

# CHAPTER 212

## PROTECTION OF EMPLOYMENT ACT

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• Act • Subsidiary Legislation •

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### ACT

Act No. 20 of 2003

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## CHAPTER 212 PROTECTION OF EMPLOYMENT ACT

**An Act to repeal the Protection of Employment Act, Chapter 212, and to make further and better provisions for the promotion of the employment relationship.**

**Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly of Saint Vincent and the Grenadines and by the authority of the same, as follows.**

[Act No. 20 of 2003.]

[Date of commencement: 20th January, 2004.]

## PART I

### *Preliminary*

#### **1. Short title and commencement**

This Act may be cited as the Protection of Employment Act, 2003, and shall come into operation on such date as the Governor-General may by Proclamation appoint.

#### **2. Objective**

The object of this Act is to support successful employment relationships by promoting confidence in employment relationships.

#### **3. Higher standards permitted**

(1) Nothing in this Act precludes higher standards than those set out in the Act being agreed upon through collective bargaining or other forms of negotiation, agreement or arbitration award.

(2) Pursuant to subsection (1) any provision in an agreement shall be void in so far as it excludes or limits the operation of any provision of this Act to the detriment of the employee.

#### 4. Interpretation

In this Act, unless the context otherwise requires—

“**Commissioner**” means the Labour Commissioner;

“**Court**” means the Magistrate’s Court or the High Court where applicable;

“**employee**” means a person who works or has worked under a contract of service whether such contract is oral or in writing, expressed or implied, for manual labour or otherwise but does not include the director of a company or a partner in a partnership who is not also an employee of the firm;

“**employer**” means any person or authority for whom an employee works or has worked under a contract of service whether such contract is oral or in writing, expressed or implied, for manual labour or otherwise, excluding the Crown and statutory boards, but only where special provisions already apply both as regards termination notice and retiring benefits;

“**employment**” means the service of an employee provided to an employer;

“**family**” means—

- (a) father;
- (b) mother;
- (c) spouse or other persons who have cohabited for a minimum period of four years;
- (d) brother;
- (e) sister; or
- (f) child;

“**Minister**” means the Minister responsible for labour;

“**proof**” means proof on a balance of probabilities;

“**seasons**” means any given period during which work is available and “**seasonal worker**” means a person employed during this time only;

“**severance payment**” means the payment which an employer is liable to make to an employee under circumstances set out in this Act;

“**specified employment**” means a well organised business with a yearly turn over of not less than twenty-five thousand dollars or any other employment as may be specified by the Minister by order;

“**summary dismissal**” means termination of the employment relationship by the employer without notice or with less than that to which the employee is entitled by any statutory provision or contractual agreement.

## PART II

### *Promotion of Employment Rights*

## **5. Protection against dismissal without good cause**

(1) Subject to the following provisions, every person shall be protected against the unfair termination of his employment without good cause.

(2) The employment of a worker shall not be terminated for reasons related to his conduct or performance before he is provided an opportunity to defend himself against the allegations made except in cases where the employer cannot reasonably be expected to provide such opportunity.

## **6. Termination after fixed term of employment**

(1) The services of an employee who has been specifically employed for a fixed period may, notwithstanding anything contained in this Act, be terminated on the expiration of the term so stipulated.

(2) For the purposes of this section, the effective date of termination of the services of an employee in relation to an employee who has been specifically employed for a fixed period and where that period expires without being renewed under the same contract, shall be the date on which the term expired.

## **7. Probationary period of employment**

(1) Except as otherwise provided for by any other law where there is a probationary period attached to a contract of employment the period shall not exceed six months.

(2) Notwithstanding subsection (1) a probationary period may be extended for a further period not exceeding the duration of the original period.

(3) The services of an employee during any probationary period may be terminated without pay except for the period worked, or notice.

## **8. Terms of employment in writing**

(1) Save in the case of daily paid and weekly paid workers, an employer shall inform an employee in writing of the terms and conditions of employment and such terms and conditions shall include—

- (a) the date of commencement of employment;
- (b) the name and address of the employer and the employee;
- (c) the rate of pay, the overtime rate if any and the pay period;
- (d) the probationary period if any;
- (e) the hours of work including time off and rest period, if any;
- (f) the rate of vacation, sick and maternity leave if applicable; and
- (g) the duties to be performed.

(2) An employer shall provide to the employee the conditions of service referred to in subsection (1) within seven working days from the date of employment or four calendar weeks where the employee is in employment at the commencement of this Act.

(3) Any person who fails to comply with the provisions of this section commits an offence and is liable on conviction to a fine not exceeding one thousand dollars.

## **9. Termination for good cause**

(1) The services of an employee may be terminated for good cause, and any employee whose service is so terminated shall not be eligible to receive from his employer severance pay under Part III of this Act.

(2) The service of an employee shall be deemed to be terminated for good cause where the employee—

- (a) has been found guilty of misconduct in or in relation to his employment which is of such a nature that it would be unreasonable to expect the employment relationship to continue;
- (b) has—
  - (i) been guilty of repeated misconduct or unsatisfactory performance which in the first instance is not sufficiently serious to warrant dismissal under paragraph (a) and is of such a nature that the employer could not reasonably be expected to continue his employment if such conduct is repeated, or
  - (ii) not been performing satisfactorily and during any period within six months, the employee has been warned by the employer in writing or orally in the presence of two credible witnesses on more than one occasion whereby the employer has indicated to him the nature of his conduct or his unsatisfactory performance and the action which the employer intends to take and thereafter no improvement in the conduct or the performance of the employee has resulted;
- (c) has been found guilty of a criminal offence relating to his employment, without the connivance, express or implied, of his employer;
- (d) does not have the capability or qualification to perform the work of the kind he was employed to do:

Provided that the employer has given the employee at least two written warnings to that effect and that within three months thereafter the employee does not rectify the defect or make up the deficiency pointed out to him; or
- (e) cannot be retained in the position he held without contravention by him or his employer of some existing law.

## **10. Termination with permission of Labour Commissioner**

(1) Where an employer desires to terminate the services of an employee for any reason other than those set out in section 9(2) on the ground that no reasonable employer can continue to employ him in that position, the employer may file a petition before the Commissioner seeking permission for termination pursuant to Part IV.

(2) The Commissioner shall on receipt of a petition under subsection (1), issue a notice thereof to the employee concerned, and after making such enquiries as he considers appropriate, the Commissioner may either grant or reject the petition.

(3) In any enquiry under subsection (2) the employee shall be heard in his own defence or may be represented.

(4) Any termination of service of an employee effected after obtaining the permission of the Commissioner as required by subsection (1) shall for the purposes of this Act, be deemed to be termination of service for good cause.

## **11. Termination for illness**

(1) An employer may terminate the services of an employee with notice given in accordance with the Schedule or payment in lieu thereof, if a medical practitioner certifies that the employee is incapable of performing his duties due to physical or mental illness which has been for a protracted period of six months and is likely to be permanent.

(2) The employer shall inform the Commissioner of a dismissal in such circumstances.

(3) An employee whose services are terminated under subsection (1) shall for the purposes of Part III be deemed to be eligible for severance pay.

## **12. Termination due to redundancy**

(1) An employer may terminate the services of an employee if the employee is redundant pursuant to the provisions of subsection (2).

(2) An employee is redundant pursuant to subsection (1) where the termination is or is part of a reduction in the work force that is a direct result of—

- (a) the modernisation or automation by the employer of all or part of the business;
- (b) the sale or disposition of part of the business by the employer;
- (c) the re-organisation of the business by the employer to improve efficiency;
- (d) the discontinuation by the employer of all or part of the business;
- (e) the impossibility or impracticability by the employer to carry out the operation of the business at its usual level or at all as a result of—
  - (i) a shortage of materials,
  - (ii) an act of God, or
  - (iii) a breakdown of equipment; or
- (f) a reduction of the operation of the employer's business necessitated by economic circumstances.

(3) An employer shall inform the recognised trade union, or if none exists, the employees' representative and the Commissioner in writing one month prior to the simultaneous or successive termination of the services of five or more employees on the ground of redundancy and shall inform them of—

- (a) the existence of the circumstances set out in subsection (2);
- (b) the reasons for the proposed termination;
- (c) the number and categories of persons involved;
- (d) the period over which the termination is intended to be carried out; and
- (e) the results of consultations with any trade union representing the employees.

(4) An employee whose services are terminated under this section shall for the purposes of Part III be eligible for severance pay.

(5) Where the services of an employee is terminated on the ground of redundancy and the employer within a period of three months from the date of such termination seeks to employ persons to perform the same or similar duties as those formerly performed by the employee who was made redundant, the employer shall give preference to the former employee if he is available.

## **13. Termination of services by employee**

(1) An employee may terminate his employment by giving his employer a minimum period of two weeks' notice in writing unless due to the nature of the work that is performed a longer notice period is customarily given if the conduct of his employer is of such a nature that the employee cannot reasonably be expected to continue in his employment and any such termination shall be deemed to be termination by the employer entitling the employee to severance pay if he is otherwise so entitled.

(2) Where a complaint is made pursuant to Part IV, the employee must prove the reason which made the continuation of the employment relationship unreasonable.

#### **14. Termination notice**

(1) Where an employer wishes to terminate the services of an employee except as provided by sections 7(3) and 9, a minimum period of notice in writing or payment made in lieu of such notice shall be given by the employer to an employee in accordance with the provisions of the Schedule.

(2) The periods of notice specified in the Schedule shall not apply where it is customary for an employer to give longer periods of notice as a result of the nature and function of the work performed by an employee.

(3) The periods of notice specified in the Schedule shall not apply where the employer is entitled to summarily dismiss an employee.

(4) For the purposes of this Part, the effective date of termination of employment—

- (a) in relation to an employee whose employment is terminated by notice, whether given by the employer or by the employee, shall be the date on which that notice expires; or
- (b) in relation to an employee whose employment is terminated without notice, shall be the date on which the termination takes effect.

#### **15. Summary dismissal**

(1) An employer may summarily dismiss without notice or payment of any severance pay an employee who is guilty of serious misconduct pertaining to his employment if the conduct is of such a nature that it would be unreasonable to require the employer to continue the employment relationship.

(2) Pursuant to subsection (1) the serious misconduct shall be directly related to the employment relationship and have a detrimental effect on the business.

#### **16. Prohibitions against termination**

An employer shall not terminate the services of an employee on any of the following grounds—

- (a) trade union membership or participation in trade union activities outside working hours or, with the consent of the employer, within working hours;
- (b) seeking office as, or acting in the capacity of, an employee's representative;
- (c) making a complaint or participating in proceedings against an employer involving an alleged violation of laws or regulations;
- (d) race, colour, sex, marital status, pregnancy, religion, political opinion, nationality or social origin;
- (e) reasonable absence from work due to family emergencies or responsibilities;
- (f) absence from work during maternity leave as certified by a medical practitioner;
- (g) absence from work due to injury or illness, provided that the employee submits a medical certificate to his employer by the third day of absence; or
- (h) absence from work in the performance of jury service as required by law.

#### **17. Remedies for unfair dismissal**

(1) Where an employee alleges that he has been unfairly dismissed, the employee or any person or organisation acting on his behalf may raise the issue as a dispute pursuant to Part IV.

(2) Where on a complaint made pursuant to subsection (1) the Commissioner, the Hearing Officer or the Tribunal finds that the complaint is substantiated, the employer may be ordered to—

- (a) re-instate the employee if the order is appropriate and if the employer and he employee agree;
- (b) re-engage the employee in work comparable to that in which he was engaged prior to his dismissal, or other reasonably suitable work; or
- (c) pay severance to the employee if the employee is so entitled.

(3) On making an order for re-instatement or re-engagement the Commissioner, the Hearing Officer or the Tribunal shall specify—

- (a) any amount payable by the employer in respect of any benefit which the employee may reasonably have received but for the dismissal for the period between the date of termination of service and the date of re-instatement;
- (b) any rights and privileges to which the employee was entitled; and
- (c) the date by which the order must be complied with.

(4) Where an order pursuant to subsection (3) is made, the employee shall be re-instated or re-engaged on such date as is specified by the Commissioner, the Hearing Officer or the Tribunal, and despite any appeal against that order, the provisions for re-instatement or re-engagement shall remain in force pending the outcome of those proceedings unless the Commissioner, the Hearing Officer or the Tribunal orders otherwise.

## 18. Test of unfair dismissal

In deciding a question as to whether or not the termination of the services of an employee is unfair, the employer shall prove the reason for the dismissal and the Commissioner, the Hearing Officer or the Tribunal shall consider whether an employer acted reasonably or unreasonably and where the employer has acted on a mistaken belief as to the factual basis for the termination, the question may be decided on the basis as to whether the actual circumstances which existed, if known to the employer, would have reasonably led him to terminate the services of the employee.

## 19. Disciplinary action

(1) An employer may take disciplinary action other than dismissal against his employee when it is reasonable to do so having regard to the circumstances.

(2) For the purposes of this section, “**disciplinary action**” includes—

- (a) a verbal warning;
- (b) a written warning;
- (c) suspension; or
- (d) demotion.

(3) In deciding what is reasonable pursuant to subsection (1), the employer shall have regard to the nature of the violation, the terms of the employment contract, the duties of the employee, the nature of the damage incurred and the previous conduct of the employee.

(4) An employer shall not impose a fine or other monetary penalty on that employee except in cases where restitution would be appropriate following an agreement to this effect by the employer and employee.

(5) Where an employee is of the opinion that disciplinary action is unreasonable, he may refer the matter to the Commissioner under Part IV.

## **20. Sale of business not to affect right of employee**

(1) The change of ownership by sale or other disposition of a business or any part thereof shall not affect the rights accruing or accrued to an employee at the time of sale or other disposition and the buyer and seller shall be jointly and severally responsible for such rights.

(2) The rights and obligations accrued or accruing together with the name and address of the new owner shall be recorded with the Commissioner at the time of sale or disposition of the business where the services of the employee are continued as provided in section 23.

## **21. Winding up**

(1) Where an employer's business is wound up or becomes insolvent, the employment relationship shall be terminated one month from the date of winding up or the appointment of a receiver, unless it is otherwise terminated pursuant to sections 7, 9, 12 or 15 within that period.

(2) This section shall not apply where, notwithstanding the winding up or insolvency, the business continues to operate or has been transformed.

(3) Where an employer's business is wound up or a receiver has been appointed, an employee or any person legally entitled to claim on his behalf payment to which he is entitled shall have priority over all other creditors including the Crown for the following sums—

- (a) wages, overtime pay, commissions and other forms of remuneration relating to work performed during the twenty-six weeks preceding the date of the institution of winding up proceedings or the appointment of a receiver;
- (b) holiday pay that is owing as a result of work performed during the two years preceding the date of the institution of winding up proceedings or the appointment of a receiver;
- (c) sums that are owing in respect of other types of paid absence accrued during the twelve months preceding the date of the institution of winding up proceedings or the appointment of a receiver; and
- (d) severance pay, compensation for unfair dismissal and other payments that are owing in respect of the termination of employment.

## **PART III**

### *Severance Pay*

## **22. Severance pay entitlement**

(1) Every employee engaged, whether before or after the commencement of this Act, in a specified employment shall be eligible to receive from his employer, severance pay in accordance with the provisions of this Act.

(2) For the purposes of this section, any employment or class or category of employment shall be deemed to be a specified employment and the onus of proof shall rest on the person or body who alleges otherwise.

## **23. Period of service for eligibility**

(1) Every employee who has worked for not less than two years for an employer in a specified employment shall on the termination of his service be eligible to receive severance pay as herein provided from his employer.

(2) Notwithstanding the provisions of subsection (1), the period of service with an employer shall be continuous service and—

- (a) includes any period with the same employer before the commencement of this Act;
- (b) includes service with any previous employer where ownership of the business was changed by sale or other disposition as provided in section 20;
- (c) whether with the same employer, his predecessor or a previous employer from whom the present employer obtained the establishment.

(3) For the purposes of this section, save as otherwise provided in this Act, termination of service shall include termination of services resulting from redundancy or any other cause but shall not include termination of services for good cause under section 9, or for retirement on the ground of age, or consequent on disciplinary action if, before taking such disciplinary action the matter has been reported to such officer as may be authorised by the Minister in this behalf and the officer has adjudged the action to be justified:

Provided that where the disciplinary action is against an employee who has put in not less than five years of service, he shall be entitled to severance pay unless the disciplinary action relates to dishonesty or refusal to discharge his work.

#### **24. Continuity of employment**

Cessation of employment of or by an employee for the following reasons shall not constitute a break in the continuity of a contract of employment—

- (a) a trade dispute;
- (b) accident, sickness, injury or absence during any period of maternity leave as certified by a medical practitioner;
- (c) operation of any other law;
- (d) act of God;
- (e) any agreement with the employer;
- (f) absence permitted or condoned by the employer; or
- (g) suspension or temporary lay off where there is no severance payment to which the employee would normally be entitled as a result.

#### **25. Computation of severance pay**

(1) The rate of severance pay which is payable by an employer shall be—

- (a) two weeks pay for each year of continuous service from two to ten years;
- (b) three weeks pay for each further year of continuous service from eleven to twenty-five years;
- (c) four weeks pay for each further year of continuous service in excess of twenty-five years,

at the rate of pay at the time of termination, a half year or more to count as a full year and less than half year to be excluded from the calculations.

(2) In the case of employees who are not paid on a piece work basis, one week's pay shall be the single time rate for a week's work, premium pay and bonus shall be excluded.

(3) In the case of employees paid on a piece work basis, one week's pay shall be equal to the aggregate of the employee's earnings for each of the thirteen weeks preceding the termination of his employment whether consecutive or not divided by thirteen.

(4) An employee who works with the same employer for three or more seasons shall be deemed to have met the requirement of continuity if he worked for three-fourths of the number of working days in the season reckoning backwards and to qualify for severance pay for three-fourths of the number of working days in each of the reckoning years.

(5) In the case of a seasonal worker one week's pay shall be equal to his total earnings for the last three seasons, divided by the number of days multiplied by five or six working days where a week is normally six working days per week.

(6) Employment of a seasonal worker shall be regarded as terminated if the worker offers himself for work at the beginning of the season and is not re-employed by his employer within the first four weeks of the season.

(7) An employee whose work is intermittent but who works with the same employer in each of the two years immediately preceding the date of termination of his employment shall be deemed to meet the requirement of continuity and shall qualify for severance pay in respect of any particular year if he has worked for a total of at least one hundred days in that year.

(8) In the case of an employee referred to in subsection (7), one week's pay is equal to one-thirteenth of the total of the last thirteen weeks earnings in the twelve months immediately preceding the date when he last worked for that employer.

(9) The employment of a worker to whom the provisions of subsection (7) applies shall be deemed to be terminated if he offers himself for employment when his employer next re-employs workers and he is not within four weeks re-employed.

## **26. Where severance not due and payable**

Where there is a change in ownership or operation of a business or where the employer dies, the employee shall not be entitled to severance pay if the contract of employment continues or if he is offered a new contract of employment by the new owners or operators of the business or the personal representative of the deceased employer on terms and conditions of employment and at a place of employment no less favourable than in his earlier contract of employment.

## **27. Severance pay due**

(1) Where an employer intends to lay off an employee for a period of at least six weeks, the employee may request his employer by notice in writing to treat his employment as permanently terminated and subject to the provisions of sections 11 and 12 of this Act, he shall then be entitled to severance pay and the employer shall so treat the employee unless he is able to offer him employment which is substantially similar to the terms and place of employment as the previous employment for a period of at least thirteen weeks, such offer being made no later than seven weeks following the date of laying off of the employee.

(2) Save as provided in this section severance pay shall be due whenever the services of an employee is terminated by an employer and the employer shall pay the employee forthwith the severance pay due to him.

(3) Where after termination of employment entitling an employee to severance pay an employee is reinstated in the service, he shall be deemed to have taken up a new employment and shall be eligible for severance pay on future service from the date of such re-instatement.

(4) If a person who would have been entitled to severance payment upon termination of his service dies, payment shall be made to his beneficiary and in the absence of a beneficiary to the Accountant-General who shall after a lapse of six years without claim pay the amount into the Consolidated Fund.

(5) Where an employee who is entitled to severance pay dies before payment is actually made, payment shall be made to his beneficiary and in the absence of a beneficiary to the Accountant-General who shall after a lapse of six years without claim pay the amount into the Consolidated Fund.

### **28. Employment on lesser pay not to prejudice severance pay**

(1) Where an employee becomes eligible to severance pay he shall not in any way be affected if he takes up another employment with lesser pay with the same employer:

Provided that every employee who takes up employment with lesser pay, shall for the purpose of eligibility for severance pay or future service, be deemed to have commenced service on the date that he takes up the new employment.

(2) Where an employee has been demoted or given employment on diminished wages by his employer on any date, the services of the employee in the earlier employment shall be deemed, for the purpose of this Act, to have been terminated on that date and the employee shall be entitled to severance pay accordingly.

### **29. Equivalent employment bar to severance pay**

Where an employee who would be eligible for severance pay in case of the termination of his services is offered the same or equivalent employment by an employer who has taken over the establishment of his previous employer, no severance pay shall be payable if service without break is offered to the employee:

Provided that in the event of the employee subsequently becoming eligible to severance pay by reason of the termination of service by the successor employer, the severance pay payable to him by the successor employer shall be calculated taking into account his earlier service under the previous employer.

### **30. Liability for severance pay in certain cases**

Where an employee has been laid off by an employer with no date of recall given to him or with a date of recall which is within a period of six months of being laid off and within that period the employer transfers his establishment to another person, the previous employer and the subsequent employer shall both be jointly and severally liable to discharge the severance pay forthwith that may be due to the employee in accordance with the provisions of this Act.

### **31. Maintenance of records**

(1) On or after the commencement of this Act, every employer shall maintain an accurate record of the date of the employment of each of his employees and in the case of transfer of establishment he shall also enter particulars of the date of commencement of employment with the previous employer in the record.

(2) An employer shall make available to the employee the records maintained under this section for his perusal and the employee may then make a copy or extract thereof.

### **32. Failure to maintain record an offence**

Any employer who fails to maintain accurate records in accordance with this section or fails to make available the said records to any employee on demand as required by section 30(2) commits an offence and upon summary conviction shall be liable to a fine not exceeding one thousand dollars.

### **33. Employees with pension and gratuity rights**

Where an employee who is entitled to payment of pension or gratuity, or both, from an employer ceases to be employed in circumstances where the pension, gratuity, or both, are payable upon the termination of his services, he shall not be entitled to severance pay:

Provided that an employee, in whose case the pension or gratuity, or both, are less favourable than the amount that would have been payable to him if severance pay was due, may apply to the Commissioner who may, after such enquiry as he deems fit and after notice to the employer, fix an appropriate amount due by way of severance pay having due regard to the amount of gratuity and pension so that the employee does not stand to lose.

#### **34. Information to be provided to employee**

When the services of an employee have been terminated, the employer shall provide him with the following information in writing—

- (a) the date and duration of employment;
- (b) category of employment or office held; and
- (c) the reason for the termination of his services.

### **PART IV**

#### *Disputes*

#### **35. Settlement of disputes**

(1) An employer or employee, or any person or organisation acting on his behalf, who alleges that the employer or employee respectively has failed to comply with any provisions of this Act, shall make a complaint in writing in the first instance to the Commissioner.

(2) If there is more than one dispute arising under subsection (1) wherein the same or similar question arises for consideration, the Commissioner may, in his discretion, combine the proceedings.

#### **36. Procedure by Commissioner**

(1) The Commissioner shall, in the case of any dispute referred to him under section 35, give notice thereof to all interested parties and try to bring about a settlement with the parties.

(2) The Commissioner or his agent shall have the right of entry and inspection of records in pursuance of the administration of this Act and the records must be related to the dispute.

(3) If, within fourteen days of the filing of the petition referring the dispute, the Commissioner does not succeed in bringing about a settlement, he shall refer the dispute with his report thereon to the Minister.

#### **37. Reference to Hearing Officer**

(1) On receipt of any report from the Commissioner pursuant to section 36, the Minister shall refer the dispute to an officer, in this Act referred to as a Hearing Officer.

(2) The Minister may, by order, appoint one or more persons to function as Hearing Officer generally or in relation to one or more case, or authorise any officer to exercise the powers of a Hearing Officer.

### **38. Procedure of Hearing Officer**

(1) The Hearing Officer shall, after issue of notice to all the interested parties, either—

- (a) hold a hearing conference and attempt to narrow down the issues and then adjudicate on the dispute; or
- (b) proceed to trial straight away and adjudicate on the dispute.

(2) The Hearing Officer shall, within fourteen days of the closing or hearing, give his decision on the dispute by order in writing.

(3) The Hearing Officer shall forthwith give to the parties a copy of the order made by him adjudging a dispute or recording a settlement.

### **39. Finality of decision**

Every decision of the Hearing Officer shall be final if no notice of appeal is filed within twenty-one days of his decision.

### **40. Appeal**

Any party to the proceeding before the Hearing Officer may, within twenty-one days of the decision by the Hearing Officer, appeal against the decision to the Tribunal.

### **41. Constitution, function and powers of Tribunal**

(1) The Tribunal shall be constituted in accordance with the provisions of this Act.

(2) The Tribunal shall consist of the following three members appointed by the Minister by instrument in writing—

- (a) a Chairman;
- (b) an assessor representing the workers to be selected by the Minister from a standing panel of three nominees of recognised workers organisations;
- (c) an assessor representing the employer to be selected by the Minister from a standing panel of three nominees of associations of employers or other body likely to be representative of employers.

(3) The function of the Tribunal shall be to hear and determine any particular dispute referred to it by the Minister and shall issue a decision or order accordingly.

(4) The Tribunal shall enquire into the matter and report in writing its decision or order to the Minister within twenty-one days of receipt of the reference or such longer time as may be necessary having regard to the circumstances of the case.

(5) The Tribunal shall furnish a written copy of its decision or order to the parties in the proceedings.

(6) The Tribunal shall exercise such powers and perform such duties as are conferred or imposed upon it by this Part, or as may be incidental to the attainment of the objects of this Part, including, without restricting the generality of the foregoing, the making of orders requiring compliance with the provisions of this Part, with any Regulation made under this Part or with any decision made in respect of a matter before the Tribunal.

(7) Every order or decision of the Tribunal is final and shall not be questioned or reviewed in any court save and except where judicial review is applicable under any law.

### **42. Acting Chairman**

(1) If the Chairman of the Tribunal is absent or unable to act the Minister may appoint another person to act in his place.

(2) If a member of the Tribunal is absent or unable to act the Minister may appoint another person from the standing panel of nominees he represents to act in his place.

#### **43. Tenure of office**

A member of the Tribunal shall hold office for such period as the Minister shall specify at the time of the appointment and shall be eligible for re-appointment.

#### **44. Extension of term of office**

(1) If an enquiry has been commenced by the Tribunal but is not completed before the expiry of the term of office of a Chairman or before the resignation from or vacation of office by a member appointed in accordance with this Act takes effect, the Minister may authorise the Chairman or member to continue as Chairman or as member respectively of the Tribunal for the purpose of completing that inquiry.

(2) An enquiry may be continued, notwithstanding any change in the membership of the Tribunal, as if the change has not occurred and in particular evidence taken by the Tribunal need not be taken again on account of the change.

#### **45. Resignation**

(1) The Chairman may at any time resign his office as Chairman by instrument in writing addressed to the Minister.

(2) A member other than the Chairman may resign his office by instrument in writing addressed to the Minister and transmitted through the Chairman.

#### **46. Offences and penalties**

(1) An employer who—

(a) fails to comply with an order made—

(i) by a hearing officer, or

(ii) where there is an appeal, by the Tribunal; or

(b) fails to comply with a settlement arrived at by the Commissioner, Hearing Officer or Tribunal in pursuance of the provisions of this Act,

commits an offence and is liable to a fine not exceeding five thousand dollars.

(2) A court convicting any offender under this section may, if it thinks fit so to do, direct the payment of part of the fine to the employee concerned.

(3) Any person who contravenes the provisions of this Act in respect of which no penalty is provided commits an offence and upon conviction shall be liable to a fine not exceeding three thousand dollars.

#### **47. Orders to be executable**

(1) An order made by the Hearing Officer or the Tribunal shall be executable according to procedures in the Magistrates Court or the High Court as if it were a judgement in a civil case made by a civil court having jurisdiction in the matter.

(2) In the case of a settlement arrived at before the Commissioner, where the amount, if any, due to an employee is not paid to him, the employee may apply to the Tribunal to make an order and every order made by the Tribunal thereon shall be executable as provided under subsection (1) of this section.

#### **48. Records to be kept**

The Commissioner shall keep or cause to be kept records of decisions made by the Hearing Officer or the Tribunal.

#### 49. Regulations

The Minister may make Regulations generally for carrying out the purposes of this Act and without prejudice to the foregoing may make Regulations—

- (a) to include any class of workers as being in a specified employment excluded by section 22;
- (b) setting out qualifications, conditions and methods of calculating severance pay; and
- (c) prescribing anything required by this Act.

#### 50. Repeal and savings

(1) The Protection of Employment Act, Chapter 150 of the Revised Laws 1990 Edition, is hereby repealed.

(2) Notwithstanding subsection (1), Regulations made pursuant to the Protection of Employment Act shall remain in force and may be modified or adapted as necessary to conform with the provisions of this Act, until Regulations made under this Act are made.

[Chapter 150 of the Revised Laws 1990 Edition.]

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#### Schedule

[Sections 11 and 14.]

##### *Termination Notice*

- 1. Weekly Paid Employees:
  - Under 1 year – 1 week
  - 1 year and under 3 years – 2 weeks
  - 3 years and under 6 years – 2 weeks
  - 6 years and over – 4 weeks
- 2. Fortnightly Paid Employees:
  - Under 2 years – 2 weeks
  - 2 years and under 6 years – 3 weeks
  - 6 years and over – 4 weeks
- 3. Monthly Paid Employees: – 4 weeks

*or*

##### *Payment in lieu of Notice*

- 1. In lieu of providing notice of termination the employer shall pay the employee a sum equal to the employee's remuneration and confer on the employee all other benefits that would have been due to him up to the expiry of any required period of notice.
- 2. Where the employee terminates the employment relationship without notice in circumstances in which notice is required and the employer does not waive the right to notice, the employee shall pay such remuneration to and confer such benefits upon the employer which have accrued at the date of termination.

**SUBSIDIARY LEGISLATION**

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*No Subsidiary Legislation*

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