

GOVERNMENT OF THE SOVEREIGN DEMOCRATIC REPUBLIC OF FIJI
DECREE NO. 27 OF 1992

TRADE DISPUTES ACT (AMENDMENT) DECREE 1992

A DECREE TO AMEND THE TRADE DISPUTES ACT

In exercise of the powers vested in me as President of the Sovereign Republic of Fiji and Commander-in-Chief of the Armed-Forces and acting in accordance with the advice of the Prime Minister and the Cabinet, I hereby make the following Decree:—

- Short title*
1. This Decree may be cited as the Trade Disputes Act (Amendment) Decree 1992.
- Interpretation*
- 2.—(1) In this Decree the Trade Disputes Act is referred to as "the principal Act".
- Section 2 of the principal Act amended*
3. Section 2 of the principal Act is amended by:
- (i) deleting the meaning ascribed to the expression "collective agreement" and substituting the following meaning:
"collective agreement" means any agreement:
 (a) that is made by a trade union of employees recognised under the Trade Unions (Recognition) Act and an employer or trade union or employers duly registered under the Trade Unions Act; and
 (b) prescribes (wholly or in part) the terms and conditions of employment of employees of one or more description, or a procedure agreement or both;
- (ii) inserting the following immediately after the meaning of the expression "conciliation committee" but before "employee":—
"Disputes" means a trade dispute;
"Disputes Committee" means the Disputes Committee constituted under this Act;
"dispute of interest" means a dispute created with intent to procure a collective agreement defined under this Act and includes a dispute created with intent to procure a collective agreement or amendment to settle a new matter as defined under this Act;
"dispute of rights" means (a) a dispute concerning the interpretation; application; or operation of a collective agreement; or (b) any dispute that is not a dispute of interest, including any dispute that arises during the currency of a collective agreement;
- (iii) inserting after the definition of "lock out" the following "new matter" means a matter decided by the Permanent Secretary to be a matter or matters in relation to any award or collective agreement significantly affecting the terms and conditions of employees covered by the said award or collective agreement;
- (iv) inserting after the definition of "organisation" the following: "party" with reference to a trade dispute means a trade union of employees recognised under the Trade Unions (Recognition) Act acting for all or any number of its members in the trade dispute, or an employer acting for himself in the trade dispute, or a trade union or employers acting for all or any number of its members in a trade dispute;
- (v) deleting the definition of "strike" and substituting the following:
"strike" means the act of any number of workers who are or have been in employment of the same employer or of different employers:
 (a) in discontinuing that employment whether wholly or partially, or in reducing the normal performance of it; or
 (b) in breaching their contracts of service; or
 (c) in refusing or failing after such discontinuance to resume or return to their employment; or
 (d) in refusing or failing to accept engagement for any work in which they are usually employed; or
 (e) in reducing their normal output or their normal rate of work;
the said act being due to any combination, agreement, common understanding, or concerted action, whether expressed or implied, made or entered into by any worker, but does not include a union meeting allowed by this Act or authorised by an employer;

- (vi) deleting the meaning of "trade dispute" and substituting the following:
"trade dispute" means any dispute or difference between any employer and a trade union recognised under the Trade Unions (Recognition) Act or between a union of employers connected with the employment or with the terms of employment, or with the conditions of labour, of any employee;
Provided that no trade dispute in the Sugar Industry shall be deemed to be a trade dispute for the purpose of this Act."

Section 3 of the principal Act (reporting of trade disputes) repealed and substituted

4. Section 3 of the principal Act is hereby repealed and substituted by the following new provision:

Reporting of trade disputes

- 3(1) Any trade dispute, whether existing or apprehended may be reported to the Permanent Secretary by:
- (a) an employer who is a party to the dispute or a trade union of employers representing him in the dispute; or
(b) a trade union of employees recognised under the Trade Unions (Recognition) Act which is a party to the dispute.
- (2) A report of a trade dispute shall be made in writing and shall sufficiently specify:
- (a) the employers and employees, or the classes and categories thereof, who are parties to the dispute, and the place where the dispute exists or is apprehended;
(b) the party by whom the report is made;
(c) each and every matter over which the dispute has arisen or is apprehended; and
(d) the steps which have been taken by the parties to obtain a settlement under any arrangements for the settlement of disputes which may exist by virtue of any registered agreement between the parties to it.
- (3) the party reporting a trade dispute shall without delay furnish by hand or by registered post a copy of the report of the dispute to each party to the dispute."

Section 4 of the principal Act amended

5. Section 4 of the principal Act is amended by:
- (a) repealing the proviso to paragraph (a) of subsection (1) and substituting the following new proviso:
Provided that:
 (i) no trade dispute which arose more than one year from the date it is reported under Section 3 shall be accepted by the Permanent Secretary except in cases where the delay or failure to report the trade dispute within the specified period was occasioned by mistake or other good cause.
 (ii) a report which has been rejected by the Permanent Secretary shall be deemed not to have been made under the provisions of this Act;
- (b) erasing the semi-colon after the word "conciliator" in paragraph (d) of subsection (1) and inserting the following thereafter:
"—here the trade dispute is a dispute of interest."
- (c) substituting a semi-colon for the full stop at the end of paragraph (g) of subsection (1).
- (d) the addition of a new paragraph after paragraph (g) of subsection (1) as follows:
 "(h) refer the trade dispute to a Disputes Committee, where such dispute is a dispute of right."

Section 5 of the principal Act amended

6. Subsection (1) of Section 5 of the principal Act is amended by substituting a full stop in place of the comma immediately after the word "dispute" on the sixth line and deleting all the words and expression thereafter.

New Section 5A

7. A new Section shall be inserted at the end of Section 5 and before Section 6 as follows:

Settlement of disputes of rights

- 5A—(1) The Permanent Secretary shall refer a dispute of rights to a Disputes Committee for settlement.
- (2) There shall be constituted a Disputes Committee consisting of three persons as follows:
(a) a Chairman who is not a party to or concerned with the dispute appointed by the Permanent Secretary;

- (b) a member approved and appointed by the Permanent Secretary on the recommendation of the trade union affected by the dispute of rights;
- (c) a member approved and appointed by the Permanent Secretary on the recommendation of the employer or the trade union of employers affected by the dispute of rights;
- Provided that the recommendations for membership under paragraphs (b) and (c) shall be submitted to the Permanent Secretary within fourteen days from the date of acceptance of the trade dispute.
- (3) The Disputes Committee shall hear the parties to the dispute and make its decision without delay and in any case within fourteen days from the date the trade dispute was referred to it;
- Provided that the Permanent Secretary may extend the period within which a decision is to be made if in his opinion the circumstances of a case require that the extension be given.
- (4) A decision of the Disputes Committee that is arrived at by consensus shall be binding on the parties and be deemed an award.
- (5) If one or both parties fail to comply with subsection (2) or where the Disputes Committee is unable to arrive at a decision by consensus or where the Disputes Committee fails to comply with subsection (3) of this Section:
- (a) the Permanent Secretary shall refer the dispute to the Minister who shall authorise the Permanent Secretary to refer such dispute to a Tribunal for settlement; and
- (b) the Tribunal after hearing the parties to the dispute shall make an award which shall be binding on the parties to the dispute.
- (6) (a) No employees employed by an employer who is a party to the dispute shall discontinue or impede normal work either totally or partially, in respect of a dispute referred to a Disputes Committee or Tribunal;
- (b) No such employer shall take any action in respect of a dispute already referred to a Disputes Committee or Tribunal;
- Provided that where the dispute involves an intention to dismiss an employee, the employer shall suspend the said employee, pending the settlement of the dispute already referred to a Disputes Committee or to a Tribunal and the period of suspension will not attract remuneration unless decided otherwise.
- (7) (a) Any employee or employees and any employer who are parties to a dispute already referred to a Disputes Committee or a Tribunal by the Permanent Secretary who contravenes the provisions of subsection (6) shall be guilty of an offence.
- (b) Any person or organisation who causes or procures or counsels or in any way encourages, persuades or influences the parties or either party to a dispute already referred to a Disputes Committee or to a Tribunal to contravene the provisions of subsection (6) shall be guilty of an offence."

New Section 10A

8. A new Section shall be inserted at the end of Section 10 and before Section 11 as follows:

"Strike unlawful when no proper secret ballot taken"

10A. Where it appears to the Minister that there is an actual or declared strike arising out of a trade dispute which has been authorised or endorsed by a trade union or trade unions, there has not been a properly conducted secret strike ballot of union members affected on the actual or declared strike, the Minister may by Order declare that strike or declared strike unlawful and order discontinuance of the strike."

Section 32 of principal Act repealed and substituted

9. Section 32 of the principal Act is repealed and substituted as follows:—

"Representation of parties"

- 32(1) In any proceedings under this Act before a Permanent Secretary, a person appointed by him, or a Disputes Committee or a Tribunal or a Board, a party:—
- (a) being a trade union, may be represented by an officer or employee of the trade union;
- (b) being an employer may appear personally or be represented by his duly authorised employee, or by an officer or employee of a trade union of employers of which he is a member; or
- (c) with leave, be represented by a member, officer or employee of an organisation of which that party is a member;
- (2) A party, may with leave, be represented by a barrister and solicitor, at proceedings before a Tribunal or Board by the Tribunal or Board."

Section 34 of principal Act amended

10. Section 34 of the principal Act is amended by the addition of the following subsection:
"(10) A collective agreement shall not be invalidated by reason only that it has not been stamped."

Schedule to principal Act amended

11. The Schedule to the principal Act is amended by the addition of the following to the list of essential services:

"Customs Services; Immigration services; Tourism Industry; vault Security Services of the Reserve Bank of Fiji and Quarantine Services and Animal Services of the Ministry of Primary Industries and Co-operatives."

Commencement

12. This decree shall be deemed to have come into force on the 1st day of May 1992.

P. K. GANILAU
President of the Sovereign Democratic
Republic of Fiji and Commander-in-Chief of the Armed Forces