

CHAPTER 48:02
TRADE DISPUTES
ARRANGEMENT OF SECTIONS

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Act 3, 2005,
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An Act to re-enact, with amendments, the Trade Disputes Act.

[Date of Commencement: 23rd April, 2004]

PART I

Preliminary (ss 1-2)

1. Short title

This Act may be cited as the Trade Disputes Act.

2. Interpretation

In this Act, unless the context otherwise requires-

"action short of a strike" means any method of working (other than the method of working commonly known as working to rule) undertaken by a body of employees in any trade or industry acting in combination or under a common understanding, which method of working slows down normal production or the execution of the normal function under their contracts of employment, of the employees undertaking such method of working;

"arbitration" means dispute resolution involving one or more neutral third parties

agreed to by the disputing parties and whose decision is binding on such parties;

"Board" means the Labour Advisory Board established under section 148 of the Employment Act;

"collective labour agreement" means a written agreement relating to the terms and conditions of employment concluded between one or more registered trade unions or branches thereof or, where no such organization exists, the representatives of the employees concerned duly elected and authorised by them and one or more employers or registered employers' organizations;

"Commissioner" means the person holding, acting in or lawfully performing the functions of the public office of Commissioner of Labour;

"contract of employment" means an agreement, whether oral in writing, express or implied, whereby one person agrees for a wage or other benefit or both, to let his labour to and to perform it under the orders of another person who agrees to hire it and includes a contract of apprenticeship and an indenture to learn;

"decision" in relation to the Industrial Court, includes an order and an award;

"dispute of interest" means a dispute concerning the creation of new terms and conditions of employment or the variation of existing terms and conditions of employment;

"dispute of right" means a dispute concerning an alleged infringement of a right flowing from statutory law, collective agreements or individual employment contracts, or the conferment of a benefit to which the claimant is legally entitled;

"employee" means any person who has entered into a contract of employment for the hire of his labour:

Provided that the expression does not include members of the-

- (i) Botswana Defence Force,
- (ii) Botswana Police Service,
- (iii) Local Police Force, and
- (iv) Prison Service;

"employer" means any person who has entered into a contract of employment to hire the labour of any person and includes-

- (a) the Government in respect of all of its officers except members of the-
 - (i) Botswana Defence Force,
 - (ii) Botswana Police Service,
 - (iii) Local Police Force, and
 - (iv) Prison Service;
- (b) a public authority; and
- (c) the person who owns or is carrying on for the time being or is responsible for the management of the undertaking, business or enterprise of whatever kind in which the employee is engaged;

"employment" means the performance by an employee of a contract of employment;

"essential service" means any of the services specified in the Schedule;

"industrial action" means a lock-out, strike or action short of a strike, in furtherance of a trade dispute;

"joint industrial council" means a body constituted for an industry in accordance with the provisions of section 36, for the purpose of negotiating terms and conditions of employment for all employees in that industry;

"labour officer" means any person appointed under the Employment Act;

"lockout" means the closing of a place of employment by an employer in any trade or industry or the suspension of work by such an employer or the refusal by such an employer to continue to employ any number of his employees in that trade or industry;

"mediation" includes facilitation, conducting a fact finding exercise, and the making of an advisory award;

"**officer**", where used with reference to an organization, includes any member of the executive committee thereof;

"**organization**" means a trade union or other organization registered under the Trade Unions and Employers' Organizations Act;

"**public authority**" includes a local authority and a land board;

"**secret ballot**" means a secret ballot referred to in section 46(1);

"**serious misconduct**" has the meaning assigned to it under section 26 of the Employment Act;

"**strike**" means the cessation of work by a body of employees in any trade or industry acting in combination or under a common understanding or a concerted refusal or a refusal under a common understanding by such body of employees to continue to work;

"**trade dispute**" includes-

- (a) an alleged dispute;
- (b) a dispute between unions;
- (c) a grievance;
- (d) a dispute of interest; or
- (e) any dispute over-
 - (i) the application or the interpretation of any law relating to employment,
 - (ii) the terms and conditions of employment of any employee or any class of employees, or the physical conditions under which such employee or class of employees may be required to work,
 - (iii) the entitlement of any person or group of persons to any benefit under an existing collective agreement;
 - (iv) the existence or non-existence of any collective agreement;
 - (v) the dismissal, employment, suspension from employment, retrenchment, re-employment or reinstatement of any person or group of persons;
 - (vi) the recognition or non-recognition of an organization seeking to represent employees in the determination of their terms and conditions of employment; or
 - (vii) whether or not a dispute does exist;

"**trade or industry**" includes-

- (a) any business, trade, manufacture, undertaking or calling of employers;
- (b) any calling, service, employment, handicraft or industrial occupation or vocation of employees;
- (c) a branch or section of any trade or industry or a group of trades or industries; and
- (d) the carrying on of its activities by the Government or any public authority;

"**trade union**" means a trade union registered under the Trade Unions and Employers' Organizations Act; and

"**unlawful industrial action**" means any industrial action declared by this Act or by the Industrial Court under this Act, to be unlawful, or any lockout, strike or action short of a strike deemed to be unlawful industrial action by virtue of section 42.

(2) Any reference in this Act to employees shall not, unless the context otherwise requires, include a reference to a sole employee.

PART II

Establishment of panel and procedure for settlement of trade disputes generally (ss 3-14)

3. Establishment of panel of mediators and arbitrators

(1) There is hereby established a panel of mediators and arbitrators with the Commissioner as the chairman of the panel.

(2) Appointment to the panel shall be on such terms and conditions and for such period as may be determined by the Minister.

(3) The Minister may appoint to the panel, mediators and arbitrators with expertise in labour law or labour relations or other specialist areas of expertise.

(4) In the discharge of their functions, the mediators and arbitrators shall be subject only to the direction or control of the Commissioner.

(5) A person who obstructs or improperly influences a mediator or arbitrator in the performance of his duties under this Act, or attempts to do so, commits an offence and is liable to a fine of P1 000 or to imprisonment for six months, or to both.

4. Composition of panel

The panel shall comprise such number of full time and part time mediators and arbitrators as the Minister may, after consultation with the Board, appoint.

5. Removal from panel

The Minister may, after consultation with the Board, remove a mediator or arbitrator from the panel on the following grounds-

- (a) inability to perform the functions of his office, whether arising from infirmity of body or mind, or from any other cause; or
- (b) serious misconduct by the mediator or arbitrator.

6. Mediation by Commissioner

(1) In this section-

"apprehended trade dispute" includes a dispute that exists but has not been referred to the Commissioner in terms of section 7.

(2) Where the Commissioner is satisfied that a trade dispute is apprehended, the Commissioner may mediate between the parties to the apprehended dispute if-

- (a) the parties invite the Commissioner to intervene; or
- (b) the Commissioner is satisfied that the apprehended trade dispute may cause harm to employees, employers, the community or property.

(3) The Commissioner may delegate a mediator from the panel referred to under section 4 to mediate between the parties contemplated under subsection (2).

(4) Mediation under this section shall be directed towards helping the parties to the dispute to reach a settlement of the dispute principally by their own efforts and, if there is a settlement, to advise them on the incorporation of the terms of the settlement into an agreement or collective agreement.

(5) In order to promote the prevention and resolution of disputes, the Commissioner may-

- (a) provide organisations with advice and training relating to, inter alia-
 - (i) designing and establishing in-house procedures for the prevention and resolution of disputes;
 - (ii) the recognition of trade unions;
 - (iii) the design and content of collective agreements; and
 - (iv) codes and procedures including disciplinary and termination of employment procedures; or
- (b) assign a mediator from the panel to provide the advice or training.

7. Referral of disputes to Commissioner

(1) A party to a trade dispute may refer the dispute, in the prescribed form, to-

- (a) the Commissioner; or
- (b) a labour officer delegated by the Commissioner.

(2) An employee referring a dispute concerning termination of employment shall refer the dispute within 30 days of the date of such termination.

(3) Any party referring a dispute shall satisfy the Commissioner, in writing, that a copy of the referral has been served on the other party to the dispute, unless the Commissioner is satisfied that it was not possible to serve the referral on that other party.

(4) Notwithstanding subsections (1) and (2), an employee who cannot read or write may refer a dispute concerning a grievance or a termination of employment orally, and the Commissioner or a labour officer delegated to do so shall complete the prescribed form on the

employee's behalf.

(5) The Commissioner or the labour officer delegated to do so, shall, upon receiving a matter referred in accordance with subsection (1)-

- (a) forthwith assign a mediator from the panel referred to under section 4 to attempt to resolve the dispute through mediation;
- (b) determine the venue, date and time of the first mediation meeting; and
- (c) inform the parties to the dispute, in writing, of the details contemplated under paragraphs (a) and (b).

(6) Notwithstanding subsection (5), the Commissioner may refer a dispute directly to arbitration if the dispute is one that is required by an agreement or by this Act to be determined by arbitration.

8. The process of mediation

(1) Subject to subsection (2), a mediator shall attempt to resolve a dispute referred to him, within 30 days of the date the dispute was received by the Commissioner or labour officer delegated in terms of section 7.

(2) The period referred to in subsection (1) may be extended by-

- (a) agreement between the parties to the dispute; or
- (b) a collective labour agreement.

(3) Where a mediator fails to mediate a dispute within the period referred to in subsection (1) or subsection (2), as the case may be, the parties to the dispute may refer the dispute to arbitration or to the Industrial Court.

(4) Subject to any prescribed rules or guidelines published in terms of section 51, the mediator shall determine how the mediation shall be conducted, and may require further meetings to be held within the period referred to in subsection (1).

(5) A mediator may, in dealing with a dispute assigned to him-

- (a) determine any question concerning-
 - (i) whether a dispute has been referred in terms of section 7;
 - (ii) the date on which the dispute was referred; or
 - (iii) the jurisdiction of the mediator to mediate the dispute;
- (b) allow an application for the condonation of a late referral, where the applicant shows good cause for such late referral;
- (c) dismiss a referral if the referring party fails to attend a mediation meeting;
- (d) give a default award if a party upon whom a referral has been served in terms of section 7(3) fails to attend a mediation meeting;
- (e) reverse, on good cause-
 - (i) any dismissal of a referral, or
 - (ii) default award, contemplated under paragraphs (c) and (d) respectively;
- (f) recommend a settlement; or
- (g) make an advisory award if-
 - (i) the parties request it, or
 - (ii) it is in the interests of settlement to do so.

(6) A decision made by a mediator in terms of subsection (5)(a)(i) and (ii) shall be final.

(7) A party to a dispute may appeal to the Industrial Court in respect of a decision made pursuant to subsection (5)(a)(iii), (b) and (e).

(8) Any statement made and any information divulged during the mediation process shall be confidential and without prejudice unless the party making the statement or divulging the information states otherwise.

(9) A mediator shall not be a compellable witness in any legal proceedings in respect of anything said or information divulged during the mediation process relating to a dispute he mediated upon.

(10) Subject to the provisions of subsection (10), the mediator shall issue a certificate of

failure to settle if the dispute is not settled within the period contemplated under subsection (1) or (2).

(11) The mediator may issue a certificate of failure to settle before the expiry of the period contemplated under subsection (1) or (2), to the effect that either party may refer the dispute to the Industrial Court, if the mediator is satisfied that there are no prospects of settlement at that stage of the dispute.

(12) A mediator shall remain seized of a dispute assigned to him until it is settled and shall continue to try to settle the dispute through mediation in accordance with the guidelines published in terms of section 51.

9. The process of arbitration

(1) The Commissioner shall refer a trade dispute referred in terms of section 7 to arbitration where-

- (a) the parties to the dispute have agreed to have the dispute settled by arbitration;
- (b) the parties to the dispute are engaged in an essential service and the dispute concerns a dispute of interest; or
- (c) the Industrial Court has directed the Commissioner to refer the dispute to arbitration.

(2) The Commissioner shall-

- (a) after consultation with the parties to the dispute, assign an arbitrator from the panel of arbitrators appointed in terms of section 4, to arbitrate the dispute;
- (b) determine the venue, date and time of the arbitration hearing; and
- (c) advise the parties to the dispute of the details contemplated under paragraphs (a) and (b).

(3) Notwithstanding that the dispute has been mediated, if the arbitrator is of the view that there are prospects of settlement, he may attempt to resolve the dispute through mediation before commencing the arbitration hearing.

(4) If the dispute has not been mediated, the arbitrator shall attempt to resolve the dispute through mediation before the commencement of the arbitration hearing.

(5) Subject to any prescribed rules or guidelines published in terms of section 51, the arbitrator may conduct the arbitration in a manner that he considers appropriate, but must deal with the substantial merits of the dispute with the minimum of legal formalities.

(6) The arbitrator shall attempt to settle a dispute referred to him for arbitration within 30 days of the dispute being referred to him.

(7) Subject to the discretion of the arbitrator as to the appropriate form of proceedings, a party to the dispute may give evidence, call witnesses, question the witnesses of any other party and address concluding arguments.

(8) The arbitrator shall have the power to-

- (a) give such directions or do such things as may be necessary or expedient for the expeditious and just hearing and determination of any dispute before him;
- (b) make an award for a specific period of time, or such other award as he considers appropriate; or
- (c) vary or rescind an award if-
 - (i) it was erroneously made in the absence of any party affected by the award,
 - (ii) it is ambiguous or contains an error or omission, but only to the extent of that ambiguity, error or omission, or
 - (iii) it was made as a result of a mistake common to the parties to the proceedings.

(9) Upon the conclusion of an arbitration hearing, the arbitrator shall make an award and shall, within 30 days of the hearing, give reasons for the award.

(10) The Commissioner may, where he considers it appropriate, extend the number of days within which an award is to be made under subsection (9).

(11) The arbitrator shall not include an order of costs in an arbitration award unless-

- (a) the parties to the dispute agree; or

(b) a party or a person representing a party in the proceedings acted in a frivolous or vexatious manner-

- (i) by proceeding with or defending the dispute in the proceedings, or
- (ii) in the party's or person's conduct during the proceedings.

(12) An arbitration award shall have the same force and effect as a judgement or order of the Industrial Court, and shall be enforceable in like manner as such judgment or order.

(13) A person aggrieved by a decision of an arbitrator under this section may appeal against such decision to the Industrial Court, within 14 days of the arbitrator's decision.

(14) An appeal referred to under subsection (13) shall lie only in respect of a decision-

- (a) to join a party to the arbitration proceedings; or
- (b) concerning the jurisdiction of the arbitrator to make an award.

(15) The Judge President of the Industrial Court may, after consultation with the Minister, publish rules for the conduct of arbitrations under this Act.

10. Representation in mediation and arbitration

(1) In any mediation or arbitration proceedings, a party to a dispute may appear in person or be represented only by-

- (a) a member or officer of that party's organisation;
- (b) a co-employee, if the party is an employee; or
- (c) a director or employee of that person, if the party is a juristic person.

(2) Notwithstanding subsection (1), an arbitrator may permit a legal representative to represent a party to a dispute in arbitration proceedings if-

- (a) the parties to the dispute agree; or
- (b) at the request of a party to the dispute, the arbitrator is satisfied that-
 - (i) the dispute is of such complexity that it is appropriate to allow the party to have legal representation, and
 - (ii) the other party will not be prejudiced.

11. Conduct of proceedings by mediator or arbitrator

The provisions of section 19(2) and (3) shall *mutatis mutandis* apply to the conduct of proceedings by a mediator or arbitrator under this Act.

12. Mediators' and arbitrators' code of ethics

The Minister shall, after consultation with the Board, publish a code of ethics for mediators and arbitrators performing functions under this Act.

13. Referral of disputes to Industrial Court

Notwithstanding the provisions of sections 6, 7, 8, and 9, the Commissioner or a labour officer delegated by him may refer a trade dispute mediated upon under this Act to the Industrial Court for determination.

14. Minister's power to refer disputes to Industrial Court

(1) Where the Minister is satisfied that a trade dispute exists or is apprehended and where-

- (a) subject to section 9(1)(b), the dispute involves an essential service; or
- (b) the Minister is satisfied that the dispute has or may jeopardize the essentials of life or the livelihood of the people of Botswana or a significant section thereof or may endanger the public safety or the life of the community; or

(c) the dispute involves categories of officers regarded as members of management, the Minister may, whether the dispute has or has not been referred to the Commissioner under section 7, refer the dispute to the Industrial Court.

(2) Where the Minister decides to take steps under subsection (1), he shall forthwith serve a notice in writing of his decision on the party to the dispute.

(3) In this section,

"member of management" means an employee who-

- (a) has authority, on behalf of his employer, to employ, transfer, suspend, lay off, recall,

promote, terminate the employment of, reward, discipline or deal with the grievances relating to the employment of any fellow employees or effectively to recommend any such action or the manner in which such grievances ought to be dealt with, if the exercise by him of that authority is not merely of a routine or clerical nature but requires the use of his discretion;

- (b) participates in the making of a general policy regarding relations between his employer and his fellow employees or any of them; or
- (c) is employed in a capacity that requires him to have full knowledge of the financial position of the undertaking or enterprise in which he is employed or gives him free personal access to other confidential information relating to the conduct of his employer's business.

PART III

Industrial Court (ss 15-30)

15. Establishment of Industrial Court

(1) There is hereby established an Industrial Court (hereinafter referred to as "the Court") as a court of law and equity, with all the powers and rights set out in this Act or any other written law.

(2) The functions of the Court are to-

- (a) settle trade disputes; and
- (b) further, secure and maintain good industrial relations in Botswana.

(3) The Court may consist of one or more divisions, as the Minister considers necessary, each headed by an Industrial Court judge.

16. Appointment of judges and other staff

(1) The President shall appoint Industrial Court judges from among persons possessing the qualifications to be judges of the High Court, as prescribed under section 96(3) of the Constitution.

(2) In appointing Industrial Court judges, the President shall designate one such judge to be the President of the Industrial Court, and any other judges shall rank according to their dates of appointment.

(3) Every appointment made under this section shall be notified in the *Gazette*.

(4) A judge of the Industrial Court who is not a citizen of Botswana or appointed on permanent and pensionable terms may be appointed on contract and shall be eligible for reappointment.

(5) Subject to subsection (6), in exercise of the jurisdiction of the Court under section 18, a judge shall sit with two nominated members, one of whom shall be selected by him from among persons nominated by the organisation representing employees or trade unions in Botswana, and the other selected by him from among persons nominated by the organisation representing employers in Botswana.

(6) Where, for any reason, the nominated members are, or either of them is, absent for any part of the hearing of a trade dispute, the jurisdiction of the Court may be exercised by the judge alone or with the remaining member of the Court, as the case may be, unless the judge, for good reason, decides that the hearing should be postponed.

(7) There shall be appointed such public officers as may be necessary to staff the Court and enable it to carry out its functions under this Act.

(8) The power to-

- (a) appoint persons to hold or act in the offices of Registrar and Assistant Registrar of the Industrial Court;
- (b) exercise disciplinary control over persons holding or acting in such offices; and
- (c) remove those persons from office,

shall vest in the President.

16A. Oath to be taken by Industrial Court judge

(1) An Industrial Court judge shall

not enter upon the duties of his office unless he has taken and subscribed to an oath, for the due execution of his office, as set out in the Schedule.

(2) An oath under subsection (1) shall be tendered by and subscribed before the President or the Chief Justice.

(3) The provisions of sections 5, 7, 8, 9 and 10 of the Promissory Oaths Act shall *mutatis mutandis* apply to an oath under this Act.

16B. Tenure of office of Industrial Court judge An Industrial Court judge shall vacate office on attaining the age of 70 years:

Provided that the President may permit an Industrial Court judge who has attained the age of 70 years to continue in office for such period as may be necessary to enable the Industrial Court judge to deliver judgment or to do any other thing in relation to proceedings that were commenced before him before he attained that age.

17. Removal from office

(1) A judge of the Court may be removed from office only for-

- (a) inability to perform the functions of his office, whether arising from infirmity of body or mind, or from any other cause; or
- (b) for serious misconduct.

(2) The power to remove a judge from office vests in the President acting in accordance with the procedure provided under section 97 of the Constitution for the removal from office of judges of the High Court.

18. Jurisdiction of Court

(1) The Court or any division of the Court shall have exclusive jurisdiction in every matter properly before it under this Act, and without prejudice to the generality of the foregoing, such jurisdiction shall include the power-

- (a) to hear and determine all trade disputes except disputes of interest;
- (b) to interdict any unlawful industrial action;
- (c) to hear appeals and reviews from decisions of mediators and arbitrators;
- (d) to direct the Commissioner to assign a mediator to mediate a dispute, where in the opinion of the Court, the matter has not been properly mediated or requires further mediation;
- (e) to direct the Commissioner to refer a dispute that is before the Court, to arbitration;
- (f) to refer any matter to an expert and, at the Court's discretion, to accept the expert's report as evidence in the proceedings; and
- (g) generally to give such directions and do such things as may be necessary or expedient for the expeditious and just hearing and determination of any dispute before it.

(2) Any matter of law arising for decision at a sitting of the Court, and any question as to whether a matter for decision is a matter of law or a matter of fact, shall be decided by the judge presiding.

(3) Upon all issues other than those referred to under subsection (2), the decision of the majority of the persons representing the Court shall be the decision of the Court.

(4) Where there is no majority decision under subsection (3), the decision of the judge shall prevail.

(5) There shall be an appeal to the Court of Appeal against decisions of the Industrial Court.

(6) In the exercise of its powers under this Act, the Court may take into consideration any existing code of industrial relations good practice agreed between the Government, employers' organisations and trade unions, and any guidelines or directives relating to wage and salary levels, and any other terms and conditions of employment that may be issued by the Government.

(7) The Court shall regulate its own procedure and proceedings as it considers fit.

19. Power to hear evidence

(1) The Court shall not be bound by the rules of evidence or procedure in civil or criminal proceedings and may disregard any technical irregularity which does not and is not likely to result in a miscarriage of justice.

(2) For the purpose of dealing with any matter before it, the Court may order any person to-

- (a) furnish, in writing or otherwise, such particulars in relation to the matter as it may require;
- (b) attend before it;
- (c) give evidence on oath or otherwise; or
- (d) produce any relevant document.

(3) An order given under subsection (2) may include a requirement as to the date on which or the time within which the order is to be complied with.

(4) Any person who, without reasonable cause, fails to comply with an order given under this section, commits an offence and is liable to a fine of P1 000 or to imprisonment for six months, or to both.

(5) Any person being required by an order made under this section to furnish information or particulars, produce any document or give evidence before the Court, who makes any statement, or furnishes information or particulars, or produces any document which he knows or has reasonable cause to believe is false or misleading in any material particular, commits an offence and is liable to a fine of P2 000 or to imprisonment for twelve months, or to both.

(6) If a witness objects to answering any question or to producing any document on the ground that it will tend to incriminate him, or on any other ground on which he could lawfully object if the objection had been made in civil or criminal proceedings in the High Court, he shall not be required to answer such question or to produce such document, nor shall he be liable to any penalty for refusing to do so:

Provided that if the Court is of the opinion that the answer to such question or the production of such document is necessary for the fair and just determination of the matter before it, it may hear the matter, or such of it as is necessary, in camera, in which case the witness shall be obliged to answer the question or produce the document, as the case may be, and such answer or such production shall not be admissible in evidence in any other civil or criminal proceedings against the witness.

20. Applications to Court

(1) Applications to the Court shall be in such form as may be prescribed.

(2) If, in the opinion of the Court-

- (a) the points in issue in any matter before it or to be brought before it are not clearly enough defined to allow the matter to be heard or determined; or
- (b) the parties have not made sufficient attempt to reach agreement, the Court may remit the matter to the parties, or to the parties and the Labour Commissioner, with such directions or advice as it may consider appropriate.

(3) Notwithstanding the provisions of sections 6, 7, 8 and 9, a party to a trade dispute may make an urgent application to the Court for the determination of a trade dispute.

(4) An urgent application under subsection (3) shall be brought on notice of motion supported by an affidavit as to the facts upon which the applicant relies for relief.

(5) The applicant shall set forth, in the affidavit, explicitly the circumstances which he avers render the matter urgent and the reasons why he claims that he could not be afforded substantial redress at a mediation by the Commissioner in due course.

21. Representation in Court

Any interested party in any proceedings under this Act may appear by advocate or may be represented by any other person so authorised by that party.

22. Proceedings in public or in private

(1) In any proceedings before the Court, the judge presiding may, on the application of

any party, and for good cause, exclude members of the public from such proceedings or any part of them.

(2) Until the decision of the Court in such proceedings has been published in accordance with this Act, nothing shall be published in respect of the proceedings or the evidence produced in such proceedings, other than a factual account thereof.

(3) A person who contravenes the provisions of subsection (2) commits an offence and is liable to a fine of P1 000 or to imprisonment for six months, or to both.

23. Publication of evidence

(1) No person shall include, in any publication relating to proceedings before the Court, any evidence or information disclosed during the course of such proceedings by-

- (a) any organisation representing employers or employees; or
- (b) any individual business, whether carried on by an individual person, a firm or a company,

and in respect of which the Court has accepted an application made during the proceedings that such evidence or information be withheld from publication.

(2) No member of the Court, or any other person concerned in or present at the proceedings thereof, shall disclose any evidence or information referred to under subsection (1) to any person except with the consent of the organisation or business concerned.

(3) A person who contravenes the provisions of this section commits an offence and is liable to a fine of P2 000 or to imprisonment for 12 months, or to both.

24. Wrongful termination of contract or disciplinary action

(1) In any case where the Court determines that an employee has been wrongfully dismissed or disciplined, the Court may, subject to its discretion to make any other order which it considers just-

- (a) in the case of wrongful dismissal, order reinstatement of the employee, with or without compensation, or order compensation in lieu of reinstatement; or
- (b) in the case of wrongful disciplinary action, order the payment of such compensation as it considers just.

(2) The Court shall consider compulsory reinstatement as a remedy for wrongful dismissal only-

- (a) where the termination was found to be unlawful, or motivated on the grounds of gender, trade union membership, trade union activity, the lodging of a complaint or grievance, or religious, tribal or political affiliation; or
- (b) where the employment relationship has not irrevocably broken down.

(3) Where the Court orders reinstatement, any compensation ordered shall not exceed the actual pecuniary loss suffered by the employee as a result of wrongful dismissal.

(4) In assessing the amount of compensation to be paid under subsection (1), the Court may take the following factors into account-

- (a) the actual and future loss likely to be suffered by the employee as a result of the wrongful dismissal;
- (b) the age of the employee;
- (c) the prospects of the employee in finding other equivalent employment;
- (d) the circumstances of the dismissal;
- (e) the acceptance or rejection by either the employer or the employee of any recommendations made by the Court for the reinstatement of the employee;
- (f) any contravention of the terms of any collective agreement or of any law relating to employment by the employer or the employee; or
- (g) the employer's ability to pay.

(5) Where a contract of employment is wrongfully terminated by an employee, the Court may make such order of compensation in favour of the employer as it considers just.

(6) An order for compensation made under subsection (5) shall not exceed six months'

monetary wages.

(7) An employer who fails to comply with an order of reinstatement made by the Court commits an offence and is liable to a fine of P1 000, or the equivalent of the employee's basic monthly wages, whichever is the greater, for every month or part thereof during which the failure to reinstate continues.

(8) The Court may order that the fine imposed under subsection (7) or any part of the fine, be paid to the employee concerned as compensation for any loss suffered as a result of the employer's failure to reinstate him.

(9) A person who, without lawful excuse, fails to comply with any decision of the Court under this section, other than an order referred to under subsection (7), commits an offence and is liable to a fine of P1,000 for every month or part thereof during which the failure continues.

25. Decision of the Court

(1) The Court may order the payment, to any person, of money it finds to be due to him under the terms of his contract of employment, this Act or any other written law.

(2) A decision of the Court shall have the same force and effect as a judgment or order of the High Court, and shall be enforceable in like manner as such judgment or order:

Provided that, without prejudice to any other remedy, any payment of money ordered under this section may be recovered summarily as a civil debt.

(3) A certificate signed by a judge of the Court shall be conclusive evidence of the existence of and the contents of the decision of the Court to which it refers.

(4) Decisions of the Court may be made retrospectively to such date as the Court considers just in the circumstances of the particular case.

26. Rescission or variation of default judgment

(1) A judgment or order obtained in default of appearance or of defence or in the absence of one of the parties to the action or proceedings (in this section referred to as a "default judgment") may be rescinded or varied on the application, in accordance with the provisions of subsection (2), of the party affected by the default judgment.

(2) A party affected by a default judgment may, within one month of knowing of the default judgment, apply to the Court, upon notice to the party in whose favour the default judgment was given, to vary or set aside such default judgment, and the Court may, on good and sufficient cause shown by the party against whom the default judgment was given, vary or set aside the default judgment on such terms as it considers just in the circumstances.

27. Variation or rescission of orders and judgments

(1) The Court may, *mero motu* or on the application of any party affected, rescind or vary-

- (a) an order or judgment erroneously sought or erroneously granted without notice to any party affected thereby;
- (b) an order or judgment in which there is an ambiguity or a patent error or omission, but only to the extent of such ambiguity, error or omission;
- (c) an order or judgment granted as the result of a mistake common to all parties; or
- (d) an order or judgment granted as the result of an issue raised *in limine* if, having regard to changed circumstances since such order or judgment was granted, it would be unjust or inequitable to allow such order or judgment to stand.

(2) A party desiring relief under this section shall make application therefor upon notice to all parties whose interests may be affected by any variation sought.

(3) The Court shall not make any order rescinding or varying any order or judgment unless it is satisfied that all parties whose interests may be affected have notice of the order proposed.

28. Interpretation of decisions

(1) A decision shall state clearly to which parties and to which employers and employees comprised in the parties each of the provisions of the decision relates, and the date on which it

is to come into effect:

Provided that the decision may be given retrospective effect, and different provisions may be brought into effect on different dates.

(2) A decision containing any provision inconsistent with the provisions of any written law relating to the terms or conditions of or affecting employment or labour, shall have effect as if such inconsistent provision were omitted.

(3) If a question arises as to the interpretation of a decision, or as to a decision being inconsistent with any written law, the Minister or any party to the decision may apply to the Court for a determination of the question, and the Court shall determine the matter after hearing the parties concerned, or if the parties concerned consent, without such hearing, and any such determination shall be considered to be a decision made under this Act:

Provided that, where the question arises out of a clerical or incidental error or omission, the Court may rectify such error or omission without hearing the parties concerned.

(4) Subject to the provisions of this section, a decision shall, as from the date when it has effect, be binding on the parties to the dispute, and shall be an implied term of every contract between the employers and employees to whom the decision relates, so that the rate of wages to be paid and the terms and conditions of employment to be observed under the contract shall be in accordance with the decision until it is varied by a subsequent decision or by agreement.

29. Costs

(1) No costs shall be awarded by the Court except against a party held by the Court to have acted frivolously or vexatiously, or with deliberate delay in the bringing or defending of a proceeding.

(2) Where costs are awarded under subsection (1), the tariff of costs laid down under the Rules of the High Court shall *mutatis mutandis* apply in respect of costs awarded by the Court.

30. Remuneration of Court

(1) Judges of the Industrial Court shall be paid such salaries and allowances, not being less than those payable to judges of the High Court in accordance with the provisions of the Judges (Miscellaneous Provisions) Act, as may be determined by the President.

(2) Nominated members of the Court shall be paid such remuneration (including allowances) as the Minister shall, with the approval of the Minister responsible for finance, determine.

PART IV

Settlement of claims that terms and conditions of employment are not being observed **(ss 31-36)**

31. Claims that terms and conditions of employment are not being observed

(1) A claim that-

- (a) the terms and conditions of employment in any trade or industry, either generally or in a particular area, have been settled by a collective labour agreement or by a decision of the Industrial Court;
- (b) the parties to the collective labour agreement or the parties bound by the decision are, or represent, either generally or in that particular area, a substantial proportion of the employers and employees in that trade or industry, being employees of the description to which the agreement or the decision relates; or
- (c) in respect of any employee of the description referred to in paragraph (b), an employer engaged in that trade or industry, or, where the operation of the collective labour agreement, or of the decision, is limited to a particular area, an employer so engaged in that area is not observing those terms and conditions,

may be referred, in writing, by, or on behalf of, any employer or employee who is adversely affected thereby, to the Industrial Court.

(2) A claim contemplated under subsection (1) may be referred to the Industrial Court

only if-

- (a) it has been referred to the Commissioner under section 7 for mediation; and
- (b) it has not been resolved within 30 days of the referral to the Commissioner or within the extended period contemplated under section 8(2), as the case may be.

(3) If, in the opinion of the Court, a claim lodged with it for the purposes of this section does not contain sufficient particulars, the Court may require to be provided with further particulars of the claim and, where it does so, the claim shall be deemed, for the purposes of this Act, not to have been lodged with the Court in accordance with this section until the Court is satisfied that it has been provided with the particulars required.

32. Recognition at the workplace

(1) A trade union seeking recognition in terms of section 50 of the Trade Unions and Employers' Organizations Act may, in the prescribed form, apply to an employer for recognition.

(2) A copy of the application, together with proof that the request has been served on the employer, shall be submitted to the Commissioner.

(3) Within 30 days of receipt of the application, the employer shall, in the prescribed form, notify the trade union whether-

- (a) it grants the trade union recognition as a collective bargaining agent in terms of section 50 of the Trade Unions and Employers' Organizations Act; or
- (b) it refuses to grant the union recognition.

(4) Subject to subsection (5), an employer may only refuse to recognise a trade union on the grounds that-

- (a) the trade union does not represent at least one third of the employees of the employer; or
- (b) the Industrial Court has authorised the withdrawal of recognition and the period contemplated in that order has not expired.

(5) Where a trade union is aggrieved by a decision made in terms of subsection (3)(b) or by the employer's failure to respond to the application within the 30 days stipulated under subsection (3), the union may refer the trade dispute to the Commissioner in the manner prescribed under section 7.

(6) If the dispute remains unresolved after 30 days of referral of the dispute, any party may refer the dispute to the Industrial Court for determination.

(7) If the dispute concerns whether the union represents at least one third of the employer's employees, the Industrial Court may direct the assigned mediator to conduct a ballot to determine the dispute.

33. Withdrawal of recognition at the workplace

(1) An employer may apply to the Commissioner to withdraw the recognition of a trade union on the grounds contemplated under section 50(6) of the Trade Unions and Employers' Organizations Act.

(2) The provisions of sections 7 and 8 shall apply to a mediation conducted in terms of this section.

(3) If the dispute remains unresolved for 30 days, the employer may refer the dispute to the Industrial Court for determination.

(4) The Industrial Court may-

- (a) if the dispute concerns the trade union's representativeness,
 - (i) direct the Commissioner or the assigned mediator to conduct a ballot to determine the question, or
 - (ii) give the union an opportunity to achieve the one third representation contemplated in section 50 of the Trade Unions and Employers' Organizations Act; or
- (b) if the dispute concerns a refusal to bargain or a material breach of a collective agreement-
 - (i) suspend or authorise the withdrawal of any of the organisational rights granted

pursuant to recognition in terms of section 50B of the Trade Unions and Employers' Organizations Act; or

(ii) suspend or authorise the withdrawal of recognition.

(5) If the Industrial Court authorises a withdrawal of recognition, it shall include in its order, the period within which the union will not be entitled to recognition.

34. Recognition at the level of industry

(1) For the purposes of this section, a trade union includes two or more trade unions acting jointly.

(2) Any trade union seeking recognition in terms of section 50(A) of the Trade Unions and Employers' Organizations Act may, in the prescribed form, apply to the Commissioner for recognition in an industry.

(3) On receipt of the application, the Commissioner shall call for representations by-

- (a) publishing a notice in the *Gazette*; and
- (b) publishing a notice in a newspaper with national circulation.

(4) After considering the representations, the Commissioner shall call a meeting of all interested organisations and attempt to facilitate the establishment of a joint industrial council.

(5) If the Commissioner fails to establish a joint industrial council, he shall determine whether or not the trade union has at least one third of the employees in the industry as members.

(6) If the Commissioner is satisfied that the trade union represents at least one third of the employees in an industry, the Commissioner shall issue a certificate in the prescribed form, certifying that the union is a recognised trade union in the industry.

(7) A party aggrieved by a decision of the Commissioner granted in terms of this section may appeal to the Industrial Court against that decision.

35. Withdrawal of recognition at level of industry

(1) Any employer or employers' organisation may apply to the Commissioner to withdraw recognition granted under section 34 on the grounds that-

- (a) subject to subsection (2), the trade union no longer represents one third of the employer's employees;
- (b) the trade union refuses to negotiate in good faith with the employer;
- (c) the trade union refuses or fails to comply with an arbitration award or an order of the Industrial Court applicable to the industry; or
- (d) the trade union has materially breached a collective agreement concluded with an employer or an employers' organisation.

(2) Whether a trade union represents one third of an employer's employees or not, may be challenged only-

- (a) one year after the Commissioner has issued a certificate in terms of section 34; or
- (b) one year after an application in terms of this section to withdraw the union's recognition on grounds of representativeness.

(3) The employer or employers' organisation shall satisfy the Commissioner, in writing, that a copy of the application has been served on the recognised trade union.

(4) On receipt of the application, the Commissioner or labour officer delegated to do so shall-

- (a) assign a mediator from the panel established under section 3, to attempt to resolve the dispute through mediation;
- (b) determine the place, date and time of the first mediation meeting; and
- (c) inform the parties to the dispute of the details contemplated under paragraphs (a) and (b).

(5) The provisions of sections 7 and 8 shall apply to a mediation conducted in terms of this section.

(6) If the dispute remains unresolved for 30 days, the employer or employers

organisation may refer the dispute to the Industrial Court for determination.

(7) The Industrial Court may give any order it considers appropriate including-

- (a) giving the trade union an opportunity to-
 - (i) remedy any breach, or
 - (ii) achieve the required threshold of representativeness, within a given period;
- (b) the suspension or the authorisation of the withdrawal of any or all organisational rights granted pursuant to recognition in terms of the provisions of the Trade Unions and Employers' Organizations Act;
- (c) the suspension or the authorisation of the withdrawal of recognition in respect of a particular employer; or
- (d) the suspension or the authorisation of the withdrawal of recognition in respect of the whole industry.

(8) Where it is necessary to determine the representativeness of the trade union, the Industrial Court may direct the Commissioner or the assigned mediator to determine it by the conduct of a ballot.

36. Joint industrial councils

(1) Where a union and an employer's organization consider themselves to be sufficiently representative of employees' and employers' interests in an industry, they may jointly apply in writing to the Commissioner for the establishment of a joint industrial council for that industry, and shall submit a copy of the proposed constitution of such joint industrial council with the application.

(2) On receipt of the application, the Commissioner shall consult any other interested parties and, after satisfying himself that the establishment of such a council is desirable and practicable, and that the proposed constitution is suitable, subject to any amendments that he may consider are desirable, and that all conditions required under this Act are met, he may, by notice published in the *Gazette*, establish and register a joint industrial council for the industry concerned.

(3) If the Commissioner does not consider that the establishment of the joint industrial council is desirable or practicable, and after hearing representations from any interested parties, he shall, as soon as possible, so inform the parties in writing, setting out the reasons for his decision.

(4) The constitution of a joint industrial council shall provide for the following matters-

- (a) the industry or class or classes of employees to be covered by the council;
- (b) the appointment, number and method of selection of employer and employee representatives;
- (c) the appointment, number and method of selection of a chairman and deputy chairman of the council;
- (d) the appointment and method of selection of a secretary or joint secretaries of the council;
- (e) the procedure for the appointment of alternative members of the council;
- (f) the number of members required to form a quorum;
- (g) the procedure for the replacement of members;
- (h) the term of office of members of the council and office holders;
- (i) the procedure to be followed in the event of a dispute or deadlock in the council;
- (j) the method by which persons affected by any collective agreement made or amended by the council shall be informed thereof;
- (k) such other matters as may be included in the constitution by the party making the application and approved by the Commissioner, or as may be advised by the Commissioner.

(5) The Commissioner may, on the application of an interested party, and upon reasonable cause being shown, cancel the registration of a joint industrial council.

(6) Any interested party aggrieved by a decision of the Commissioner not to establish and register a joint industrial council, or a decision to cancel the registration of a joint industrial council, may appeal against such decision to the Minister.

PART V

Collective Labour Agreements (ss 37-38)

37. Collective labour agreements binding on parties thereto

(1) Every collective labour agreement shall be binding upon the parties thereto.

(2) A collective labour agreement shall cease to be binding upon the parties thereto upon the expiry of one month, or such greater period as the notice may specify, immediately after the day on which any party to the agreement serves notice in writing to every other party to the agreement that it repudiates the agreement:

Provided that no notice under this subsection shall be served without the permission in writing of the Minister before the expiry of six months immediately after the day on which the agreement came into force.

38. Registration of collective labour agreements

(1) Each party to a collective labour agreement or to an agreement extending or varying the terms of a collective labour agreement shall lodge a certified copy thereof with the Commissioner within 28 days of the day on which such agreement was concluded.

(2) The Commissioner shall register, in such manner as may be prescribed, or in the absence of any such prescription as he may determine, one copy of the agreement lodged with him, and shall serve notice on each party to the agreement that he has done so.

(3) Where the Commissioner is of the opinion that any term of the agreement lodged with him under the provisions of this section is contrary to any provision of this Act or any other written law, he shall withhold registration thereof and shall serve notice of such fact and his opinion, in writing, on each party to the agreement.

(4) Any interested party aggrieved by a decision of the Commissioner to withhold the registration of a collective agreement, may appeal against such decision to the Minister.

(5) Any party to a collective labour agreement who contravenes the provisions of subsection (1) commits an offence and is liable to a fine of P2,000 or to imprisonment for 12 months, or to both.

PART VI

Unlawful industrial action and enforcement of collective labour agreements and decisions of the Industrial Court (ss 39-42)

39. Right to strike and lockout

(1) Every party to a dispute of interest has the right to strike or lockout if-

- (a) the dispute has been referred to the Commissioner in accordance with section 7, and, subject to subsections (2) and (3), the dispute still remains unresolved after 30 days;
- (b) after the 30 days has expired, 48 hours notice of the commencement of the strike or lockout has been given in the prescribed form to the Commissioner and the other parties to the dispute; and
- (c) the strike or lockout conforms to-
 - (i) the provisions of this Part, and
 - (ii) any agreed rules regulating the conduct of a strike or lockout, or
 - (iii) any rules determined by the mediator in terms of section 40(1).

(2) If the party referring the dispute fails to attend a mediation meeting contemplated under section 7(5), the period of 30 days referred to under subsection (1)(b) shall be extended for a further 30 days commencing from the date of the hearing.

(3) If parties to the dispute, other than the referring party, fail to attend a mediation meeting contemplated under section 7(5), the mediator shall not be obliged to grant an extension contemplated under subsection (2).

40. Regulation of strikes and lockouts

(1) A mediator assigned in terms of section 7(5)(a) to mediate a dispute of interest shall, if the dispute cannot be resolved before the expiry of the 30 day period, try to reach agreement on-

- (a) rules to regulate the conduct of the strike or lockout, failing which the mediator shall determine rules in accordance with any guidelines published in terms of section 51;
- (b) the provision of a minimum service.

(2) The rules contemplated in subsection (1) shall include rules concerning the conduct of the strike or lockout and any conduct in contemplation or furtherance of the strike or lockout including, subject to the provisions of subsection (4), picketing and the use of replacement labour.

(3) An employer shall not take persons into employment to do the work of employees who are on strike or who are locked out-

- (a) if the parties have concluded an agreement on the provision of a minimum service during the strike or lockout; or
- (b) if no such agreement is concluded, within 14 days of the commencement of the strike or lockout.

(4) A trade union shall not picket the premises of the employer during a strike or lockout-

- (a) if the parties have concluded an agreement on the provision of a minimum service during the strike or lockout; or
- (b) if no such agreement is concluded, within 14 days of the commencement of the strike or lockout.

41. Strikes and lockouts in compliance with this Part

(1) A person does not commit a delict or a breach of contract by taking part in a strike or a lockout in compliance with the provisions of this Part.

(2) A person who takes part in a strike or lockout may not be dismissed for doing so, but this shall not preclude the employer from dismissing an employee during a strike or lockout for any other reason that is valid and fair.

(3) Notwithstanding subsection (1), an employer is not obliged to remunerate an employee for services that the employee does not render during the strike or lockout in compliance with the provisions of this Part.

(4) Civil proceedings may not be instituted against any person for participating in a strike or lockout carried out in compliance with this Part except any act in contemplation or furtherance of a strike that constitutes defamation or an offence.

42. Prohibition of certain strikes and lockouts

(1) No person may take part in a strike or lockout if-

- (a) the strike or lockout-
 - (i) is not in compliance with the provisions of this Part or an agreed procedure, or
 - (ii) is in breach of a peace clause in a collective agreement; or
- (b) the subject matter of the strike or lockout is-
 - (i) not a trade dispute,
 - (ii) regulated by a collective agreement,
 - (iii) a matter that is required by this Act to be referred to arbitration or to the Industrial Court for adjudication; or
 - (iv) a matter that the parties to the dispute have agreed to refer to arbitration.

(2) The Industrial Court may interdict-

- (a) a strike or lockout not in compliance with the provisions of this Act; or
- (b) conduct-
 - (i) in contemplation or in furtherance of a strike or lockout; and
 - (ii) that is not in compliance with this Act.

(3) No interdict contemplated under subsection (2) may be granted unless-

- (a) the applicant has given the prescribed notice to the respondent of its intention to apply

- for an interdict;
- (b) the applicant has served a copy of the notice and the application on the Commissioner; and
 - (c) the respondent has been given a reasonable opportunity to be heard before a decision is made.

PART VII

Protection of essential services, life and property (ss 43-47)

43. Breaches of contracts affecting essential services

(1) An employee who wilfully breaches his contract of employment knowing or having reasonable cause to believe that the probable consequence of his doing so, either alone or in combination with others, will be-

- (a) to deprive the public or any section of the public, either wholly or to a substantial extent, of an essential service or substantially to diminish the enjoyment of an essential service by the public or by any section of the public; or
- (b) to endanger human life or public health or to cause serious bodily injury to any person or to expose valuable property, whether movable or immovable, to the risk of destruction, deterioration, loss or serious damage,

commits an offence and is liable to a fine not exceeding P2 000 or to imprisonment for a term not exceeding 12 months, or to both.

(2) Any person who causes, procures, counsels, or influences any employee to breach his contract of employment or any employer who has recourse to a lock-out, knowing or having reasonable cause to believe that the probable consequence of that employee's breach of his contract of employment, either alone or in combination with others, or of the lock-out, as the case may be, will be any of the consequences specified by subsection (1) commits an offence and is liable to a fine not exceeding P2,000 or to imprisonment for a term not exceeding 12 months, or to both.

44. Notices of section 43 and of Schedule to be displayed

(1) Every employer in an essential service shall cause to be displayed in accordance with this section, in all premises used for the purposes of the essential service, a printed notice containing a copy of section 43 and of the Schedule together with a Setswana translation of the same.

(2) Every notice referred to in subsection (1) shall be displayed in a conspicuous place where it may conveniently be read by persons employed in the premises in question and, in the event of the notice being lost, destroyed, removed, defaced or obliterated, the employer shall forthwith cause it to be replaced.

(3) Every employer in an essential service shall take every reasonable step to ensure that any employees in the essential service who are illiterate are regularly informed of and understand section 43 and the Schedule.

(4) Any person who, without reasonable excuse, destroys, removes, defaces, obliterates or otherwise damages any printed notice displayed in accordance with this section commits an offence and is liable to a fine not exceeding P500 or to imprisonment for a term not exceeding three months, or to both; and in any proceedings for an offence under this subsection the court shall presume the absence of a reasonable excuse on the part of the person charged unless the contrary is proved.

(5) Any employer who contravenes this section commits an offence and is liable to a fine not exceeding P500 or to imprisonment for a term not exceeding three months, or to both.

45. Industrial action in essential services

(1) Where any industrial action in furtherance of a trade dispute is contemplated by an employer or employers or by employees in an essential service, the trade dispute shall be reported to the Commissioner by an organization acting on behalf of the employer or employers or employees, as the case may be, and-

- (a) section 7(3) shall apply in respect of the report of the trade dispute as if the report were made under section 7; and
- (b) where a trade dispute is reported in accordance with this subsection it shall be deemed, for the purposes of this Act, to have been reported to the Commissioner under section 7.

(2) Where there is a failure to reach a settlement of a trade dispute reported to the Commissioner in accordance with subsection (1) within 21 days of the day on which the dispute was so reported, the employer or employers or employees by or on whose behalf the dispute was so reported may, subject to subsection (4), forthwith proceed to take industrial action in furtherance of the dispute and, notwithstanding any other provision of this Act, such industrial action shall be deemed, for the purposes of this Act, not to be unlawful industrial action.

46. Additional ballots in respect of secret ballots of employees

(1) Where a trade union is by virtue of the Trade Unions and Employers' Organizations Act, the exclusive negotiating body on behalf of employees in an essential service by whom industrial action is contemplated, the Minister may direct that only members of that trade union shall be entitled to vote in a secret ballot of those employees and, where the Minister does so direct, only members of that trade union shall vote in the ballot.

(2) Every secret ballot shall be supervised by the Commissioner or by an officer or officers authorized by him in writing to do so.

(3) Where any secret ballot is to be held in more than one place, it shall be held in all such places on the same day or days and between the same hours:

Provided that, where the person supervising the ballot in accordance with subsection (2) at any place is satisfied that every person entitled to vote who is likely to cast his vote at that place has done so, he may forthwith close the ballot being held at that place.

47. Contravention of section 43 not unlawful in certain circumstances

(1) An employee shall not be guilty of an offence under section 43 if he breaks his contract of employment in pursuance of industrial action taken under section 45.

(2) A person shall not be guilty of an offence under section 43(2) of causing, procuring, counselling or influencing any employee to break his contract of employment if the person does so in pursuance of industrial action taken under section 45.

(3) An employer shall not be guilty of an offence under section 43(2) of having recourse to a lock-out if he does so in pursuance of industrial action taken under section 45.

PART VIII

Miscellaneous (ss 48-55)

48. Consent of Director of Public Prosecutions for prosecutions

A prosecution for an offence under this Act shall not be instituted except by or with the written consent of the Director of Public Prosecutions:

Provided that a person may be arrested for and charged with such an offence and remanded in custody or on bail notwithstanding that the consent of the Director of Public Prosecutions to the institution of a prosecution for the offence has not been obtained, but no further proceedings shall be taken until that consent has been obtained.

49. Amendment of Schedule

The Minister may, by order published in the *Gazette*, amend the Schedule.

50. Regulations

The Minister may, by statutory instrument, make regulations for any matter required to be prescribed under this Act and for the better carrying into effect of the purposes and provisions of this Act and, without prejudice to the generality of the foregoing, such regulations may-

- (a) regulate the conduct of secret ballots;
- (b) prescribe the remuneration and allowances payable to persons, other than public officers, appointed by him under this Act; and

- (c) prescribe the form in which statistics on the mediation, arbitration and adjudication of trade disputes shall be kept under section 52.

51. Codes and guidelines

(1) The Minister may, after consultation with the Board, publish Codes of Good Practice, policies, guidelines and model procedures and agreements to guide employers, employees and their respective organisations.

(2) In making any decision under this Act, a mediator, arbitrator or the Industrial Court shall take any code, policy, guideline or model agreement into account.

52. Statistics and reports on dispute prevention and resolution

(1) The Commissioner shall keep prescribed statistics on the mediation, arbitration and adjudication of disputes.

(2) The Commissioner shall prepare an annual written report for submission to the Board on the state of dispute prevention and resolution.

(3) The Commissioner shall provide further information on the prevention and resolution of disputes at the request of the Board.

53. Delegation of functions

The Commissioner may delegate any of the Commissioner's functions under this Act to labour officers.

54. Repeal of Cap. 48:02

The Trade Disputes Act (hereinafter referred to as "the repealed Act"), is hereby repealed.

55. Savings and transitional

(1) All subsidiary legislation made under the repealed Act and in force immediately prior to the coming into operation of this Act shall, in so far as it is not inconsistent with the provisions of this Act, continue in force as if made under this Act.

(2) The repeal of the Trade Disputes Act shall not be construed as invalidating any process to resolve a trade dispute begun or undertaken under or in accordance with the provisions of the said Act.

(3) Notwithstanding the repeal of the Trade Disputes Act, proceedings commenced under the repealed Act shall be dealt with, inquired into and determined in accordance with that Act.

(4) Any penalty in respect of an offence under the repealed Act shall be imposed as if this Act had not come into operation, but where, under this Act, the penalty in respect of the offence is reduced or mitigated in relation to the penalty or punishment that would have been applicable before the coming into operation of this Act, the provisions of this Act relating to penalties shall apply.

SCHEDULE

ESSENTIAL SERVICES (ss 2 and 49)

ESSENTIAL SERVICES

Air traffic control services

Botswana Vaccine Laboratory

Electricity services

Fire services

Bank of Botswana

Health services

Operational and maintenance services of the Railways

Sewerage services

Transport and telecommunications services necessary to the operation of any of the foregoing services

Water services

(s 16A(1))

OATH OF INDUSTRIAL COURT JUDGE

I, do swear that I will well and truly serve the Republic of

Botswana in the office of Industrial Court Judge and that I will do justice in accordance with the Constitution of Botswana as by law established and in accordance with the laws and usage of Botswana without fear or favour, affection or ill-will.

So Help Me God