

STATUTORY INSTRUMENTS

2012 No. 8.

THE LABOUR DISPUTES (ARBITRATION AND SETTLEMENT)
(INDUSTRIAL COURT PROCEDURE) RULES, 2012

ARRANGEMENT OF RULES

Rule

PART I—PRELIMINARY

1. Title.
2. Interpretation.

PART II—REFERENCE OF A LABOUR DISPUTE TO THE INDUSTRIAL COURT.

3. Reference of a labour dispute.
4. Receipt of a reference.
5. Memorandum of each party.

PART III—HEARING OF A LABOUR DISPUTE.

6. Extension of time.
7. Registrar to fix hearing.
8. Legal representation.
9. Hearing a labour dispute.
10. Witnesses.
11. Examination and cross examination.
12. Evidence.

Rule

PART IV—PROCEDURE OF INDUSTRIAL COURT IN
ESSENTIAL SERVICES DISPUTES.

13. Notice of withdrawal of labour.
14. Reference of collective withdrawal of labour to the court.
15. Filing of reference with Registrar.
16. Memorandum of each party.
17. Setting a hearing date.
18. Expeditious hearing.

PART V—DECISIONS AND AWARDS OF THE COURT.

19. Decision of the court.
20. Awards of the court.
21. Awards to be submitted to the Minister.
22. Enforcement of awards or decisions of the court.

PART VI—APPEALS.

23. Appeals from decisions of the court.
24. Appeals from decisions of a labour officer.

PART VII—MISCELLEANOUS.

25. Revocation of S.I. 224 - 3.

SCHEDULES

- | | | |
|-----------------|---|--|
| First Schedule | - | Reference of a labour dispute to the Industrial Court by a labour officer. |
| Second Schedule | - | Reference of a labour dispute to the Industrial Court by a party to the dispute. |
| Third Schedule | - | Industrial Court register. |
| Fourth Schedule | - | Reference of a labour dispute to the Industrial Court by a Minister. |
| Fifth Schedule | - | Appeal from the Industrial Court to the High Court. |

STATUTORY INSTRUMENTS

2012 No. 8.

The Labour Disputes (Arbitration And Settlement) (Industrial Court Procedure) Rules, 2012.

(Under section 40(1) of the Labour Disputes (Arbitration and Settlement) Act 2006, Act No. 8 of 2006).

IN EXERCISE of the powers conferred upon the Minister responsible for labour by section 40(1) of the Labour Disputes (Arbitration and Settlement) Act 2006, and in consultation with the Chief Justice, these Rules are made this 28th day of April, 2011.

PART I—PRELIMINARY.

1. Title.

These Rules may be cited as the Labour Disputes (Arbitration and Settlement) (Industrial Court Procedure) Rules, 2012.

2. Interpretation.

In these Rules unless the context otherwise requires—

“Act” means the Labour Disputes (Arbitration and Settlement) Act 2006, Act No. 8 of 2006;

“Court” means the Industrial Court established under section 7 of the Act;

“Registrar” means the Registrar of the Industrial Court appointed under section 12 of the Act.

PART II—REFERENCE OF A LABOUR DISPUTE TO THE COURT.

3. Reference of a labour dispute.

(1) Where a labour officer is requested by a party to a dispute to refer the dispute to the court under section 5 of the Act, the labour officer shall refer the dispute in the form specified in the First Schedule.

(2) Where a labour dispute has been reported to a labour officer and he or she has not referred it to the court or otherwise disposed of it within eight weeks, a party to the dispute may refer the dispute to the court in the form specified in the Second Schedule.

(3) A reference to the court by a labour officer shall be accompanied by—

- (a) a report of the labour officer describing the dispute and the steps taken by him or her to resolve the dispute; and
- (b) all documents and information furnished to the labour officer by the parties.

(4) Where a party to the dispute has referred the dispute to the court the Registrar shall require the labour officer in writing to furnish the court with the information referred to under subrule (3).

4. Receipt of a reference.

Upon receipt of a reference under rule 3 the Registrar shall file and register the reference in a form specified in the Third Schedule and allocate a registration number to the reference.

5. Memorandum of each party.

(1) The Registrar shall, within seven days after registering a reference, give notice to the parties that a dispute has been referred to the court and require each party to file a memorandum and in the case of the claimant, the memorandum shall be filed within seven days after receipt of the notice.

(2) The memorandum referred to in subrule (1) shall set out, in the case of the claimant, the nature and particulars of each item of the claim involved in the dispute and the claimant shall serve a copy of the memorandum on the respondent.

(3) The memorandum under subrule (2) shall be accompanied by an affidavit of service.

(4) The respondent shall, within seven days after receipt of the memorandum, file a reply as he or she may wish to give to the items of the claim raised in the claimant's memorandum and shall serve the memorandum on the claimant.

(5) The memorandum under subrule (4) shall be accompanied by an affidavit of service.

(6) Each party to the dispute shall submit six copies of the party's memorandum to the court and six copies of such documents as in the opinion of the Registrar may be necessary.

(7) Where the dispute is between an employer and a labour union, the claimant shall attach the recognition and collective bargaining agreement between the employer and the labour union to the memorandum.

PART III—HEARING OF A LABOUR DISPUTE.

6. Extension of time.

(1) A party to a dispute who fails to file documents within the prescribed time, may apply to the court for extension of time.

(2) The court may determine the application as it deems fit.

7. Registrar to fix hearing.

(1) The Registrar shall fix a date, place and time of hearing where—

(a) both parties have filed a memorandum; or

(b) the time for filing a memorandum has lapsed and no extension of time has been granted by the court.

(2) Where the Registrar has fixed a date for hearing under subrule (1)(b), the parties shall rely on the information and documents submitted to the court.

Legal representation.

In proceedings before the court, a party may appear by himself or herself or by an agent including a labour union or an employer's organisation or may be represented by an advocate.

9. Hearing of labour disputes.

(1) On the hearing date fixed under rule 7, the court shall call upon the claimant to present his or her case including calling any witness that he or she may wish to rely on.

(2) When the claimant closes his or her case, the court shall call upon the respondent to present his or her case and upon closure of the respondent's case, the court shall call upon the claimant to make a reply to the respondent after which the hearing shall be closed.

10. Witnesses.

(1) Where a party wishes to call a witness, the name and address of the witness shall be included in a list of witnesses and it shall be attached to the memorandum submitted under rule 5.

(2) A witness may object to answering a question or to producing a document on the ground that it incriminates him or her.

11. Examination and cross examination.

A party is entitled to examine a witness called by him or her and may cross examine a witness called by the other party.

12. Evidence.

(1) All evidence given to the court at the hearing shall be given on oath or affirmation.

(2) All documentary evidence tendered in the court shall be original or where an original cannot be found, a certified copy of the original.

PART IV—PROCEDURE OF INDUSTRIAL COURT IN ESSENTIAL SERVICES
DISPUTES.

13. Notice of withdrawal of labour.

(1) Where a notice in writing for a collective withdrawal of labour from an essential service under section 34 of the Act has been given to an employer, the employer shall notify a labour officer of the contemplated withdrawal of labour as soon as practicable.

(2) A labour officer shall notify the Minister in writing of an intended collective withdrawal of labour as soon as practicable but in any case not later than two days from the date he or she is notified.

14. Reference of collective withdrawal of labour to the court.

Where the Minister has been notified of an intended collective withdrawal of labour, he or she shall within 5 days after receiving the notice refer the matter to the court in the form specified in the Fourth Schedule.

15. Filing of reference with Registrar.

The reference under rule 14 shall be filed with the Registrar and the Registrar shall allocate a registration number to the reference.

16. Memorandum of each party.

(1) The Registrar shall within five days after registering a reference require each party to file a memorandum and any further and better particulars.

(2) A claimant shall within five days after being required to file a memorandum, file a memorandum setting out the nature and particulars of each item of the claim involved in the dispute and shall within the five days serve the memorandum on the respondent.

(3) A memorandum filed under subrule (2) shall be accompanied by an affidavit of service.

(4) The respondent shall within five days after being served with a memorandum under subrule (2), file a reply as he or she may wish to the items of the claim raised in the claimant's memorandum.

17. Setting a hearing date.

(1) Where both parties have filed their memorandum and further and better particulars, if required to do so, the Registrar shall set a date, time and place for hearing within five days after the date on which the memorandum or further and better particulars were required to be given or agreed to be given.

(2) The Registrar shall in any case fix the date for hearing to be within five days after due service of the memorandum on the respondent where the respondent has not filed a reply to the claimant's memorandum.

(3) In a case to which subrule (2) applies, the hearing shall, unless withdrawn proceed to be determined *exparte*.

18. Expeditious hearing.

(1) The court shall in the case of essential services inquire into and determine a reference expeditiously and shall declare its findings not later than twenty one days from the date of the commencement of the hearing.

(2) The court shall sit from day-to-day and may, for the purposes of hearing and determining the reference—

- (a) suspend any other matter pending before it; and
- (b) sit during Sundays and on public holidays where it considers it necessary for ensuring compliance with subrule (1).

PART V—DECISIONS AND AWARDS OF THE COURT.

19. Decision of the court.

(1) After hearing the parties, the court shall make a decision based on the evidence adduced before it.

(2) The decision of the court shall be by consensus reached by the members of the court.

(3) Where the court is unable to reach a decision by consensus, the matter shall be decided by the Chief Judge.

20. Awards of the court.

(1) An award or decision of the court shall be announced by the Chief Judge in the presence of the parties to the dispute.

(2) An award or decision of the court shall take effect from a date determined by the court but in any case, not earlier than the date the dispute arose.

(3) The court may, when making an award, determine the period during which the award shall remain in force.

21. Awards to be submitted to the Minister.

The Registrar of the court shall submit to the Minister, a copy of every award of the court.

22. Enforcement of awards or decisions of the court.

(1) An award or a decision of the court shall be enforceable in the same way as a decision in a civil matter in the High Court.

(2) A party to an award or decision of the court who fails or refuses to abide by the terms of the award or decision of the court shall be held liable for contempt of court.

PART VI—APPEALS.

23. Appeals from decisions of the court.

(1) Where a party is dissatisfied with a decision of the court, he or she may appeal to the Court of Appeal.

(2) An appeal shall lie from a decision of the court to the Court of Appeal only on a point of law, or to determine whether the court had jurisdiction over the matter.

(3) Appeals under this rule shall be made under the Judicature (Court of Appeal) Rules, S.I. No.13-10.

24. Appeals from decisions of a labour officer

(1) A party who is dissatisfied with a decision of a labour officer on a complaint made under section 13 of the Employment Act 2006, or sections 4 and 5 of the Act may appeal to the court.

(2) An appeal under subrule (1) shall lie on a question of law, and with leave of the court, on a question of fact forming part of the decision of the labour officer.

(3) The court may confirm, modify or reverse any decision from which an appeal is made.

(4) In hearing an appeal, the court shall follow the procedure for hearing disputes provided for under these Rules.

(5) The appeal shall be made in the form specified in the Fifth Schedule.

PART VII—MISCELLANEOUS.

25. Revocation of S.I. 224 - 3

The Trade Disputes (Arbitration and Settlement) (Industrial Court) (Procedure) Rules S.I. 224 - 3 are revoked.

SCHEDULES

Rule 3 (1)

FIRST SCHEDULE

REFERENCE OF A LABOUR DISPUTE TO THE INDUSTRIAL COURT
BY A LABOUR OFFICER.

REFERENCE TO THE INDUSTRIAL COURT.

The reference of Mr/Miss a labour officer in the
Ministry responsible for labour, sitting at in labour
dispute No. between claimant,
and respondent.

1. The labour officer is of the opinion that a substantial question of law or fact has arisen in the proceedings and is therefore unable to resolve the dispute.
2. The question or issues are—
 - (a)
 - (b)
 - (c)
3. The labour officer desires the court to determine and dispose of the dispute.

Dated this day of 20

.....
Labour Officer

SECOND SCHEDULE

Rule 3 (2)

REFERENCE OF A LABOUR DISPUTE TO THE INDUSTRIAL COURT
BY A PARTY TO THE DISPUTE.

REFERENCE TO THE INDUSTRIAL COURT.

The reference of Mr/Miss a party to a labour
dispute No. between claimant and
respondent handled by a labour officer.

1. The labour officer has failed to dispose of the dispute within eight weeks
after it was reported.
2. The issues or questions are—
 - (a)
 - (b)
 - (c)
3. The party desires the court to determine and dispose of the dispute.

Dated this day of 20

.....
Party to the dispute

THIRD SCHEDULE

Rule 4

INDUSTRIAL COURT REGISTER

<i>Dispute No.</i>	<i>Date reported</i>	<i>Parties to the Dispute</i>	<i>Matters in Dispute</i>	<i>Type of Industry</i>	<i>Recognition and Collective Bargaining Agreement</i>	<i>Date of hearing</i>	<i>Date of settlement of Dispute</i>	<i>Award by the Court</i>	<i>Entered by</i>

FOURTH SCHEDULE

Rule 14

REFERENCE OF A LABOUR DISPUTE TO THE INDUSTRIAL COURT
BY THE MINISTER.

REFERENCE TO THE INDUSTRIAL COURT.

The Reference of Hon Minister responsible for labour in the dispute of collective withdrawal of labour is essential services between and

1. I have been notified that there is an intended collective withdrawal of essential services in the(health, electricity, water, sanitary, fire, prisons, air traffic control, civil aviation, telecommunication, ambulance, transport, police) services.
2. The issues or questions are—
 - (a)
 - (b)
 - (c)
3. I desire that the court determines and disposes of the dispute.

Dated this day of 20

.....
Minister responsible for labour

FIFTH SCHEDULE

Rule 24

Date

THE REGISTRAR,
HIGH COURT.

APPEAL FROM THE INDUSTRIAL COURT TO THE HIGH COURT

In accordance with the provisions of section 22 of the Labour Disputes (Arbitration and Settlement) Act, 2006, Act No. 8 of 2006 and the Labour Disputes (Arbitration and Settlement) (Industrial Court Procedure) Rules, 2011, an appeal is made against the decision taken by the Court concerning an award made on day of 20 at.....

The record of hearing and the award are attached to this appeal

Name and Signature:
Employer or Worker(s)

GABRIEL OPIO,
Minister of Gender, Labour and Social Development.