

# TRADE DISPUTES (AMENDMENT) ACT, 1997

No. 14



of 1997

## ARRANGEMENT OF SECTIONS

### SECTION

1. Short title and commencement
2. Amendment of Cap. 48:02
3. Amendment of section 4 of the Act
4. Insertion of section 4A in the Act
5. Amendment of section 5 of the Act
6. Amendment of section 6 of the Act
7. Insertion of sections 6A and 6B in the Act
8. Amendment of section 7 of the Act
9. Amendment of section 9 of the Act
10. Amendment of section 17 of the Act
11. Amendment of section 20 of the Act
12. Repeal

### AN Act to amend the Trade Disputes Act

*Date of assent:* 20th August, 1997.

*Date of commencement:* 9th October, 1992.

ENACTED by the Parliament of Botswana.

1. (1) This Act may be cited as the Trade Disputes (Amendment) Act, 1997, and shall be deemed to have come into operation on 9th October, 1992.

Short title and  
commencement

(2) Notwithstanding anything to the contrary in any other law, any trade dispute reported or referred to the Commissioner which has not been mediated upon by the Commissioner immediately before the commencement of this Act may be mediated upon in accordance with the provisions of the Trade Disputes Act as amended by the Trade Disputes (Amendment) Act, 1992, and any dispute originating or remaining unresolved immediately before the commencement of this Act may be referred to the Industrial Court for determination.

2. The Trade Disputes Act (in this Act referred to as "the Act") is amended —

Amendment  
of Cap. 48:02

- (a) by deleting the definition of "industrial relations officer" which appears in section 2(1) thereof; and
- (b) by substituting the words "labour officer" for the words "industrial relations officer" wherever they appear in the Act.

Amendment  
of section 4 of  
the Act

3. Section 4 of the Act is amended —

- (a) by inserting the words “6A or 6B” after the words “section 5,” wherever they appear in the section; and
- (b) by inserting the words “or referred” after the word “reported” which appears in subsections (1) and (3) thereof.

Insertion of  
section 4A in  
the Act

4. The Act is amended by inserting immediately after section 4 thereof, the following new section —

“Delegation of  
functions

4A. The Commissioner may delegate any of his functions under this Act to specified labour officers.”.

Amendment  
of section 5  
of the Act

5. Section 5 of the Act is hereby amended by substituting for that section, the following section —

“Reporting or  
referring trade  
disputes to  
Commissioner

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

(2) Every report or reference of a trade dispute made under this Act shall, except disputes mentioned in section 6A or 6B, 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 or reference is made;
- (c) where the report or reference is made on behalf of a party, the nature of the authority given by that party; and
- (d) the nature of the dispute.

(3) A report or reference of a dispute under section 6A or 6B may be made in writing or orally to the Commissioner or a labour officer, as the case may be.

(4) The party or organization acting on behalf of a party reporting or referring a trade dispute under this section shall forthwith serve a copy of the report or reference 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 or referred to the Commissioner under this section or as to the day on which such a dispute was so reported or referred, the question shall be determined by the Commissioner whose determination shall be conclusive on the question.”.

Amendment  
of section 6  
of the Act

6. Section 6 of the Act is amended —

- (a) by inserting the words “or the labour officer delegated by him” immediately after the word “Commissioner” wherever it appears in the section;

- (b) in subsection (1) thereof, by inserting the words “or referred” immediately after the word “reported” which appears on the second line of the subsection;
- (c) by deleting the words “or nominating an industrial relations officer so as to act subject to his directions” which appear in subsection (2) (b) (i) thereof; and
- (d) by adding at the end of subsection (4) thereof, the following new subsection —  
“(5) Where the labour officer delegated by the Commissioner is unable to negotiate a settlement of the dispute between the parties, he shall refer the matter to the Commissioner together with a report of his efforts to secure a settlement.”.

7. The Act is amended by inserting immediately after section 6 thereof, the following new sections —

“Protest against termination of employment

6A. (1) Without prejudice to the provisions of section 5, where a contract of employment is or is to be terminated by the employer, the employee wishing to protest against the termination shall make such protest to the nearest labour officer.

(2) Where an employee whose contract of employment is for an unspecified period of time (other than a contract of employment for a specified piece of work, without reference to time) terminates the contract without giving the required notice of his intention to do so, or making full payment in terms of section 19 of the Employment Act, or where an employee whose contract of employment is for a specified piece of work, without reference to time, or for a specified period of time, terminates the contract before the work specified by the contract is completed, or the period of time for which the contract was made has expired, the employer wishing to protest against the termination shall make such protest to the nearest labour officer.

(3) The employer or employee shall be deemed to have waived his right of protest under this section unless he exercises it within 14 days immediately after learning of the termination or intended termination of the contract of employment:

Provided that a labour officer, the Commissioner, or the court may, on good cause shown, condone any delay in making a protest.

(4) Where a protest is made to the nearest labour officer under this section, he shall forthwith proceed to enquire into the circumstances giving rise to the protest to try to secure a resolution of the conflict acceptable to both the employer and the employee, and for this purpose may, by order in writing served on any person, require that person —

Insertion of sections 6A and 6B in the Act

Cap. 47:01

- (a) to furnish him in writing or otherwise, within such reasonable time as shall be specified in the order, with such material particulars as the labour officer may require;
- (b) to attend before him at a time and place to be specified in the order;
- (c) to give evidence on oath or otherwise; and
- (d) to produce before him any material document.

(5) Where the labour officer is unable to negotiate a settlement of the dispute between the parties under this section, he shall

- (a) Where he is of the opinion that there is no likelihood of a settlement by a further mediation, request the Commissioner to issue a certificate in terms of section 7 for the dispute to be referred to the Industrial Court; or
- (b) refer the matter to the Commissioner together with a report of his efforts to secure a settlement.

Reference of  
grievances to  
Labour Officer  
Cap. 47:01

6B. (1) Notwithstanding the provisions of section 6A, where an employer or employee is in breach of the provisions of the Employment Act or neglects or refuses to fulfil the terms of a contract of employment or where any question, difference or doubt arises as to the rights or liabilities of either party to a contract of employment or misconduct, neglect or ill-treatment of or by either party, the party aggrieved may report or refer the matter to a labour officer who shall thereupon take such steps as seem to him expedient to resolve the matter.

(2) Where the labour officer is unable to negotiate a settlement of the dispute between the parties under this section, he shall refer the matter to the Commissioner together with a report of his efforts to secure settlement.”.

Amendment  
of section 7  
of the Act

8. Section 7 of the Act is amended by substituting for that section the following —

“Failure to  
reach settle-  
ment

7. Where there is a failure, after what, in the opinion of the Commissioner or a labour officer delegated by settlement him, is a reasonable time, to reach a settlement of a trade dispute reported or referred to him under section 6, 6A or 6B, and in the event of the dispute not being settled by other means, the Commissioner or the labour officer delegated by him shall issue a certificate, notice of which, in writing, shall be served on each party, to the effect that either party or both parties may refer the dispute to the Industrial Court.”.

Amendment of  
section 9 of  
the Act

9. Section 9 of the Act is amended by inserting after the words “section 5” which appear in subsection (1) thereof, the words, “, 6A or 6B”.

10. Section 17 of the Act is amended in subsection (6) thereof, by substituting the words "ten persons" for the words "six persons" which appear therein.

Amendment  
of section 17  
of the Act

11. Section 20 of the Act is amended by adding at the end of subsection (2) thereof, the following new subsections —

Amendment  
of section 20  
of the Act

"(3) Notwithstanding the provisions of sections 4 to 9, a party to a trade dispute may make an urgent application to the Court for the determination of a trade dispute.

(4) An urgent application under subsection (3) shall be brought on notice of motion supported by an affidavit as to the facts upon which the applicant relies for relief.

(5) The applicant shall set forth, in the affidavit, explicitly the circumstances which he avers render the matter urgent and the reasons why he claims that he could not be afforded substantial redress at a mediation by the Commissioner in due course."

12. The proviso to section 1 of the Act as amended by section 2 of the No. 8 of 1995 Trade Disputes Act, 1995, is hereby repealed.

Repeal

PASSED by the National Assembly this 12th day of August, 1997.

C.T. MOMPEI,  
*Clerk of the National Assembly.*