, on behalf of that organization or business, that the information should not be published.

(2) No person concerned in or present at any proceedings before the Permanent Arbitrator under this Act shall disclose to another person any information such as is referred to in subsection (1) except with the consent of the organization or business concerned, unless it is his duty so to disclose the information.

(3) Any person who issues a publication containing information which it is prohibited to include therein by virtue of subsection (1) or who discloses any information in contravention of subsection (2) shall be guilty of an offence and liable to a fine of P150.

25. In any proceedings before him under this Act, the Permanent Arbitrator may admit or exclude the public, including any representatives of the news media, to or from the proceedings or any part thereof.

Proceedings before Permanent Arbitrator may be held in public or private
Restriction of publication of reports of proceedings before Permanent Arbitrator

26. (1) Where the public is excluded under section 25 from proceedings before the Permanent Arbitrator or from any part of such proceedings, no person shall publish any report or summary of the proceedings or of that part of the proceedings, as the case may be.

(2) Where the public is admitted under section 25 to proceedings before the Permanent Arbitrator or to any part of such proceedings, no person shall publish any report or summary of the proceedings

or of that part of the proceedings, as the case may be, unless the report or summary is fair and accurate.

(3) No person shall publish any comment on proceedings before the Permanent Arbitrator under this Act unless the Permanent Secretary has caused the award of the Permanent Arbitrator arising out of those proceedings or to which those proceedings otherwise relate to be published in the Gazette in accordance with section 23.

(4) Any person who contravenes this section shall be guilty of an offence and liable to a fine of P100.

Represent-
ation in
proceedings
before
Permanent
Arbitrator

27. (1) Where, in any proceedings before the Permanent Arbitrator under this Act, the parties are bound by a collective labour agreement which contains provision for the representation of the parties thereto in the settlement of trade disputes or are in the process of concluding such an agreement and have already reached agreement on such representation, representation of the parties in the proceedings shall be as provided in the collective labour agreement or as otherwise so agreed, as the case may be.

(2) Where, in any proceedings before the Permanent Arbitrator under this Act, subsection (1) does not apply, a party –

- (a) may appear personally;
- (b) may appear and be represented by a legal practitioner, if the Permanent Arbitrator consents thereto;
- (c) being an organization, may appear and be represented by an officer, employee or member of the organization, if the Permanent Arbitrator consents thereto; or
- (d) not being an organization, may appear and be represented by an officer or employee of the party or by an officer, employee or member of an organization of which the party is a member, if the Permanent Arbitrator consents thereto.

Chief Justice
may make
rules in
connexion
with
proceedings
before
Permanent
Arbitrator
Claims that
recognized
terms and
conditions
of
employment
are not
being
observed

28. The Chief Justice may make rules for regulating and prescribing the practice and procedure in connexion with proceedings before the Permanent Arbitrator under this Act.

PART IV *Settlement of claims that recognized terms and conditions of employment are not being observed*

29. (1) Where a claim is lodged with the Minister in accordance with this section –

- (a) that terms and conditions of employment in any trade or industry, either generally or in a particular area, have been settled by a collective labour agreement or by an award of the Permanent Arbitrator;
- (b) that the parties to the collective labour agreement or the parties bound by the award are or represent, either generally or in that particular area, a substantial proportion of the employers and employees in that trade or industry,

being employees of the description (in this section and in section 30 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 that trade or industry or, where the operation of the collective labour agreement or of the award is limited to a particular area, an employer so engaged in that area is not observing those terms and conditions (in this section and in section 30 referred to as "the recognized terms and conditions"),

the Minister may take such steps as seem to him necessary or 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 the Permanent Arbitrator.

(2) A claim under this section may be made by or on behalf of any employer or employee who is adversely affected by the alleged failure to observe the recognized terms and conditions and shall be lodged, in writing, with the Minister.

(3) If, in the opinion of the Minister, a claim lodged with him for the purposes of this section does not contain sufficient particulars, he may require to be provided with further particulars of the claim and, where he does so, the claim shall be deemed, for the purposes of this Act, not to have been lodged with the Minister in accordance with this section until he is satisfied that he has been provided with the particulars required.

30. (1) Where a claim under section 29 is referred to the Permanent Arbitrator by the Minister under that section, the provisions of section 18 which apply in respect of a trade dispute referred to the Permanent Arbitrator under this Act shall apply, with all necessary modifications, in respect of the claim and, where the Permanent Arbitrator is satisfied that the terms and conditions of employment being observed by the employer in question are less favourable than the recognized terms and conditions, the Permanent Arbitrator shall make an award requiring the employer to observe the recognized terms and conditions in respect of every employee of the recognized description from time to time employed by him.

(2) An award under this section shall have effect as an implied term of the contract of employment of every employee of the relevant description affected thereby from such date as the Permanent Arbitrator shall appoint, being a date not earlier than the date on which, in the opinion of the Permanent Arbitrator, the employer was first informed of the claim giving rise to the award by or on behalf of the employer or employee by or on whose behalf the claim was lodged with the Minister.

(3) An award under this section shall cease to have effect on the coming into operation of a collective labour agreement or of an

Referral to
Permanent
Arbitrator
of claims
that
recognized
terms and
conditions
of
employment
are not
being
observed.

award of the Permanent Arbitrator varying or abrogating the recognized terms and conditions.

PART V *Collective labour agreements*

Contents
of
collective
labour
agreements

31. Every collective labour agreement shall —
- (a) be signed by or on behalf of the parties thereto and, where the agreement has been concluded following mediation, conciliation or arbitration, by the mediator, conciliator or arbitrator, as the case may be;
 - (b) clearly set out the terms of the agreement;
 - (c) specify the period of its duration;
 - (d) contain provision for its extension, subject to such variations as may be agreed, or for the conclusion of a new collective labour agreement at the expiry of its period of duration;
 - (e) contain provision for the terms and conditions of employment to prevail, in the event of such an interval, between the termination of the agreement and the date on which any extension thereof or any new collective labour agreement comes into force;
 - (f) contain provision for its interpretation in the event of any question as to its interpretation arising;
 - (g) specify the circumstances and the manner in which the terms of the agreement may be varied during the period of its duration;
 - (h) specify the procedure for the settlement of trade disputes and, where the agreement contains provision for the representation of the parties thereto in the settlement of trade disputes, the extent to which they may be represented for that purpose;
 - (i) contain provision for a speedy and practicable grievance procedure and for unsettled grievances to be referred to arbitration or, where such grievances constitute trade disputes, to be reported to the Commissioner of Labour under section 5; and
 - (j) specify a method for communicating the terms of the agreement to all the employees concerned.

Collective
labour
agreements
to be
binding on
parties
thereto

32. (1) Every collective labour agreement shall be binding upon the parties thereto.

(2) A collective labour agreement shall cease to be binding upon the parties thereto at the expiry of one month, or such greater period as the notice may specify, immediately after the day on which any party to the agreement serves notice in writing on every other party to the agreement that it repudiates the agreement:

Provided that no notice under this subsection shall be served without the permission in writing of the Minister before the

expiry of 6 months immediately after the day on which the agreement came into force.

33. (1) Every party to a collective labour agreement or to an agreement extending or varying the terms of a collective labour agreement shall lodge a certified true copy thereof with the Commissioner of Labour within 28 days immediately after the day on which the agreement was concluded:

Registration of collective labour agreements

Provided that every party to any such agreement which is in force at the commencement of this Act, shall lodge a certified true copy thereof with the Commissioner of Labour within 3 months immediately after the commencement of this Act.

(2) Where the Commissioner of Labour is of the opinion that any term of an agreement, of which a copy has been lodged with and registered by him in accordance with this section, is contrary to this Act or to any other written law, he shall serve notice in writing of that opinion on every party to the agreement.

(3) The Commissioner of Labour shall register, in such manner as the Minister may require, one copy of any copies of the same agreement lodged with him in accordance with subsection (1) and shall serve notice in writing on every party to the agreement that he has done so.

(4) Any organization or other person being a party to a collective labour agreement who contravenes subsection (1) shall be guilty of an offence and liable to a fine of P50.

PART VI Unlawful industrial action and enforcement of collective labour agreements and awards of Permanent Arbitrator

34. Where it appears to the Minister that there is actual or declared industrial action in furtherance of a trade dispute, whether existing or apprehended, and he is satisfied that all practicable means for reaching a settlement of the trade dispute, by way of the procedures prescribed by a collective labour agreement or by this Act, have not been exhausted, he may, by order, declare the industrial action to be unlawful.

Power of Minister to declare industrial action unlawful where procedures for settlement of trade disputes have not been exhausted

35. (1) Where it appears to the Minister that there is actual or declared industrial action in any trade or industry and he is satisfied that the industrial action is, either wholly or in part, in furtherance of a trade dispute, whether existing or apprehended, in some other trade or industry or has some other purpose in addition to the furtherance of a trade dispute, whether existing or apprehended, within the trade or industry in which the industrial action appears to the Minister to be taking place or to have been declared, the Minister may, by order, declare the industrial action to be unlawful.

Power of Minister to declare sympathetic and certain other industrial action unlawful

(2) For the purposes of this section, employees shall be deemed to be in the same trade or industry if and shall be deemed not to be in the same trade or industry unless –

- (a) they are members of or their interests are represented by the same trade union or branch thereof; or
- (b) their terms and conditions of employment are governed, either wholly or in part, by the same collective labour agreement.

Lock-out,
strike or
action short
of a strike
to achieve
closed shop
unlawful

36. Any lock-out, strike or action short of a strike intended or calculated to compel or influence any employer not to employ or continue to employ a person on the ground that he is not a member of a trade union or that he is or is not a member of a particular trade union shall be deemed, for the purposes of this Act, to be unlawful industrial action.

Powers of
Minister
in respect
of
industrial
action where
collective
labour
agreement
or award
of
Permanent
Arbitrator
in force

37. (1) Where it appears to the Minister that there is actual or declared industrial action in furtherance of a trade dispute, whether existing or apprehended, in any trade or industry and he is satisfied –

- (a) that the matters to which the trade dispute relates have been settled by a collective labour agreement or by an award of the Permanent Arbitrator;
 - (b) that a substantial proportion of the employers and a substantial proportion of the employees in that trade or industry are, either directly or through their respective organizations, bound by the agreement or award; and
 - (c) that the agreement or award remains in force,
- the Minister may –

- (i) by order in writing signed by him, require any party to the dispute to show cause why the party should not be required to comply with the agreement or award while it remains in force;
- (ii) invite any party to the dispute to comply with the agreement or award while it remains in force;
- (iii) by order in writing signed by him, require any party to the dispute forthwith to comply with the agreement or award while it remains in force; or
- (iv) by order declare the industrial action to be unlawful until such date as shall be specified in the order.

(2) An order under subsection (1) (i) may include a requirement as to the date on or the time within which the order is to be complied with.

(3) Any person being a party to the trade dispute in question who, without reasonable excuse, fails to comply –

- (a) with an order under subsection (1) (i) shall be guilty of an offence and liable to a fine of P50; or
- (b) with an order under subsection (1) (iii) shall, without prejudice to section 40, be guilty of an offence and liable to a fine of P250 and to imprisonment for 3 months;

and in any proceedings for an offence under this subsection the court shall presume –

- (i) the absence of a reasonable excuse on the part of the person charged; and
- (ii) that any document purporting to be an order under subsection (1) (i) or (iii) is such an order,

unless the contrary is proved.

(4) Where an order under subsection (1) (i) or (iii) is directed to a body corporate, partnership or organization, every director or officer of the body corporate, partner of the partnership or officer of the organization, as the case may be, shall use his best endeavours to ensure compliance with the order and, where an offence is committed in respect of such an order, every such director, officer or partner shall be deemed, for the purposes of this Act, 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.

38. (1) Every order of the Minister under this Act declaring any industrial action to be unlawful shall be in writing signed by him and shall come into operation upon the expiry of the day on which it is made or at such later time as the Minister may specify in the order.

Orders of
Minister
declaring
industrial
action
unlawful

(2) The Permanent Secretary shall forthwith cause every order such as is referred to in subsection (1) to be published in the Gazette; but failure to comply with this subsection in respect of any such order shall not affect the validity thereof.

(3) The Permanent Secretary may cause a copy of any order such as is referred to in subsection (1) to be served on any organization or other person affected thereby.

39. (1) Any person who –

- (a) takes part in any unlawful industrial action shall be guilty of an offence and liable to a fine of P100 and to imprisonment for 3 months; or
- (b) declares or instigates or incites another to take part in any unlawful industrial action shall be guilty of an offence and liable to a fine of P500 and to imprisonment for 12 months.

Offences in
connexion
with
unlawful
industrial
action

(2) Where a person is charged with an offence under subsection (1) (a) and it is proved –

- (a) that he ceased work or refused to continue to work, being work which under his contract of employment he was bound to do; or
- (b) that he adopted a method of working (other than the method of working commonly known as working to rule) which slowed down normal production or the execution of the normal functions under his contract of employment,

in circumstances which give rise to a reasonable suspicion that he was, by so doing, taking part in or acting in furtherance of any unlawful industrial action and fails to satisfy the court that he acted as aforesaid from causes wholly unconnected with that unlawful industrial action, he shall be deemed, for the purposes of this section, to be guilty of the offence with which he is charged.

(3) Where an officer or any person purporting to act as an officer of an organization commits an offence under subsection (1) with the authority of the organization, every person who was, at the time the offence was committed, an officer of the organization shall be deemed, for the purposes of this section, to be guilty of the 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.

(4) Where an officer or any person purporting to act as an officer of an organization commits an offence under subsection (1), he shall be deemed, for the purposes of this section, to do so with the authority of the organization unless the contrary is proved.

Penalty
for breaches
of awards
of
Permanent
Arbitrator

40. (1) Any person bound by an award of the Permanent Arbitrator who wilfully commits any breach or fails to comply with any term or condition of the award shall be guilty of an offence and liable to a fine of P500 and to imprisonment for 6 months.

(2) Where an employer is convicted of an offence under subsection (1) and the court is satisfied that an employee of the employer has not been paid any sum or sums of money he ought to have been paid by the employer had the terms and conditions of the award been observed by the employer, the court may, either in addition to any penalty it may impose or instead of imposing any penalty, order the employer to pay the sum or sums to the employee.

(3) Notwithstanding the provision of any other law to the contrary, the power conferred by subsection (2) may be exercised by any court having jurisdiction in respect of the offence under subsection (1) and there shall be no limit to the amount the court may order to be paid thereunder.

PART VII *Protection of essential services, life and property*

Prohibition
of breaches
of contracts
of
employment
affecting
essential
services
for
endangering
life or
property

41. (1) Any employee who wilfully breaks his contract of employment knowing or having reasonable cause to believe that the probable consequence of his so doing, either alone or in combination with others, will be —

(a) to deprive the public or any section of the public, either wholly or to a substantial extent, of an essential service or substantially to diminish the enjoyment of an essential service by the public or by any section of the public; or

(b) to endanger human life or public health or to cause serious bodily injury to any person or to expose valuable property, whether movable or immovable, to the risk of destruction, deterioration, loss or serious damage,
shall be guilty of an offence and liable to a fine of P500 and to imprisonment for 12 months.

(2) Any person who causes, procures, counsels or influences any employee to break his contract of employment or any employer who has recourse to a lock-out knowing or having reasonable cause to believe that the probable consequence of that employee's breach of his contract of employment, either alone or in combination with others, or of the lock-out, as the case may be, will be any of the consequences specified by subsection (1) shall be guilty of an offence and liable to a fine of P500 and to imprisonment for 12 months.

42. (1) Every employer in an essential service shall cause to be displayed in accordance with this section, in all premises used for the purposes of the essential service, a printed notice containing a copy of section 41 and of the Schedule together with a Setswana translation of the same.

Notices of section 41 and of Schedule to be displayed

(2) Every notice such as is referred to in subsection (1) shall be displayed in a conspicuous place where it may conveniently be read by persons employed in the premises in question and, in the event of the notice being lost, destroyed, removed, defaced or obliterated, the employer shall forthwith cause it to be replaced.

(3) Every employer in an essential service shall take every reasonable step to ensure that any employees in the essential service who are illiterate are regularly informed of and understand section 41 and the Schedule.

(4) Any person who, without reasonable excuse, destroys, removes, defaces, obliterated or otherwise damages any printed notice displayed in accordance with this section shall be guilty of an offence and liable to a fine of P50 and to imprisonment for one month; and in any proceedings for an offence under this subsection the court shall presume the absence of a reasonable excuse on the part of the person charged unless the contrary is proved.

(5) Any employer who contravenes this section shall be guilty of an offence and liable to a fine of P50 and to imprisonment for one month.

43. (1) Where any industrial action in furtherance of a trade dispute is contemplated by an employer or employers or by employees in an essential service, the trade dispute shall be reported to the Commissioner of Labour by or by an organization acting on behalf of the employer or employers or of the employees, as the case may be, and —

Industrial action in essential services

- (a) section 5 (2), (3) and (4) shall apply in respect of the report of the trade dispute as if the report were made under section 5; and
- (b) where a trade dispute is reported in accordance with this subsection, it shall be deemed, for the purposes of this Act, to have been reported to the Commissioner of Labour under section 5.

(2) Where there is a failure to reach a settlement of a trade dispute reported to the Commissioner of Labour in accordance with subsection (1) within 21 days immediately after the day on which the dispute was so reported, the employer or employers or the employees by or on whose behalf the dispute was so reported may, subject to subsection (3), forthwith proceed to take industrial action in furtherance of the dispute and, notwithstanding any other provision of this Act, such industrial action shall be deemed, for the purposes of this Act, not to be unlawful industrial action.

- (3) Industrial action shall not be taken under subsection (2) –
 - (a) where the Minister has, within the period of 21 days prescribed by subsection (1), served notice in accordance with section 9 (2) on each party to the dispute of his decision to take steps under section 9 (1); or
 - (b) by employees unless –
 - (i) the Minister has been informed in writing to his satisfaction, not less than 3 days immediately before the ballot is held, of the arrangements made for a secret ballot of those employees to be held on the question of whether industrial action should or should not be taken;
 - (ii) such a secret ballot is held in accordance with section 44 and which such regulations as the Minister may make regulating the conduct of such ballots; and
 - (iii) the result of such secret ballot shows that no less than two-thirds of the employees entitled to vote and actually voting therein are in favour of taking industrial action.

Additional provisions in respect of secret ballots of employees

44. (1) Where a trade union is, by virtue of the Act for the time being providing for the registration of trade unions, the exclusive negotiating body on behalf of employees in an essential service by whom industrial action is contemplated, the Minister may direct that only members of that trade union shall be entitled to vote in a secret ballot of those employees and, where the Minister does so direct, only members of that trade union shall vote in the ballot.

(2) Every secret ballot shall be supervised by the Commissioner of Labour or by an industrial relations officer or industrial

relations officers authorized by him in writing in that behalf or by both the Commissioner of Labour and such officer or officers.

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

Provided that, where the person supervising the ballot in accordance with subsection (2) at any place is satisfied that every person entitled to vote who is likely to cast his vote at that place has done so, he may forthwith close the ballot being held at that place.

45. (1) An employee shall not be guilty of an offence under section 41 (1) if he breaks his contract of employment in pursuance of industrial action taken under section 43.

Contraven-
tion of
section 41
not unlawful
in certain
circumstances

(2) A person shall not be guilty of an offence under section 41 (2) of causing, procuring, counselling or influencing any employee to break his contract of employment if he does so in pursuance of industrial action taken under section 43.

(3) An employer shall not be guilty of an offence under section 41 (2) of having recourse to a lock-out if he does so in pursuance of industrial action taken under section 43.

PART VIII *Miscellaneous*

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

Consent of
Attorney-
General
required for
prosecutions
under Act

Provided that a person may be arrested for and charged with such an offence and 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.

47. The Minister may, by order published in the Gazette, amend the Schedule.

Power of
Minister to
amend
Schedule

48. The Minister may make regulations for the better carrying into effect of the purposes and provisions of this Act and, without prejudice to the generality of the foregoing, such regulations may

Power of
Minister
to make
regulations

- (a) prescribe the form in which reports of trade disputes shall be made under section 5;
- (b) regulate the conduct of secret ballots; and
- (c) prescribe the remuneration and allowances payable to persons, other than public officers, appointed by him under this Act.

49. Notwithstanding the provisions of Part III relating to the appointment of a Permanent Arbitrator and until such time as the Permanent Arbitrator is appointed, the President may, after

Appointment
of a
temporary
arbitrator

Repeal of
Cap. 48:02
and
Cap. 48:03

consulting the Minister appoint, from time to time and on such terms and conditions as may be specified, any person with the requisite qualifications to be an arbitrator to perform the functions of the Permanent Arbitrator.

50. The Trade Disputes Act and the Essential Services (Arbitration) Act are hereby repealed.

SCHEDULE

(ss. 2 and 47)

ESSENTIAL SERVICES

Air traffic control services
Bank of Botswana
Botswana Vaccine Laboratory
Electricity services
Fire services of the Government, of the Railways and of local authorities
Health services
Sanitary services
Telecommunication services
Water services
Transport services necessary to the operation of any of the foregoing services.

PASSED by the National Assembly this 1st day of April, 1982.

B.K. TEMANE,
Clerk of the National Assembly.