

NATIONAL LABOUR COMMISSION REGULATIONS, 2006 (L.I. 1822)

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NATIONAL LABOUR COMMISSION REGULATIONS, 2006 (L.I. 1822)

IN exercise of the powers conferred on the Commission under section 152 of the Labour Act, 2003 (Act 651) these Regulations are made this 1st day of February 2006.

Negotiation procedures

Regulation 1—Negotiation in good faith

Parties to an industrial dispute shall negotiate in good faith in the first instance to resolve the dispute in accordance with the dispute settlement procedures established in their respective Collective Agreements or Contracts of Employment.

Regulation 2—Time for concluding negotiations

The negotiation shall be concluded within seven working days after the occurrence of the dispute.

Regulation 3—Records of negotiation process

(1) The parties shall keep written records of the negotiation process and the outcome signed by both parties.

(2) Where the parties cannot agree to sign a consensus record together, each party may present its own record duly signed.

Regulation 4—Failure to resolve dispute by negotiation

If the dispute remains unresolved after seven working days, either party shall refer it to the Commission for the appointment of a mediator.

Regulation 5—Failure to exhaust procedures in Collective Agreement

Where the Commission is satisfied that the parties have not exhausted the procedures established in the Collective Agreement or have not agreed to waive those procedures, the Commission shall order the parties to comply with those procedures within the time determined by the Commission.

Mediation procedures

Regulation 6—Complaint to be in writing

The complainant shall submit a written complaint to the Commission or complete Form "A" (Complainant Form) specified in the Schedule to these Regulations and submit it to the Commission.

Regulation 7—Time within which to respond to complaint

(1) The Commission shall within three working days serve the other party with a copy of the complaint and request the other party to the dispute to respond to the complaint in writing within fourteen working days after the receipt of the Commission's request.

(2) Where a party to a dispute fails to respond to the request of the Commission within the stipulated period of fourteen working days, the Commission shall send a final notice to the party concerned to respond within a further seven working days after which the Commission shall proceed to determine the case.

Regulation 8—Choice of mediator

After receipt of the response in regulation 7, the Commission shall provide both parties with the list of mediators for the parties to make a selection of a mediator or mediators.

Regulation 9—Appointment of mediator

The Commission shall appoint the mediator or mediators jointly chosen by the parties to mediate in the dispute.

Regulation 10—Failure to agree on choice of mediator

Where the parties to a dispute fail to agree on a choice of mediator the Commission shall, within two working days, appoint a mediator or mediators to mediate in the dispute.

Regulation 11—Time within which to conclude mediation

The mediation shall be concluded within fourteen days after the date of appointment of the mediator.

Regulation 12—Dispute settled through mediation

(1) Where at the end of the mediation there is a settlement of the dispute, the terms of the settlement shall be recorded and signed by the mediator and the parties to the dispute.

(2) A copy of the signed terms of settlement shall be lodged with the Commission.

Regulation 13—Binding settlement

The settlement referred to in regulation 12 shall be binding on the parties.

Regulation 14—Duty to co-operate in mediation efforts

The parties to the mediation process shall co-operate in the mediation efforts.

Regulation 15—Failure to settle through mediation

Where there is no settlement at the end of the mediation process, the mediator shall immediately declare the dispute as unresolved and refer the dispute to the Commission within three working days for voluntary arbitration.

Regulation 16—Conflict of interest

- (1) A mediator shall disclose in writing any interest of whatever nature in a dispute referred for mediation.
- (2) Upon consideration of the interest by the Commission, the mediator may be changed unless the parties to the dispute consent in writing to retain the mediator.

Voluntary arbitration

Regulation 17—Reference to voluntary arbitration

Where a dispute is referred to the Commission under regulation 15, the Commission shall, with the consent of the parties, refer the dispute to an arbitrator or an arbitration panel for voluntary arbitration.

Regulation 18—Failure to agree on choice of arbitrator

Where the parties to a voluntary arbitration fail to agree on the appointment of an arbitrator or an arbitration panel, the Commission shall, within three working days, appoint an arbitrator or arbitration panel.

Regulation 19—Disclosure of interest

- (1) An arbitrator shall disclose in writing any interest of whatever nature the arbitrator may have in a dispute referred for voluntary arbitration.
- (2) Upon consideration of the interest by the Commission, the arbitrator may be changed unless the parties to the dispute consent in writing to waive this option.

Regulation 20—Time within which to submit statement of issues or questions in dispute

Within three working days after the appointment of an arbitrator or arbitration panel, the parties to an industrial dispute shall submit to the arbitrator in writing a statement on the issues or questions in dispute signed by one or more of the parties or their representatives.

Regulation 21—Failure or refusal to sign a statement of issues or questions in a dispute

- (1) Where a party to a dispute fails or refuses to sign a statement as required in regulation 20, the statement may be submitted without that party's signature.
- (2) A statement pursuant to sub-regulation (1) shall state that the other party has failed or refused to sign the statement and the Commission shall authorise the arbitrator to proceed with the arbitration despite the fact that only one party has signed the statement of the issue.

Regulation 22—Failure to appear before an arbitrator

If a party fails to appear before the arbitrator or arbitration panel after the expiration of seven working days after being notified, the arbitrator or arbitration panel shall proceed to hear and determine the dispute.

Regulation 23—Time within which to conclude voluntary arbitration

The voluntary arbitration process shall be concluded within fourteen working days after the date of appointment of the arbitrator or arbitration panel or within the extra time determined by the Commission.

Regulation 24—Voluntary arbitration award binding

The decision of the arbitrator or a majority of the arbitrators shall be binding on the parties.

Regulation 25—Arbitration award to be communicated

The arbitrator or arbitration panel shall within seven working days of the last sitting make an award and communicate the award to the parties and the Commission within seventy-two hours.

Compulsory arbitration

Regulation 26—Compulsory arbitration by the Commission

If a dispute remains unresolved within seven working days after the commencement of a strike or lockout, the dispute shall be settled by compulsory arbitration by the Commission.

Regulation 27—Content of notice to be served by the Commission

(1) Where a dispute is referred to the Commission under regulation 26, the Commission shall serve a notice on the parties

- (a) stating what in its opinion the unresolved issues are between the parties, and
- (b) asking the parties whether they agree to those issues.

(2) The parties shall respond within three working days.

Regulation 28—Composition of Compulsory Arbitration Panel

A compulsory arbitration shall comprise three members of the Commission, one member each representing Government, Organized Labour and Employers Organisations.

Regulation 29—Time within which to conclude compulsory arbitration

A compulsory arbitration process shall be concluded within fourteen working days after service of the notice in regulation 27.

Regulation 30—Compulsory arbitration award binding

The award of the majority of the arbitrators in a compulsory arbitration shall be binding on the parties.

Regulation 31—Publication of compulsory arbitration award in Gazette

A compulsory arbitration award shall immediately on completion be published in the Gazette and other State media by the Commission and copies shall be given to the parties to the dispute.

Regulation 32—Appeals against compulsory arbitration award

Appeals against a compulsory arbitration award shall lie to the Court of Appeal on questions of law only, within seven working days after the publication of the award under regulation 31.

Regulation 33—Summary settlement of dispute by the Commission

(1) After the receipt of a complaint in accordance with regulation 6 and a response to the complaint in accordance with regulation 7, the Commission may, after giving the parties to the dispute the right to be heard, settle the dispute summarily without recourse to mediation or arbitration.

(2) Where a party to a dispute fails to respond to a complaint in accordance with regulation 7, the Commission may determine the complaint without recourse to that party and the decision of the Commission shall be binding on the parties to the dispute.

(3) The Commission may re-open a dispute which has been determined under sub-regulation (2) if a party to the dispute on application within fourteen working days after the determination of the case provides reasonable explanation for the failure to respond to the complaint.

Procedures for resolving disputes from essential services

Regulation 34—Dispute Resolution in Essential Services

Parties to an industrial dispute in essential services shall endeavour to settle the dispute within three days after the occurrence of the dispute by negotiation.

Regulation 35—Referral to the Commission after failure to resolve dispute

If the dispute remains unresolved after the expiration of the three days referred to in regulation 34, the parties shall within the next working day refer the dispute to the Commission for settlement by compulsory arbitration.

Regulation 36—Compulsory arbitration by the Commission

The Commission shall, not later than three working days after the dispute has been referred to it, constitute a compulsory arbitration panel to settle the dispute by compulsory arbitration within fourteen working days.

Strikes and lockout procedures

Regulation 37—Notice of intention to strike or lockout

Where

(a) the parties fail to agree to refer a dispute for voluntary arbitration, or

(b) a dispute remains unresolved at the end of the arbitration proceedings,

either party intending to take strike action or prepare for lockout, shall give written notice of the intended action to the other party and the Commission shall, within seven working days after the

failure of the parties to agree to refer the dispute to another arbitration, terminate the arbitration proceedings.

Regulation 38—Time within which strike or lockout action can be undertaken

Strike action or lockout may be undertaken after the expiration of seven working days from the date of the notice referred to in regulation 37 and not at any time before the expiration of that period.

Regulation 39—Effective date of notice of strike or lockout

The seven working days referred to in regulation 38 shall begin to run from the date of receipt of the notice by the Commission.

Regulation 40—Prohibition of strike or lockout in respect of essential services

An employer carrying on, or a worker engaged in an essential service shall not resort to a lockout or strike in connection with or in furtherance of an industrial dispute in which workers in the essential service involved.

Regulation 41—Cooling-off period

A party to an industrial dispute shall not resort to a strike or lockout during the period when negotiation, mediation or arbitration proceedings are in progress.

Procedures for maintaining a database of mediators and arbitrators and fees

Regulation 42—List of mediators and arbitrators

The Commission shall maintain a list of industrial relations mediators or arbitrators who meet the criteria of the Commission.

Regulation 43—Application to be listed as mediator or arbitrator

A person who seeks to be listed as a mediator or arbitrator shall complete and submit an application form which may be obtained from the Commission.

Regulation 44—Mediators and arbitrators not employees of Commission

A person appointed as mediator or arbitrator of the Commission does not become an employee of the Commission.

Regulation 45—Disqualified mediator or arbitrator

A person appointed as a mediator or arbitrator is not qualified to serve in that capacity if the person has a financial or other interest in the undertaking or employers' or workers' organisation involved in the dispute, unless the parties to the dispute agree to the appointment in writing despite the disclosure of the interest.

Regulation 46—Removal from the list of mediators and arbitrators

A person listed as a mediator or arbitrator may be removed from the list by the Commission on the grounds that the person

- (a) no longer satisfies the criteria for admission,
- (b) has been repeatedly or flagrantly delinquent in submitting reports to the Commission,
- (c) has refused to make reasonable and periodic reports in a timely manner to the Commission concerning activities relating to mediation or arbitration,
- (d) has been the subject of complaints by parties who use the services of the Commission after appropriate enquiry has established a just cause for the cancellation, or
- (e) has died.

Regulation 47—Notice for removal of mediators and arbitrators

A mediator or arbitrator listed on the database may only be removed after thirty days' notice.

Regulation 48—Voluntary withdrawal from list of mediators or arbitrators.

A person listed as a mediator or an arbitrator by the Commission may withdraw from the list at any time by giving the Commission thirty days' notice in writing.

Regulation 49—Mediation and voluntary arbitration fees

Fees shall be in conformity with Government Consultancy rates obtained from the Ministry of Finance and Economic Planning.

SCHEDULE

(Regulation 6)

NATIONAL LABOUR COMMISSION

COMPLAINT FORM A

Complainant:.....
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Respondent:

Address :.....
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Address:

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Contact Nr
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Contact Nr

COMPLAINT

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Relief Sought

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Signed:

COMPLAINANT

JOSEPH A. ARYITEY

Chairperson, National Labour Commission

Date of Gazette Notification: 17th March 2006.

Entry into force: 22nd June 2006.