

ORDER IN COUNCIL

I
1993

ratifying a Projet de Loi

ENTITLED

The Industrial Disputes and Conditions of Employment (Guernsey) Law, 1993

(Registered on the Records of the Island of Guernsey
on the 11th May, 1993.)



1993

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 11th day of May, 1993 before Graham Martyn Dorey, Esquire, Bailiff; present:—Harry Wilson Bisson, Herbert Nicolle Machon, Geoffrey Ernest Le Page, Stanley Walter John Jehan, Raymond Arthur Heaume, Esquires, Mrs. Dorothy Winifred Le Pelley, Charles Anthony Spensley, Kenneth John Rowe, Lawrence Oscar Ozanne, and John Richard Rowe Henry, Esquires, Jurats.

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 10th day of March, 1993, approving and ratifying a Projet de Loi entitled “The Industrial Disputes and Conditions of Employment (Guernsey) Law, 1993”, THE COURT, after the reading of the said Order in Council and after having heard Her Majesty’s Procureur thereon, ordered that the said Order in Council be registered on the records of this Island of which Order in Council the tenor followeth:-

At the Court at Buckingham Palace

The 10th day of March 1993

PRESENT,

The Queen's Most Excellent Majesty in Council

WHEREAS there was this day read at the Board a Report from the Right Honourable the Lords of the Committee of Council for the affairs of Guernsey and Jersey dated the 3rd day of March 1993 in the words following, viz.:—

“YOUR MAJESTY having been pleased, by Your General Order of Reference of the 22nd day of February 1952, to refer unto this Committee the humble petition of the States of the Island of Guernsey setting forth:—

“1. That, in pursuance of their Resolution of the 31st day of October 1991, the States of Deliberation at a meeting held on the 27th day of May 1992 approved a Bill or “Projet de Loi” entitled “The Industrial Disputes and Conditions of Employment (Guernsey) Law, 1993”, and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction thereto. 2. That the said Bill or “Projet de Loi” is in the words and figures set forth in the Schedule hereunto annexed. And most humbly praying that Your Majesty might be graciously pleased to grant Your Royal Sanction to the Bill or “Projet de Loi” of the States of Guernsey entitled “The Industrial Disputes and Conditions of Employment (Guernsey) Law, 1993”, and to order that the same shall have force of law in the Islands of Guernsey, Herm and Jethou.”

“THE LORDS OF THE COMMITTEE, in obedience to Your Majesty's said Order of Reference, have taken the said Petition and the said Projet de Loi into consideration and do this day agree humbly to report, as their opinion, to Your Majesty, that it may be advisable for Your Majesty to comply with the prayer of the said petition and to approve of and ratify the said Projet de Loi.”

HER MAJESTY having taken the said Report into consideration is pleased, by and with the advice of Her Privy Council, to approve of and ratify the said Projet de Loi, and to order, and it is hereby ordered, that the same shall have the force of Law within the Islands of Guernsey, Herm and Jethou.

AND HER MAJESTY doth hereby further direct that this Order, and the said Projet de Loi (a copy whereof is hereunto annexed), be entered upon the Register of the Island of Guernsey and observed accordingly.

AND the Lieutenant Governor and Commander-in-Chief of the Island of Guernsey, the Bailiff and Jurats, and all other Her Majesty's Officers for the time being in the said Island, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

N. H. Nicholls

(No.I - 1993)

PROJET DE LOI

ENTITLED

**The Industrial Disputes and Conditions of Employment
(Guernsey) Law, 1993**

ARRANGEMENT OF SECTIONS

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The Industrial Disputes and Conditions of Employment (Guernsey) Law, 1993

THE STATES, in pursuance of their Resolution of the 31st day of October, 1991(a), have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Islands of Guernsey, Herm and Jethou.

PART I INDUSTRIAL DISPUTES

The Industrial Disputes Officer.

1. (1) The States shall appoint an officer to be known as the Industrial Disputes Officer.

(2) The Industrial Disputes Officer shall hold office for such period as the States may direct.

(3) A member of the States of Deliberation or of the States of Election within the meaning of the Reform (Guernsey) Law, 1948(b) shall not hold the office of Industrial Disputes Officer.

(a) Article XIX of Billet d'Etat No.XX of 1991.

(b) Ordres en Conseil Vol.XIII, p.288.

The Deputy Industrial Disputes Officer.

2. (1) The Industrial Disputes Officer shall appoint a deputy to be known as the Deputy Industrial Disputes Officer.

(2) The appointment of the Deputy Industrial Disputes Officer shall be subject to the approval of the States.

(3) In the event of the Industrial Disputes Officer being unable to perform his functions under this Law, the Deputy Industrial Disputes Officer shall act in his place.

(4) A member of the States of Deliberation or of the States of Election within the meaning of the Reform (Guernsey) Law, 1948 shall not hold the office of Deputy Industrial Disputes Officer.

Functions of the Industrial Disputes Officer.

3. (1) Where an industrial dispute, actual or apprehended, is notified to the Industrial Disputes Officer, he shall use his best endeavours to prevent or settle the dispute -

- (a) by giving such advice and assistance as he thinks necessary or expedient;
- (b) by conciliation;
- (c) by arbitration, voluntarily submitted to by the parties; or

- (d) by referring the dispute to the Tribunal with the agreement of the parties.

(2) The Industrial Disputes Officer shall refer an industrial dispute to the Tribunal -

- (a) if, in his opinion, the dispute cannot be settled by the methods set out in subsection (1); or
- (b) if the dispute is not settled within six weeks of being notified to him, unless in his opinion negotiations, conciliation or arbitration proceedings are in progress with a view to a settlement.

(3) The decision of the Industrial Disputes Officer -

- (a) as to whether a dispute which has been notified to him is an industrial dispute;
- (b) as to the date upon which an industrial dispute was notified to him; and
- (c) as to the matters set out in subsection (2)(a) and (b);

shall be final.

(4) Where the Industrial Disputes Officer refers an industrial dispute to the Tribunal under this section, he shall forthwith deliver written terms of reference to the Tribunal identifying each issue in the dispute which is to be investigated and upon which the Tribunal is required to make an award.

(5) The Industrial Disputes Officer may make such recommendations to the Board in relation to the operation of this Law (whether in general or in relation to a particular industrial dispute) and to his functions thereunder as he thinks fit.

The Industrial Disputes Tribunal.

4. (1) There shall be constituted a tribunal to be known as the Industrial Disputes Tribunal ("the Tribunal"),

(2) The Tribunal shall be constituted whenever occasion may require for the purposes of investigating any industrial dispute referred to it by the Industrial Disputes Officer under section 3.

(3) The provisions of the Schedule shall have effect in relation to the constitution, membership, powers and proceedings of the Tribunal.

Functions of the Tribunal.

5. (1) The Tribunal shall -

- (a) investigate and make an award in respect of any industrial dispute referred to it by the Industrial Disputes Officer under section 3;
- (b) as soon as possible after making the award, give a written statement thereof to the parties;
- (c) within 28 days of making the award, cause a notice thereof to be displayed in the Royal Court House for a period of seven days;
- (d) declare that its award shall take effect from a specified date.

(2) Where the dispute in question is as to whether an employer was observing the recognised conditions of employment within the meaning of section 11 or conditions not less favourable than them, the Tribunal, if satisfied -

- (a) that the employer was not observing such conditions; and
- (b) that at some date before the reference of the dispute to the Tribunal ("the date of knowledge") the employer became aware or ought to have become aware

that such conditions should have been observed by him;

may declare that its award shall take effect from a specified date which shall not be earlier than the date of knowledge.

Proceedings to be confidential.

6. (1) No person shall disclose, except before the Tribunal or with lawful excuse, any matter which came to his knowledge by reason of his being a member of the Tribunal or by reason of his being present before the Tribunal when the Tribunal was sitting in camera.

(2) A person who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding level 5 on the uniform scale; and in addition, if he is a member of the Tribunal, he shall be disqualified from membership of the Tribunal for life.

Interpretation of awards.

7. (1) The Industrial Disputes Officer or any party to an award of the Tribunal may, provided that the Tribunal has not been dissolved in accordance with paragraph 2 of the Schedule, apply to the Tribunal for a decision upon any question as to the interpretation of the award.

(2) The Tribunal shall, before making such a decision, hear any representations of the Industrial Disputes Officer or of the parties as to the question in issue.

(3) The decision of the Tribunal upon an application under subsection (1) shall be stated in writing to the Industrial Disputes Officer or (as the case may be) to the parties and shall have effect as if it were an original award.

Costs of arbitrations.

8. (1) Where an industrial dispute is, pursuant to section 3(1)(c), voluntarily submitted by the parties to arbitration, the Industrial Disputes Officer may make such recommendation as to the costs of the arbitration as he thinks fit, including a recommendation that the whole or any part of those costs should be borne by one or more of the parties or by the States.

(2) An arbitrator is not bound by a recommendation of the Industrial Disputes Officer under subsection (1), but he shall take it into consideration when making his award as to costs.

Records.

9. The Board shall preserve records of all proceedings before the Tribunal for six years or for such other period as may be prescribed by order of the Board.

PART II
CONDITIONS OF EMPLOYMENT

Awards to be incorporated in contracts of employment.

10. Subject to the provisions of section 13, a decision or award of the Tribunal shall, from the date upon which it takes effect, be binding on the employer and employee to whom it relates and shall be an implied condition in the contract of employment between them until varied by a subsequent decision or award, by a subsequent negotiated agreement between the parties or by an agreement, provision or permit mentioned in section 12(a), (b) or (d) or 13.

Recognised conditions of employment must be observed.

11. Where in any trade or industry conditions of employment are established by negotiation, arbitration or award to which the parties are organisations of employers and trade unions which are respectively representative of substantial proportions of the employers and employees engaged in that trade or industry in Guernsey, those conditions shall be known as "the recognised conditions of employment", and all employers in that trade or industry shall observe them or conditions of employment not less favourable than them.

Meaning of "not less favourable".

12. For the purposes of section 11, conditions of employment are not less favourable than the recognised conditions of employment if they are in accordance with-

- (a) an agreement to which the parties are organisations of employers and trade unions which are respectively representative of substantial proportions of the employers and employees engaged in that trade or industry in Guernsey;
- (b) in the absence of such an agreement, an agreement between the particular employer and a trade union which is representative of a substantial proportion of the employees engaged in that trade or industry in Guernsey;
- (c) an award of the Tribunal or of an arbitrator relating to the conditions of employment to be observed by an employer in that trade or industry in Guernsey; or
- (d) a statutory provision in force in Guernsey relating to conditions of employment, unless that provision is itself less favourable than the provisions of an agreement or award

mentioned in paragraph (a), (b) or (c),
being an agreement or award-

- (i) relating to the employer in question or to an employers' organisation of which he is a member; or
- (ii) to which such an employer or such an organisation is a party.

Employees of less than normal efficiency.

13.(1) Subject to the conditions referred to in subsection (2), a contract of employment entered into between an employer and an employee who, by reason of age or physical or mental infirmity, is unable substantially to perform the duties normally carried out by an employee engaged in a similar occupation in Guernsey as efficiently, or for such periods, as such duties are normally carried out by such an employee shall not for the purposes of this Law be deemed to be-

- (a) a contract of employment on conditions less favourable to that employee than the recognised conditions of employment; or
- (b) a contract at variance with the implied conditions of contract referred to in section 10.

(2) The conditions referred to in subsection (1) are that the Board has granted a permit authorising the employment of the employee under the conditions of the contract of employment and that the permit and any conditions subject to which the permit was granted are in force and are being complied with.

Certain matters deemed to be industrial disputes.

14.(1) Upon the employment of any person in contravention of section 10 or 11, an industrial dispute shall be deemed to have arisen.

(2) Any question as to the nature, scope or effect of the recognised conditions of employment in any trade or industry, or as to whether an employer is or was observing the recognised conditions of employment or conditions not less favourable than them, shall be deemed to be an industrial dispute.

(3) Should any such question be referred to the Tribunal, the Tribunal shall (without prejudice to the other matters which it may properly take into account) have regard to the provisions of section 16 and to any collective agreements concerning the conditions of employment of similar employees engaged in comparable trades or industries in Guernsey.

PART III
GENERAL PROVISIONS

Board to cooperate with Tribunal.

15. The Board and its members and officers shall give the Tribunal any document or information which is in their possession, custody or power and which is required by the Tribunal to enable it to investigate an industrial dispute.

Offences.

16.(1) A person who-

- (a) in proceedings before the Tribunal, or in making any statement or providing any information or document to the Industrial Disputes Officer or the Deputy Industrial Disputes Officer when acting in the exercise or purported exercise of their functions under this Law-
 - (i) makes a statement which he knows or believes to be false, misleading or deceptive in a material particular;
 - (ii) recklessly makes a statement which is false, misleading or deceptive in a material particular; or

- (iii) produces or furnishes or causes or permits to be produced or furnished any information or document which he knows or believes to be false, misleading or deceptive in a material particular;
 - (b) on being duly summoned as a witness before the Tribunal, fails without reasonable excuse (proof whereof shall lie on him) to attend;
 - (c) on attending before the Tribunal as a witness, fails, when legally required to do so-
 - (i) to take the oath or affirmation;
 - (ii) to produce any document in his possession, custody or power; or
 - (iii) to answer any question put to him;
 - (d) does any other thing before the Tribunal which, if done before the Royal Court, would constitute a contempt of court; or
 - (e) without reasonable excuse (proof whereof shall lie on him) obstructs or hinders the Industrial Disputes Officer
-

or the Deputy Industrial Disputes Officer in the exercise or purported exercise of their functions under this Law;

is guilty of an offence.

(2) A person guilty of an offence by virtue of subsection (1) is liable on conviction to a fine not exceeding level 5 on the uniform scale or to imprisonment for a term not exceeding 3 months or to both.

Orders of the Board.

17. An order of the Board under this Law-

- (a) may be amended or repealed by a subsequent order hereunder;
- (b) may contain such consequential, incidental, supplementary and transitional provision as may appear to the Board to be necessary or expedient;
- (c) shall be laid before a meeting of the States as soon as possible and shall, if at that or the next meeting the States resolve to annul it, cease to have effect, but without prejudice to anything done under it or to the making of a new order.

Interpretation.

18.(1) In this Law, unless the context otherwise requires-

"the Board" means the States Board of Employment; Industry and Commerce;

"costs of the hearing", in relation to a hearing before the Tribunal, includes any costs, fees and expenses reasonably incurred by any party thereto in the preparation or presentation of his case (including witness costs), and any costs and expenses of and incidental to the holding or conduct of the hearing and the determination of the dispute, whether incurred by the States, the Tribunal and members thereof, the Industrial Disputes Officer, the Board or any person appointed by the Board under paragraph 27 of the Schedule;

"employee" means a person who has entered into or who is gainfully occupied under a contract of employment (express or implied, written or oral) with an employer, whether it is a contract of service or apprenticeship or a contract personally to execute any work or labour;

"Guernsey" means the Islands of Guernsey, Herm and Jethou;

"industrial dispute" means any dispute or difference between an employer and an employee, or between an employee and employees, connected with the employment or non-employment, or the conditions of employment, of any person;

"the recognised conditions of employment" has the meaning given by section 11;

"trade or industry" includes the performance of its functions by a public authority;

"the Tribunal" means the Industrial Disputes Tribunal constituted under section 4.

(2) Any reference in this Law to an enactment is a reference thereto as amended, re-enacted, extended or applied.

Repeals.

19. The Industrial Disputes and Conditions of Employment Laws, 1947 to 1986(c), the Industrial Disputes (Rules of Procedure and Scale of Fees) Ordinance, 1947(d), the Industrial Disputes and Conditions of Employment (Continuance) Law, 1948(e) and

(c) Ordres en Conseil Vol.XIII, p.1; Vol.XV, pp.20, 253 and 314; Vol.XVII, pp.220 and 459; Vol.XXIII, p.211; and No.XVI of 1986.

(d) Recueil d'Ordonnances Tome IX, p.180.

(e) Ordres en Conseil Vol.XIV, p.11.

the Industrial Disputes and Conditions of Employment (Continuance) Law, 1950(f) are repealed.

Exclusion of Arbitration Law.

20. The provisions of Part I of the Arbitration (Guernsey) Law, 1982, as amended(g), shall not apply to arbitration voluntarily submitted to by the parties under section 3(1)(c) above.

Citation.

21. This Law may be cited as the Industrial Disputes and Conditions of Employment (Guernsey) Law, 1992.

Commencement.

22. This Law shall come into force on the day appointed by Ordinance of the States; and different days may be appointed for different provisions.

(f) Ordres en Conseil Vol.XIV, p.411.

(g) Ordres en Conseil Vol.XXVII, p.525; and No.VII of 1986.

SCHEDULE
THE INDUSTRIAL DISPUTES TRIBUNAL

Constitution and membership.

1. The Tribunal shall be constituted anew for each industrial dispute referred to it by the Industrial Disputes Officer under section 3.

2. The Tribunal shall be dissolved upon the expiration of twenty eight days from the date on which it makes its final award.

3. The Tribunal shall consist of a chairman, who shall preside over proceedings, and two other members ("the ordinary members").

4. The Industrial Disputes Officer and Deputy Industrial Disputes Officer shall not be members of the Tribunal.

5. The chairman and the ordinary members shall be appointed by the Bailiff after consultation with the Industrial Disputes Officer.

6. One ordinary member shall be appointed from each of two panels to be drawn up under paragraph 10 below and to be known as the Employers' Panel and the Employees' Panel.

7. Should any member of the Tribunal be unable to attend (whether indefinitely or for a period which, in the opinion of the Industrial Disputes Officer, is unreasonably long) a replacement member shall be appointed in accordance with the provisions of this Schedule.

8. Where the chairman is replaced pursuant to paragraph 7, the hearing (if it has begun) shall begin anew.

9. Where an ordinary member is replaced pursuant to paragraph 7, the hearing (if it has begun) shall continue unless, in the opinion of the chairman, it is necessary in the interests of justice that the hearing should begin anew.

The Panels.

10. The Industrial Disputes Officer shall, after consultation with the Board and organisations respectively representative of employers and employees in Guernsey, draw up and maintain the Employers' Panel and the Employees' Panel.

11. The Panels shall each consist of eight persons who in the opinion of the Industrial Disputes Officer represent generally the interests respectively of employers and employees in Guernsey.

12. The Board shall cause lists of the names of Panel members to be deposited at the Greffe for public inspection and to be published every January in La Gazette Officielle.

Quorum and voting.

13. The quorum of the Tribunal shall be three.

14. Decisions shall be taken by a simple majority.

15. Each member of the Tribunal shall, subject to paragraph 16, have one vote.

16. The chairman shall not vote unless there is an equality of votes, in which case he shall have a casting vote.

Rules of procedure.

17. The Board may by order prescribe rules of procedure governing or in relation to-

- (a) the notification of industrial disputes to the Industrial Disputes Officer;
- (b) the reference of industrial disputes to the Tribunal;
- (c) the hearing, investigation and determination of industrial disputes by the Tribunal;

- (d) the summonsing of witnesses and the service of documents;
- (e) the carrying out by the Industrial Disputes Officer and the Tribunal of any of their functions under this Law; and
- (f) ancillary matters.

18. Rules of procedure under paragraph 17-

- (a) may regulate procedure in connection with matters preparatory to and subsequent to hearings (including the interpretation of awards), as well as in connection with the conduct of hearings;
- (b) may amend, repeal or modify any provision of this Schedule relating to a matter of procedure.

19. Subject to the provisions of this Law and of rules of procedure under paragraph 17, the Tribunal shall determine its own procedure.

20. No award or decision of the Tribunal shall be invalidated solely by reason of any procedural irregularity unless the irregularity was such as to prevent any party to the dispute from presenting his case fairly before the Tribunal.

Hearings may be in camera.

21. The Tribunal may declare that the whole or any part of any hearing before it shall be heard in camera.

22. Unless the Tribunal makes such a declaration, the hearing shall be held in public: provided that the Tribunal may at any time exclude any person from the hearing or any part thereof.

Powers of the Tribunal.

23. The Tribunal shall, for the purposes of investigating an industrial dispute, have the same powers as the Royal Court in respect of-

- (a) the attendance and examination of witnesses;
- (b) the administration of oaths or affirmations to witnesses;
- (c) the production of documents and exhibits;

and a summons in relation to any of these matters signed by the chairman of the Tribunal shall be equivalent to a formal process issued in that behalf in an action before the Royal Court.

Costs.

24. The Tribunal may, subject to any scales of costs prescribed by order of the Board under paragraph 26, order that the whole or any part of the costs of a hearing shall be paid by one or more of the parties or by the States in such proportions as the Tribunal may direct.

25. The costs of a hearing shall, unless some other award is made in that respect by the Tribunal under paragraph 24, be borne by the States.

26. The Board may by order prescribe maximum scales of costs, fees and expenses in relation to the costs of hearings; and where the Board so prescribes a scale in relation to any proceeding or matter, an award of the Tribunal under paragraph 24 in relation to the costs of such a proceeding or matter shall not exceed the amount prescribed.

Appointment of Secretary.

27. The Board shall appoint a permanent secretary to the Tribunal and shall provide such other officers and facilities as it may consider necessary.