

Hon. Mr. McLagan

INDUSTRIAL CONCILIATION AND
ARBITRATION AMENDMENT

ANALYSIS

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A BILL INTITULED

AN ACT to amend the Industrial Conciliation and Arbitration Act, 1925. 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 Industrial Conciliation and Arbitration Amendment Act, 1947, and shall be read together with and deemed part of the Industrial Conciliation and Arbitration Act, 1925 (hereinafter referred to as the principal Act). Short Title. See Reprint of Statutes, Vol. III, p. 939
2. (1) The Governor-General may from time to time appoint fit and proper persons to be Deputy Judges of the Court of Arbitration. Deputy Judges of Court of Arbitration.

(2) No person shall be eligible for appointment as a Deputy Judge of the Court unless he is eligible to be a Judge of the Supreme Court.

(3) There shall be paid to each Deputy Judge of the Court out of the Consolidated Fund, without further appropriation than this section, a salary at the rate of one thousand seven hundred and fifty pounds a year. 5

(4) Except as provided in the *last preceding* subsection, each Deputy Judge shall as to tenure of office, emoluments, and allowances (including superannuation allowance) have the same rights and be subject to the same provisions as a Judge of the Court. 10

(5) The office of Deputy Judge may be held in conjunction with any other office which the Governor-General shall deem not incompatible. 15

(6) Each Deputy Judge, as soon as may be after his acceptance of office, shall take and subscribe the Oath of Allegiance and the Judicial Oath, in accordance with the Promissory Oaths Act, 1908, as if he had been appointed a Judge of the Court. 20

See Reprint
of Statutes,
Vol. I, p. 1017

Deputy Judge
may act as
Judge.

3. (1) Notwithstanding anything to the contrary in the principal Act, in the case of the illness or absence of a Judge of the Court at any time the Governor-General may appoint a Deputy Judge of the Court to act as Judge of the Court during the illness or absence of the Judge. 25

(2) Notwithstanding anything to the contrary in the principal Act, if for any reason a Judge of the Court considers it necessary or desirable that a Deputy Judge should act as Judge of the Court for the hearing and determination of any particular matter or for any specified period, he may request the Deputy Judge to act as Judge of the Court. 30

(3) The fact that any Deputy Judge purports to act as Judge of the Court pursuant to any appointment or request under this section shall be sufficient evidence of his authority so to do, and while so acting he shall have all the powers and authorities of a Judge of the Court. 35 40

(4) No act done by a Deputy Judge, or by the Court, while the Deputy Judge purports to act as Judge of the Court pursuant to this section shall in any proceedings be questioned on the ground that the occasion
5 for his appointment or for his so acting had not arisen or had ceased.

4. (1) Subject to the provisions of this section and notwithstanding the provisions of section four of the Industrial Conciliation and Arbitration Amendment
10 Act (No. 2), 1937, or any delegation previously made thereunder, the Court may from time to time, by order under the seal of the Court or in such other manner as the Court thinks fit, delegate to each of the Deputy Judges, or to any Deputy Judge named by it, any of
15 its functions, jurisdiction, or powers under the principal Act, or under the Shops and Offices Act, 1921-22, or under the Apprentices Act, 1923, or under the Factories Act, 1946, or under any other enactment whatsoever, whether enacted before or after the passing of this Act.

Court may delegate functions to Deputy Judges. 1937, No. 10

20 (2) Without prejudice to the generality of the *last preceding* subsection, it is hereby declared that the Court may under this section delegate any of its functions, jurisdiction, or powers under sections one hundred and thirty-four and one hundred and thirty-six
25 of the principal Act or any of its functions, jurisdiction, or powers in relation to any case stated for the opinion of the Court under section one hundred and thirty-three of the principal Act or in relation to any appeal against the decision of a delegate of the Court acting under the
30 authority of section four of the Industrial Conciliation and Arbitration Amendment Act (No. 2), 1937.

See Reprint of Statutes, Vol. III, p. 240 Ibid., Vol. V, p. 576 1946, No. 43

(3) Any order or other delegation made by the Court for the purposes of this section may be at any time in like manner varied or revoked.

35 (4) The fact that the Court may have delegated any of its functions, jurisdiction, or powers in accordance with this section shall not deprive the Court of power to itself exercise any such functions, jurisdiction, or powers.

1937, No. 10

Proceedings
before Deputy
Judges.

5. (1) Proceedings before any Deputy Judge acting in pursuance of any delegation under the *last preceding* section shall be conducted as nearly as may be in the same manner as proceedings before the Court, and, subject to the provisions of this Act, the provisions of the principal Act relating to proceedings before the Court shall, so far as they are applicable and with the necessary modifications, apply with respect to any proceedings before a Deputy Judge. 5

(2) Every award, judgment, order, or other instrument made by a Deputy Judge shall be signed by him and filed with the appropriate Clerk of Awards or other officer of the Court, and may be sealed with the seal of the Court. 10

(3) Every award, judgment, order, or other instrument made by a Deputy Judge acting in pursuance of a delegation under the *last preceding* section shall, subject to the provisions of the *next succeeding* section, have the same effect as, and be deemed to be, an award, judgment, order, or other instrument, as the case may be, made by the Court. 15 20

Appeals from
Deputy Judges.

6. (1) Any person who is directly affected by any decision of a Deputy Judge acting in pursuance of a delegation under section *four* of this Act may, within such time and in such manner as may be prescribed by regulations in that behalf made under the principal Act, appeal therefrom to the Court. 25

(2) In the case of an appeal under this section the Court may deal with the matter by way of rehearing and in all respects as if the matter had not been dealt with by the Deputy Judge: 30

Provided that in any case where the appeal is from an award made by a Deputy Judge, no person, union, or association shall be relieved from his or its obligation to conform to the award pending the determination of the appeal. 35

Judicial
notice of
signature.

7. Section one hundred and fifty-eight of the principal Act is hereby amended by inserting in subsection one, after the words "Judge of the Court", the words "or a Deputy Judge of the Court,". 40

8. (1) The following shall be deemed to be a rule of every industrial union of workers, whether registered before or after the passing of this Act, namely:—

Secret ballot
on question
of strike or
lockout.

5 If the members of the union or of any section thereof are concerned or are likely to be concerned in a dispute which is likely to result in a strike, no such strike shall take place until the question whether the strike shall take place has been submitted to a secret ballot of those members of the union who are concerned
10 or are likely to be concerned in the matter of the dispute. The secret ballot shall be held in the manner prescribed by regulations made under the Industrial Conciliation and Arbitration Act, 1925, or, if there are
15 no such regulations, then either in the manner prescribed by the rules of the union or, where there are no such rules, in such manner as shall ensure the secrecy of the ballot.

(2) The following shall be deemed to be a rule of every industrial union of employers, whether registered
20 before or after the passing of this Act, namely:—

If the members of the union or of any section thereof are concerned or are likely to be concerned in a dispute which is likely to result in a lockout, no such lockout shall take place until the question whether the
25 lockout shall take place has been submitted to a secret ballot of those members of the union who are concerned or are likely to be concerned in the matter of the dispute. The secret ballot shall be held in the manner prescribed by regulations made under the Industrial
30 Conciliation and Arbitration Act, 1925, or, if there are no such regulations, then either in the manner prescribed by the rules of the union or, where there are no such rules, in such manner as shall ensure the secrecy of the ballot.

35 (3) If a strike or lockout takes place and any members of an industrial union or of any section of an industrial union are parties to the strike or lockout, the said union shall be deemed to have instigated the strike or lockout within the meaning of sections one hundred
40 and twenty-four, one hundred and twenty-six, and one hundred and twenty-seven of the principal Act, unless the union proves that before the strike or lockout took place a secret ballot was held as required by the rules set out in the foregoing provisions of this section on
45 the question whether the strike or lockout should take place.

(4) If a strike takes place and any members of an industrial union or of any section of an industrial union are parties to the strike, then, unless before the strike took place a secret ballot was held as required by the rule set out in subsection *one* of this section on the question whether the strike should take place and a majority of votes cast in the ballot was in favour of the strike so taking place,— 5

(a) Every member of the industrial union who is a party to the strike shall be liable to a penalty not exceeding *twenty* pounds: 10

(b) Every officer of the industrial union shall be liable to a penalty not exceeding *twenty* pounds unless he proves that he had no means of knowing of the imminence of the strike or that he took every step possible to ensure compliance with the said rule and to prevent the strike. 15

(5) If a lockout takes place and any members of an industrial union or of any section of an industrial union are parties to the lockout, then, unless before the lockout took place a secret ballot was held as required by the rule set out in subsection *two* of this section on the question whether the lockout should take place and a majority of votes cast in the ballot was in favour of the lockout so taking place,— 20 25

(a) Every member of the industrial union who is a party to the lockout shall be liable to a penalty not exceeding *one thousand* pounds:

(b) Every officer of the industrial union shall be liable to a penalty not exceeding *four hundred* pounds unless he proves that he had no means of knowing of the imminence of the lockout or that he took every step possible to ensure compliance with the said rule and to prevent the lockout. 30 35

(6) Every penalty under this section shall be recoverable at the suit of an Inspector of Awards in the same manner as a penalty for a breach of an award and not otherwise, and all the provisions of the principal Act with respect to the enforcement of an award shall, so far as applicable, apply accordingly. 40

(7) Nothing in this section shall be deemed to render lawful any strike or lockout which would otherwise be unlawful, or to derogate from the provisions of Part V of the principal Act.

5 **9.** (1) It is hereby declared that the Court shall have and shall be deemed always to have had power on application made in accordance with regulations under the principal Act to give its opinion upon any question connected with the construction of any award
10 or industrial agreement, or upon any particular determination or direction of the Court, or upon the construction of any statute relating to matters within the jurisdiction of the Court.

Power to interpret awards, industrial agreements, &c.

(2) The Court may decline to give its opinion where
15 it deems it inadvisable so to do.

(3) The Court may refuse to consider itself bound by any opinion so given, whether in respect of the same matter or any other matter, if the Court is satisfied that it has not been fully informed, or that the matter
20 affects parties other than those immediately interested, or where the asking for and obtaining of the opinion has a tendency to defeat or avoid penalties which ought not to be avoided, or to protect parties from the consequences of wilful breaches.

25 (4) Nothing in this section shall be deemed to derogate from the provisions of section ninety-eight of the principal Act.