

## **COURT PROCEDURES**

### **Alternative dispute resolution services before court procedures**

Court procedures may be pursued only after the parties have demonstrated some effort to use the alternative dispute resolution services unless the Labour Commissioner certifies that the matter is such that alternative dispute resolution services were unsuitable.

### **The role of the Labour Commissioner in relation to the Labour Tribunal**

The Labour Commissioner is responsible for—

- (a) coordinating labour disputes to the Labour Tribunal;
- (b) pursuing a written determination from the Labour Tribunal;
- (c) maintaining a file of written determinations and judgments emanating from the Labour Tribunal.

### **Referral of matter to the Labour Tribunal**

The Labour Commissioner must refer a matter to the Labour Tribunal where—

- (a) any of the alternative dispute resolution services have failed to resolve the matter;
- (b) the facts are complex or the law is complex;
- (c) there is an urgent need for the powers of the court to grant interim or other orders needed to preserve the rights or benefits of the claimant;
- (d) the Labour Tribunal already has before it proceedings which are between the same parties and which involve the same or related issues;

- (e) on assessment of the file at any time the Labour Commissioner is of the view that the issues arising are best resolved using court procedures;
- (f) one or both of the parties involved have requested the Labour Commissioner to refer a point of law to the Tribunal;
- (g) the Labour Commissioner is of the view that there is a point of law that should be determined by the Labour Tribunal;
- (h) there is a dispute about the quantum of damages.

### **Establishment of Labour Tribunal**

(1) The Labour Tribunal is established.

(2) The Labour Tribunal shall have an official seal which shall be judicially noticed.

### **Composition of Labour Tribunal**

(1) The Labour Tribunal shall comprise of a pool or panel of 3 members

appointed by the Minister in the following manner—

- (a) the Chairperson, acting after consultation with the Judge of the Supreme Court; and
- (b) 2 other members appointed by the Minister acting after consultation with the Chairperson.

(2) The Chairperson of the Labour Tribunal shall be a barrister or solicitor of the Supreme Court who has practiced for at least 10 years.

(3) The 2 other members shall each be a barrister or solicitor of the Supreme Court who has practiced for at least 5 years.

(4) The Chairperson of the Labour Tribunal shall be appointed for no more than 5 years and shall be eligible for reappointment.

(5) The other 2 members shall each be appointed for no more than 3 years and shall be eligible for reappointment.

(6) Notwithstanding subsection (1), any act, proceeding or determination of the Tribunal shall not be called into question or invalidated by reason of a vacancy regarding the members appointed under subsection (3).

(7) In the event that a member of the panel cannot sit to hear and determine a matter then the Minister may, following the guidelines in this section, appoint a temporary member to hear a specific matter.

### **Jurisdiction of Labour Tribunal**

(1) The Labour Tribunal has jurisdiction to hear and determine all matters that have been referred to it in accordance with this Code including—

- (a) preparing written determinations without a hearing;
- (b) entering any premises of an employer where work is being or has been done and make any necessary enquiries;
- (c) matters pertaining to trade disputes, strikes or lockouts.

(2) Except for contempt of court matters, the Labour Tribunal does not have jurisdiction to hear and determine criminal matters which shall be dealt with by the criminal justice system.

(4) Where in any proceedings before the Labour Tribunal it appears that a crime as stipulated by this Code may have occurred the chairperson may refer the matter to the Attorney General.

## **Sittings of the Labour Tribunal**

(1) The Labour Tribunal shall sit in the following manner—

(a) the chairperson acting alone; or

(b) the chairperson sitting with both members.

(2) The Labour Tribunal may sit with the chairperson acting alone to determine questions of law referred by the Labour Commissioner or to hear and determine matters which the chairperson considers to be uncomplicated.

(3) The Labour Tribunal may sit with the chairperson and both members to hear and determine cases where the facts are complex or the law is complex or the chairperson believes that the justice of the case would be met with the sitting of the full tribunal.

(4) Where the Labour Tribunal sits in accordance with subsection (3) its decision shall be according to the opinion of the majority of members.

(5) The Labour Tribunal may sit at such times as are necessary for the settlement of a dispute.

(6) The Labour Tribunal and parties to the proceedings shall not disclose information pertaining to the proceedings unless the consent of the chairperson is given.

## **Role of the chairperson**

The chairperson of the Labour Tribunal shall be responsible for administering the tribunal process including—

(a) preparing written determinations and judgments;

(b) in cases of conflict or unavailability, assigning case files to members of the Labour Tribunal to prepare written determinations or to conduct hearings;

- (c) scheduling hearings;
- (d) preparing written reports for the ministry;
- (e) working with the ministry to ensure that members of the Labour Tribunal and any support staff are skilled to conduct Tribunal matters efficiently and effectively;
- (f) maintaining a catalogue of all determinations and judgments.

### **Determination of matter without a hearing**

(1) The Labour Tribunal may proceed to determine a matter without a hearing where both parties consent in writing to this procedure or the respondent—

- (a) has presented no response in the proceedings; or
- (b) does not contest the case.

(2) During a determination of any matter without a hearing, the chairperson may order further and better particulars from any party relevant to the proceedings.

### **Labour Tribunal and alternative dispute resolution**

(1) Subject to subsection (2), where any matter comes before the Labour Tribunal for a hearing the chairperson must, before proceeding with the hearing, consider whether an attempt has been made to resolve the matter using any form of mediation and may direct that mediation or further mediation takes place.

(2) The Labour Tribunal shall not direct that mediation in accordance with subsection (1) takes place where—

- (a) there is great animosity between the parties;
- (b) it will not contribute constructively to resolving the matter;

- (c) it will not be in the public's interest; or
- (d) it will undermine the urgent or interim nature of the proceedings.

(3) Where the recommendations proposed by the Labour Commissioner during evaluative mediation were rejected by one or both of the parties, the Labour Tribunal may—

- (a) accept the recommendations by the Labour Commissioner and deem it a binding award of the Labour Tribunal; or
- (b) substitute the recommendations for an appropriate award of its own; and
- (c) if the Tribunal considers that it is just and equitable to do so, impose a penalty on a party or both parties where the—
  - (i) behaviour was not in good faith, or
  - (ii) rejection of the recommendations of the Labour Commissioner was unreasonable.

### **Tribunal proceedings**

(1) In the hearing or determination of any matter before it, the Labour Tribunal shall—

- (a) where it appears appropriate, seek to avoid formality in its proceedings;
- (b) be guided by but not bounded by any written law or rule of law relating to the admissibility of evidence in proceedings before courts;
- (c) make enquiries of persons appearing before it and witnesses as it considers appropriate;

- (d) where it appears appropriate, allow the presentation of evidence in written briefs from any party and, if necessary, seek clarification or elaboration of the briefs in writing;
- (e) make appropriate use of technological advances to ensure that matters are dealt with expeditiously including email, fax, electronic meetings and teleconferences and in this regard, the Labour Tribunal must, wherever possible, deal with matters without requiring the physical attendance of parties at a hearing;
- (f) dispense with the taking of the oath or affirmation, where it is appropriate to do so; and
- (g) conduct the hearing in a manner that it considers appropriate for the clarification of the issues before it and generally to the just handling of the proceedings.

(2) Where a written document, record or information is required to be submitted to the Labour Tribunal that requirement may be met by submissions made in electronic form.

(3) The Labour Tribunal may, for the purposes of any proceedings, direct or allow a person to make a written submission or a submission by way of video link, audio link, email or other appropriate technological means.

(4) During any proceedings the Labour Tribunal may hear and receive evidence—

- (a) by a party directly or a representative of that party;
- (b) by a trade union who represents either party;
- (c) by any person having wide experience in trade disputes or trade unionism; or

- (d)by the counsel of a person who has demonstrated that he or she has a viable interest in the matter including matters of public policy.

### **Appointment of experts**

The Labour Tribunal may appoint persons who are experts in a particular subject area of relevance to a particular dispute to act as a special advisor to the Labour Tribunal.

### **Powers of Labour Tribunal**

In addition to any power assigned to it under this Code, the Labour Tribunal has the power to—

- (a)summon and enforce the attendance of any person before it to give evidence on oath or otherwise;
- (b)hear and determine any matter in the absence of any party who has been summoned to appear before the Tribunal and has failed to do so;
- (c)request the production of documents by any person to meet the justice of the case;
- (d)abridge or enlarge the time for instituting proceedings or for doing any act, filing any document or presenting any evidence in connection with the proceedings;
- (e)amend or permit the amendment of any document filed in connection with the proceedings;
- (f)declare the rights of the parties in any matter arising out of this Code;
- (g)direct any person to comply with any duty imposed on him or her by this Code;
- (h)subject to conditions as the Tribunal may determine—



- (i) remit an issue to mediation; or
- (ii) direct the parties to enter into negotiations if the parties are represented by counsel or highly skilled persons,
- (i) make an order or award including a provisional or interim order or award relating to any of the matters in dispute;
- (j) dismiss any matter or refrain from hearing any matter where it appears that the matter is trivial or vexatious or that further proceedings are unnecessary or not in the public's interest; and
- (k) generally issue any order that is necessary for the expeditious and just resolution of the dispute or any other matter before it.

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*For questions and comments in relation to the foregoing, please email Mrs Chanelle Petty Barrett, Permanent Secretary in the Ministry of Home Affairs and Labour, at [chanelle.pettybarrett@gov.ai](mailto:chanelle.pettybarrett@gov.ai).*