



ANALYSIS

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1964, No. 133

An Act to amend the Waterfront Industry Act 1953

[4 December 1964]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title—This Act may be cited as the Waterfront Industry Amendment Act 1964, and shall be read together with and deemed part of the Waterfront Industry Act 1953 (hereinafter referred to as the principal Act).

2. Chairman may state case for Court of Appeal—Section 4 of the principal Act is hereby amended by inserting, after subsection (6), the following subsection:

“(6A) The Chairman of the Tribunal may in any matter before the Tribunal state a case for the opinion of the Court of Appeal on any question of law arising in the matter.”

3. Functions of Commission—(1) Section 8 of the principal Act is hereby amended by omitting from paragraph (d) the words “the rules determining the priority of the allocation of labour and”.

(2) Section 8 of the principal Act is hereby further amended by adding the following paragraphs:

“(f) Subject to and without affecting the powers of any Harbour Board to regulate the times, places, and mode of the shipping, unshipping, landing, warehousing, stowing, and depositing of goods, to allocate labour in accordance with such priorities as may from time to time be agreed to at a port by all employers of waterside workers at that port, and, failing agreement, as may be determined by the Commission:

“(g) To train or arrange for the training of waterside workers in first aid.”

4. Powers of Commission—(1) Section 9 of the principal Act is hereby amended by inserting in paragraph (a) of subsection (2), after subparagraph (v), the following subparagraphs:

“(vi) Providing for employers’ contributions to any group endowment assurance scheme or other retirement scheme for waterside workers:

“(vii) Providing for contributions agreed between the employers’ and the workers’ organisations, or prescribed by order of the Tribunal, to be paid on behalf of employers to the trustees of any fund established for the benefit of waterside workers:”.

(2) Section 9 of the principal Act is hereby further amended by inserting in subsection (2), after paragraph (h), the following paragraph:

“(hh) Establish such special funds or reserves as it deems necessary or expedient:”.

5. Leases from Harbour Boards—The principal Act is hereby amended by inserting, after section 9, the following section:

“9A. (1) Notwithstanding anything to the contrary in the Public Bodies’ Leases Act 1908 or in any other Act, every Harbour Board is hereby empowered, and shall be deemed always to have been empowered, to let or lease by private treaty any land, premises, or wharves vested in it or controlled by it to the Commission for the purpose of enabling

the Commission to use such land, premises, or wharves in carrying out its functions.

“(2) Every such lease shall be for such term, and at such rent, and upon or subject to such conditions as may be agreed upon between the Harbour Board and the Commission, and if any Board and the Commission are unable to agree upon the terms of any such lease the matters in dispute shall be referred to arbitration under the Arbitration Act 1908.

“(3) For the purposes of the Rating Act 1925 the land, premises, or wharves comprised in any such lease shall be deemed to be harbour works under the control and management of a Harbour Board.”

6. Principal orders as to pay and conditions of work—

Section 11 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsections:

“(2) No principal order shall apply with respect to any work of a kind which immediately before the passing of the Waterfront Industry Amendment Act 1964 was not customarily performed by waterside workers unless the Tribunal is satisfied—

“(a) That any such work is work of a kind not customarily performed by workers other than waterside workers immediately before the making of the order; or

“(b) That every employer and every organisation of employers or workers which will be affected by the order agree to it applying to any such work.

“(2A) No principal order shall apply with respect to the work of driving or operating the controls (other than emergency controls) of any mechanical equipment on any land, premises, or wharves controlled by a Harbour Board where that equipment is owned or provided by a Harbour Board and the work is done by persons employed by the Harbour Board under the terms or conditions of an award or industrial agreement made under the Industrial Conciliation and Arbitration Act 1954 (whether or not they are at any particular time under the control of any other person), unless the Tribunal is satisfied that every employer and every organisation of employers or workers which will be affected by the order agree to it applying to that work.”

7. Appeals to Tribunal—(1) Section 20 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

“(1) Any employer or any organisation of employers or workers affected by any decision or order to which this section relates, or the Commission on matters concerning its functions or powers, or any person whose name is removed from a bureau register and whose appeal against that removal is declined by the Port Conciliation Committee may, within fourteen days after the date of the decision or order, or within such further time as the Tribunal may in any case allow, appeal against it to the Tribunal by lodging with the Port Conciliation Committee (in respect of a decision of such a Committee) or with the Tribunal (in respect of any other decision or order) a notice of appeal in the prescribed form.”

(2) Section 20 of the principal Act is hereby further amended by repealing subparagraph (i) of paragraph (a) of subsection (2).

8. Advocates—The principal Act is hereby amended by repealing section 22, and substituting the following section:

“22. (1) In any proceedings before the Tribunal every party to the proceedings and every organisation allowed to be heard under section 22A of this Act and the Commission, on matters concerning its functions or powers, may be represented by an advocate or advocates.

“(2) No person shall be an advocate unless he is an officer or servant of a party to the proceedings or of an organisation allowed to be heard under section 22A of this Act or of the Commission, and is not a barrister or solicitor:

“Provided that a barrister or solicitor may act as advocate—

“(a) On an application for an order under paragraph (c) of section 12 of this Act; or

“(b) On a preliminary application to the Tribunal to consider whether it has jurisdiction to deal, in whole or in part, with any matter proposed to be raised before it in any proceedings where—

“(i) Notice of the preliminary application and of the grounds on which it is made have been lodged with the Tribunal and given to the other parties to the proceedings not less than seven clear days before the day appointed for the hearing of the proceedings; or

“(ii) The Tribunal grants leave for barristers and solicitors to act as advocates; or

“(c) With the consent of all the parties in any other case.”

9. Organisations entitled to be heard in any proceedings—The principal Act is hereby amended by inserting, after section 22 (as substituted by section 8 of this Act), the following section:

“22A. In any proceedings before the Tribunal any organisation of employers or workers shall be entitled to appear and be heard in every respect as if it were a party to the proceedings if, in the opinion of the Tribunal, the organisation or the members thereof may in any manner be affected by the result of the proceedings.”

10. Time for appeal against removal of name from bureau register—Section 28 of the principal Act is hereby amended by inserting in the proviso to subsection (2), after the word “him”, the words “or within such further time as the Port Conciliation Committee may in any case allow”.

11. Preference for permanent workers—Section 29 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsection:

“(2) Any person whose name is on the bureau register and who is in the permanent employment of any employer shall, so long as he is available and ready and willing to undertake waterside work for that employer, be entitled to be employed on that work in preference to persons who are not in such permanent employment.”

12. Port Conciliation Committees—Section 31 of the principal Act is hereby amended by repealing the proviso to subsection (2), and substituting the following proviso:

“Provided that at any port where a Harbour Board acts as wharfinger the Harbour Board shall be entitled to nominate an employers’ representative.”

13. Functions of Port Conciliation Committee—(1) Section 32 of the principal Act is hereby amended by omitting from paragraph (c) of subsection (1) the words “make rules to be followed in determining the priority of the allocation of labour;”.

(2) Section 32 of the principal Act is hereby further amended by adding the following subsection:

“(3) Where there is no Port Conciliation Committee for any port, any union or association or the New Zealand Port Employers’ Association Incorporated or any employer of waterside workers may at any time refer to the Tribunal for

decision any dispute that arises in relation to waterside work or any question in relation to any matter that is a function of Port Conciliation Committees by virtue of the provisions of subsection (1) of this section.”

14. Abolition of Combined Committees—(1) The principal Act is hereby amended by repealing sections 34 to 36.

(2) The principal Act is hereby consequentially amended—

- (a) By omitting from paragraph (a) of subsection (2) of section 20 the words “and Combined Committees”:
- (b) By omitting from paragraph (b) of subsection (1) of section 32 the words “Except where there is a Combined Committee for the port”:
- (c) By omitting from subsection (1) of section 42 the words “(including a Combined Committee)”:
- (d) By omitting from subsection (1) of section 43 the words “including a Combined Committee”.

15. National Conciliation Committee—(1) The principal Act is hereby amended by repealing section 37, and substituting the following section:

“37. (1) For the purpose of conciliation proceedings under section 18 of this Act in respect of every application relating to two or more ports, the Minister shall appoint a National Conciliation Committee consisting of seventeen members of whom—

“(a) One shall be appointed as Chairman:

“(b) Seven shall be appointed on the nomination of the New Zealand Port Employers’ Association Incorporated:

“(c) One shall be appointed on the nomination of the Harbours Association of New Zealand:

“(d) Eight shall be appointed on the nomination of associations.

“(2) The Chairman of the National Conciliation Committee shall be appointed on the unanimous nomination of the other members of the Committee:

“Provided that where those members are unable to agree on a unanimous nomination the Chairman shall be selected by the Minister.

“(3) Where the associations are unable to agree on the persons to be nominated by them for appointment pursuant to paragraph (d) of subsection (1) of this section the Minister shall decide the number of persons to be nominated by each association.

“(4) The members of the National Conciliation Committee shall be appointed for a term not exceeding two years.”

(2) Notwithstanding the provisions of subsection (1) of this section, any National Conciliation Committee which is in existence immediately before the commencement of this Act shall discharge its duties in the conciliation proceedings for the purpose of which it was appointed.

16. National Amenities Committee—(1) Section 38 of the principal Act is hereby amended—

(a) By omitting from subsection (1) the word “eight”, and substituting the word “seven”:

(b) By repealing paragraph (c) of subsection (1).

(2) Section 38 of the principal Act is hereby further amended by repealing paragraphs (e) and (f) of subsection (1), and substituting the following paragraph:

“(e) Two shall be appointed on the nomination of associations.”

(3) Section 38 of the principal Act is hereby further amended by inserting, after subsection (1), the following subsection:

“(1A) Where the associations are unable to agree on the persons to be nominated by them for appointment pursuant to paragraph (e) of subsection (1) of this section the Minister shall decide the number of persons to be nominated by each association.”

(4) The members of the National Amenities Committee who are in office immediately before the commencement of this Act and who have been appointed under paragraph (e) or paragraph (f) of subsection (1) of section 38 of the principal Act, as originally enacted, shall be deemed to have been appointed under paragraph (e) of that subsection as substituted by subsection (2) of this section.

(5) The term of office of every person deemed by subsection (4) of this section to have been appointed to the National Amenities Committee shall expire on the date on which, but for the passing of this Act, his term would have expired under the provisions of the principal Act.

17. Functions of National Amenities Committee—(1) The principal Act is hereby amended by repealing section 39, and substituting the following section:

“39. (1) The functions of the National Amenities Committee shall be—

“(a) To authorise the Commission to provide amenities for waterside workers (including waiting rooms,

restaurants, canteens, and first aid rooms) at any port at a cost not exceeding five thousand pounds for each such amenity:

- “(b) Subject to the Harbours Act 1950, to approve schemes for the provision by Harbour Boards of necessary amenities for waterside workers:
- “(c) To fix the terms and conditions under which the Commission shall reimburse any Harbour Board for the costs incurred or to be incurred by that Board in providing, after the seventeenth day of March, nineteen hundred and fifty-three, new amenities for waterside workers, and to approve any variations in those terms and conditions from time to time agreed between the Commission and that Board:
- “(d) To approve expenditure for maintenance costs (other than costs of cleaning, heating, lighting, and care-taking) of amenities provided for waterside workers, whether provided before or after the seventeenth day of March, nineteen hundred and fifty-three.

“(2) Any terms and conditions fixed pursuant to paragraph (c) of subsection (1) of this section shall not be affected by any change in the use of the amenities authorised under subsection (3) of this section.

“(3) No amenities provided for waterside workers before or after the seventeenth day of March, nineteen hundred and fifty-three, whether provided by a Harbour Board or otherwise, shall be used for any other purpose without the approval of the Minister. Where amenities provided by a Harbour Board after that date or provided and paid for by the Commission before or after that date are on land vested in a Harbour Board or are on any wharf owned by or under the control of a Harbour Board and are approved by the Minister to be used for other purposes, the value of those amenities at the time when they cease to be used for waterside workers shall be deducted from the total cost of new amenities provided by a Harbour Board in place thereof for the purpose of fixing the amount payable to the Board for the new amenities under paragraph (c) of subsection (1) of this section, or, where no new amenities are provided by the Harbour Board, shall be paid to the Commission by the Harbour Board.

“(4) If any dispute arises between the National Amenities Committee and any Harbour Board as to the value of any

amenities for the purposes of this section, the dispute shall be referred to arbitration under the Arbitration Act 1908.”

(2) The passing of this Act shall not affect the liability of the Commission to pay to any Harbour Board any rent fixed to be paid to that Harbour Board under paragraph (c) of subsection (1) of section 39 of the principal Act as originally enacted. Any rent so fixed to be paid shall, for the purposes of section 39 of the principal Act (as substituted by subsection (1) of this section), be deemed to be a term fixed under paragraph (c) of subsection (1) of that section (as so substituted).

18. Term of office—The principal Act is hereby amended by inserting, after section 42, the following section:

“42A. Notwithstanding anything to the contrary in this Act, every member of any Committee appointed under this Act, unless he sooner vacates his office otherwise than by effluxion of time, shall continue to hold office until his successor comes into office.”

19. Limited application of Industrial Conciliation and Arbitration Act 1954—The principal Act is hereby amended by repealing section 44, and substituting the following section:

“44. (1) Except as otherwise provided in this section, the provisions of the Industrial Conciliation and Arbitration Act 1954 and the provisions of the Labour Disputes Investigation Act 1913 shall not apply to any employer or waterside worker who is bound by a principal order or other order or to any organisation of employers or waterside workers which is so bound.

“(2) The provisions of Part III (except section 57 and paragraph (k) of section 66), Part IV, Part X, and Part XI of the Industrial Conciliation and Arbitration Act 1954 shall apply to every employer and waterside worker who is bound by a principal order or other order and to every industrial union or industrial association of employers or waterside workers which is so bound and, so far as those provisions relate to officers and members of any such union or association, to those officers and members. For the purposes of this subsection every such order shall be deemed to be an award or industrial agreement within the meaning of that Act.”

20. Repeal of spent provision—The principal Act is hereby amended by repealing section 46.

21. Unauthorised expenditure—The principal Act is hereby amended by inserting, after section 50, the following section:

“50A. The Commission may, for purposes not authorised by this Act or by any other Act, in any financial year expend any sum or sums not amounting in the whole to more than five hundred pounds.”

This Act is administered in the Department of Labour.
