Introduction to the Danish Labour Court

Sankt Annae Plads 5, DK 1250 Copenhagen K
Phone (0045) 3395 6735 Fax (0045) 3315 4922
www.arbejdsretten.dk mbd@arbejdsretten.dk

1. The Labour Market

An estimated 2,900,000 of the 5,200,000 inhabitants of Denmark are part of the labour force, and 2,700,000 are active, 1,900,000 in the private and 800,000 in the public sector.
Approximately 80% of the employees are organised in trade unions, grouped within national federations that in turn are grouped within a few central organisations, the largest of which is the Danish Federation of Trade Unions (Landsorganisationen i Danmark/LO).
Approximately 50% of the private employers are organised as well, the most comprehensive organisation being the Danish Employers' Confederation (Dansk Arbejdsgiverforening/DA).

2. Danish Labour Law

Customarily labour law is divided into individual employment law and collective labour law.
In Denmark regulation by collective law is significant as compared to regulation by individual contracts and legislation, the case being that trade unions and private employers, organisations and public employers usually form an agreement on wages and other working conditions, and quite a number of non-organised private employers join these agreements.
Consequently, the legislation, which consists of rules applying to certain groups of employees (e.g., the Salaried Employees Act) as well as to specific matters (e.g., the Holidays Act) is of minor importance compared to some other countries.
For a relatively small group of employees in the public sector, however, the terms of employment are governed rather strictly by the Public Servants Act and municipal and regional public servants regulations.

3. History

The Danish Employers' Confederation was founded in 1896 and the Danish Federation of Trade Unions in 1898.
In September 1899 a big industrial dispute was compromised between the two labour market organisations. The employers recognised the right of the workers to unionise, and the unions accepted the prerogative of the employers, in particular the right to direct work.
During the next years basic principles were established for the solution of conflicts in connection with collective agreements; and a distinction was drawn between conflicts of interests, where the matter in dispute is not covered by a collective agreement, and conflicts of rights.
In conflicts of interests the parties as a rule are free to take collective industrial action (strike or lockout); but when a collective agreement has been concluded, they are under an obligation of peace as long as the agreement is in force.
An alternative procedural system has been set up, and a conflict of right must be settled through negotiations at either the local, the organisational or the central organisational level. If the dispute is not resolved in this way, a dispute concerning the interpretation of the agreement must be referred to industrial arbitration and a dispute concerning a breach of the agreement must be brought before the Labour Court.
As a dispute-resolving body the Court has existed since 1900. In 1910 it was established as a proper court of law named The Permanent Court of Arbitration with special rules concerning appointment of judges and powers. Since 1964 it has been named the Labour Court (Arbejdsretten)
The present Danish Labour Court Act dates back to 1997.

4. Dispute-Resolving Bodies

The ordinary Danish courts of law consist of 24 district courts (and a Maritime & Commercial Court), 2 regional high courts and a Supreme Court. According to the Administration of Justice Act most cases are heard by a district court court as a first instance; and the judicial system is based on the principle that most cases may be tried at two and only two instances.

Denmark has just one Labour Court. It is not part of the ordinary judicial system but has, according to the Labour Court Act, exclusive jurisdiction to deal with first of all disputes of rights, especially breaches of agreements on wages and working conditions, including industrial actions in contravention of collective agreements.

Conflicts of interests (concerning areas not covered by collective agreements) are settled by negotiation, eventually facilitated by the Official Conciliator, or through collective industrial action. Pursuant to the Act on Conciliation in Industrial Disputes the Conciliator may prepare a compromise on which a ballot must be taken. If notice has been given of a strike or other industrial action the Conciliator may order a postponement of the action for a period, while negotiations take place.

Cases involving individual employment contracts are heard by the ordinary courts of law or eventually by arbitration pursuant to the Danish Arbitration Act.

However, cases concerning employment according to collective agreements may also be eligible for hearing in the ordinary system of law courts.

Thus, if a case belongs to the interpretation of a statutory provision which does not exclusively or chiefly concern areas that comes under the jurisdiction of the Labour Court, each of the parties is deemed entitled to demand that the matter be dismissed by that court or, at least, be postponed pending the decision of the ordinary courts of law.

Individual employees cannot institute proceedings before the Labour Court.

Meanwhile, if the relevant trade union is not inclined to prosecute the employee's claim before this Court, the Labour Court Act therefore grants the person in question permission to bring his own action for outstanding wages before the ordinary courts. The same permission are given to employees, who are not members of a trade union. Disputes between an employee and his union as well may be brought before the ordinary courts.

Basically, the interpretation of collective agreements is not covered by the Labour Court.

Instead, according to a special negotiation procedure, disputes to that effect are brought before the industrial arbitration tribunals, set up by the parties themselves. This is done on the basis of rules set down in the General Agreement between the Danish Employers' Confederation and the Danish Federation of Trade Unions and is based on the associated Norm for Rules for the Hearing of Industrial Disputes or similar provisions.

If there is agreement on that point the industrial arbitration tribunals may also consider other matters, and some collective agreements, particularly those involving public authorities as employers and salaried employees contain provisions that completely dispense with the Labour Court as a dispute-resolving body.

Correspondingly, the Labour Court may under the Act deal with cases that would otherwise be subject to industrial arbitration, if the parties so agree.

It is estimated that the industrial arbitration tribunals consider between 400 and 500 cases per year. The Labour Court deals with between 1,000 and 1,500 cases per year. In recent years, however, less than 25 cases per year were subjected to a full-court hearing. A somewhat larger number of cases about 100 per year, were concluded by the parties entrusting the decision to the judges who considered the cases in the preliminary meetings. The balance of cases were concluded by default judgements, settled by the parties themselves or lapsed without a court meeting.

Cases involving employment under the Civil Servants Act and the municipal public servants regulations are dealt with by the respective authorities and, in the final instance, by the ordinary courts of law. However, matters concerning collective neglect of the special duties incumbent upon civil servants, for instance related to work stoppages, contravention and interpretation of certain agreements on wages and terms of employment, are brought before a Governmental or Municipal and Regional Public Servants Court, respectively, in accordance with the Civil Servants Act and a special act. Between them, the public servants courts receive, on an average, 50 cases per year.

5. Contractual Negotiation

According to the General Agreement between the Danish Employers' Confederation and the Danish Federation of Trade Unions and the Norm for Rules for the Hearing of Industrial Disputes, an effort must be made to settle any disagreement of an industrial nature, whether it be a matter of dispute of interest or right, by conciliation.

According to the Labour Court Act these rules, which have served as a model for similar provisions in other general agreements and which have been adopted to a great extent in the ordinary agreements, are deemed to apply to parties, who have not themselves adopted adequate rules for the resolution of disputes of an industrial nature.

The existence of the special negotiation procedure means that only a minor part of this type of conflicts are continued before judicial dispute-resolving bodies, and it would normally be regarded as a breach of agreement if a party fails to participate in conciliation.

In the event of failure to settle the dispute by local negotiation between the employer and the employees' shop steward, the allegedly injured party will submit a petition for conciliation specifying the subject of the dispute. The next step is the setting-up of a conciliation committee, normally each party to the agreement will appoint a member, often from amongst a defined group of persons. The conciliators need not be impartial but they may not, however, have any personal interest in the matter to be considered. The discussions with the committee are rather informal and often take place on the firm’s premises.

The result of the conciliation is forthwith committed to a minute book, and if the conciliators are unanimous the committee may settle the dispute once and for all at variance with the wishes of the parties directly involved.

If the conciliation is futile, the consideration of the dispute may be continued at a meeting with the organisations. These meetings are usually attended by several representatives from each organisation and, as in the case of the conciliation committee, the board of negotiators may decide the matter if unanimous.

In situations where time is of the essence an alternative procedure is used: so-called joint meetings are called and everybody, including representatives of the central organisations, participate at the same time.

6. Industrial Arbitration

The industrial arbitration tribunals are not covered by the general Arbitration Act but are governed by provisions in the General Agreement between the Danish Employers Confederation and the Danish Federation of Trade Unions or similar general agreements as well as stipulations in the collective agreements in question. These are usually modelled after the Norm for Rules for the Hearing of Industrial Disputes. If the parties have failed to adopt adequate rules of their own, the Norm will apply pursuant to the Labour Court Act.

Usually the arbitration tribunals are set up for the purpose of hearing a single, already existing case, in which case each party normally appoints 2 arbitrators and jointly select one (or in some cases 3) umpire(s).

However there are a few permanent industrial arbitration tribunals, such as the permanent Board of Dismissals, which was set up in accordance with the General Agreement between the Danish

Employers' Confederation and the Danish Federation of Trade Unions for the purpose of deciding cases involving non-objective dismissals.
The umpire is selected most often from a small circle of legal professionals, for instance from the group of members of the Presidium of the Labour Court.
The only requirement in order for you to become an arbitrator, however, is that you have no personal interest in the matter.
If the parties fail to agree on the choice of an umpire, the President of the Labour Court will appoint him or her.
The industrial arbitration tribunals are concerned, first and foremost, with disputes over the interpretation of the collective agreements, which the parties have been unable to resolve, by negotiation in accordance with the agreement. Normally it is regarded as a breach of agreement, if a party fails to co-operate in the implementation of the arbitration proceedings.
Although, according to the Act, a breach of the collective agreement seems to be a matter for the Labour Court, another significant area for the industrial arbitration tribunals involves cases concerning dismissals of shop stewards, pleading that the dismissal was non-objective.
Furthermore, some agreements contain provisions that refer cases to arbitration on a general basis, and, besides, it frequently occurs that the parties specifically agree to have the industrial arbitration tribunal consider the matter of breach of agreement in connection with the question of interpretation.
The parties presenting their points of view in the way of a complaint and defence plea normally commence the arbitration proceedings.
The industrial arbitration tribunal is presided over by the umpire, and the actual presentation to the tribunal is done verbally and in principle in the same manner as before the ordinary courts of law. However, the representatives of the parties are not always lawyers, and in reality the hearing can be rather informal.
If there is no agreement between the arbitrators, the umpire will have the final say in the matter and a detailed award arranged as in any civil judgement.

7. The Labour Court

7.1.Jurisdiction

The Danish Labour Court is a special court of law. The Court is seated in Copenhagen, but the jurisdiction includes the whole country.
Cases involving the following must be referred to the Labour Court and cannot be dealt with by the ordinary courts of law:
a) Breaches and interpretations of a general agreement between the Danish Employers' Confederation and the Danish Federation of Trade Unions, and/or corresponding general agreements and settlements.
b) Breaches of collective agreements on wages and working conditions.
c) The lawfulness of a warned collective industrial action or the notices issued in this connection, provided the organisation or party effected has objected within a few days.
d) Whether a collective agreement exists. -in support of a demand for an agreement in an area where no collective agreement has been made.
e) Disputes over the competence of the official conciliators.

7.2.Composition

The Labour Court has a body of 49 members: a President and 5 vice-presidents (the Presidium), 6 ordinary and 14 substitute members appointed on recommendation by private employers, organisations and public employers plus 6 ordinary and 17 substitute members appointed on recommendation by employees' organisations.

The Minister of Employment appoints the ordinary and substitute members to the court for a period of 5 years.
Upon recommendation by the ordinary judges the Minister appoints the President and vice-presidents for the time for them to complete a 70th year.
Normally the President and vice presidents are judges from the Danish Supreme Court, where as the other members of the Court are chairmen of trade unions or heads of rather large companies, employers' organisations or public authorities.
Consequently no member is assigned to a full-time job at The Labour Court.

7.3. Parties

Cases can only be brought by and against the relevant employers and employee organisations, regardless of whether the breach was committed by or against single members of either organisation, or the collective industrial action was threatened or commenced by or against single members of either organisation. Where an organisation is a member of a comprehensive organisation, the case must be conducted by and against the latter.
When the party of the employer is a single company or authority, not affiliated to an employers' organisation the case must be conducted by or against the individual company or the authority it self.
An individual employee cannot bring a case before the Labour Court.
In the ordinary Danish courts only advocates are allowed to represent the parties, but in The Labour Court there are no restrictions as to the rights of the parties to be represented by somebody else. Normally agents of the organisations represent the parties.

7.4. Preconditions

Before a matter is brought before the Labour Court, attempts of settling the dispute by negotiation will usually have been made in accordance with the agreement. Questions of interpretation may have been decided by industrial arbitration.
As a rule, in order to impose a fine for breach of a collective agreement a joint meeting must be held before the case is brought before the Labour Court.

7.5. Proceedings

A matter is brought before the Labour Court by submitting a written plea of complaint. The secretariat of the Court sends a copy of the plea to the defendant calling at the same time for a written plea for the defence, and setting the time for a preliminary meeting within 3 weeks. Among other things the written complaint and the defence plea must hold the claims of the party and a brief presentation of the facts supporting the claims.
When court is held by the President, one of the vice-presidents or in certain cases the Head of Secretariat alone, the parties (each represented by a comprehensive organisations) exchange complaints and defences pleas and, as the case may be, additional pleas. The judge may ask the parties to obtain further statements or information, and the case may be postponed, setting a later date for a preliminary meeting.
This procedure includes an investigation of a possible amicable solution, in a vast majority of cases the parties manage to reach a settlement - sometimes through the intervention of the judge and are thereby concluded.
If the judge can ascertain that it is impossible to reach an agreement between the parties, a date and time is set for a full-court hearing. As a rule the President or vice-president who has dealt with the case during the preparatory meetings, will sit as presiding judge of the Court during the hearing. At the final hearing of the case the President or one of the vice-presidents will sit together with 3 of the members from the side of the employers and 3 of the members from the side of the employees. If a party is not a member of the Danish Employers' Confederation or the Danish Federation of Trade Unions the secretariat of the Court will select the members to sit on the case.

Parties not attached to one of the organisations or authorities giving recommendations to the Minister of Employmanent on appointment of judges, may demand that their case is heard and judged by a member of the Presidium alone.
If a case is of special interest, 3 members instead of one may represent the Presidium of the Court.
With the necessary adjustments the principles applicable to ordinary civil law cases under the provisions of the Administration of Justice Act apply to the procedures of the Labour Court. In practice the hearings are rather informal and brief.
While the preliminary meetings are held in camera, the public can attend the full-hearings.
After the opening of the hearing the representative for the plaintiff presents his case before the Court in an objective manner, including recitation of documents. The representative of the defendant may add his observations to the presentation. After the presentation follows the examination of possible witnesses who (like in any other Danish courts of law) are told that it involves criminal liability not to tell the truth. The representatives of both parties and each member of the Court may put questions to the witnesses. After examining the witnesses, the representatives of the parties deliver their pleadings and the hearing is declared closed by the presiding judge.
Immediately after the hearing 7 (or 9) members of the Court sit in camera to discuss what is to be decided and to give their votes. First a member appointed on recommendation by the employer or the employee side gives his vote and explains his reasons. Then a member, appointed on recommendation by the opposite side, gets the floor and so on. The presiding judge gives his vote at the end. When the votes have all been given, a date is set for the final adoption of the decision.
Before this final meeting is held, the presiding judge draws up a draft of the decision and copies of the draft sent to the other members.
On the set date the case is discussed briefly again, and the other members of the Court may propose alterations to the draft.
The decision is drawn up according to the traditions of the Danish civil law. It consists of an exposition of the parties' claims, an account of the facts of the case as they have been presented to the Court and a short record of the statements made by the witnesses, the pleadings made by the representatives, the legal rules and principles on which the decision is based, and the grounds of the decision are given. Finally the conclusion of the Court is specified.
If there are any dissenting opinions, they are not mentioned in the decision or published. Thus the decision appears as if it had been adopted unanimously although dissenting opinions occur very often. The members of the Court are not entitled to reveal to anybody what has been discussed in camera.
The decision and the final wording are adopted according to the majority of votes, and the presiding judge pronounces the decision publicly in the courtroom.

7.6. Cases of Urgency

Pursuant to the Labour Court Act strikes or lockouts in contravention of a collective agreement must immediately be reported to the organisations, and a joint meeting attended by the organisation must be held the day after the beginning of a strike or lockout.
When a current industrial action is brought to the Labour Court, the case will be considered as a case of urgency. The first preliminary meeting will deal with the case within a week, usually the following Monday or Thursday.
Already at the preliminary meeting the defendant will often admit, that the industrial action in question is in contravention of the collective agreement, and the representative of the defendant will promise to direct the members of the organisation, who are taking part in the industrial action, to bring the action to an end.
As a rule the presiding judge will appeal to the members of the organisation to comply with the request of their organisation. If the members of the organisation do not comply with such a request

immediately, the fine, which they are to be imposed because of the action, will increase considerably. If the defendant does not admit that the industrial action is in contravention of the collective agreement, and if the opposite party insists on the claim, a full-court hearing will be fixed, sometimes within 14 days. If the Court cannot deal with all the problems of the case immediately, it can at the end of the hearing deliver an interlocutory order declaring the industrial action in contravention of the collective agreement. The final decision will normally be released 2-3 weeks later.

If the industrial action is no longer on going when the case is brought to the Court, the case will be handled as a non-urgent case.

7.7. Decisions during Preliminary Meetings

In a substantial number of cases the parties and the judge at the preliminary meeting will agree that the matter is not of such a nature as to justify a full-court hearing.

If so, evidence is produced at this point or at a subsequent preliminary meeting and, in conclusion, the parties will present a brief oral review of their points of view.

The resolution of the case is thereafter entrusted to the President, vice-president or in certain cases the Head of Secretariat. According to the Labour Court Act the head of the secretariat, like any member of the Presidium, is required to meet the general conditions of being a judge and in fact has always been a district court judge.

In most cases the judge will promptly deliver and explain the result, which is entered into the records of the Court, usually without special grounds. This marks the final conclusion of the case.

7.8. Penalties

Sanctions against breaches of agreement invariably take the form of penalties payable to the aggrieved organisation. In cases involving failure to pay a set fine the penalty may include additional payment of the shortfall.

The penalty is determined on the basis of all fact of the case and with due regard to the degree the breach of agreement was excusable.

Very brief strikes are normally exempt from penalties. Participants in a work stoppage who resume work before a joint meeting is held, or who follow a recommendation from the joint meeting to return to work, are only fined a penalty if there is clearly no reasonable justification for the work stoppage or the stoppage is deemed to be part of a systematic action.

Currently the penalty for participation in work stoppages in contravention of collective agreements is DKK 35.00 per hour of the strike for an unskilled worker and DKK 40.00 per hour for a skilled labourer. If a work stoppage continues after the judge at a preparatory meeting in the Labour Court, has endorsed the organisations mandate to the strikers to resume work, the penalty is raised by DKK 30.00 per hour.

The penalties imposed by the Labour Court in other cases frequently amount to DKK 500,000.00. Penalties may be imposed on an organisation as such if it has been party to a breach of agreement. In serious cases the penalty imposed may be very considerable. The largest penalty so far imposed on an organisation was DKK 20,000,000.00.

7.9. Costs

The costs of the Labour Court are first and foremost financed by the Mineistry of Employment. However, under the Labour Court Act, the unsuccessful parties to the cases also contribute. Still, the amounts in question are quite modest: DKK 2,000.00 after a full-court hearing and DKK 500.00 after a case decided by judgement in default.

Thus, unlike what is customary in ordinary civil cases, the Labour Court will not order the unsuccessful party to pay an amount to cover the successful party-s legal costs.

7.10. Review and Appeal

Decisions made by the Labour Court cannot be appealed to any other judicial instance.

However, the Court itself may review the decision. As to default judgements, if the defendant asks for it within one month, but generally merely if the case has been incorrectly elucidated and the defendant only in this manner may avoid a significant loss.

7.11. Workload and Aspects of Time

Over the past few years the Labour Court has received an increasing number of cases, 1.000 – 1.400 per year.

5-10% of the cases, brought before the Labour Court, concern strikes or lockouts in contravention of collective agreements. Another 75% of the cases are brought against non-organised employers, mostly on the payment of alleged substandard wages etc.

The increased number of cases has not resulted in a corresponding increase in hearings. Probably, partly because most of the former type cases are settled out of court and partly because a decision of a substantial judgements is entrusted with the judges during preparatory meetings.

As a rule final decisions will be made 3 months to 1 year after the day of registration.

8. References to the European Court of Justice

The Labour Court can refer to the European Court of Justice just like the ordinary courts of law and in the same fashion. Actually the Labour Court has asked only a couple of times for a preliminary ruling.

Industrial arbitration tribunals can refer to the European Court as well, and have done so in a few cases.

9. Enforcement

Judgements of the Labour Court, decisions by a judge during preliminary meetings and full settlements made before the Court can be executed according to the rules of the Administration of Justice Act like ordinary civil judgements and settlements.

In the same way decisions made at conciliation, organisation or joint meetings and decisions made by industrial arbitration tribunals according to the Labour Court Act are enforceable along the same lines as amicable settlements made before a court of law.