

THE EMPLOYMENT RELATIONS (AMENDMENT) ACT 2013

Act No. 5 of 2013

I assent

Rajkeswur PURRYAG

6 May 2013

President of the Republic

ARRANGEMENT OF SECTIONS

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An Act

To amend the Employment Relations Act

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the Employment Relations (Amendment) Act 2013.

2. Interpretation

In this Act –

“principal Act” means the Employment Relations Act.

3. Section 2 of principal Act amended

Section 2 of the principal Act is amended –

- (a) in the definition of “labour dispute” –
 - (i) in paragraph (b), by inserting, after the words “Pay Research Bureau”, the words “or a salary commission, by whatever name called,”;
 - (ii) by adding the following new paragraph –
 - (c) does not include a dispute that is reported more than 3 years after the act or omission that gave rise to the dispute;
- (b) in the definition of “worker”, by deleting the words “Industrial and Vocational Training Act”, and replacing them by the words “Mauritius Institute of Training and Development Act”;
- (c) by inserting, in the appropriate alphabetical order, the following new definition –

“Remuneration Regulations” means any regulations made by the Minister under section 93 of this Act and includes any Remuneration Order, made under the repealed Industrial Relations Act, which is still in operation;

4. Section 5 of principal Act amended

Section 5 of the principal Act is amended –

- (a) by repealing subsection (3);
- (b) in subsection (5), by adding the words “, specifying, *inter alia*, the address of the registered office”;
- (c) by inserting, after subsection (9), the following new subsection –
 - (9A) An appeal under subsection (8) shall be heard in the presence of the trade union registered under subsection (2).

5. Section 7 of principal Act amended

Section 7 of the principal Act is amended, in subsection (1), by repealing paragraph (c) and replacing it by the following paragraph –

- (c) the membership of the trade union has fallen below the required minimum specified in section 5(1)(e) or (f);

6. Section 12 of principal Act amended

Section 12 of the principal Act is amended by inserting, after subsection (8), the following new subsection –

- (8A) An appeal under subsection (8) shall be heard in the presence of the trade union of which the change of name has been registered under subsection (5).

7. Section 20 of principal Act amended

Section 20 of the principal Act is amended, in subsection (6), by deleting the words “he may apply, for the safeguard of the interests of the creditors or members of the trade union, to the District Court which shall have jurisdiction to make such order as it may consider appropriate in the circumstances” and replacing them by the words “the trade union shall be wound up in such manner as may be prescribed”.

8. Section 21 of principal Act amended

Section 21 of the principal Act is amended, in subsection (2)(b), by deleting the words “at a general assembly held in accordance with the rules of the special fund” and replacing them by the words “by a majority of the members present and voting at a general assembly”.

9. Section 28 of principal Act amended

Section 28 of the principal Act is amended, in subsection (1) –

- (a) by deleting the words “, on complaint made by not less than 5 per cent of the members of a trade union, or on examination of the annual return or any other document of a trade union,”;

- (b) by inserting, after the words “this Act”, the words “or where he has received a complaint made by not less than one per cent of the members of a trade union”.

10. Section 29 of principal Act amended

Section 29 of the principal Act is amended, in subsection (1) –

- (a) in paragraph (a), by deleting the words “to establish” and replacing them by the words “subject to subsection (1A), to establish”;
- (b) by inserting, after subsection (1), the following new subsection –

(1A) A worker shall have the right to join only one trade union, of his own choice, in the enterprise where he is employed or his bargaining unit.

11. Section 31 of principal Act amended

Section 31 of the principal Act is amended, in subsection (2)(a), by deleting the figure “75,000” and replacing it by the figure “100,000”.

12. Section 36 of principal Act amended

Section 36 of the principal Act is amended, in subsection (3), by deleting the figure “30” and replacing it by the figure “60”.

13. Section 37 of principal Act repealed and replaced

Section 37 of the principal Act is repealed and replaced by the following section –

37. Criteria for recognition of trade union of workers

(1) Subject to subsections (2) and (3), a trade union shall be entitled to recognition as a bargaining agent for a bargaining unit in an enterprise or industry, where it has the support of not less than 30 per cent and not more than 50 per cent of the workers in the bargaining unit of the enterprise or industry.

- (2) Subject to subsection (3) –
- (a) a trade union which has the support of more than 50 per cent of the workers in a bargaining unit in an enterprise or industry shall be entitled to recognition as the sole bargaining agent of the bargaining unit of the enterprise or industry;
 - (b) 2 or more trade unions which have each the support of not less than 30 per cent and not more than 50 per cent of the workers in a bargaining unit in an enterprise or industry, shall be entitled to be recognised as a joint negotiating panel of the bargaining unit of the enterprise or industry.

(3) Where a trade union or group of trade unions has been granted recognition as a sole bargaining agent or joint negotiating panel, respectively, for a bargaining unit in an enterprise or industry, no other trade union shall be entitled to recognition for the bargaining unit except by virtue of an order or determination of the Tribunal under section 38.

(4) Where a trade union has been granted recognition under subsection (1) and –

- (a) one or more new trade unions, having the support of not less than 30 per cent and not more than 50 per cent of the workers in the bargaining unit, apply to the employer for recognition –
 - (i) the employer may grant recognition to the trade unions altogether as a joint negotiating panel of that bargaining unit;
 - (ii) the employer may not grant recognition to any of the new trade unions which refuses to form part of a joint negotiating panel; or

- (iii) the employer or one or more of the new trade unions may, where the existing trade union refuses to form part of a joint negotiating panel, apply to the Tribunal for an order directing the existing trade union to form part of the joint negotiating panel;
- (b) a new trade union which has the support of more than 50 per cent of the workers in the bargaining unit, applies to the employer for recognition in respect of that bargaining unit, the employer or the new trade union may apply to the Tribunal for its determination as to which trade union is to be recognised, and the Tribunal shall make an order to that effect.

(5) Where there is no recognised trade union in an enterprise or industry and a trade union or group of trade unions, which is not entitled to recognition under subsection (1) or (2)(b), applies for recognition to an employer, the employer may voluntarily grant recognition to the trade union or group of trade unions having obtained the highest percentage of support from the workers in the bargaining unit of the enterprise or industry.

14. Section 38 of principal Act repealed and replaced

Section 38 of the principal Act is repealed and replaced by the following section –

38. Order for recognition of trade union of workers

(1) Where an employer refuses to grant recognition to a trade union or group of trade unions in accordance with section 37, the trade union or group of trade unions may apply to the Tribunal for an order directing the employer to recognise the trade union or group of trade unions.

(2) On an application made under subsection (1), the Tribunal shall –

- (a) subject to subsection (3), issue an order that the trade union or group of trade unions be granted recognition where the Tribunal is satisfied that that trade union or group of trade unions has produced evidence that it is eligible for recognition in accordance with section 37;
- (b) organise and supervise a secret ballot in a bargaining unit in an enterprise or industry, in order to determine which trade union the workers in the bargaining unit wish to be their bargaining agent in accordance with section 37, where –
 - (i) a trade union or group of trade unions already has recognition in respect of that bargaining unit; and
 - (ii) the Tribunal is satisfied that the applicant trade union or group of trade unions, has produced evidence that it is eligible for recognition in accordance with section 37;
- (c) organise and supervise a secret ballot in a bargaining unit, in order to determine which trade union the workers in the bargaining unit wish to be their bargaining agent in accordance with section 37, where –
 - (i) no other trade union or group of trade unions has been granted recognition in respect of the bargaining unit; and
 - (ii) the Tribunal is satisfied that 2 or more of the applicant trade unions have each the support of more than 50 per cent of the workers in the bargaining unit;

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- (d) set aside the application where it is satisfied that a trade union or group of trade unions has not produced evidence that it is eligible for recognition in accordance with section 37.
- (3) The Tribunal may organise and supervise a secret ballot in the bargaining unit before –
- (a) making an order under subsection (2)(a); and
 - (b) setting aside an application under subsection (2)(d).
- (4) Where an application is made to the Tribunal under section 37(4)(a)(iii) or (b), the Tribunal shall organise and supervise a secret ballot in the bargaining unit in order to determine which trade union the workers in the bargaining unit wish to be their bargaining agent.
- (5) In a situation not covered in subsections (1) to (4), where an application is made to the Tribunal in a matter relating to recognition of a trade union or group of trade unions, the Tribunal may organise and supervise a secret ballot in a bargaining unit in order to determine which trade union the workers in the bargaining unit wish to be their bargaining agent in accordance with section 37.
- (6) Where a secret ballot takes place under this section, a worker shall not vote for more than one trade union or group of trade unions.
- (7) (a) The Tribunal shall determine an application under section 37 and under this section within 30 days of the receipt of the application.
- (b) The Tribunal may, in exceptional circumstances, extend the delay specified in paragraph (a) for another period of 30 days.

(8) Where the Tribunal makes an order or determination granting recognition, the order or determination shall –

- (a) specify the employer and the trade union to which it relates;
- (b) specify the bargaining unit;
- (c) declare whether the trade union shall be recognised as a bargaining agent or a sole bargaining agent, or whether there shall be a joint negotiating panel; and
- (d) require the trade union or the joint negotiating panel and the employer concerned to meet at specified intervals or at such time and on such occasions as the circumstances may reasonably require, for the purposes of collective bargaining.

(9) Where a trade union has been recognised as a sole bargaining agent, or a group of trade unions has been recognised as a joint negotiating panel, it shall replace any other trade union or group of trade unions as the bargaining agent of the workers.

(10) Where recognition has been ordered or determined under this section, no claim for recognition or revocation or variation of recognition in the same bargaining unit shall be entertained before the expiry of a period of 12 months commencing on the date of the order or determination, as the case may be.

(11) The Tribunal may, where the recognition of a new trade union gives rise to the revocation of the recognition of another trade union, enquire into the independence of the trade unions in relation to the employer.

(12) Where an employer fails to comply with an order or determination under this section, the aggrieved party may apply to the Tribunal for compensation and the Tribunal shall make an order for the payment of a compensation which shall not be less than

500 rupees per day so long as the order or determination is not complied with.

15. Section 39 of principal Act amended

Section 39 of the principal Act is amended, in subsection (1), by deleting the figures “38(7)” and replacing them by the figures “38(10)”.

16. Section 51 of principal Act amended

Section 51 of the principal Act is amended, in subsection (1), by deleting the figures “37(4)” and replacing them by the figures “37(5)”.

17. Section 55 of principal Act amended

Section 55 of the principal Act is amended –

- (a) by repealing subsection (3) and replacing it by the following subsection –

(3) Subject to subsection (3A) and to any award made under section 56(5), a collective agreement shall remain in force for a period of not less than 24 months from the date of its coming into force.

- (b) by adding the following new subsection –

(3A) Negotiation for the renewal of a collective agreement shall start –

- (a) not later than three months before its expiry;
- (b) where the agreement specifies a date for the start of renegotiation, on such date; or
- (c) where the agreement specifies an event on the occurrence of which renegotiation shall start, on the date on which that event occurs.

18. Section 57 of principal Act amended

Section 57 of the principal Act is amended –

- (a) in subsection (1), by deleting the words “Subject to subsection (2), a” and replacing them by the word “A”;
- (b) by repealing subsection (2) and replacing it by the following subsection –

(2) Notwithstanding subsection (1)(b), a collective agreement shall not contain a provision reducing the wages provided in the Remuneration Regulations.

19. Section 58 of principal Act amended

Section 58 of the principal Act is amended –

- (a) by numbering the existing provision as subsection (1);
- (b) by adding the following new subsection –

(2) (a) Where a party to a collective agreement which is in force refuses a variation of the agreement, any party may apply to the Tribunal for a variation of the agreement and the Tribunal, on hearing the parties, shall vary the agreement where it is satisfied that the variation is warranted in accordance with subsection (1).

(b) An application made under paragraph (a) shall be determined by the Tribunal within 60 days of the date of receipt of the application.

20. Section 64 of principal Act amended

Section 64 of the principal Act is amended –

- (a) by repealing subsection (1) and replacing it by the following subsection –

(1) Subject to section 63 and subsections (2) and (3),

any labour dispute, whether existing or apprehended, may be reported to the President of the Commission –

- (a) by any party to the dispute; or
 - (b) by a recognised trade union on behalf of any party to the dispute.
- (b) by repealing subsection (6) and replacing it by the following subsection –
- (6) Every report of a labour dispute shall be made in such form as the Commission may approve.

21. Section 65 of principal Act amended

Section 65 of the principal Act is amended –

- (a) in subsection (1)(a), by adding the words “or does not comply with section 67”;
- (b) by repealing subsection (1)(e);
- (c) in subsection (3), by deleting the figure “7” and replacing it by the figure “14”.

22. Section 67 of principal Act amended

Section 67 of the principal Act is amended by adding the following new paragraph, the full stop at the end of paragraph (b) being deleted and replaced by the words “; or” –

- (c) while a collective agreement is in force, a labour dispute on matters relating to wages, and terms and conditions of employment which –
 - (i) are contained in the collective agreement;
 - (ii) have been canvassed but not agreed upon during the negotiation process leading to the collective agreement ; or
 - (iii) have not been canvassed during the negotiation process leading to the collective agreement,

except during a period of negotiation for renewal of the collective agreement starting from a date specified in section 55(3A).

23. Section 69 of principal Act amended

Section 69 of the principal Act is amended, in subsection (5), in paragraph (a), by deleting the words “within 7 days, submit a report to that effect” and replacing them by the words “within 14 days, submit a report, together with its recommendations,”.

24. Section 72 of principal Act amended

Section 72 of the principal Act is amended, in subsection (2), by inserting, after the word “award”, the words “, other than an award under Part VIIIA of the Employment Rights Act,”.

25. Section 77 of principal Act amended

Section 77 of the principal Act is amended, in subsection (1) –

- (a) by repealing paragraph (b) and replacing it by the following paragraph –
 - (b) strike or lock-out occurs whilst –
 - (i) a collective agreement or an award relating to wages, and terms and conditions of employment is in force; or
 - (ii) a report of the Pay Research Bureau or a salary commission, by whatever name called, by which the person has opted to be governed, is in force in relation to remuneration or allowances of any kind;
- (b) in paragraph (e), by deleting the word “or” at the end of the paragraph;

(c) by inserting, after paragraph (e), the following new paragraph –

(ea) the Tribunal makes an order under section 86(3);
or

26. Section 78 of principal Act amended

Section 78 of the principal Act is amended –

(a) in subsection (1) –

(i) by inserting, after the word “decision”, the words “to have recourse to a strike”;

(ii) by deleting the word “Commission” and replacing it by the words “supervising officer”;

(b) in subsection (2), by deleting the words “a representative of the Commission” and replacing them by the words “the supervising officer”;

(c) by repealing subsection (4).

27. New section 79A inserted in principal Act

The principal Act is amended by inserting, after section 79, the following new section –

79A. Conciliation service by Minister

(1) Notwithstanding the other provisions of this Act, the Minister may, at the request of parties to a labour dispute, provide a conciliation service with a view to conciliating the parties –

(a) where the dispute has remained unresolved at the level of the Commission and the parties have declined to refer it for voluntary arbitration;

(b) at any time before or after a lawful strike takes place.

(2) Where the dispute is resolved by an agreement under subsection (1), the agreement shall –

- (a) be recorded in writing;
- (b) be signed by the parties;
- (c) be registered with the supervising officer and the Tribunal; and
- (d) have the effect of a collective agreement as specified in sections 55 and 56.

28. Section 85 of principal Act amended

Section 85 of the principal Act is amended, in subsection (2)(c), by deleting the words “3 independent” and replacing them by the words “6 independent”.

29. Section 86 of principal Act amended

Section 86 of the principal Act is amended –

- (a) in subsection (1), by inserting, after the words “this Act”, the words “, the Employment Rights Act”;
- (b) in subsection (2), by inserting, after paragraph (b), the following new paragraph –
 - (ba) make awards and orders under the Employment Rights Act in relation to the reduction of workforce or closing down of enterprise;

30. Section 95 of principal Act amended

Section 95 of the principal Act is amended –

- (a) by inserting, after subsection (1), the following new subsection –

(1A) Notwithstanding subsection (1), where, in an enterprise or industry, there is a collective agreement which covers or refers to matters specified in the relevant

Remuneration Regulations, those Remuneration Regulations shall not apply to that enterprise or industry, except for provisions in relation to matters not covered or referred to in the collective agreement.

(b) by adding the following new subsection –

(6) Notwithstanding subsection (5), the Industrial Court shall have jurisdiction to hear and determine any civil claim arising out of any Remuneration Regulations.

31. Section 99 of principal Act amended

Section 99 of the principal Act is amended, in subsection (1)(a), by deleting the words “, who shall be appointed on a part-time basis” and replacing them by the words “who shall be appointed”.

32. Section 100 of principal Act amended

Section 100 of the principal Act is amended, in subsection (3), by deleting the figure “500” and replacing it by the figure “1,000”.

33. Section 102 of principal Act amended

Section 102 of the principal Act is amended, in subsection (5), by deleting the figure “5,000” and replacing it by the figure “10,000”.

34. Section 103 of principal Act amended

Section 103 of the principal Act is amended, in subsections (1) and (2), by deleting the figure “10,000” and replacing it by the figure “25,000”.

35. Section 104 of principal Act amended

Section 104 of the principal Act is amended by deleting the figure “25,000” and replacing it by the figure “50,000”.

36. Second Schedule to principal Act amended

The Second Schedule to the principal Act is amended –

- (a) in paragraph 3 –
 - (i) in subparagraph (1) –
 - (A) in sub-subparagraph (a), by deleting the words “The jurisdiction” and replacing them by the words “Subject to paragraph (aa), the jurisdiction”;
 - (B) by inserting, after sub-subparagraph(a), the following new sub-subparagraph –
 - (aa) In a matter relating to reduction of workforce or closing down of enterprise, the jurisdiction of the Employment Promotion and Protection Division established under section 39A of the Employment Rights Act shall be exercised by the Tribunal.
 - (C) in sub-subparagraph (b), by deleting the word “Each” and replacing it by the words “Subject to section 39A of the Employment Rights Act, each”;
- (b) in paragraph 6, in subparagraph (1), by inserting, after the words “in any proceedings”, the words “, except for proceedings relating to a reduction of workforce or closing down of enterprise under the Employment Rights Act,”;
- (c) by inserting, after paragraph 7, the following new paragraph –
 - 7A. (1) The Tribunal shall have the power to issue execution of its orders.
 - (2) Every order of the Tribunal shall be enforced in the same manner as an order of the Industrial Court.

- (d) in paragraph 18, in subparagraph (1), by inserting, after the words “by an officer of the trade union of workers”, the words “or a negotiator”.

37. Savings and transitional provisions

(1) Any application made to an employer for recognition of a trade union or group of trade unions before the commencement of this Act shall be dealt with in accordance with this Act.

(2) Any proceedings pending before the Tribunal before the commencement of this Act, in relation to an application for the recognition of a trade union or group of trade unions, shall be dealt with in accordance with this Act.

(3) Subject to subsection (4), the validity of the recognition of a trade union of workers which obtained recognition before the commencement of this Act shall remain unaffected.

(4) (a) (i) Where 2 or more trade unions are already recognised in an enterprise or industry as bargaining agents only and the trade unions refuse to form a joint negotiating panel, the employer or any of the trade unions may make an application to the Tribunal, within 12 months of the commencement of this Act, for a determination as to which trade union the workers in the bargaining unit wish to be their bargaining agent.

(ii) Where 2 or more trade unions are already recognised in an enterprise or industry, and one of the trade unions has recognition as a sole bargaining agent, the employer or any of the trade unions may make an application to the Tribunal, within 12 months of the commencement of this Act, for a determination as to which trade union the workers in the bargaining unit wish to be their bargaining agent.

(b) For the purpose of determining an application under paragraph (a), the Tribunal shall organise and supervise a secret ballot in the bargaining unit in order to determine which trade union the workers in that bargaining unit wish to be their bargaining agent.

(5) Where this Act does not make provision for any saving and transition, the Minister may make such regulations as may be necessary for such saving and transition.

38. Commencement

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of this Act.

Passed by the National Assembly on the ninth day of April two thousand and thirteen.

Ram Ranjit Dowlutta
Clerk of the National Assembly