

INDUSTRIAL ARBITRATION (AMENDMENT) ACT.

Act No. 42, 1953.

An Act to make certain provisions relating to membership of industrial unions of employees and long service leave of employees; for these and other purposes to amend the Industrial Arbitration Act, 1940-1952; and for purposes connected therewith. [Assented to, 17th December, 1953.]

Elizabeth II,
No. 42, 1953.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the "Industrial Arbitration (Amendment) Act, 1953." Short title and citation.

(2) The Industrial Arbitration Act, 1940, as amended by subsequent Acts, is in this Act referred to as the Principal Act.

(3) The Principal Act, as amended by this Act, may be cited as the Industrial Arbitration Act, 1940-1953.

2. The Principal Act is amended—

Amend-
ment of
Act No. 2,
1940.

- (a) by omitting from paragraph (a) of subsection See. 20. one of section twenty the words "thirty-five (Original jurisdiction.) pounds" and by inserting in lieu thereof the words "forty pounds";
- (b) by omitting from the same paragraph the words "one thousand seven hundred and fifty pounds" and by inserting in lieu thereof the words "two thousand pounds";
- (c) by omitting from the same paragraph the words "Provided further that no award shall be made for the payment of wages or remuneration of persons

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persons occupying managerial positions unless such persons are exclusively employed by the Commissioner for Railways, the Commissioner for Road Transport and Tramways, the Metropolitan Meat Industry Commissioner, The Maritime Services Board of New South Wales, the Metropolitan Water, Sewerage and Drainage Board, the Water Conservation and Irrigation Commission, the Board of Fire Commissioners of New South Wales, or The Hunter District Water Board, or are employees of any city, shire, or municipal council, or are employees employed under the Police Regulation Act, 1899, or any statute passed in substitution for or amendment of the same";

- (d) by inserting in the same subsection after the words "Provided that an award affecting" the words "officers of either House of Parliament or persons employed in either of the Departments of the Legislature under the separate control of the President or Speaker or under their joint control or affecting";
- (e) by omitting from the same subsection the words "such employees" and by inserting in lieu thereof the words "such officers and employees".

3. The Principal Act is further amended—

Further
amendment
of Act No.
2, 1940.

Sec. 88c.

(Long
service
leave and
sick leave.)

- (a) by omitting paragraph (a) of subsection one of section 88c and by inserting in lieu thereof the following paragraph:—

"(a) (i) in the case of employees who have whether before or after the commencement of the Industrial Arbitration (Amendment) Act, 1953, completed at least twenty years' service with an employer be—

- (a) in respect of twenty years' service so completed, three months, and

(b)

(b) in respect of each ten years' service completed after such twenty years, six and one-half weeks, and

(c) on the termination of the employee's services, in respect of the number of years' service completed since he last became entitled to an amount of long service leave, a proportionate amount on the basis of six and one-half weeks for ten years' service; and

(ii) in the case of employees who have whether before or after the commencement of the Industrial Arbitration (Amendment) Act, 1953, completed at least ten years' service but less than twenty years' service with an employer and whose services with such employer are terminated by the employer for any cause other than serious misconduct or by the employee for any reason or by reason of the death of the employee after such commencement, be a proportionate amount on the basis of three months for twenty years' service, or";

(b) by inserting at the end of the same subsection the following proviso and new subsection:—

Provided that an employee entitled to long service leave in pursuance of the provisions of subparagraph (i) of paragraph (a) of this subsection shall not be entitled to long service leave in pursuance of the provisions of the said subparagraph as enacted immediately before the commencement of the Industrial Arbitration (Amendment) Act, 1953, and any long service leave

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leave taken by an employee before such commencement in pursuance of the provisions of subparagraph (i) of paragraph (a) of this subsection as enacted immediately before such commencement shall be deducted from the long service leave to which such employee is entitled under subparagraph (i) of paragraph (a) of this subsection.

(1A) Where an employee dies and any long service leave—

- (a) to which such employee was entitled has not been taken, or
- (b) accrues upon termination of the services of such employee by reason of his death;

the employer shall thereupon pay to such employee's personal representative the wages that would have been payable to such employee in respect of such long service leave less any amount already paid to the employee in respect of any such long service leave.

Any amount payable by the employer under this subsection and not paid may, without prejudice to any other mode of recovery thereof, be recovered by the personal representative as unpaid wages due and payable to him under an award or industrial agreement by the employer concerned.

(c) by inserting next after subsection four of the same section the following new subsection:—

(4A) Any exemption granted pursuant to subsection four of this section shall not apply to an employer in respect of any employee who, within a period of three months after the date of commencement of the Industrial Arbitration (Amendment) Act, 1953, or the date from which such exemption takes effect, or the date of commencement of his employment, as the case may require, has by notice in writing to the employer elected to be subject to the provisions of the award or industrial agreement relating to long service leave or sick leave, as the case may be, in lieu of those provided for in such scheme.

Notwithstanding

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Notwithstanding any provision of any such scheme where an employee has given notice in writing as aforesaid, such employee shall be entitled to such benefits under such scheme, other than long service leave or sick leave, as he would have been entitled to receive had he voluntarily left the service of the employer upon the date upon which such notice was given: Except as aforesaid upon such notice being given the rights of the employee to any benefits under such scheme and the obligations under such scheme of the employer and any persons charged with the administration of such scheme in respect of that employee and any person claiming under the employee or in respect of his employment shall cease and determine.

(d) by inserting next after subsection eight of the same section the following new subsection:—

(8A) (a) The terms of every award made pursuant to this section and in force at the commencement of the Industrial Arbitration (Amendment) Act, 1953, shall be deemed to be varied, as from such commencement, to the extent necessary to give effect to the provisions of subsection one of this section as amended by the said Act.

(b) As soon as practicable after such commencement the registrar shall vary the terms of every award to which paragraph (a) of this subsection applies to give effect to the terms of that paragraph.

The registrar may refer any matter arising out of this subsection to the commission for direction.

4. The Principal Act is further amended by inserting in subsection two of section ninety-six after the word "business" the words "or the premises in or upon which persons are employed by him in such industry."

Further
amendment
of Act No.
2, 1940.
Sec. 96 (2).
(Exhibition
of award.)

No. 42 1953.Further
amendment
of Act No.
2, 1940.Sec. 127.
(Appointment
and powers
of
inspectors.)Subst.
sec.
129A.Entry and
inspection
by
accredited
union repre-
sentatives.**5. (1) The Principal Act is further amended—**

- (a) by omitting from subsection three of section one hundred and twenty-seven the words "ten pounds" and by inserting in lieu thereof the words "fifty pounds";
- (b) by omitting section 129A and by inserting in lieu thereof the following section:—

129A. (1) The registrar may, on application being made by any person and on proof to his satisfaction that such person is the secretary or a duly accredited representative of an industrial union of employees whose members are engaged in an industry in respect of which an award or industrial agreement is in force, issue to that person in writing an entry and inspection permit.

(2) The person to whom any such entry and inspection permit has been issued may, if such permit is for the time being in force—

- (a) enter the premises of any employer engaged in any such industry—
 - (i) during any lunch hour or non-working time for the purpose of interviewing employees on legitimate union business;
 - (ii) during working hours for the purpose of investigating any suspected breach of this Act or of any award or industrial agreement in force in relation to such industry;
- (b) for the purpose of investigating any suspected breach of this Act or of any award or industrial agreement in force in relation to such industry, require any employer engaged in such industry to produce for his inspection during the usual office hours at the employer's office

office or other convenient place any time and pay sheets kept by him in regard to employees in such industry, and may make copies of the entries in such time and pay sheets relating to any such suspected breach. No. 42, 1953.

In this subsection "premises" includes any building, mine, mine working, ship, vessel, or place of any kind wherein or in respect of which any industry is carried on or any work is being or has been done or commenced.

(3) An entry and inspection permit—

- (a) shall remain in force until it expires in accordance with paragraph (b) of this subsection or is revoked in pursuance of the provisions of this section;
- (b) shall expire when the person to whom it was issued ceases to be the secretary or a duly accredited representative of the industrial union and notification of such cessation has been given to the registrar;
- (c) may be revoked by the registrar if he is satisfied that the person to whom it was issued has wilfully hampered or hindered employees during their working time or has otherwise acted in an improper manner in the exercise or purported exercise of any power conferred on him by this section.

Any decision of the registrar revoking any entry and inspection permit shall be subject to appeal to the commission as prescribed.

(4) Nothing in this section shall authorise a secretary or duly accredited representative of an industrial union of employees to enter a private dwelling house, or the land used in connection therewith, unless some manufacture or trade in which labour is employed is carried on therein.

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(5) Any person who hinders or obstructs the holder of an entry and inspection permit for the time being in force in the exercise of any power conferred on him by this section shall be liable to a penalty not exceeding fifty pounds.

(6) A person to whom an entry and inspection permit has been issued pursuant to this section shall upon the expiry or revocation of such permit return such permit to the registrar for cancellation. Any person failing to comply with the provisions of this subsection shall be liable to a penalty not exceeding fifty pounds.

(2) The terms of every award or industrial agreement which is in force at the commencement of this Act and in which provisions have been inserted pursuant to subsection one of section 129A of the Principal Act shall as from such commencement be deemed to be varied by omitting such provisions therefrom. As soon as practicable after such commencement the registrar shall vary the terms of every such award or industrial agreement to give effect to the provisions of this subsection.

Further
amend-
ment of
Act No. 2,
1940.

New sec.
129B.

Employ-
ment of
unionists.

6. The Principal Act is further amended by inserting next after section 129A the following new section:—

129B. (1) An employer engaged in any industry or calling to which an award or industrial agreement relates or applies shall give absolute preference of employment to members of the industrial union or unions engaged in such industry or calling.

(2) Where an adult person is, at the date of commencement of the Industrial Arbitration (Amendment) Act, 1953, employed by an employer in any industry or calling to which an award or industrial agreement relates or applies, or after such commencement enters into

into employment with an employer in any such industry or calling, or is employed by an employer in an industry or calling to which no award or industrial agreement relates or applies and an award or industrial agreement is made in respect of such industry or calling, such adult person shall not continue in such employment after the expiration of a period of twenty-eight days from the date of commencement of the Industrial Arbitration (Amendment) Act, 1953, or such entry into employment or the date on which the award or industrial agreement so made becomes operative, as the case may require, unless—

- (a) he is a financial member of an industrial union of employees whose members are engaged in such industry or calling; or
- (b) he has applied to be admitted as a member of such industrial union.

(3) An employer bound by an award or industrial agreement shall not knowingly continue in employment in any position or employment subject to the award or industrial agreement any adult person who contravenes or fails to observe the provisions of subsection two of this section.

(4) Every person who is obliged to become a member of an industrial union of employees in accordance with the foregoing provisions of this section shall be entitled to become a member of such union on application made in accordance with its rules and in so far as the rules of any such union are inconsistent with the provisions of this subsection they shall be null and void.

(5) (a) No member of an industrial union shall be expelled from such union except in accordance with the provisions of this subsection.

(b)

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(b) Twenty-eight days' notice of the proposed expulsion shall be given to such member.

(c) Within the said period of twenty-eight days such member may apply to the commission for an order restraining the union from continuing with the expulsion and pending the decision of the commission no further steps shall be taken by the union in connection with the expulsion.

(d) Upon any such application the commission shall, as soon as practicable, proceed to enquire into the reasons for the expulsion.

(e) (i) If the commission is satisfied that the circumstances are such as to justify the expulsion it may grant leave to the union to proceed accordingly.

(ii) If the commission is not so satisfied it may make an order restraining the union from taking any further steps in connection with the expulsion.

(6) For the purpose of this section—

- (a) "adult person" means a person of eighteen years of age or upwards and every other person who is for the time being in receipt of not less than the minimum rate of wages provided for adult employees by the award or industrial agreement which relates or applies to the industry or calling in which he is engaged;
- (b) "industrial agreement" includes any agreement affecting rates of pay or conditions of employment made under any Act other than this Act;
- (c) a person shall not be deemed to have applied for membership of an industrial union unless he has applied for such membership in the manner prescribed by the rules of the union and tendered

tendered any fee or subscription required by such rules to be paid or tendered by persons applying for such membership. No. 42, 1953.

(7) Notwithstanding anything contained in this Act or the rules of an industrial union an employee shall not be compelled to pay in advance more than one-fourth of the amount prescribed by such rules as the annual fee or subscription payable for membership of such union.

(8) Any person who commits a breach of any of the provisions of subsection one, two or three of this section shall be liable to a penalty not exceeding one hundred pounds. Proceedings for the recovery of such penalty may be taken by the secretary of an industrial union concerned in the industry or calling in which the person alleged to have committed the breach is engaged.

(9) (a) In the event of a trade union which is registered as an industrial union—

(i) refusing or failing to admit to membership of such union any person entitled to be admitted thereto in pursuance of the provisions of subsection four of this section within a period of one month after application by such person for membership, or

(ii) expelling any person from membership of such union otherwise than in accordance with the provisions of subsection five of this section,

the commission may order such trade union to pay a penalty not exceeding one hundred pounds.

(b) The provisions of sections one hundred and twelve, one hundred and thirteen and one hundred and fourteen of this Act shall apply, mutatis mutandis, to and in respect of the

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the jurisdiction and powers conferred upon the commission by this section and any penalties imposed by the commission under this section.

(10) The foregoing provisions of this section shall not apply to or in respect of—

- (a) the employment in any industry or calling of a person who has been issued by the registrar pursuant to subsection eleven of this section with a certificate of exemption from membership of an industrial union of employees covering that industry or calling, if such certificate or any renewal thereof is for the time being in force; or
- (b) the employment of any person to whom a certificate of exemption from union membership has been issued pursuant to paragraph (b) of subsection two of section twenty of this Act if the period specified in such certificate or any renewal thereof has not expired; or
- (c) the employment during a period of vacation of a bona fide student of a school, college or university; or
- (d) the employment of persons occupying managerial positions; or
- (e) the employment of any person who has applied for a certificate of exemption pursuant to subsection eleven of this section and whose application has not been finally determined.

(11) (a) For the purposes of this subsection “conscientious belief” includes any conscientious belief whether the grounds thereof are or are not of a religious character and whether the belief is or is not part of the doctrine of any religion.

(b) Any person who—

- (i) objects on the grounds of conscientious belief to being a member of an industrial union of employees; and

(ii)

(ii) applies in the manner prescribed to ~~No. 42, 1953.~~ the registrar for a certificate of exemption from membership of any such union; and

(iii) satisfies the registrar that his objections on the grounds of conscientious belief are genuine; and

(iv) pays to the registrar an amount equivalent to the subscription prescribed by the rules of the industrial union for membership of such union;

shall be issued by the registrar with a certificate of exemption from membership of the industrial union.

(c) Any such certificate shall remain in force for the period specified therein and may be renewed from time to time by the registrar upon payment of such amount, not exceeding the amount referred to in subparagraph (iv) of paragraph (b) of this subsection, as the registrar may require.

(d) Any amount received by the registrar pursuant to this subsection shall be paid by him to the credit of the Consolidated Revenue Fund.

(e) Any person whose application for a certificate of exemption from membership of an industrial union, or for any renewal thereof, under this subsection is refused, may within twenty-one days of the decision of the registrar refusing the application appeal in the manner prescribed to the commission from such decision. The commission may on such appeal make such order as it thinks fit.

(12) Nothing in this section shall limit or in any way affect—

(a) the powers, authorities, duties or functions conferred or imposed upon the commission or a committee by any other

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other provisions of this Act except to the extent to which the exercise or performance of any such power, authority, duty or function would be contrary to or inconsistent with the provisions of subsections one, two or three of this section.

- (b) the rights or obligations conferred or imposed on an employer or employee by any other provisions of this Act or by an award or industrial agreement;
- (c) any law relating to preference in employment to persons who have served as members of the naval, military or air forces of the Commonwealth.
