

Right Hon. Mr. Nash

GOVERNMENT SERVICE TRIBUNAL

ANALYSIS

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A BILL INTITULED

AN ACT to Provide for the Establishment of a Tribunal
to Prescribe Scales of Salaries and Conditions of
Service of Officers of the Government Service, and
5 for Matters Incidental Thereto. Title.

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

1. This Act may be cited as the Government Service
10 Tribunal Act, 1948. Short Title.

Interpretation.

2. In this Act, unless the context otherwise requires,—

“Controlling authority” means the Public Service Commission:

“Employee”, in relation to the Public Service, means any person employed therein in New Zealand, whether permanently or on probation or temporarily; but does not include any person holding a position to which is attached an annual salary in excess of eight hundred and twenty-five pounds or of such other amount as may from time to time be prescribed:

“Government service” means the service of His Majesty in respect of the Government of New Zealand, not being honorary service:

“Prescribed” means prescribed by regulations made under this Act:

“Principal order” means an order made by the Tribunal under section *eight* of this Act:

“Public Service” means so much of the Public Service within the meaning of the Public Service Act, 1912, as is under the control of the Public Service Commission:

“Service organization” means such organization or organizations as may from time to time be prescribed as representing employees of the Public Service or any class or classes thereof:

“Tribunal” means the Government Service Tribunal established under this Act.

See Reprint
of Statutes,
Vol. VII, p. 522

Government
Service
Tribunal.

3. (1) There is hereby established a Tribunal to be known as the Government Service Tribunal.

(2) The Tribunal shall consist of three persons who shall be appointed by the Governor-General in Council on the recommendation of the Prime Minister, and of whom—

(a) One, to be the Chairman of the Tribunal, shall be a Judge or a Deputy Judge of the Court of Arbitration:

(b) One shall be appointed as the Government member:

(c) One shall be appointed on the nomination of the service organization if there is only one or, if there are two or more, on the joint nomination of the service organizations (including any organizations prescribed under section *twenty-five* of this Act) or, in default of a joint nomination, after consultation by the Prime Minister with each of the service organizations.

(3) Except as provided in the *next succeeding* subsection every member of the Tribunal shall be appointed for a term of three years, but may from time to time be reappointed, or may be at any time removed from office
 5 by the Governor-General in Council for disability, insolvency, neglect of duty, or misconduct, or may at any time resign his office by writing addressed to the Prime Minister.

(4) If any member of the Tribunal dies, or is
 10 removed from office, or resigns, the vacancy so created shall be filled by the appointment, in the manner prescribed by subsection *two* of this section for appointments to the vacant office, of some person qualified for that office. Every person so appointed shall be
 15 appointed for the residue of the term for which his predecessor was appointed.

(5) Unless he sooner vacates his office as provided in the *last preceding* subsection, every member of the Tribunal shall continue in office until his successor comes
 20 into office, notwithstanding that the term for which he was appointed may have expired.

(6) The powers of the Tribunal shall not be affected by any vacancy in the membership of the Tribunal.

4. In the event of the incapacity of the Chairman or
 25 any other member of the Tribunal by reason of illness or absence or any other cause the Governor-General in Council may, in the manner prescribed by the *last preceding* section for appointments to the office concerned, appoint some other person qualified for appointment to that office to act in the place of the Chairman
 30 or other member. Every person so appointed shall while the incapacity continues be deemed for all purposes to be the Chairman or other member of the Tribunal, as the case may be.

35 5. There may from time to time be appointed in accordance with the Public Service Act, 1912, a Secretary of the Tribunal and such other officers as may be required for the purposes of this Act.

6. (1) For the purpose of carrying out its functions
 40 under this Act the Tribunal shall be deemed to be a Commission of Inquiry under the Commissions of Inquiry Act, 1908, and, subject to the provisions of this Act and of any rules or regulations made under this Act, all the provisions of that Act shall apply
 45 accordingly.

Deputies of
 Chairman or
 members of
 Tribunal.

Secretary and
 other officers.
 See Reprint
 of Statutes,
 Vol. VII, p. 522

Tribunal to be a
 Commission of
 Inquiry.
 Ibid.,
 Vol. I, p. 1036

(2) The Chairman of the Tribunal, or any other member or the Secretary of the Tribunal, purporting to act by direction or with the authority of the Chairman, may issue summonses requiring the attendance of witnesses before the Tribunal, or the production of documents, or may do any other act preliminary or incidental to the hearing of any application or other matter by the Tribunal. 5

Functions of
Tribunal.

7. (1) The Tribunal shall have the following functions in relation to the remuneration and conditions of service of employees of the Public Service, that is to say:— 10

(a) To make principal orders and other orders as hereinafter provided:

(b) To make recommendations to the Prime Minister, upon application made as hereinafter provided, in respect of any matters other than the matters in respect of which principal orders may be made. 15

(2) In exercising its powers and functions under this Act the Tribunal shall have regard to— 20

(a) The general purpose of the Economic Stabilization Act, 1948:

(b) The necessity for promoting the efficiency of the Public Service: 25

(c) The latest pronouncement made by the Court of Arbitration specifying standard rates of wages for skilled, semi-skilled, and unskilled workers: 30

(d) Such other considerations as the Court of Arbitration is for the time being required to take into account in making or amending an award under the Industrial Conciliation and Arbitration Act, 1925. 35

See Reprint
of Statutes,
Vol. III, p. 939

(3) Every general order increasing or reducing rates of remuneration that is made by the Court of Arbitration pursuant to any stabilization regulations under the Economic Stabilization Act, 1948, shall, subject to such amendments as may be determined by the Tribunal, apply with respect to the rates of remuneration of all employees of the Public Service; and the Tribunal shall amend any existing principal order affected thereby accordingly. 40

8. (1) Subject to the provisions of this Act, the Tribunal may from time to time, in respect of employees of the Public Service, make principal orders not inconsistent with this Act or any other enactment for all or any of the following purposes:—

Principal orders as to pay and conditions of service.

- 5
- (a) Prescribing scales of salaries or wages for grades in the Public Service, and for any subdivisions of the grades:
- 10 (b) Prescribing holidays, ordinary hours of work, and the period to be worked before overtime rates become payable; and prescribing rates of remuneration and conditions in respect of minimum earnings, overtime, travelling-time, shift-work, night-work, and special duty, and in respect of work on Saturdays, Sundays, and holidays, and at any other time outside the ordinary hours of duty:
- 15 (c) Prescribing minimum rates of pay for adult employees and for married employees:
- 20 (d) Prescribing the terms and conditions on which relieving, travelling, lodging, and meal and other allowances and expenses may be granted, and prescribing the rates of any such allowances or expenses as aforesaid:
- 25 (e) Prescribing tool allowances, clothing allowances, and other allowances in the nature of additional pay for classes or conditions of work warranting the payment thereof:
- 30 (f) Prescribing the terms and conditions on which industrial clothing may be issued.

(2) Every principal order shall continue in force until it is revoked by a subsequent principal order.

35 (3) Except as provided in section *ten* of this Act, no principal order shall be revoked until it has been in force for at least one year. For the purposes of this subsection a principal order shall be deemed to come into force on the earliest date on which any provision of the order comes into force.

40 (4) No principal order shall be deemed to be invalid on the ground that it delegates to, or confers on, the controlling authority or any other person any discretionary authority.

Power to amend
principal orders.

9. Subject to the provisions of this Act, the Tribunal may from time to time during the currency of any principal order make orders for all or any of the following purposes:—

(a) To amend the provisions of the principal order for the purpose of remedying any defect therein or giving fuller effect thereto: 5

(b) To amend the provisions of the principal order for such purpose and in such manner as the Tribunal is satisfied that all the parties to the application for the principal order have agreed upon: 10

(c) To interpret the provisions of the principal order or of any order amending the principal order. 15

Power to
consolidate
orders.

10. Notwithstanding anything to the contrary in this Act, the Tribunal may make principal orders consolidating any existing orders, and may include therein any matters in respect of which principal orders may be made under section *eight* of this Act: 20

Provided that where a consolidating order is so made all limitations of time applicable under this Act to the making of any order or of any matter ancillary thereto shall apply to every provision of any such consolidating order in all respects as if the consolidating order had not been made. 25

Application for
order or
recommendation
to be made to
Tribunal and
served on
respondent.

11. (1) Any service organization or the controlling authority may at any time apply in writing to the Tribunal for a principal order or other order or for a recommendation in accordance with the provisions of this Act. 30

(2) An application under this section shall be deemed to be made on the day on which it is lodged with the Tribunal.

(3) Except as provided in the *last preceding* section, no application for a principal order to replace an existing principal order shall be made until the existing order has been in force for at least ten months. 35

(4) In the case of any application made by any service organization, the controlling authority shall be the respondent. 40

(5) In the case of any application made by the controlling authority, every service organization in respect of whose members or any of them an order or recommendation is applied for shall be a respondent.

5 (6) Every application under this section shall name the applicant and the respondent or respondents, and shall contain a detailed statement of the claims made by the applicant.

10 (7) A copy of every application shall, as soon as it is made, be sent by the applicant to the respondent or to each respondent if there are two or more, and also to every service organization that is neither an applicant nor a respondent.

15 **12.** (1) At any time within one month after a copy of any application is sent to any respondent under the *last preceding* section or within such further time as the Tribunal may in any case allow, the respondent may lodge with the Tribunal a statement in detail admitting such of the claims in the application as he desires to admit, or making a counter-proposal with respect to all or any of the claims in the application. Statement by respondent.

20 (2) A copy of every such statement shall at the same time be sent by the respondent to the applicant.

25 **13.** Subject to the provisions of any rules or regulations made under this Act, the person making any application or statement under this Act may amend it at any time before the final determination of the application by the Tribunal. Amendment of applications and statements.

30 **14.** Where all the parties to any application for a principal order or other order agree in writing upon all or any of the terms to be incorporated in the order, the Tribunal may, if it thinks fit, in making its order, incorporate in the order all or any of the terms so agreed upon, without making inquiry into the matters to which those terms relate, except so far as may be necessary to ensure that the order is in accordance with this Act. Orders by consent.

35 **15.** (1) At any time after the respondent's statement in reply to any application has been lodged with the Tribunal or after the expiration of the time allowed for lodging the respondent's statement, the Tribunal shall appoint a day and place for the hearing of the application, and shall notify the applicant and the respondent of the day and place so appointed. Hearing and adjournments.

(2) Except with the consent of the respondent, the day so appointed shall not be earlier than one month after the making of the application.

(3) The Tribunal may adjourn the hearing of any application from time to time and from place to place. 5

Assessors.

16. (1) For the purposes of the hearing of any application the applicant may appoint one assessor and the respondent, or the respondents jointly if there are two or more, may appoint one assessor.

(2) No person shall be qualified to be appointed to be an assessor unless he is employed in the Government service or is an officer or employee of a service organization. 10

(3) The assessors appointed in respect of any application shall be entitled to be present at and to take part in the hearing and determination of that application as if they were members of the Tribunal, but they shall not be entitled to vote and shall not be parties to any decision of the Tribunal: 15

Provided that the members of the Tribunal other than the assessors may at any time deliberate in private as to the Tribunal's decision on the application or as to any question arising in the course of the proceedings. 20

(4) The Tribunal's powers in relation to any application shall not be affected by any failure to appoint an assessor or by the absence of any assessor. 25

Advocates.

17. At the hearing by the Tribunal of any application the applicant and the respondent may be represented by an advocate or advocates. No person shall be an advocate unless he is employed in the Government service or is an officer or servant of a service organization. 30

Rules of procedure.

18. (1) Subject to the provisions of this Act and of any regulations made under this Act, the Tribunal may from time to time make rules for regulating its procedure. 35

(2) Subject to the provisions of this Act and of any rules or regulations made under this Act, the Tribunal may regulate its procedure in such manner as it thinks fit.

Quorum and decision of Tribunal.

19. (1) The presence of the Chairman and of at least one other member entitled to be present shall be necessary to constitute a sitting of the Tribunal. 40

(2) The decision of a majority of the members present at a sitting of the Tribunal shall be the decision of the Tribunal. If the members present are equally divided in opinion, the decision of the Chairman shall be the decision of the Tribunal.

(3) Every order made by the Tribunal shall be signed by the Chairman and at least one other member of the Tribunal, and shall be published in the *Gazette*.

20. (1) Every order made by the Tribunal in accordance with this Act shall be binding on the Crown and on every employee whom the order purports to affect, whether or not any such employee is a member of any service organization.

Effect of orders.

(2) Any order or provision of an order may be made by the Tribunal so as to come into force on a day to be specified in that behalf in the order, being either before or after the date of the order but not earlier in any case than the date of the making of the application for the order and, in the case of a principal order replacing an existing principal order (except as provided in section ten of this Act), not earlier than one year after the date of the coming into force of the existing order.

(3) Every order or provision of an order in respect of which no date is specified as aforesaid shall come into force on the day after the date of the order.

21. Proceedings before the Tribunal shall not be held bad for want of form. No appeal shall lie from any order of the Tribunal, and, except upon the ground of lack of jurisdiction, no proceeding or order as aforesaid shall be liable to be challenged, reviewed, quashed, or called in question in any Court.

Proceedings before Tribunal not to be questioned or appealed against.

22. (1) No person shall in any manner attempt to influence the Tribunal or any member of the Tribunal in respect of any matter within the functions of the Tribunal.

Attempts to influence improperly the decisions of the Tribunal.

(2) Nothing in this section shall be so construed as to prohibit any person from giving information or advice or making representations with respect to any such matter at the request or invitation of the Tribunal, or as an assessor, or as an advocate or witness before the Tribunal.

(3) Every person who commits a breach of the provisions of this section commits an offence, and shall be liable on summary conviction to a fine not exceeding one hundred pounds.

Remuneration
and travelling-
allowances.

23. There shall be paid out of moneys appropriated by Parliament for the purpose to the members of the Tribunal (other than the Chairman) and to assessors appointed under this Act such remuneration by way of salary, fees, or allowances and such travelling expenses and allowances as may from time to time be prescribed by regulations made under this Act. 5 10

Regulations.

24. (1) The Governor-General may from time to time, by Order in Council, make regulations not inconsistent with this Act for providing for any matters that by this Act are expressed to be prescribed or that may be deemed necessary in order to give full effect to this Act. 15

(2) Regulations made under this section shall come into force on a date to be specified therein in that behalf (whether before or after the date of the Order in Council making the regulations), and if no such date is specified shall come into force on the date of publication in the *Gazette* of a notification of the making of the regulations. 20

Application of
Act to other
branches of
Government
service.

25. (1) Regulations may from time to time be made under this Act for the purpose of applying the provisions of this Act to such branch or branches of the Government service as may be specified in the regulations. 25

(2) In its application to any such branch of the Government service as aforesaid, this Act shall be deemed to be modified as follows:— 30

(a) References in this Act to the Public Service shall be deemed to be references to that branch: 35

(b) References in this Act to the controlling authority shall be deemed to be references to such person as may be prescribed in that behalf:

(c) References to service organizations shall be deemed to be references to such organization or organizations as may be prescribed in that behalf. 40

26. Every enactment conferring powers on the controlling authority shall be read subject to the provisions of this Act as applying to the Public Service or, as the case may be, as extended from time to time under the
5 *last preceding* section, and of any order made under this Act.

Other Acts to be read subject to this Act.