



REPUBLIC OF VANUATU

**TRADE DISPUTES (AMENDMENT)
ACT NO. 6 OF 2020**

Arrangement of Sections

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REPUBLIC OF VANUATU

Assent: 30/06/2020
Commencement: 02/07/2020

TRADE DISPUTES (AMENDMENT) ACT NO. 6 OF 2020

An Act to amend the Trade Disputes Act [CAP 162].

Be it enacted by the President and Parliament as follows-

1 Amendment

The Trade Disputes Act [CAP 162] is amended as set out in the Schedule.

2 Commencement

This Act commences on the day on which it is published in the Gazette.

SCHEDULE

AMENDMENTS OF TRADE DISPUTES ACT [CAP 162]

1 Section 1

Insert in their correct alphabetical positions:

““adjudicator” means the person appointed under section 9;

“Tribunal” means the Trade Dispute Tribunal established under section 8;”

2 Section 1 (Definitions of “arbitration proceedings”, “board” and “conciliator”)

Repeal the definitions.

3 Section 1 (Definition of “conciliation proceedings”)

Delete “a conciliator”, substitute “the Commissioner”

4 Part 2 (Heading)

Delete “INDIVIDUAL”, substitute “TRADE”

5 Sections 3 and 4

Repeal the sections, substitute

“3 Request for conciliation of trade disputes

If a trade dispute arises between an employer and a worker, either party may request the Commissioner to settle the trade dispute by conciliation.

4 Settlement of trade dispute by the Commissioner

(1) If a request referred to in section 3 is made to the Commissioner, and the Commissioner considers that he or she can act upon such request with a reasonable prospect of success, the Commissioner must without delay promote a settlement of the trade dispute within 7 days from the date of receiving the request.

(2) If the Commissioner considers that he or she cannot act upon the request of the parties within 7 days as required under subsection (1), he or she must refer the request to the Tribunal.”

6 Section 5

Delete “a labour officer” (wherever occurring), substitute “the Commissioner”

7 At the end of section 5

Add

- “(3) A person is liable on conviction for an offence committed under subsection (2):
- (a) in the case of an individual – to a fine not exceeding VT 100,000 or imprisonment for a term not exceeding 3 years or to both; or
 - (b) in the case of a corporate body - to a fine not exceeding VT 1,000,000.”

8 Section 6

Repeal the section, substitute

“6 Memorandum of conciliation

- (1) A memorandum recording the terms of the conciliation must be:
- (a) made by the Commissioner before whom the conciliation proceedings have taken place; and
 - (b) signed by the Commissioner and the parties.
- (2) The memorandum under subsection (1) is binding on the parties to the trade dispute.
- (3) A person who fails to comply with this section commits an offence punishable on conviction:
- (a) in the case of an individual - to a fine not exceeding VT 100,000 or imprisonment for a term not exceeding 3 years or to both; or
 - (b) in the case of a corporate body - to a fine not exceeding VT 1,000,000.

7 Delegation by the Commissioner

- (1) The Commissioner may delegate to a labour officer his or her power to promote settlement of a trade dispute by conciliation.
- (2) To avoid doubt, the Commissioner must not delegate his or her power under section 6.”

9 Part 3

Repeal the Part, substitute

“PART 3 THE TRADE DISPUTE TRIBUNAL

8 Establishment of the Trade Dispute Tribunal

The Trade Dispute Tribunal is established.

9 Appointment and removal of adjudicator

- (1) The Tribunal consists of an adjudicator who is to be appointed in writing by the Judicial Service Commission on the recommendation of the Minister responsible for trade dispute.
- (2) The adjudicator is to hold office for a period of 5 years and is eligible for re-appointment only once.
- (3) Subject to subsection (4), the Ministry responsible for trade dispute is to determine the terms and conditions of appointment of the adjudicator.
- (4) The Government Remuneration Tribunal is to determine the remuneration of the adjudicator.
- (5) The appointment of the adjudicator must follow a fair and transparent selection process and must be based on merit.
- (6) A person must not be appointed under subsection (1), unless the person is a registered legal practitioner with 5 years or more experience in litigation.
- (7) The Judicial Service Commission may remove the adjudicator if he or she:
 - (a) fails to fulfil the functions conferred on the adjudicator under this Act; or
 - (b) commits a serious breach of a term and condition of his or her appointment; or
 - (c) becomes bankrupt; or
 - (d) commits a serious misconduct.

10 Functions of the Tribunal

- (1) The functions of the Tribunal are to consider and make awards on any trade dispute.
- (2) The Tribunal has such other functions as may be conferred on it under this Act or any other Act.

11 Powers of the Tribunal

- (1) The Tribunal has the power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions under this Act or any other Act.
- (2) The Tribunal is to determine and regulate its own procedures by Order.

12 Awards by the Tribunal

- (1) The Tribunal must make an award without delay and, in any case, not more than 3 months from the date of receiving notification of the dispute.
- (2) An award made by the Tribunal under this section is final.

13 Non-admission of legal practitioners

A person with legal qualifications, experience or training is not permitted to represent any party or witness before the Tribunal, unless he or she appears as a party or as a witness.

14 Evidence

- (1) A person is entitled to produce all such information as may be required without being bound by the rules of evidence applicable in civil or criminal proceedings.
- (2) The Tribunal may require any person:
 - (a) to produce, in writing, such other information; or
 - (b) to attend and give evidence on oath.
- (3) A person may refuse to provide any information or to answer any question or to produce any document on the ground to incriminate him or her or on any lawful ground.
- (4) A person who knowingly gives false information or produces a false document to the Tribunal commits an offence punishable on conviction:

- (a) in the case of an individual - to a fine not exceeding VT100,000 or to imprisonment to a term not exceeding 3 years, or to both;
- (b) in the case of a body corporate - to fine not exceeding VT1,000,000.

15 Conflict of interest

- (1) If the adjudicator has a conflict of interest in any proceedings of the Tribunal, he or she must disclose his or her interest to the Judicial Service Commission.
- (2) Subject to subsection 9(6), if the adjudicator discloses his or her interest under subsection (1), the Judicial Service Commission must appoint another person to preside over the proceeding in that specific matter.

16 Tribunal to summon a person

- (1) The Tribunal may summon a person or any representative of a party to the dispute, to provide a statement to the Tribunal in relation to the dispute.
- (2) A person who fails to comply with subsection (1) commits an offence punishable on conviction to a fine not exceeding VT 1,000,000.

17 Trade disputes brought to any Court

If a matter is brought to any Court and it relates to a trade dispute, the Court must refer that matter to the Tribunal.”

10 Section 26

- (a) Delete “arbitration” (wherever occurring), substitute “adjudication”
- (b) Delete “Part 3”, substitute “Part 2 or 3”

11 Paragraph 34(1)(c)

Repeal the paragraph, substitute

- “(c) that it may be conducive to a settlement of the trade dispute by conciliation or adjudication if the industrial action is discontinued or deferred,”

12 Section 38

Repeal the section.

13 At the end of Part 6

Add

“41 Regulations

The Minister may make Regulations not inconsistent with this Act for the better carrying out or giving effect to the provisions of this Act.”