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THE INDUSTRIAL RELATIONS ACT, 1980

(Act No. 4 of 1980)

THE INDUSTRIAL COURT RULES, 1984

(Under section 12)

In exercise of the powers conferred by section 12 of the Industrial Relations Act, 1980 and in consultation with the Attorney-General, I hereby make the following Rules —

Citation and commencement.

1. These Rules may be cited as the Industrial Court Rules, 1984, and shall come into force on the 27th January, 1984.

Interpretation.

2. In these Rules, unless the context otherwise requires —

“the Act” means the Industrial Relations Act, 1980;

“application” means an application or reference made to the Court for the determination or settlement of any question or trade dispute, or for any order or injunction which the Court may lawfully make under the Act;

“decision” includes an order of the Industrial Court;

“legal practitioner” has the same meaning as in the Legal Practitioner’s Act, 1964;

“member” means a Member of the Court;

“Registrar” means the Registrar of the Industrial Court who shall be appointed by the Minister.

Submission of applications to the Court.

3. (1) Any person who makes an application to the Court shall —

(a) in the case of an application for the determination of any matter (other than a dispute) under Parts III, IV, V, VI, VIII or IX or under sections 50(4) or 53(1) of the Act, make such application in the manner set out in Form A of the Schedule hereto;

(b) in the case of an unresolved dispute falling under section 58 or 60 of the Act, make such application in the manner set out in Form B of the Schedule hereto;

(c) in the case of an application by the Minister under section 53 of the Act, make such application in the manner set out in Form C of the Schedule hereto;

(d) in the case of an application for the interpretation of a decision under Rule 9(3), make such application in the manner set out in Form D of the Schedule hereto.

(2) The Court may not take cognisance of any dispute which has not been reported or dealt with in accordance with Part VII of the Act.

Institution of proceedings.

4. (1) Proceedings before the Industrial Court shall be instituted by the applicant presenting to the Registrar an application together with six copies thereof setting out the following —

- (a) name and address of the applicant;
- (b) name and address of the person (hereinafter referred to as “the respondent”) against whom relief is sought;
- (c) the nature and full particulars of each item of the claim involved in the dispute and as stated in the terms of reference to the Court;
- (d) the class or classes of workers to whom the dispute relates;
- (e) such submission as the applicant may wish to make in support of its claim;
- (f) the name and address of witnesses, if any, whom it is proposed should be called in support of the application;
- (g) the name and address of the legal practitioner or any other person whom the applicant wishes to present him in the application.

(2) On receipt of the application, the Registrar shall —

- (a) enter the details of the application in a register to be kept and maintained by him;
- (b) assign to the application a case number.

(3) The Registrar shall, within seven days of the receipt of such application, send a copy thereof to the respondent and give him notice to appear in Court with his replying answer to the application on such date as the Registrar may determine. The replying answer shall be in six copies and shall set out the following —

- (a) such reply as the respondent may wish to give to the items of the claim raised in the applicant’s claim;
- (b) an admission of such submissions set out in the application as the respondent admits and a denial of any such submissions as the respondent does not admit;
- (c) any submissions which the respondent may wish to make in support of its reply;
- (d) the names and addresses of any witnesses whom it is proposed should be called in support of his opposition;
- (e) the name and address of the legal practitioner or any other person whom the respondent wishes to represent him.

(4) The applicant shall be entitled to file a replication or to plead in re-convention within seven days.

(5) On receiving an application made by the Labour Commissioner under section 58(3) or (4) or section 60 of the Act, the Registrar shall in addition to complying with Rule 4(2) of these Rules serve a copy of the application, including the title of the proceedings on the Labour Commissioner,

(6) On receiving an application by the Minister for an injunction under section 63(1) of the Act, the Registrar shall comply with Rule 4(2).

(7) On receiving an application for the interpretation of a decision, the Registrar shall comply with Rule 4(2).

The hearing.

5. (1) As soon as possible after the close of pleadings (application, answer and replication and plea in reconvention, if any) the Court shall appoint a date for the hearing of the application and cause a notice to be served on the applicant and respondent and any person declared by the Court to be an interested party.

(2) Where there is any dispute as to whether a person is an interested party, the decision of the Court shall be final.

(3) Before the hearing of an application the Court may give any directives it considers necessary for the disposal thereof.

Court may seek clarification.

6. Where the Court considers that either the application of the applicant or the answer of the respondent does not adequately set forth the particulars required by the Court or if for any other reason the Court requires clarification or amplification of any submission made by either party, the Court may require that party to supply such further particulars, clarification or amplification to the Court and to the other party.

Proceedings of the Court etc.

7. (1) All proceedings of the Court shall be open to the public but the Court may, in any particular case, determine whether any hearing or part thereof shall be held in camera.

(2) Evidence of witnesses shall be given on oath or affirmation and witnesses shall be subject to cross-examination.

(3) The applicant shall under normal circumstances, be invited to give an opening address to the Court and this shall be followed by the respondent's address. These addresses shall be confined to outlining the negotiating procedure and discussion which has preceded the declaration of a dispute before the Court followed by submissions and arguments in support of the issues in dispute.

(4) On the conclusion of the opening addresses, the applicant shall call his witnesses if any, followed by the respondent.

(5) Witnesses should not be in Court until called, but on the conclusion of his evidence a witness may remain in the Court. Only the Court shall have the right to recall a witness once his evidence has been given and he has been released.

(6) Where any witness is not available due to sickness or any other cause not attributable to his own or his party's neglect, the party may apply to the President for permission to take the evidence of the witness when he is available, provided this does not fall after the conclusion of the proceedings, In any case the President has the right to determine whether or not the evidence of a late witness shall be taken.

(7) After the evidence of witnesses, if any, has been taken the applicant may address the Court followed by respondent. The applicant may then reply on any matter arising out of the address of the respondent.

(8) On conclusion of the proceedings, the President shall advise the parties of the day on which the award of the Court shall be read to them.

(9) Evidence by affidavit shall be admissible before the Court in its discretion.

(10) Where documents are submitted by either party in support of a submission, they shall be in original or, where these are not available, by certified copy of the original.

(11) Any person declared to be an interested party under Rule 5, whether or not representing an applicant or a respondent and whether or not summoned by the Court, shall have the right to call witnesses to testify.

(12) If a party fails or both parties fail to appear at a hearing or part thereof, the provisions of paragraphs (13), (14) and (15) of this Rule shall apply and, for the purposes of these Rules, an appearance shall be construed as including an appearance through a person representing a party in accordance with section 15 of the Act.

(13) Where the applicant fails to appear, the Court may —

- (a) if such failure occurs before the hearing has actually commenced and the respondent so requests, dismiss the application or, whether or not the respondent so requests, adjourn the hearing;
- (b) if such failure occurs after the hearing has actually commenced and if the case for the applicant has not been concluded, adjourn the hearing or dismiss the application; or
- (c) if such failure occurs after the case for the applicant has been concluded, proceed with or adjourn the hearing or dismiss the application or make a decision.

(14) Where the respondent fails to appear, the Court may —

- (a) proceed with or adjourn the hearing; or
- (b) after hearing the case for the applicant make a decision.

(15) Where both parties fail to appear, but subject to paragraphs (13) and (14), the Court may adjourn the hearing or make a decision.

(16) The Court may recall any witness or call any other person to give evidence on any matter relevant to the application or to the hearing and may order the production of any documents.

(17) The parties to an application may, with the permission of the Court, call additional witnesses.

Decisions of the Court.

8. (1) Every decision of the Court shall be a reasoned decision and shall be delivered at an open sitting of the Court and recorded in a document signed by the President.

(2) Where any member disagrees with the majority decision of the Court, such disagreement and the reasons therefor shall be recorded in a document signed by him.

Other powers of the Court.

9. (1) The Court may —

- (a) either of its own volition or at the request of any party, extend the time appointed by these Rules for the performance of any act, even though the time appointed therefor has passed;
- (b) postpone the time and date fixed for any hearing;
- (c) dismiss the proceedings if any applicant gives notice that he wishes to withdraw his application;
- (d) if the applicant and respondent agree in writing upon the terms of a decision to be made by the Court, give a decision accordingly without a formal hearing;

- (e) on good cause shown, condone any failure of strict compliance with these Rules, and in particular, but without derogating from the foregoing, in the case of an urgent application, the Court or the President acting in Chambers may dispense with the forms or services provided in these Rules and dispose of the matter at such time and in such place as the President may deem fit.

(2) The Court shall cause any patent clerical mistake, incidental error or omission to be rectified without further reference to the parties and shall cause the Registrar to notify the parties of such mistake, incidental error or omission and the rectification thereof.

(3) Where either an applicant or respondent requires the interpretation of all or part of a determination of any matter to which he was a party before the Court he shall notify the Court as soon as may be in accordance with Form D in the Schedule hereto and the Court shall upon receipt thereof proceed to give its interpretation.

Application of High Court Rules and power to regulate procedure.

10. Subject to the Act and these Rules —

- (a) where these Rules do not make provision for the procedure to be followed in any matter before the Court, the High Court Rules shall apply to proceedings before the Court with such qualifications, modifications and adaptations as the President may determine; and
- (b) where, in the opinion of the President, the High Court Rules cannot be applied in the manner provided for in paragraph (a), the Court may determine its own procedure.

Revocation of Legal Notice No. 52 of 1982.

11. The Industrial Court Rules, 1982 are hereby revoked.

SCHEDULE

FORM A.

The President,
The Industrial Court,
P.O. Box 19,
MBABANE.

Copy to the Labour Commissioner, P.O. Box 198, MBABANE.

APPLICATION TO THE COURT

In accordance with the Industrial Relations Act, 1980, and the Industrial Court Rules, 1981, application is hereby submitted to the Court for the determination/settlement* of the following question(s) (Each question to be detailed, if necessary on a separate sheet).

.....
.....
.....
.....
.....

The name and address of other parties affected by this application and to whom a copy of the application has been sent are:—

- (1)
- (2)
- (3)

The name, title and address of the applicant are:—

.....
.....
.....

Date:

Applicant:

Note: * Delete as necessary

FORM B

The President,
The Industrial Court,
P.O. Box 19,
MBABANE.

APPLICATION FOR DETERMINATION OF AN UNRESOLVED DISPUTE

In accordance with Section 58 of the Industrial Relations Act, 1980 and the Industrial Court Rules, 1981 application is hereby made for the determination of an unresolved dispute between:

..... the employer
and representing

the following class or classes of employee of whom none/the following classes of employee* are employed in an essential service as defined by Section 65 of the Industrial Relations Act.

The issues in dispute between the parties are (detail each issue, if necessary on a separate sheet).

.....
.....
.....

The unresolved dispute falls/does not fall*/to be dealt with under Section 58 (2) of the Industrial Relations Act.

Attached hereto is —

- (i) a certificate signed by the Labour Commissioner stating that the dispute is an unresolved dispute;
- (ii) a letter signed by both parties to the dispute requesting the Labour Commissioner to refer the dispute to the Court for determination. (Where the matter is one which falls to be dealt with under Section 58 (2) this letter may be omitted).

The issues forming the unresolved dispute have been discussed between the parties concerned in accordance with the procedures agreed between them, but without reaching agreement.

Date:..... Applicant:

Notes: * Delete as necessary

- (1) Where the application is being made by the Labour Commissioner, copies of the application must be sent to the parties to the dispute.
- (2) Where the application is being made by one of the parties to the dispute, copies of the application must be sent to the Labour Commissioner and to the other party to the dispute.

- (3) Where the unresolved dispute concerns employees in an essential service, the Labour Commissioner is required to apply to the Court for settlement of the dispute and the consent of the parties thereto is not necessary.
- (4) Delete references in the application as necessary.

FORM C.

Rule 3 (1)

The President,
 The Industrial Court,
 P.O. Box 19,
 MBABANE.

APPLICATION FOR INJUNCTION

In accordance with Section 63 of the Industrial Relations Act, 1980 and the Industrial Court Rules, 1981, application is hereby made for an injunction against the following parties:

.....

.....

.....

.....

The grounds on which the application is based are as follows:

.....

.....

.....

.....

.....

.....

Date: Minister

Note: A copy of this application must be sent to the parties named in the application and to the Labour Commissioner.

FORM D.

The President,
The Industrial Court,
P.O. Box 19,
MBABANE.

APPLICATION FOR INTERPRETATION OF DECISION

In accordance with Rule 3 (1) of the Industrial Court Rules, 1981, application is hereby made to the Court for the interpretation of clause(s).....of the decision made by the Court in Case Number,.....

The applicant*/respondent in that case submits that the determination requires interpretation in respect of the above mentioned clause(s) and enclosed is a memorandum in support of this submission. The applicant*/respondent wishes/does not wish* to be heard in respect of this application and intends/does not intend* to call witnesses for this purpose.

Date:..... Applicant/Respondent:.....

Note: The application for interpretation must be signed by either the applicant or respondent in the case in respect of which the interpretation is sought.

*Delete as necessary.

J.A. HASSANALI
Acting Chief Justice.

MBABANE.
18th January, 1984.