

QUESTIONNAIRE FOR NATIONAL SUMMARY OF LABOUR COURT SYSTEM

1. Do you have a Labour Court for resolution of labour disputes:

In accordance with Chapter 452 of the Maltese Laws, called Employment and Industrial Relations Act, there is established a tribunal known as the Industrial Tribunal – (*Section 73 (1)*)

1.1 If so, does it deal with individual and collective rights or just one or there other and, if so, where are the other disputes resolved.

1. When a trade dispute has been registered and the Minister responsible for Employment and Industrial Relations does not manage to get the parties to reach an amicable settlement, he shall refer the issue to the Industrial Tribunal within 21 days from being informed that no settlement has been reached (*Section 74 (1)*)

2. The same applies if parties agree that the trade dispute be referred to the tribunal, in which case the Minister has to refer the issue to the Industrial Tribunal within 21 days – (*Section 74 (2)*)

3. The Minister may also refer to the tribunal for advice, any matter relating to or arising out of a trade dispute, or trade dispute generally or trade disputes of any class or any other matter which in his opinion ought to be referred (*Section 74 (4)*)

A "trade dispute" is defined in Article 2 as a dispute between employers and workers, or between workers and workers, which is connected with any one or more of the following matters:

(a) terms and conditions of employment, or the physical conditions in which any workers are required to work;

(b) engagement or non-engagement, or termination or suspension of employment or the duties of employment, of one or more workers;

(c) allocation of work or the duties of employment as between workers or groups of workers;

(d) matters of discipline;

(e) facilities for officials of trade unions;

(f) machinery for negotiation or consultation, and other procedures, relating to any of the foregoing matters, including the recognition by employers or

employers' associations of the right of a trade union to represent workers in any such negotiation or consultation or in the carrying out of such procedures;

(g) the membership or non-membership of a worker in a particular trade union;

4. The Industrial Tribunal also has exclusive jurisdiction to consider and decide the following cases:- (*Section 75 (1)*)

(a) All cases of alleged unfair dismissals

(b) All cases falling within the jurisdiction of the Tribunal by virtue of Title 1 of the Act or any regulations. Title 1 provides for the following matters - Recognised Conditions of Employment, Protection of Wages, Protection against Discrimination related to Employment, Termination of Contracts of Service, Enforcement and Non-Compliance related to Employment

1.2 What is the composition of the court

The Prime Minister in terms of Section 73 (2) shall appoint a panel of not more than fifteen persons to act as chairpersons of the Industrial Tribunal, after consultation with the Malta Council for Economic and Social Development, so however that -

(a) at least three of the members so appointed shall be persons who are advocates of at least seven years experience;

(b) such persons shall be appointed for a period that does not exceed three years from the date of their appointment and may be re-appointed for further periods each of not more than three years;

(c) such persons shall serve as chairpersons either in turn or in accordance with such distribution of duties and subject to such provisions as to inability to serve and other circumstances, as may be prescribed by the Minister.

Section 73 (3) provides that The Industrial Tribunal shall consist of -

(a) a Chairperson chosen from the above-mentioned list; and

(b) two other members of the Tribunal who shall be selected by the Chairperson of the Tribunal to represent, so far as may be equally, the interests in dispute, from two panels of persons appointed by the Minister to serve as members of the Tribunal as occasion may require, one panel consisting of persons nominated by trade unions represented on the Malta Council for Economic and Social Development and the other panel consisting of persons nominated by employers' associations and other organisations representing employers represented on the Malta Council for Economic and Social Development: Provided that if the parties to a trade dispute agree, within such time as the Chairperson shall fix for the purpose, on the selection of the two

members who are to sit with the Chairperson, the Chairperson shall make the selection according to that agreement.

In cases where the Tribunal has an exclusive jurisdiction as provided for in section 75 (vide point 4 in question 1.1) the Tribunal shall be composed of one Chairperson to be chosen from the list of chairpersons being advocates of at least seven years experience (Section 73 (4))

Section 73 (5) then provides that in cases which are not contemplated in section 75 of the Act and in which the Government, or any body or company where the Government is involved, is a party, the Tribunal shall be composed of -

(a) a Chairperson chosen from the list set up the Prime Minister above mentioned

(b) a member selected by the Chairperson of the Tribunal from the panel of persons nominated by trade unions; and

(c) a member representing the government, or other body or company involved in the trade dispute who shall be appointed ad hoc by the Minister.

1.3 Is there a system of appeal, if so, what is it

In cases of unfair dismissal and in cases falling under the jurisdiction of the Industrial Tribunal in accordance with article 75(1)(a) and (b), there shall be a right of appeal on a point of law.

Such appeal shall be made by an application to the Court of Appeal constituted in accordance with article 41(6) of the Code of Organisation and Civil Procedure. Such application shall be filed by not later than twelve days from the date of the decision of the Tribunal:

Provided that when an appeal is lodged to the Court of Appeal and a plea is entered by either of the parties that the appeal is null and void because it is not based on a point of law decided by the Tribunal or that the appeal is null and void at law for any other reason whatsoever, that appeal shall be referred by the Registrar to the Court of Appeal for a decree *in camera* on the admissibility or otherwise of the appeal. (Section 82 (3))

1.4 Please provide a breakdown of the types of cases that come before the Labour Court, with a rough estimate of the numbers of each category annually

Vide above – last annual report traceable dates back to 2004!

PROCEDURE

2. Does a claim have to be made in a particular form

The matter has to be referred to the Tribunal for a decision by means of a referral in writing which should consist of a declaration stating the facts of the case (Section 75 (2) & (3)) The Statement of case shall also contain a list of all the witnesses that the party intends to produce (*Section 8 of the Industrial Tribunal Procedure Rules -- Subsidiary Legislation 452.18*)

Does it have to be made within a specific time of the act complained of?

The referral is to be presented in the Registry of the Tribunal by not later than four months from the effective date of the alleged breach. (*Section 73 (3)*)

Does the employer have a specific time within which to respond

The statement of case is to reach the Secretary of the Tribunal seven clear days before the date set for hearing (*Section 5 of the Industrial Tribunal Procedure Rules -- Subsidiary Legislation 452.18*)

Can time for compliance be extended, if so how

The law does not provide for such eventuality, nevertheless, the Tribunal has the power to accept late submissions if a valid reason at law is given, as the Tribunals have all the powers which are vested in the Civil Court, First Hall, in terms of the Code of Organization and Civil Procedure (*Section 77*)

Are any preliminary steps required to be taken before any type of claim can be commenced

Vide above

3. Is there a court fee, if so how much

No application fee or Court fees are payable. The only real expenses are the transcripts which are obtained at a reasonable fee from the Law Courts transcribers, and the fees due to the person assisting the applicant. These fees are stipulated by the Representation Fees Regulations, Subsidiary legislation 452.61, and the maximum charge allowed is €93.17.

**4. Do parties have to be represented or can they represent themselves?
Is trade Union representation common?**

The referral may be made in writing by the worker alleging the breach or by some other person acting in the name and on behalf of such worker (*Section 75 (2)*). The case for any party to a dispute may be presented by the party itself which may choose to be represented or aided by a person or persons of its trust. (*Section 78 (2)*).

5. How are judgment given orally or in writing?

Decisions and awards of the Tribunal shall be in writing and shall not specify in detail the reason for such decision or award, but may make reference to the main evidence heard. The Tribunal, however, shall make it quite clear from its decision or award that all the relevant arguments put forward by both sides shall have been taken into consideration (*Section 12 of the Industrial Tribunal Procedure Rules – Subsidiary Legislation 452.18*)

**Is there a time limit for producing judgments?
If so, what is it?**

The Tribunal shall decide any issue referred to it within a period that does not exceed one month from the date of the referral, unless in the opinion of the Chairperson, a longer period is necessary for a valid reason which must be stated and registered in the proceedings of the Tribunal. (*Section 78 (1)*)

Are there any sanctions for late judgment?

The law does not provide for any sanctions.

REMEDIES

**6. What type of remedy can be awarded for what types of claim?
Are there limits to compensation?
If so, what?**

Article 80 and 81 provide as follows:-

80. (1) In giving any award, decision or advice, the Tribunal shall take into consideration the social policies of the Government based on principles of social justice and the requirements of any national development plan and other economic policies of the Government in the course of implementation, and shall endeavour to ensure that its award, decision or advice is in furtherance of any such policies and plans.

(2) Where any matter before the Tribunal concerns or relates to public officers -

(a) the Tribunal shall ensure that there is no encroachment on the functions of the Public Service Commission, and shall abstain from taking cognizance of any matter which is within the functions of that Commission; and

(b) any award or decision of the Tribunal shall be subject to the overriding authority of the House of Representatives.

(3) Where the matter before the Tribunal concerns or relates to persons employed with bodies corporate established by law and managed by a board or other body appointed by the Government or to persons employed with companies in which the Government has a controlling interest, any award or decision of the Tribunal shall endeavour to establish or maintain due relativity between the terms and conditions of those employees and the terms and conditions of public officers.

(4) The Tribunal shall not make any award or decision which is inconsistent with any enactment, or other instrument having the force of law, regulating wages and other terms and conditions of employment.

81. (1) Where on a complaint for unfair dismissal referred to the Tribunal under article 75, the Tribunal -

(a) finds that the grounds of the complaint are well founded, and

(b) on the specific request of the complainant to be reinstated or re-engaged made in the referral or in the statement of his case,

the Tribunal considers that it would be practicable and in accordance with equity, for the complainant to be reinstated or re-engaged by the employer, the Tribunal shall make an order to that effect, stating the terms on which it considers that it would be reasonable for the complainant to be so reinstated or re-engaged:

Provided that where the complainant is employed in such managerial or executive post as requires a special trust in the person of the holder of that post or in his ability to perform the duties thereof, the Tribunal shall not order the reinstatement or reengagement of the complainant; but where the complainant was appointed or selected to such post as aforesaid by his fellow workers the Tribunal may order his reinstatement or re-engagement in the post held by him before such appointment or selection.

(2) Where on a complaint made under article 75, the Tribunal finds that the grounds for the complaint are well-founded -

(a) in cases of unfair dismissal, if there is no specific request for reinstatement or re-engagement or the Tribunal decides not to make an order for reinstatement or re-engagement as aforesaid, the Tribunal shall make an

award of compensation, to be paid by the employer to the complainant, in respect of the dismissal:

Provided that, in determining the amount of such compensation, the Tribunal shall take into consideration the real damages and losses incurred by the worker who was unjustly dismissed, as well as other circumstances, including the worker's age and skills as may affect the employment potential of the said worker:

(b) in all other cases, the Tribunal may make such order as it deems necessary in order to remedy the breach or it may make an award of compensation to be paid by the employer to the complainant, or it may award such compensation and make such orders as it may deem necessary in order to remedy the breach.

7 Can interest be awarded, if so, in what circumstances?

The Tribunal can take any decision it wants, as stated above.