

THE UNITED REPUBLIC OF TANZANIA



No. 62 OF 1964

I ASSENT,

J. K. NYERERE,
President

10TH DECEMBER, 1964

An Act to provide for the establishment of Workers' Committees in certain businesses and undertakings, to restrict the powers of employers to dismiss employees summarily and otherwise in relation to the discipline of employees, to provide for the payment of additional compensation on the occasion of the termination of employment except in specified circumstances, to amend the law relating to employment and severance allowance, and for matters connected therewith and incidental thereto

[.....]

ENACTED by the Parliament of the United Republic of Tanzania.

PART I**PRELIMINARY**

1.(1) This Act may be cited as the Security of Employment Act, 1964.

short title
and com-
mencement

(2) Subject to the provisions of sections 2 and 53, the several Parts and provisions of this Act shall come into operation on the dates appointed for the commencement thereof by the Minister by notice published in the *Gazette*.

2. The Minister may, by notice published in the *Gazette*, apply Part IV of this Act to Tanganyika generally or may restrict its application, to any part of Tanganyika, or to any category or description (however defined of businesses or employers, and may appoint the date on which Part IV shall come into operation in its application to such part, category or description; and where the application of Part IV is so restricted it shall apply only in respect of employees employed in such part, or in the businesses or by the employers of the relevant category or description, as the case may be.

Application
of Part IV

Application to the United Republic and the President	3. Nothing in this Act shall be construed as prohibiting, restricting or otherwise affecting the exercise by the President of his powers to dismiss, remove from office or terminate the appointment of any person holding office in the service of the United Republic or any member of the Local Government Service, or as empowering a Conciliation Board to order the payment of the statutory compensation to any such person on account of his dismissal, removal from office or termination of appointment by the President: but, save as aforesaid, this Act binds the United Republic and (notwithstanding the provisions of the Civil Service Act, 1962 or the regulations made thereunder, or the laws regulating the Local Government Service) every authority other than the President having powers of dismissal, removal termination of appointment or discipline in respect of the civil service of the United Republic or the Local Government Service in relation to employees in such services.
C.A. Act 11	
Interpretation	4.-(1) In this Act, unless the context otherwise requires- "auxiliary grades", in relation to the service of the United Republic, means the subordinate service, works -staff and persons appointed on temporary or daily terms (as such service, staff and terms are, from time to time, defined in the laws, regulations, orders and instructions regulating the civil service of the United Republic). but does not include judicial officers within the meaning of the Judicial Service Act, 1962;
C.A. Act 10	"Board" means a Conciliation Board established by the Minister under this Act; "business" includes any undertaking or establishment in which any person is employed; "Committee" means a Workers' Committee established or required to be established under this Act, and "the Committee" in relation to any business, employer or employee, means the Workers' Committee established or required to be established under this Act for such business or for the business of such employer or in which such employee is employed; "decision" in relation to the Minister or a Board includes any order, direction or approval of the Minister or Board on a reference under this Act, other than an order made by the Board under section 14; "Disciplinary Code" means the Code of disciplinary offences set out in the first column of the Second Schedule to this Act, as varied from time to time in accordance with any order under section 52; "disciplinary penalty" means summary dismissal, deduction from wages by way of punishment, and a formal severe reprimand, reprimand or written warning, but does not include any such withholding of increase in or increment to salary or any such informal reprimand or warning as is referred to in subsection (3) of section 20; and a penalty shall be deemed to be less than another disciplinary penalty if it appears in the list of disciplinary penalties set out in this definition after such other penalty;
Cap. 366	"employee" has the meaning ascribed to it in the Employment Ordinance except that it does not include-

- (a)-(i) a member of the Military Forces;
- (ii) a member of the Police Force;
- (iii) a member of the Prisons Service;
- (iv) a member of the National Service;
- (v) a member of the Unified Teaching Service;
- (vi) a person in the service of the Common Services Organization or any of the Self-Contained Services of that Organization;
- (vii) a person in the service of the United Republic other than a member of one of the auxiliary grades;
- (viii) a person in the service of a local authority other than a member of a grade comparable to the auxiliary grades in the service of the United Republic,

in respect of his membership of such Force or Service or in respect of such service, as the case may be; or

- (b) any person for the time being exempted as an employee from the operation of Part III, IV V or VI of the Employment Ordinance by an order made under subsection (3) of section 1 of that Ordinance, in respect of his employment as such employee; or

(c) a casual employee; or

- (d) an apprentice under a contract made in accordance with the Apprenticeship Ordinance;

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"employer" has the meaning ascribed to it in the Employment Ordinance and, in addition, includes, in any case in which the power to appoint, terminate appointments of, or exercise disciplinary powers over, employees is vested by written law in some person or authority other than the employer, such other person or authority;

"labour officer" means a person holding office in the service of the United Republic as a principal labour officer, senior labour officer, labour officer, senior labour inspector or labour inspector, and includes the Minister, the Labour Commissioner and any Assistant Labour Commissioner; and "the labour officer," in relation to any business, means the labour officer appointed to be in charge of the area which the business is situated

"local representative of the Union" means a union member appointed by the Union to be its local representative for the business or area concerned for the purposes of performing the functions conferred on the local representative by this Act;

"the Minister" means the Minister for the time being responsible for labour matters and, to the extent that any function imposed or power conferred on the Minister is delegated to the Labour Commissioner under this Act, includes the delegate of the Minister;

"reference" means a reference to a Board or the Minister in accordance with this Act;

"re-instate" means to re-instate an employee who has been suspended;

"severance allowance" means the allowance provided for in the Severance Allowance Act, 1962;

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"the Union" means the National Union of Tanganyika Workers;
 "union member" means a member of the Union.

(2) Subject to the provisions of subsection (1), this Act shall be read as one with the Employment Ordinance.

(3) References in this Act to any time when a Committee is suspended include references to a time prior to the first elections to a Committee for a business in which a Committee is required by this Act to be established and to any time between the dissolution of a Committee by the Minister and the first elections thereafter.

(4) The Minister may, by writing under his hand, determine which grades in the service of a local authority are comparable to the auxiliary grades in the service of the United Republic and any such determination shall be conclusive for the purposes of this Act.

(5) If any question arises as to the identity of an officer or local representative of the Union having functions under this Act, the matter may be referred to a labour officer and a certificate purporting to be under the hand of a labour officer stating the identity of such officer or representative on a date specified therein shall be admissible in evidence without further proof and shall be *prima facie* evidence of such matters.

PART II

WORKERS' COMMITTEES AND CONCILIATION BOARDS

(a) *Establishment and Functions of Workers' Committees*

Workers'
Committees

5.-(1) Subject to the provisions of this section, a Workers' Committee shall be established in every business in which ten or more union members (being employees within the meaning of this Act), are employed.

(2) Notwithstanding the provisions of subsection (1)-

(a) where the employer and the branch secretary of the Union for the area concerned (or if the business is carried on in more than one area, the branch secretaries of the Union for the areas concerned) agree that it is expedient to do so, there may be established in accordance with such agreement; or

(b) where a labour officer so directs, there shall be established in accordance with such directions, more than one Committee for a business, or one Committee for two or more businesses of the same employer.

(3) Where more than one Committee is established for the same business, the agreement or direction in accordance with which each is established shall declare the employees, places or parts of the business in respect of which each Committee may exercise its functions; and, for the purposes of this Act, the employees, places or parts in respect of which each such Committee is established shall be deemed to be employed in, or to form places in or parts of, as the case may be, separate businesses.

(4) Where one Committee is established for two or more businesses of the same employer, the agreement or direction in accordance with which it is established shall declare the businesses in respect of which the Committee may exercise its functions; and, for the purposes of this Act, the businesses for which the Committee is established shall be deemed to be one business.

(5) Where a labour officer gives any directions under this section for the establishment of a Committee or Committees, such Committee or Committees shall be established in accordance with such directions notwithstanding any earlier directions or any agreement made pursuant to this section for the establishment of any Committee or Committees.

(6) Subject to any regulations under section 54, the provisions of the First Schedule to this Act shall have effect as to the constitution and proceedings of, election to, and otherwise in relation to, a Committee,

6.--(1) The functions of a Committee in, and in relation to, the business for which it is established are-

- (a) to consult with the employer on matters relating to the maintenance of discipline and the application of the Disciplinary Code;
- (b) to discuss with the employer, at regular intervals and at least once every three months, means of promoting efficiency, and productivity;
- (c) to consider and advise the employer on safety and welfare arrangements for persons employed in the business;
- (d) to attend, by a member of the Committee nominated by itself for that purpose, all statutory inspections at the place of work by any authority charged by law with the duty to make inspections and report on working conditions;
- (e) to investigate and report to the appropriate authority on any non-compliance with the provisions of a wage regulation order made under the Regulation of Wages and Terms of Employment Ordinance or any law replacing the same, or with any collective agreement or arbitral award, which relates to the business or employees therein, and for this purpose to inspect time and wage sheets and other appropriate employment records;
- (f) to consider and advise the employer on any of the employees rules for the place of work;
- (g) to consult with the employer concerning any impending redundancies and the application of any joint agreement on redundancies;
- (h) generally to assist in the furtherance of good relations between the employer and persons employed, in the business and to exercise such other functions as are conferred on a Committee by this Act.

(2) Nothing in subsection (1) shall empower a Committee to consult, consider, advise, or make recommendations in relation to any matter concerning-

- (a) the termination of probationary employment within a period of one month from the commencement of the employment for reasons other than for a breach of the Disciplinary Code;
- (b) the termination of seasonal, temporary or casual employment for reasons other than for a breach of the Disciplinary Code;

Functions
of Com-
mittees

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- (c) the engagement of new staff except in so far as such engagement is connected with any termination of employment on the grounds of redundancy,
- (d) the promotion of any employed person;
- (e) the transfer of any employed person to work of a similar character as that which he performed immediately before such transfer at the same or some other place of employment under the same employer:

Provided that nothing in paragraph (a) or (b) of this subsection shall be construed as precluding a Committee from considering a report of an employee under section 38.

Dissolution
and
suspension
of Com-
mittee

7.(1) The Minister may dissolve a Committee, or suspend it from the exercise of its functions, on the ground that it is not impartial or is otherwise not properly discharging its functions.

(2) A Committee shall stand dissolved if the number of union members (being employees within the meaning of this Act) employed in the business for which the Committee is established falls below ten.

(3) A Committee shall be suspended from the exercise of its functions as long as the numbers of the Committee are less than the appropriate quorum prescribed in the First Schedule.

Duties of
Employers
in relation to
Committees

8. An employer in whose business a Committee is required to be, or is, established in accordance with this Act-

- (a) shall do all such reasonable acts as are necessary, in accordance with the provisions of the First Schedule, to provide for the election of the members of the Committee;
- (b) shall not discriminate against a member of the Committee on the ground of the latter's membership of the Committee and, in particular and without prejudice to the generality of the foregoing, shall not terminate the employment of a member of the Committee (except for breach of the Disciplinary Code) without the prior approval of a labour officer;
- (c) shall make available a suitable room for use by the Committee for its meetings and provide reasonable facilities for the storage of its records;
- (d) shall permit the Committee to meet at least once a month (and at such other times as the employer agrees), during working hours and without deduction of pay, to consider disciplinary matters;
- (e) shall permit a member of the Committee nominated for the purpose to take part in statutory inspections in respect of which the Committee has a function, and without deduction of pay; and
- (f) shall not hinder or obstruct a member of the Committee in the reasonable performance of the functions of the Committee under this Act and shall give consideration to any advice, report or recommendations made by the Committee in the exercise of its functions,

9.- (1) It shall be lawful for the Union to pay the reasonable and necessary expenses of any Committee:

Financial Expenses

Provided that nothing in this subsection or in any other law shall authorize the payment by the Union of any remuneration or allowance to a member of a Committee as such.

(2) A member of a Committee shall not be entitled to any additional pay on account of his membership of the Committee nor shall he be entitled to any overtime pay on account of his attendance at meetings of the Committee or his performance of any of the functions of the Committee outside normal working hours.

(b) *Establishment and Functions of Conciliation Boards*

10.-(1) The Minister shall, by order Published in the *Gazette*, establish throughout Tanganyika such number of Conciliation Boards as he shall consider necessary for the purposes of exercising the functions conferred upon a Board by any law, and shall in like manner declare the areas in respect of which each such Board shall exercise such functions.

Establishment of Boards

(2) Notwithstanding any declaration of an area in respect of which a Board shall exercise its functions or other provisions of this Act, the proceedings before or decision of a Board in any reference shall not be invalidated solely on the ground that such reference originated outside such area

11.-(1) There shall be a Chairman of each Board who shall be appointed by the Minister.

Composition of Boards

(2) Where any reference is made to a Board in accordance with this Act or otherwise by law, the Chairman shall appoint two other members of the Board one of whom shall be appointed from amongst persons nominated for the purpose by the regional or branch secretary of the Union for an area in respect of which the Board exercises its functions, and the other-

- (a) where the employer concerned is the Government of the United Republic, shall be a senior civil servant (within the meaning ascribed to that expression in the Civil Service (Negotiating Machinery) Act, 1962);
- (b) where the employer concerned is a local authority, shall be appointed from amongst the members of the local authority nominated for the purpose by the local authority; and
- (c) in any other case, shall be appointed from amongst persons nominated for the purpose by the Federation of Tanganyika Employers:

Provided that if any person or body by whom persons may be nominated for the purposes of this subsection fails to make such nominations, the Chairman shall appoint such person as he thinks fit to represent the interest concerned;

and, subject to the provisions of subsection (3), in the hearing and deciding of such reference and for any purpose incidental thereto, the Board shall comprise the Chairman and the two other members so appointed.

(3) Where, after the commencement of the hearing of a reference by a Board, there is a vacancy-

- (a) in the office of Chairman, the proceedings shall be discontinued and shall be commenced anew before a fully constituted Board;
 - (b) amongst other members, the proceedings may continue notwithstanding the vacancy, or the Chairman may appoint a substitute member nominated as aforesaid by or representing the same interest as the member who vacated his seat; and the proceedings may continue before the Board as then constituted; and the proceedings before or decision of the Board shall not be invalidated solely by reason of such vacancy or substitution.
- (4) In selecting members of a board for any reference, the Chairman shall, so far as he is able-
- (a) appoint persons who do not have any direct interest in the reference;
 - (b) in any case to which paragraph- (c) of subsection (2) applies, appoint as a member a person engaged in the same industry as that in which the business concerned is engaged.

Notification
of reference
and
to be heard

12.--(1) The Chairman of a Board to which a reference is made shall-

- (a) unless the reference contains a signed statement by **the party** other than the party making the reference that such party has notice that the reference is to be made, inform such party of the reference being made; and
- (b) upon the request of a party, inform him of the time and place of the hearing (and any adjourned hearing), and the delivery of the decision,

but, save as aforesaid, the responsibility for **ascertaining the time and place** of the hearing and delivery of the decision shall lie upon the parties.

(2) Parties to a reference and their representatives shall have the right to be present and to be heard at the hearing of the reference, to be present at the time of the delivery of a decision by a Board, and to submit memoranda for the consideration of a Board:

Provided that no advocate may appear or act for any party before a Board.

**Proceedings
in camera
Evidence**

13. The proceedings of a Board shall be held in camera.

14.--(1) A Board shall, for the purpose of reaching a decision on any reference to it, be entitled to elicit all such information as in the circumstances may be considered necessary, without being bound by any rules of evidence in civil or criminal proceedings, and may by order require any person-

- (a) to furnish in writing or otherwise such particulars in relation to the reference as may be required; and
- (b) to attend before the Board and give evidence on oath (which the Chairman is hereby authorized to administer) or otherwise; and
- (c) to produce any document:

Provided that if any person refuses to furnish any particular, to answer any question or to produce any document, on the ground that it will tend to incriminate him or on any other lawful ground, he shall not be required to furnish such particular or to answer such question or to produce such document, nor shall he be liable to any Penalty for refusing to do so.

(2) Any person who, without lawful excuse, fails to obey any order given under subsection (1) and communicated to him shall be guilty of an offence and shall be liable on conviction to a fine not exceeding five hundred shillings.

15. Where the hearing, of a reference is concluded before two members of a Board in addition to the Chairman and such two members are agreed on the decision, the decision of such members shall be the decision of the Board, but in any other case the decision of the Chairman shall be the decision of the Board.

Decisions of Board

16. The Board shall keep a proper record in writing of the proceedings and decisions in all references to it, and, where there is any further reference from a decision of a Board to the Minister, a copy of the Proceedings shall be supplied to the Minister.

Board to keep record of proceedings

17. Save as provided in this Act or in any regulations made hereunder, a Board may regulate its own procedure.

Procedure

18. The expenses of a Board shall be paid out of moneys provided by Parliament.

Expenses

PART III

RESTRICTION ON THE SUMMARY DISMISSAL AND FINING OF EMPLOYEES, AND THE ADMINISTRATION OF THE DISCIPLINARY CODE

(a) *Disciplinary Penalties*

19. Subject to the provisions of section 3 but notwithstanding the provisions of any other law, no employer-

Restriction on summary dismissal and fine

(a) shall summarily dismiss any employee; or

(b) shall, by way of punishment, make any deduction from the wages due from him to any employee,

save for the breaches of the Disciplinary Code, in the cases and subject to the conditions, prescribed in this Part and the Second Schedule to this Act.

20.-(1) Subject to the following provisions of this Part and to any decision of a Board or the Minister on a reference an employer may-

Disciplinary penalties

(a) dismiss an employee summarily;

(b) make a deduction, not exceeding one day's pay, from the wages of an employee;

(c) impose a formal severe reprimand, reprimand or written warning on an employee,

for breaches of the Disciplinary Code in the cases in which those disciplinary penalties may be imposed in accordance with the Second Schedule.

(2) Where, in accordance with the Second Schedule-

(a) any particular disciplinary penalty may be imposed, the employer may instead impose a lesser penalty but, in the event of a subsequent breach of the Disciplinary Code, the imposition of a lesser penalty on a previous occasion or

occasions shall not preclude the employer from imposing the disciplinary penalty which may, in, accordance with the Second Schedule, be imposed for such subsequent breach;

- (b) any particular disciplinary penalty may be imposed only for a second or subsequent breach of the same provision of the Disciplinary Code, only such previous breaches shall be taken into account as have been the subject of a report to the Committee or the local representative of the Union under section 21, or the subject of a report to a labour officer under section 22; and no previous breach shall be taken into account if the employee has not committed a breach of the same provision of the Code (being a breach which has been the subject of a reference or report as aforesaid) within a period of six months immediately preceding the breach under consideration:

Provided that where an employee is absent from work without reasonable cause for two or more consecutive days, each day's absence shall constitute a separate breach of paragraph (c) of the Disciplinary Code and the employer may take all such breaches into account and impose the appropriate penalty notwithstanding that no earlier or separate report shall have been made in accordance with section 21 or 22, and a report made on the imposition of a penalty in such a case shall be deemed to be a separate report of every such breach.

- (3) Nothing in this Act shall be construed as prohibiting or restricting an employer from withholding any increase in or increment to wages where such increase or increment is granted for efficiency, ability or on account of the satisfactory performance of work or from issuing an informal reprimand for or a warning of unsatisfactory work or conduct to an employee without making any reference or report thereof or of the occasion therefore in accordance with this Part, but no such reprimand or warning shall constitute a disciplinary penalty or be recorded against the employee in any record of his employment.

(b) Imposition of Disciplinary Penalties by Employers

21.(1) This section applies to businesses, in which a Committee is, or is required to be, established:

Provide that, where a Committee is for the time being suspended this section and any provisions of this Act consequential or incidental thereto shall have effect as if for the references to the Committee (including references to the chairman or deputy chairman thereof) there were substituted references to the local representative of the Union.,

(2) Where an employer proposes to impose a disciplinary penalty on an employee for a breach of the Disciplinary Code, he shall-

- (a) inform the chairman of the Committee, or in the absence of the chairman the deputy chairman, in writing of his intention to impose such penalty, advising him at the same time of any disciplinary penalties he has imposed on the same employee in connection with any other breaches of the Disciplinary Code;

When a
Committee
is or is
required
to be
established

(b) afford an opportunity to the Committee to make such representations as it deems fit in relation to the proposal,

but shall not proceed to implement the proposal except in the authorized by subsection (3).

(3) Where, within three days of his informing the chairman or deputy chairman of the Committee of his proposal-

(a) the employer has received no written representations against his proposal from the Committee, he may proceed to impose the proposed or any lesser disciplinary penalty;

(b) the employer receives written representations against his proposal from the Committee, the employer and the Committee shall discuss the same as soon as is practicable and, after such discussion, the employer may proceed to impose the proposed or any lesser disciplinary penalty:

Provided that if no agreement as to a proposal of the employer to dismiss an employee summarily is reached between the employer and the Committee, the employer shall not summarily dismiss the employee-

(i) unless, after the employee is informed, by the employer of the employer's proposal to dismiss him summarily, the employee informs the employer and the Committee that he does not intend to make a reference to the Board, or a period of seven days has expired after the employee is so informed and the employee has not both informed the employer that he intends to make a reference to the Board and made a reference accordingly; or

(ii) where a reference is made within such period aforesaid, the reference is abandoned, or the proposed summary dismissal is confirmed by the Board or, if the proposed summary dismissal is not confirmed by the Board, it is confirmed by the Minister.

(4) An employer may suspend on half pay any employee to whom the proviso to subsection (3) refers, at any time after he has discussed its representation together with the Committee; but no employee shall be entitled to be suspended.

Code, he shall-

(a) explain the reasons to the employee; and

(b) report the same, together with the reasons and circumstances, in

A report under this section may, if the employee is willing to sign the same, include an acknowledgment by the employee that the employer has informed him of the penalty and his reasons for imposing, it.

(3) Where an employer proposes to dismiss an employee summarily, he shall first inform the employee of his proposal and of the reasons there for in writing and shall report the same, together with his reasons and the circumstances, in writing, to the labour officer; but the employer shall not proceed to implement such proposal-

- (a) before the expiration of a period of three days after such report; or
- (b) if, within such period of three days, the local representative of the Union (after consultation with the employer) informs the employer in writing that he supports the employee in an intended reference to the Board, unless-
 - (i) no reference is made to the Board by the employee within a period of seven days after the employer has been so informed by the local representative of the Union; or
 - (ii) where a reference is made to the Board within such period aforesaid, the reference is abandoned, or the proposed summary dismissal is confirmed by the Board or, if the proposed summary dismissal is not confirmed by the Board, it is confirmed by the Minister.

(4) An employer may suspend on half pay any employee to whom paragraph (b) of subsection (3) refers at any time after he has been informed by the local representative of the Union that the latter supports the employee in an intended reference to the Board; but no employee shall be entitled to be so suspended.

Employee may refer dismissal, etc. to a Board

23.(I) Where an employee ---

- (a) is summarily dismissed; or
- (b) is informed by his employer, that the employer proposes to dismiss him summarily, or
- (c) suffers a deduction by way of a disciplinary penalty from the wages due to him from his employer,

he may, within the time specified in subsection (2), refer the matter to the Board and the Board shall, so far as is reasonably practicable, hear the reference and give its decision thereon within seven days (excluding Sundays and public holidays) of the reference being received by it.

(2) A reference to a Board under this section shall be made within seven days of the employer, proposes to dismissed, being informed of the proposal to dismiss him, or differing the deduction, as the case may be:

Provided that in case to which section 22 applies and in which the employer is informed in accordance with that section that an employer proposes to dismiss has the support of the local representative of the Union, the reference may be made not later than seven days after the employer is so informed.

(3) For the avoidance of doubts it is hereby declared that an employee may make a reference to the Board in the circumstances specified in has complied with the provisions of this Part.

Powers of Boards

(c) *Functions and Powers of Boards and the Minister under this Part*

24.--(1) Subject to the provisions of this Part, where a reference is made to a Board under Head (b), the Board---

- (a) shall decide whether the summary dismissal, proposed summary dismissal or deduction- from wages, as the case may be, is, having breaches of the Disciplinary Code, justified and appropriate, and shall confirm, reverse or vary the imposition of disciplinary penalties, and may make such consequential orders and directions as are provided in this section, according to its assessment of the culpability and record of the employee;
- (b) may in the case of an employee who has been dismissed or suspended pending the decision of the Board, order his re-engagement or re-instatement, as the case may be, or direct that the dismissal or proposed dismissal shall take effect (unless the employer re-engages or re-instates the employee) as a termination of employment otherwise than by dismissal, and may, authorize the imposition of a lesser disciplinary penalty;
- (c) may order the refund to the employee of any deduction and may authorize the imposition of a lesser disciplinary penalty;
- (d) may approve the terms of any lawful settlement between the employer and the employee.,
- (2) Notwithstanding, the provisions of subsection (1)-
- (a) a Board shall not order the re-engagement or re-instatement of an employee formerly employed or employed by an employer as a domestic servant (other than a domestic servant employed in a -commercial undertaking) or as a personal secretary, personal clerk or personal assistant, but in any case in which it would, but for the provisions of this paragraph have ordered such a re-engagement or re-instate- that order that the dismissal shall take effect (unless, the employer re-engages or re-instates the employee) as a termination of employment and may, if Part IV of this Act is in operation in relation to the employee, order that the employer shall pay to the employee, in addition to any sum to which the employee becomes entitled by virtue of such termination, the statutory-, compensation payable to an employee under an order made under subsection (1) of section 39 in a case where Board is not satisfied that the employment is terminated, by the employer in and on account of one of the circumstances specified in subsection (2) of that section;
- (b) where a court has convicted an employee of a criminal charge and disciplinary penalty ha been imposed or proposed by the employer against such employee in accordance with the provisions of the Second Schedule and on account of such conviction or other wise arising out of his conduct in the matter, a Board shall not, on any reference arising out of such penalty or proposed penalty--
- (i) question the conviction or the findings of the court on such charge;
- (ii) order the re-engagement or re-instatement of the employee;

(iii) make any other decision inconsistent with or repugnant to the court's decision.

Implementation of
certain
decisions

- 25.--(1) Where, in the exercise of its powers under this Part, a Board orders-
- (a) the re-engagement or re-instatement of an employee, the employer shall (unless such employee refuses to be re-engaged or re-instated, as the case may be) re-engage or re-instate the employee in his former employment, and such re-engagement or re-instate-ment shall have effect for the purpose of the payment of wages, entitlement to severance allowance and other retiring benefits, and otherwise in relation to any benefits of employment, from the date of the employee's summary dismissal or suspension, as the case may be, but the employer may deduct from any wages due on or after any re-instatement any half pay paid during the period of suspension
- (b) that the summary dismissal or proposed summary dismissal of an employee shall have effect as the termination of his employment, the employer shall be deemed to have terminated the employment of the employee otherwise than by summary dismissal on the date of the dismissal or suspension (or, if the employee was not suspended, on the day on which the employer informed the employee that he proposed to dismiss him summarily), and the employer shall pay to the employee such sums as would have been due had the employment been terminated by payment of wages in lieu of notice and any other payments, due on the termination of -employment in such a case, less any half pay paid during a period of suspension;
- (c) the refund to an employee of any deduction, the employer shall make such refund accordingly.
- (2) Where a Board confirms the proposed summary dismissal of an employee or authorizes a deduction from wages, no further reference shall lie to the Board on account of such summary dismissal or deduction.
- (3) Where a Board confirms the summary dismissal or proposed summary dismissal of an employee, the employer shall not be entitled to recover from such employee any half pay paid during a period of suspension.

Further reference
to Minister

- 26.-41) Where-
- (a) the summary dismissal or proposed summary dismissal of an employee is confirmed by a Board and, subsequent to such confirmation, the Committee, or, in a case to which the proviso to subsection (1) of section 21 or section 22 applies, the local representative of the Union, informs the Board that it or he supports the employee, the employee; or
- (b) the summary dismissal or proposed summary dismissal of an employee is not confirmed by a Board, the employer- may, within fourteen days after receiving notice of the decision of the Board, refer the same to the Minister:

Provided that an employer may not refer a decision to the Minister in any case in which he has not complied with the appropriate, procedures specified in Head (b) of this Part.

(2) Where any matter is referred to the Minister under this section, the Minister shall, as soon as is practicable, give a decision thereon and, in the performance of his functions under this section, the Minister may exercise the Powers conferred on a Board by section 24 (in so far as they are applicable to the reference to him); and the provisions of section 25 shall apply to and in respect of the decisions of the Minister as they apply to and in respect of the decisions of the Board.

(d) *Miscellaneous*

27.-41) The decision of the Minister on a reference to, him under section 26, and, subject to any decision on a reference to the Minister therefrom, the decision of a Board on a reference to it under this Part-

Finality
and elect
of decisions
of Board
and Minister

(a) shall be final and conclusive; and

(b) shall be binding on the parties to the reference, and the relationship between the parties in consequence of the matters in respect of which the reference was made shall be determined accordingly, and

(c) may be enforced in any court of competent jurisdiction as if it were a decree.

(2) In addition to its powers to execute any decision which requires the refund of any wages deducted or, expressly or by implication, the payment of any sum to an employee where a dismissal is ordered to take effect as the termination of employment, a court in which it is sought to enforce a, decision of the, Minister or a Board may make and enforce such order as necessary -for the specific performance of any decision for the re-engagement or re-instatement of any employee (notwithstanding that the court would not have power apart from this subsection to make or enforce such orders) and may award damages for the failure of the employer to carry out any such decision as if he had dismissed the employee concerned wrongfully (and, if Part IV of this Act is in operation in relation to the employee concerned, such damages shall include the statutory compensation provided for in that Part).

28. --(1) No suit or other civil proceeding (other than proceedings to enforce a decision of the Minister or the Board on a reference under this Part) shall be entertained in any civil court with regard to the summary of dismissal or proposed summary dismissal, or a deduction by way of a disciplinary penalty from the wages, of an employee.

(2) In this section, "civil proceeding" includes a cross suit or counterclaim, any set off and civil proceeding" under Part XI of the Employment Ordinance.

29. (1) Notwithstanding the foregoing provisions of this Part, when an employee is charged in criminal proceedings, with a criminal offence which is also a breach of the Disciplinary Code, no proceedings for the imposition of a disciplinary penalty under this Act shall be instituted, and any such proceedings instituted shall be suspended, until the conclusion of the criminal proceedings and of any appeal. therefrom.

(2) Where an employee has been acquitted of a criminal, char& no proceedings for the imposition of the disciplinary penalties summary dismissal or deduction from wages under this Act shall be instituted against him for a breach of the Disciplinary Code which substantially

the same as the criminal charge on which he was acquitted, but nothing in this subsection shall preclude the institution of disciplinary proceedings or the imposition of a disciplinary penalty for any other breach of the Disciplinary Code arising out of his conduct in this matter.

(3) Notwithstanding the foregoing provisions of this section, an employer may suspend without pay any employee (including an employee already suspended on half pay) charged with any criminal offence which is also a breach of the Disciplinary Code, or a conviction for which is a breach of the Disciplinary Code, but the suspension of an employee without pay in pursuance of the provisions of this section shall not extend later than the acquittal of the employee on such charge unless another such charge is pending. No employee shall be entitled to be so suspended.

Stay of certain orders on further reference to Minister

30. Notwithstanding the provisions of subsection (1) of section 25, where the employer makes a reference to the Minister against the refusal of the Board to confirm the summary dismissal or proposed dismissal of an employee, such employer shall not be required to give effect to the provisions of such subsection unless he abandons such reference, or until the reference has been determined by the Minister, and the provisions of such subsection in relation to the decision, of the Board shall be subject to any decision made by the Minister.

Employer may exercise disciplinary powers notwithstanding reference pending in respect of other breaches of disciplinary Code Summary dismissal for lawful cause

31. Nothing in this Part shall be construed as precluding an employer who has informed an employee that he proposes to dismiss him summarily, Or Who has Suspended an employee pending the decision on a reference, in respect of any breach of the Disciplinary Code, from instituting further disciplinary proceedings and, subject the provisions of this Part, summarily dismissing or suspending such employee, or informing him that he proposes to dismiss him imposing a lesser penalty, for any other breach of the

32. For the avoidance of doubts it is hereby declared that where-

- (a) after making such report to a Committee or the local representative of the Union as is provided for in section 21 or such report to a labour officer as is provided for in section 22, as the case may require, an employer has summarily dismissed an employee and no reference is made to a Board in respect of such dismissal, or such a reference is abandoned; or
- (b) the summary dismissal of proposed summary dismissal of an employee is confirmed the Board (and such confirmation is not altered by the Minister or the Minister;

such employee shall, for the purposes of this or any other law, be deemed to have summarily dismissed for lawful cause.

PART IV

ADDITIONAL COMPENSATION ON TERMINATION OF EMPLOYMENT IN CERTAIN CASES

Payment of additional compensation on certain cases

33. Subject to the provisions of this Part, an employer who terminates the employment of an employee shall, if so ordered by a Board in the exercise of its powers under section 39, pay to the employee in addition to every other sum which he is liable to pay to the employee on such termination of appointment, the statutory compensation prescribed by section 35:

Provided that no such statutory compensation shall be payable if, not later than three days after he has been notified of the Board's order for the payment thereof, or if the matter is referred to the Minister, of the Minister's confirmation of the order, the employer re-engages the employee on the statutory terms.

34.---(1) In this Part, references to the termination of employment by an employer are references to-

meaning of
"termination of
employment"

(a) the termination of an oral contract of service by an employment
(b) the determination of a written contract-

(i) under subsection (1) of section 52 of the Employment Ordinance on the grounds that the employer is unable to fulfill the same;

(ii) under subsection (3) of section 52 of the Employment Ordinance if the application there for is made by the employer;

(c) the refusal or failure of an employer to continue to employ, on the statutory terms and without any break in employment, an employee who has completed an oral contract of service or a written contract of service (other than a foreign contract of service) and who is willing and able to serve the employer in the same capacity under a further oral contract of service (or in the case of an employee who has completed a written contract, under an oral contract), on such terms,

but, save for the purposes of section 37, do not include references to-

(i) the termination of employment during a probationary period at any time within one month of the commencement of the employment; or

the termination of employment at the conclusion of a contract expressed to be period not exceeding two months and not renewable, or;

(iii) the termination of employment on any occasion on which, in accordance with subsection (1) of section 8A Of the Severance Allowance Act, 1962, or any other law which declares that Act shall apply to the parties to a contract of employment the same manner as it applies to cases set out in the said subsection, the employer," is not liable to pay severance allowance, or

(iv) the termination of a contract of apprenticeship made in accordance with the provisions of the Apprenticeship Ord-Cap. 81

(v) the termination of employment by summary dismissal, or the termination of employment otherwise than by summary dismissal which is ordered by a Board or the Minister under Part III; or

(vi) the termination of the employment of a casual employee; and for the avoidance of doubts it is hereby declared that no act of an employer whereby a contract of employment is terminated in accordance with the provisions of section 20, 21, or 22 of the Employment Ordinance or otherwise by operation of law shall constitute a termination of employment by the employer for the purpose of this Part.

(2) For the purpose of this Part, where the parties to a contract expressed to be for a fixed period and not renewable nevertheless renew the contract, or enter into a new contract in substantially the same terms as the previous contract, within one month of the completion of such first mentioned contract, such contracts shall be deemed to be renewable and not to be contracts to which paragraph (ii) of subsection (1) refers.

Statutory
compensation

35. The statutory compensation shall be-

- (a) such sum of money as shall be equal to the severance & allowance due and payable to the employee on the termination of his employment; or
- (b) the sum of five hundred shillings,
whichever is the greater.

Provided that where, by reason of the provisions of subsection (2) of section 4, section 6 or section 7 of the Severance Allowance Act, 1962. the employer is exempt from liability to Pay severance allowance or the amount of severance allowance is reduced, there shall be substituted for the sum prescribed in paragraph (a) of this section such sum as shall be equal to the severance allowance that, but for the provisions of those sections or any of them, would have been payable to the employee on the termination of his employment.

The
statutory
terms

36. The statutory terms-

- (a) in the case of an employee who has completed an oral contract of service, are 'terms not less favourable to the employee than those of the contract then completed;
- (b) in the case of an employee who has completed a written contract of service, are terms not less favourable to the employee, than those of the contract then completed (including Availability of the employer at the completion of the Employment repatriate the employee and any members of his family to which the liability for repatriation would have extended had the employee continued to be employed on a written contract), but no provision shall be made for the deposit or deferment of wages, and, in the absence of any agreement to the contrary, wages shall be payable at intervals of one month, and the contract period shall be calculated accordingly.

Notification of
employee of
circum- stances of
termination

37,(1) When an employer proposes to terminate the employment of any employee, he shall-

- (a) in the case of an employee engaged on a written contract, not less than twenty-eight days before the expiration of the written contract; or,
- (b) in any other, case; at the time he gives notice, makes. a payment of wages in lieu of notice or takes any other step to terminate the employment of the employee,

inform the employee of the circumstances in and on account of which such employee employment is being terminated, and shall further, if so requested by the Committee, or if there is no Committee or the Committee is suspended, by the local representative of the Union, inform such Committee or local representative of such circumstances.

(2) Any employer who terminates the employment of any employee without giving such information at such time as is required by subsection (1) shall be precluded from advancing any circumstances as justification for the non-payment of the statutory compensation in proceedings before a Board arising out of such termination.

38.--(I) An employee who has been notified of his employer's intention to terminate his employment, or whose employment has been terminated by his employer, and who claims the statutory compensation, may-

Reference of claims to statutory compensation to Board

- (a) report the matter to the Committee or, if there is no Committee or the Committee is suspended, to the local representative of the Union; and
- (b) if the reference has the written approval of the Committee or the local representative of the Union, as the case may be, refer his claim for the statutory compensation to the Board.

(2) The reference of a claim for statutory compensation to a Board shall be made not later than seven days after the termination of employment.

39.--(1) The Board shall consider every claim for statutory compensation referred to it in accordance with this Part and, unless it is satisfied that the circumstances in and on account of which the employment of the employee was terminated by the employer are circumstances of a kind specified in subsection (2), it shall order the employee to pay the statutory compensation to the employee.

Orders for statutory compensation

- (2) The circumstances referred to in subsection (1) are-
- (a) the winding up or partial winding up of the business, the conclusion of the work which the employee was employed to perform, or the removal of the business wholly or partly from Tanganyika
 - (b) the total or partial suspension of work for reasons outside the control of the employer, including, without prejudice to the generality of the foregoing, the non-availability of raw material, the breakdown of machinery, adverse climatic conditions, earthquake, storm or other natural disaster; or
 - (c) the completion of seasonal or temporary work; or
 - (d) the redundancy of the employee, or
 - (e) the inefficiency of the employee or his inability to perform properly the work he was employed to do; or
 - (f) the failure or neglect of the employee, without any sufficient reason, to fulfill the duties incumbent upon him under the contract of employment; or
 - (g) the replacement of the employee for the purpose of improving efficiency and productivity; or
 - (h) the occurrence of any circumstances which, having regard to the nature of the work or the character of the business, render the employee unsuitable to continue to perform the work he was engaged to do; or

- (i) the absence of the employee from work on account of illness beyond the time permitted by any law or regulation or by any collective agreement or contract of service under which he is entitled to sickness benefits from his employer; or
- (j) the employee has reached the age at which, in accordance with any law or the conditions of his employment, he may be retired compulsorily on pension, whether or not a pension has been awarded; or
- (k) the re-engagement or re-instatement of an employee, in accordance with the decision of a Board or the Minister made under Part III of this Act, into a position filled since such employee's dismissal or suspension by the employee in question; or
- (l) the employment is terminated by the employer in circumstances which would have justified the employer summarily dismissing the employee in accordance with section 20; or
- (m) the employee has been engaged in undermining or attempting to undermine the authority of the employer or the Committee; or
- (n) the Minister has certified that, in the interests of good industrial relations or for the avoidance of dissension at the place of work, the employment may be terminated without payment of the statutory compensation.

Reference to the Minister

40.—(1) Where a Board makes an order for the payment of statutory compensation against an employer, the employer may, within fourteen days of receiving notice thereof, refer the same to the Minister and the Minister shall consider every such reference and either confirm or reverse such order, and, in the exercise of his functions under this section, the provisions of section 39 shall apply *mutatis mutandis* to the Minister as they apply to a Board.

(2) Where an employer makes a reference to the Minister in respect of any order of the Board under this Part, the order shall be suspended until the reference is decided by the Minister.

Finality and effect of decisions of Minister and Boards

41. The decision of the Minister on a reference to him under section 40 and, subject to any decision on a further reference to the Minister therefrom, the decision of a Board under section 39 shall be final and conclusive and shall be binding on the parties to the reference, and, subject as aforesaid, such decision may be enforced in any court of competent jurisdiction as if it were a decree.

Exclusion of the jurisdiction of the courts

42.—(1) No suit or other civil proceeding (other than proceedings to enforce a decision of the Minister or the Board on a reference under this Part) shall be entertained in any civil court with regard to the liability of an employer to pay, or the entitlement of an employee to, any statutory compensation.

(2) In this section "civil proceeding" includes a cross suit or counterclaim, any set off and any civil proceeding under Part XI of the Employment Ordinance.

PART V

MISCELLANEOUS

Reference to the Minister

43. The parties to a reference to the Minister shall be entitled to submit memoranda in support of their respective cases, but shall not be entitled to appear in person or by advocate or other representative before him.

44. The Minister may delegate the functions imposed and the powers conferred upon him to hear and decide references to the Labour Commissioner.

Delegation of Minister's powers

45. Where, under any other written law, a reference may be made to a Board, then unless such other law makes any provision inconsistent herewith—

References under other laws

- (a) such reference shall be deemed to be a reference for the purposes of Part II of this Act;
- (b) the decision of the Board thereon shall be subject to an appeal to the Minister (or, if the Minister so delegates the function, to the Labour Commissioner) at the instance of either party:

Provided that, in the case of an employee, no appeal shall lie unless it has the written approval of the Workers' Committee or the local representative of the Union, as the case may be; and

- (c) the provisions of this Act relating to the finality and conclusiveness of decisions of a Board and the Minister shall apply *mutatis mutandis* to the decision of the Board on such a reference and the decision of the Minister on an appeal therefrom.

46. A certificate purporting to be under the hand of—

- (a) the Minister stating his decision on a reference to him;
- (b) the chairman of a Board stating the decision of the Board on a reference thereto,

Certificates by the Minister and Chairman of Boards

shall be admissible in evidence without further proof and shall be conclusive evidence of such decision.

47.—(1) The provisions of this Act shall have effect notwithstanding anything contained in the Trade Disputes (Settlement) Act, 1962, the Civil Service (Negotiating Machinery) Act, 1962 or the Local Government Service (Negotiating Machinery) Act, 1963.

Act to prevail over other legislation relating to employment disputes Acts 1962 Nos. 43 and 52, Acts 1963 No. 66

(2) Nothing in the Arbitration Ordinance shall apply to any proceedings or decision under Parts III or IV of this Act.

48. Subject to the provisions of this Act which exclude the jurisdiction of the courts, the provisions of Part XI of the Employment Ordinance shall apply *mutatis mutandis* in relation to any question, difference or dispute between an employer and an employee arising out of the decision of the Minister or a Board under this Act as they apply in relation to the questions, differences or disputes referred to in that Part.

Application of Part XI of Employment Ordinance

49.—(1) Nothing in this Act and no imposition of a disciplinary penalty for a breach of the Disciplinary Code shall exempt any person from being proceeded against, convicted or punished for a criminal offence.

Criminal proceedings

(2) Nothing in any other law prohibiting or restricting the punishment of a person twice for the same offence shall apply in relation to the imposition of a disciplinary penalty by an employer.

50.—(1) Any person who refuses or neglects to comply with a decision of the Minister or a Board on a reference to which he is a party (other than a decision of a Board which is reversed by the Minister) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding two thousand shillings:

Offences

Provided that no person shall be proceeded against for an offence against this section in respect of a decision of a Board during a period in which he may, in accordance with the provisions of this Act, make a reference from such decision to the Minister or, if such a reference is made, unless it is abandoned or, if it is not abandoned, before the Minister's decision has been communicated to him; and no person who makes such a reference shall be convicted of any offence against this section solely by reason of his refusal or failure to comply with the decision of the Board during any such period, or prior to the abandonment of, or, as the case may be, the communication of the Minister's decision on, such reference.

(2) Any person who—

- (a) being an employer in whose business a Committee is required to be established by this Act and who, having been directed by a labour officer to take such steps as are reasonably available to him to establish such Committee; or
- (b) being an employer in whose business or businesses a Committee is or Committees are established and who, having been directed by a labour officer to take such steps as are reasonably available to him to establish two or more Workers' Committees for any such business or one Committee for two or more of such businesses,

refuses or neglects to comply with such directions within the time limited for compliance therewith by such labour officer shall be guilty of an offence and shall be liable on conviction to a fine not exceeding two thousand shillings.

(3) Any person who, being concerned in the supervision of an election of members of a Committee or assisting in such election, discloses any information as to the candidate for whom any voter wishes to or has voted which is communicated to him in accordance with the procedure prescribed for such election save in accordance with such procedure or except for some purpose authorized by law, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding two thousand shillings.

(4) Where an offence against this section is committed by a body corporate and such offence has been committed on the direction of or with the consent or approval of any director, manager, secretary or other officer of such body corporate, that person as well as such body corporate shall be guilty of any offence and may be proceeded against and, if convicted, punished accordingly.

(5) No Government officer shall be liable under subsection (1) or (2) of this section for anything done or omitted to be done by him as an officer of the Government in good faith.

Forms

51. The Minister may prescribe forms to be used for the purpose of this Act and any forms prescribed shall be used, with such variations as the circumstances require, for the matters and in the cases for which they are prescribed.

Amendment
of the
Disciplinary
Code

52.—(1) The Minister may, by order published in the *Gazette*, add to, amend, delete or replace any provision of the Disciplinary Code or other provisions of the Second Schedule.

(2) An order under this section shall be laid before the National Assembly.

53. The laws specified in the first, second and third columns of the Third Schedule are hereby amended, in the manner set out opposite thereto in the fourth column of the said Schedule:

Amendment
of other
laws

Provided that-

- (a) the provisions of this section in relation to the amendments set out in Part B of the said Schedule shall come into operation on the commencement of Part III of this Act; and
- (b) the provisions of this section in relation to the amendments set out in Part C of the said Schedule shall come into operation on the commencement of Part IV of this Act and, so long as any notice under section 2 restricts the application of the said Part IV to certain parts of Tanganyika or certain categories or descriptions of businesses or employers, shall have effect only in respect of the employees in relation to whom the said Part IV has effect.

54.-(1) The Minister may make regulations-

Regulations

- (a) regulating the procedure of Workers' Committees and prescribing the occasions on which and the purposes for which the employer or his representative may attend meetings;
 - (b) regulating the procedure to be followed on the making of references to Conciliation Boards, and of Boards, and prescribing the manner in which the decisions and orders of a Board shall be communicated;
 - (c) regulating the procedure to be followed on the making of references to the Minister;
 - (d) amending the procedure set out in the First Schedule for the election of members of Workers' Committees;
 - (e) for prescribing anything which may be prescribed;
 - (f) generally for the better carrying into effect of the purposes and provisions of this Act.
- (2) Subject to any provisions to the contrary in such other law, regulations made by the Minister under this Act shall apply to references to a Board under any other law and to appeals to the Minister from the decisions of the Board thereon.

THE FIRST SCHEDULE

(Section 5 (6))

CONSTITUTION OF A WORKERS' COMMITTEE AND SUPPLEMENTARY PROVISIONS

(a) Constitution

1-(1) The constitution of a Workers' Committee shall be determined by the number of union members (being employees within the meaning of this Act) employed at the business at the time of the latest ordinary election of members of the Committee in accordance with the following scale-

Constitution

Number of union members	Number of members of the Committee
10 to 20 union members	3 members.
21 to 100 union members	5 members (of whom at least one shall represent non-manual employees, if any such are
Over 100 union members	5 members plus additional member for each additional 500 union members; (at least two members shall represent non-manual employees, if any such are employed).

(2) The quorum of a Committee shall be the first integer above one-half of the number of members of the Committee prescribed in sub-paragraph (1) above.

(b) Elections

Members to be elected

2.-(1) The members of a Committee shall be elected, in accordance with this Part of this Schedule, by the union members (being employees within the meaning of this Act) employed in the business.

(2) Where a business is divided into departments or sections, the employer and the local representative of the Union may agree that the members of the Committee shall be elected to represent the departments or sections, and the number of representatives allotted to each department or section, or group of departments or sections, shall be in proportion, as nearly as may be, to the number of union members (being employees within the meaning of this Act) employed therein.

Elections

3.--(1) An ordinary election shall be held-

(a) in the case of a business to which section 5 applies at the commencement of Part 11 of this Act, as soon as practicable after the commencement of that Part:

Provided that where, prior to the commencement of that Part, a committee of workers has been elected in any business for purposes similar to those prescribed by this Act as the functions of a Workers' Committee or any of them, and by a procedure substantially similar to that prescribed in this Schedule or substantially similar to that so prescribed in the case of voters who are unable to write (and for the purposes of this proviso a procedure may be deemed to be substantially similar notwithstanding that the votes were recorded by the supervisors of the election instead of being written on a voting paper and placed in a ballot box) the Committee shall be deemed to be a Workers' Committee for the purposes of this Act and the term of the members of such Committee shall run from the date of such election;

(b) in the case of a business to which section 5 first applies after the commencement of Part 11 of this Act, or to which section 5 having ceased to apply by reason of the fall in the numbers of the union members employed therein below ten, the said section once more applies, as soon as practicable after the said section so applies;

(c) as soon as practicable after the Minister has dissolved the Committee or all the seats of the members of the Committee have become vacant;

(d) on the expiration of the term for which any member of the Committee was elected.

(2) Save where an Ordinary election is required to be held under item (c) of sub-paragraph (1), an election to fill a casual vacancy shall be held where a member of the Committee ceases to be a member before the expiration of the term for which he was elected.

Nomina-
tion of
candidates

4.-(1) When an election is to be held, the employer and the local representative of the Union shall agree upon a day for the nomination of candidates, and the employer shall give notice thereof and of the number of vacancies to be filled at the election.

(2) No person shall be qualified for nomination as a candidate-

(a) unless he is an employee within the meaning of this Act and a union member;

(b) if he is under twenty-one years of age;

(c) if he has not been employed by the employer for at least twelve months:

Provided that if the business has not been in existence for twelve months, or the work is of a seasonal character or there are less candidates qualified under this item than there are vacancies an employee shall not be disqualified for nomination by reason only of his not having been employed by the employer for at least twelve months;

(d) if he is not qualified to be an officer of a trade union by reason of the provisions of subsection (4) of section 25 of the Trade Unions Ordinance,

and the election of any person not so qualified shall be void.

(3) A candidate's nomination paper shall be in writing signed by such number of union members (being employees within the meaning of this Act) employed in the business (or, in the case of election for representatives of departments or sections, employed in the relevant departments or sections) as follows: -

- | <i>Where the number of such union members is</i> | <i>No. of signatures required for nomination</i> |
|--|--|
| from 10 to 20 (inclusive) | 3: |
| from 21 to 100 (inclusive) | 5: |
| over 100 | 10: |
- (4) Each candidate shall deliver his nomination paper to the local representative of the Union on the day appointed for nomination. The latter shall thereupon submit the nominations to the branch secretary of the Union for the area (who shall satisfy himself that the are in order) and furnish a list of the nominees to the employer at least seven days before the day appointed as election day.

(5) The local representative of the Union shall, if required, assist union members in the completion of nomination papers and shall witness the marks of illiterate nominators.

5. Where the number of candidates properly nominated equals or is less than the number of vacancies on the Committee, the candidates shall be deemed to have been elected and the local representative of the Union shall accordingly declare them to have been so elected. When the number of candidates properly nominated is less than the number of vacancies, the election procedure for the remaining vacancies shall commence anew.

Where number of nominated candidates equals or is less than the number of vacancies

6. Where there are more candidates properly nominated than vacancies, the employer and the local representative of the Union shall agree upon a day at least seven days after the nomination of candidates for the election; and the employer shall give notice thereof.

Election of candidates

7.-(1) An election-

(a) shall take place during working hours:

Provided that an election to fill a casual vacancy shall not be held during working hours unless the employer authorizes its being so held;

- (b) shall be held in such a place set apart for the purpose, and shall be conducted, so as to ensure that voting in accordance with sub-paragraph (3) is as secret as the circumstances of the voters permit;
- (c) shall be attended and supervised by the employer, or his representative and the local representative of the Union or, if the latter is himself a candidate, a union member appointed by the branch secretary of the Union for the area to represent him.

Procedure at election

(2) Each union member (being an employee within the meaning of this Act) employed in the business on the day of an election shall have one vote at the election:

Provided that when an election is held for a representative of a department or a section, only such members so employed in the relevant department or section shall vote thereat.

(3) The voting at an election shall be conducted in the following manner: -

(a) each qualified voter-

- (i) who is able to write the name of the candidate of his choice and wishes so to do, shall obtain a voting paper from the supervisors of the election, shall write the name of the candidate of his choice thereon and place the paper, folded with the name on the inside, in a ballot box;
- (ii) who is unable to write the name of the candidate of his choice or does not wish so to do, shall tell the name of the candidate of his choice to the supervisors of the election jointly and one of the latter shall write the same on a voting paper and place the same folded as aforesaid in ballot box;
- (b) when every qualified voter who has attended has given his vote, the ballot papers shall be counted (paper containing the name of more than one candidate or not being legible being disregarded) and the local representative of the Union or his representative, in the presence of the employer or his representative, shall declare to be elected to fill the vacancies those candidates for whom the greater numbers of votes have been recorded;

- (c) when an equality of vote, is found to exist between candidates and, after deducting from the number of vacancies the number of candidates having greater numbers of votes, the remaining vacancies are fewer than the candidates having equal votes, a further election shall be held between such last-mentioned candidates for such remaining vacancies.

Tenure of office

8.-(1) A member of a Committee elected in an ordinary election shall, unless he earlier ceases to be a member, hold office for a period of two year:

Provided that where members are elected in an election held in the circumstances described in item (a), (b) or (c) of sub-paragraph 3, half of such members (or, if one half is not an integer, the nearest integer above one half), chosen by lot, shall hold office for a period of one year.

(2) A member of a Committee elected to fill a casual vacancy shall unless he earlier ceases to be a member, hold office for the period for which the member in whose place he was elected held office.

(3) A member of a Committee shall cease to be a member notwithstanding that such period aforesaid shall not have expired-

- (a) on his ceasing to be employed in the business in which the Committee is established.
- (b) on his resignation from the Committee;
- (c) on his ceasing to be an employee within the meaning of this Act or a member of the Union;
- (d) if the General-Secretary of the Union, or his deputy, removes him from office.

(c) Miscellaneous

Proceedings of committee

9.-(1) In addition to the meetings prescribed by sections 6 and 8 of this Act, a Committee shall meet at such times as may be necessary to consider disciplinary matters which have been referred to it under Part III of this Act and may meet at such other times as may be necessary or expedient for the Performance of its functions:

Provided that save when disciplinary matters have been so referred to it, the Committee shall not meet during normal working hours except with the prior permission of the employer or his representative.

(2) A Committee shall elect from its members a chairman and deputy chairman, and the chairman, or in his absence the deputy chairman, shall have the duty of convening meetings.

(3) At any meeting of a Committee, the chairman or, in his absence, the deputy chairman, shall preside.

(4) A decision of the majority of members present and voting at a meeting at which there is a quorum shall be deemed to be a decision of the Committee-

(5) Subject to there being a quorum, the acts and proceedings of a Committee shall not be invalidated by reason only of a vacancy or, of it being afterwards discovered that there was a defect in the election of a person purporting to be a member.

(6) Where there is an equality of votes, the chairman, or in his absence the deputy chairman, shall have a casting vote in addition to his Original vote

(7) A proper record in writing shall be kept by every Committee of all matters relating to the imposition of a disciplinary penalty or a Proposed disciplinary Penalty by the employer for a breach of the Disciplinary Code and a copy of this record shall be forwarded to a Board and to the employer in any case where a reference in relation to such penalty is made to a Board under the provisions of this Act.

Notices

10. Where an employer is required to give notice of any Matter under this Schedules he shall cause written notice thereof to be displayed on such boards or at such places within the place of work as are customarily used for bringing notices to the attention of employees.

Disputes between employer and local representatives

11. Where the employer or his representative and the local representative of the Union or his representative fail to agree on any matter required by this Schedule to be done with their agreement, a labour officer may give directions as to such matter, and any matter effected in accordance with such directions shall be deemed to have been effected with such agreement aforesaid.

THE SECOND SCHEDULE

(Sections 19 and 20)

1.

2.

THE DISCIPLINARY CODE	PERMISSIBLE PENALTIES				
	1st breach	2nd breach	3rd breach	4th breach	5th and subsequent breach
Where the employee-					
(a) is late for work;	Written warning	Reprimand	Severe reprimand	Fine	Summary dismissal,
(b) is absent from his work-place during working hours without his employer's permission;	Written warning	Reprimand	Severe reprimand	Fine	Summary dismissal
	1st breach	2nd breach	3rd breach	4th and subsequent breach	
(c) is absent from work without reasonable cause;	Reprimand	Severe reprimand	Fine	Summary dismissal	
(d) fails to complete his task;	Written warning	Reprimand	Fine	Summary dismissal	
(e) neglects his duties but not so as to endanger the safety of persons or property;	Reprimand	Severe reprimand	Fine	Summary dismissal	
(f) fails to comply with the employer's instructions relating to work (including, without prejudice to the generality of the foregoing, those designed to increase efficiency or output);	Reprimand	Severe reprimand	Fine	Summary dismissal	
	Any breach				
(g) wilfully damages, misuses or misappropriates buildings, machinery, raw materials, other property or tools or any object used in connection with his work;	Summary dismissal				

1.	2.
THE DISCIPLINARY CODE	PERMISSIBLE PENALTIES
	Any breach
(h) neglects or fails to carry out his duties so as to endanger himself or others or property or neglects or fails to Comply with any instructions relating to safety or welfare;	Summary dismissal
(i) commits any unjustifiable assault or brawls at the place or in the course of work;	Summary dismissal
(j) commits an unjustifiable assault, whether or not at his place of work, on his employer, a member of his employer's immediate family or a member of the management staff;	Summary dismissal
(k) commits any serious or repeated act of insubordination at the employees premises or during working hours against the employer, or members of the management staff;	Summary dismissal
(l) is unable to perform his work efficiently by reason of the use of alcohol;	Summary dismissal
(m) is unable to perform his work efficiently by reason of the improper use of drugs;	Summary dismissal
(n) is convicted by Any court of any unlawful act at the place of, or in the course of, work, unless such employee successfully appeals against such conviction;	Summary dismissal
(o) is guilty of an immoral act at the place of or in the course of work;	Summary dismissal
(p) smokes in a place which the employer has forbidden for reasons of safety;	Summary dismissal
(q) is convicted by a court of an Offence involving fraud or dishonesty, or for which he was sentenced to imprisonment, unless such employee successfully appeals against such conviction;	Summary dismissal
(r) without due authority discloses or conveys any information or any technical, trade or confidential matter to the Prejudice of his employer;	summary dismissal
(s) being employed in the service of the United Republic, commits any act which is against public interest.	Summary dismissal

THE THIRD SCHEDULE

(Section 53)

AMENDMENT OF LAWS

PART A

The
Employment
Ordinance
(Cap. 366)

Section 2

(a) Delete the definition "employment card"..

(b) Delete the definition "oral contract" and substitute the following now definition:-
"oral contract' means any contract of service other than a written contract;".

Section 25

Is repealed and replaced by the following new section: -

"Wages during imprisonment or lawful custody

25. No wages shall be payable to any employee in respect of any period during which the employee is imprisoned under any law or otherwise detained in lawful custody."

Section 25A In subsection (3), delete the words and comma "to an employee employed on a contract to execute piece work or to perform a journey, or"

Section 29 Delete Paragraph (a) of the proviso.

Section 30 Substitute a full stop for the semi-colon at the end of paragraph (iii) of the proviso and delete paragraph (iv) of the proviso.

Section 32 In paragraph (a), substitute a semi-colon for the comma after the word "period" in the fifth line and delete the remainder of the paragraph.

Section 34 Is repealed and replaced by the following new section: -

"Contracts for task and piece work to take effect as monthly contracts

Acts 1964 No. 62

34-(1) Subject to the provisions of this section, but notwithstanding any agreement or custom to the contrary, where, after the commencement of Part V of the Security of Employment Act, 1964, any Person Purports to enter into a contract of service under which a task or piece work is to be executed, or a journey to be performed, for an agreed remuneration, such contract shall have effect as if it were, and shall for all purposes be deemed to be, a contract of Service for the performance of work of the kind envisaged in such first-mentioned contract of service or period of time which, in the absence of any agreement between the parties for a lesser period, shall be deemed to be a month.

(2) Nothing in subsection (1) shall be construed as precluding the calculation of wages under any contract of service (including a contract deemed by that subsection to be a contract for a period of time) according to, piece rates or work performed and, subject to any agreement to the contrary, in the case of a contract of service under which a task or piece work is to be executed for an agreed remuneration and which takes effect in accordance with that subsection, wages shall be so calculated.

(3) Nothing in this section shall be construed as affecting the contract of service of any casual employee."



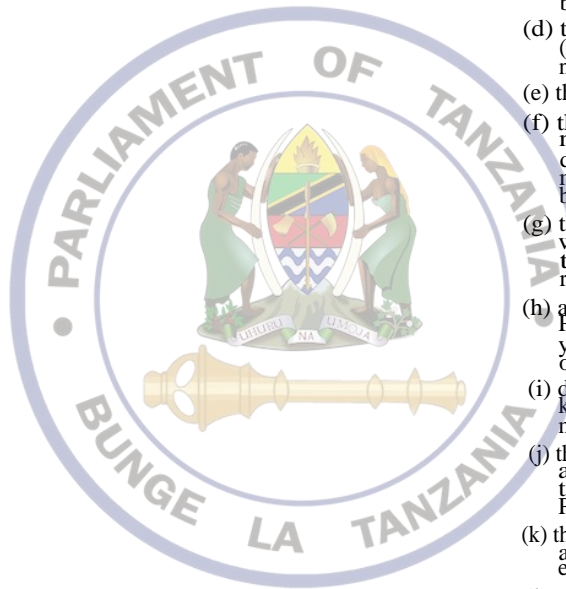
Section 35 Is repealed and replaced by the following new section:-

"Record of oral contracts

35.--(1) Every employer shall prepared and maintain or cause to be prepared or maintained a record of contract for every employee employed by him under an oral contract of service, other than a casual employee.

(2) A record of contract shall contain the following particulars:-

- (a) the name, age and sex of the employee and details of his domicile (i.e. his village, area and region);
- (b) the name, address and occupation of the employer;
- (c) the work to be performed by the employee;
- (d) the type of contract: (e.g. daily, weekly, fortnightly, monthly);
- (e) the place of work;
- (f) the number of hours normally worked per day, week, fortnight or month, as the case may be;
- (g) the rate of wages and whether calculated on time, task or piece rates;
- (h) any other recompense provided for the employee (e.g. a commission, or a share in profits);
- (i) details of payments in kind (e.g. rations, housing, water);
- (j) the intervals of payment and, if it is other than the place of work, the place of payment;
- (k) the full names, addresses and relationships of the employee's next-of-kin;
- (l) any Trade Union membership number of the employee;
- (m) any National Provident Fund membership number of the employee;
- (n) any additional terms of the contract;
- (o) the date on which the employment commenced;
- (p) the date and signatures of the employer and employee, or the employee's thumb print witnessed by a person acceptable to an illite-acceptable and who has explained the terms of the contract to him.

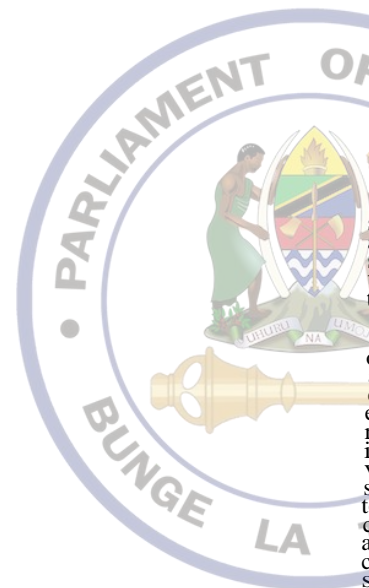


Provided that it shall not be necessary to include in any such record and conditions arising from custom, usage or law, or any benefits or rights so conferred on employees, and the provisions of subsection (5) of this section shall not apply in relation to such conditions, rights or benefits.

(3) Every record of contract shall be prepared in duplicate and one copy shall be given to the employee at the time of his engagement (or, in the case of employees engaged before the commencement of Part V of the Security of Employment Act, 1964, within one month of such commencement) and one copy retained by the employer. Each copy shall be amended by the employer in the event of any change in the particulars required to be recorded.

(4) An employer who fails—
 (a) to prepare or cause to be prepared such record as aforesaid; or
 (b) to issue a copy of an appropriate record to the employee concerned,
 shall be guilty of an offence against this Ordinance and shall be liable upon conviction to a fine not exceeding two thousand shillings.

(5) Where any dispute arises as to the terms and conditions of an oral contract other than a contract for the employment of a casual employee and the employer fails to produce a record of such contract made in accordance with the provisions of this section, the statement of the employee as to the nature of the terms and conditions shall be receivable as evidence of such terms and conditions unless the employer satisfies the court to the contrary."



Section 158

In subsection (1) insert, immediately below item (i), the following new item:-

"(ia) providing for further particulars to be recorded in a record of oral contract, for the manner of registration thereof, and for all other matters relating to the making and cancellation of such records; "

Section 4

Insert the word "or" at the end of sub-Paragraph (ii) of paragraph (a) of subsection (1) and delete sub-paragraph (iii) of that paragraph.

Section 5

Substitute a semi-colon for the full stop at the end of paragraph (c) of subsection (3) and add the following new paragraph to that subsection: -

The
 Severance
 Allowance
 Act 1962
 (Acts 1962
 No. 57)

"(d) no account shall be taken, of any period prior to the commencement of Part V of the security of Employment Act, 1964 during which the employee was serving under a contract of service to which section 34 of the Employment Ordinance, (as then in force) referred."

PART B

The Employment Ordinance (Cap. 366)

Section 37

Substitute a colon for the full stop at the end of the section and add the following now proviso: -

"Provided that nothing in this section shall prohibit or restrict the summary dismissal of an employee to whom Part III of the Security of Employment Act, 1964 applies in any case in which he may be dismissed summarily in accordance with that Part, nor shall this section be construed as rendering lawful the summary dismissal of such an employee except in accordance with the provisions of that Part."

Section 51

Substitute a semi-colon and the word or for the full stop at the end of subsection (1) and add the following new paragraph to that subsection: -

"(c) in the case of an employee to whom Part III of the Security of Employment Act, 1964 applies, if it is summarily terminated in accordance with the provisions of that Part of that Act:

Provided that, in addition to the provisions of that Part of that Act, a written contract shall not be summarily terminated without the consent of a labour officer and shall be subject to such conditions relating to the payment of wages earned, any deposited wages due to the employee and the employee's right to the repatriation of himself and his family, as the labour officer may direct."

Section 61

In subsection (3), insert, immediately after the words "this Ordinance", the words "or any other law"

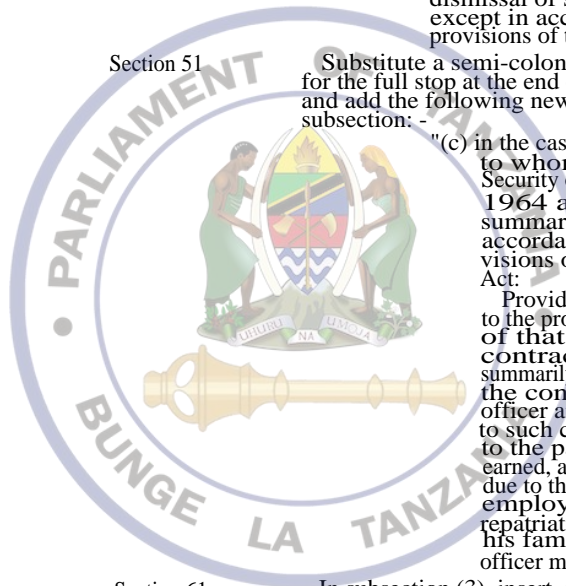
The Severance Allowance Act, 1962 (Acts 1962 No. 57)

Section 3

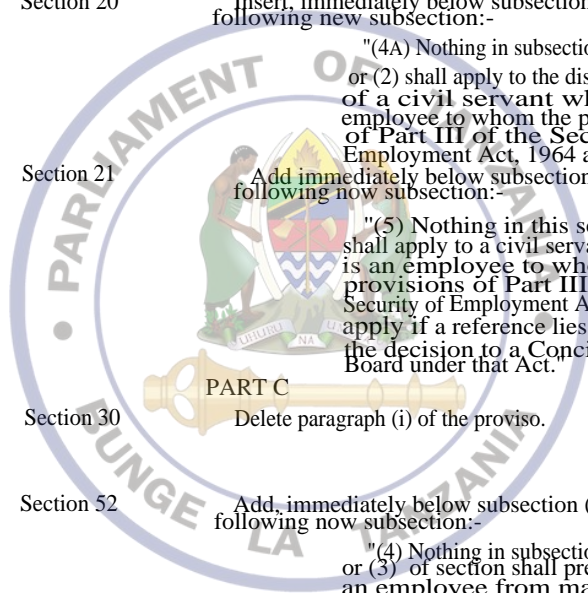
(a) Insert, immediately after the figures "1962" in the third line, the brackets, words, commas and figures "(or, in a case to which, paragraph (bb) refers, the commencement of Part III of the Security of Employment Act, 1964)"

(b) Insert, immediately below paragraph (b), the following new paragraph:-

"(bb) the employment is lawfully terminated by the employee, or the employee's contract of service expires and he refuses to renew the same, and the appropriate Conciliation Board established under the Security of



		Employment Act, 1964 is satisfied, after reference to it and inquiry into the circumstances, that the employer has unlawfully assaulted the employee and that the employee has terminated the employment or refused to renew the contract by reason thereof, and gives its certificate to that effect; or".
	Section 4	Substitute a comma for the full stop at the end of subsection (4), and add the "or unless the case falls within the Provisions of paragraph (bb) of section 3."
	section 5	Insert, immediately after the words "sentence of imprisonment" in paragraph (c) of subsection (3), the words, figures, brackets and commas "or otherwise detained in lawful custody, is suspended without pay in the circumstances specified in subsection (3) of section 29 of the Security of Employment Act, 1964, or"
The Civil Service Act 1962 (C.A. Act 11)	Section 20	Insert, immediately below subsection (4), the following new subsection:- "(4A) Nothing in subsection (1) or (2) shall apply to the dismissal of a civil servant who is an employee to whom the provisions of Part III of the Security of Employment Act, 1964 apply."
	Section 21	Add immediately below subsection (4), the following new subsection:- "(5) Nothing in this section shall apply to a civil servant who is an employee to whom the provisions of Part III of the Security of Employment Act, 1964 apply if a reference lies against the decision to a Conciliation Board under that Act."
	Section 30	Delete paragraph (i) of the proviso.
The Employment Ordinance (Cap. 306)	Section 52	Add, immediately below subsection (3) the, following new subsection:- "(4) Nothing in subsection (1) or (3) of section shall preclude an employee from making a reference, to a Conciliation Board established under the Security of Employment Act, 1964 claiming statutory compensation under that Act, or shall confer on an administrative officer, labour officer or a court any jurisdiction to determine the liability of an employer to pay, or the entitlement of an employee to receive, such statutory compensation."
	New Section 60A	Add, immediately below section 60, the following new section: - "Continued employment under oral contract 60A. For the avoidance of doubts it is hereby declared that nothing in the foregoing provisions of this Part shall be construed as prohibiting or restricting an employee who



		has completed a written contract of service, other than a foreign contract of service, from continuing in the service of his employer under an oral contract of service."
	Section 103	Substitute a comma for the full stop at the end of the proviso, to subsection (1) and add the following "or, in respect of an employee who at the completion of a written contract of service has waived his right to repatriation under Part V of the Ordinance."
	Section 128	Add, immediately below subsection (3), the following new subsection:- "(4) Nothing in this section shall apply to statutory compensation within the meaning ascribed to that expression in Part IV of the Security of Employment Act, 1964."
The Severance Allowance Act, 1962 (Acts 1962 No. 57)	Section 3	Substitute a colon for a full stop at the end of the section and add the following new proviso:- "Provided that when an employee who has completed a contract to which sections 49 and 56 of the Employment Ordinance refer and who is re-engaged by his employer on the statutory terms as defined in section 36 of the Security of Employment Act, 1964, severance allowance shall not be payable to or in respect of such employee by reason of the expiry of the maximum periods of service or re-engagement (as defined in the relevant sections of the Employment Ordinance)."
	Section 10	Substitute a colon for the full stop at the end of subsection (1) and add the following new proviso: - "Provided that where the employer is informed by the employee that the employee proposes to refer the termination of his employment to a Conciliation Board under the provisions of Part IV of the Security of Employment Act, 1964 the employer may withhold the severance allowance until- (a) if no reference is made to such Board within the time limited therefore in the said Act, the expiry of that time; or (b) the abandonment of the reference; or (c) the communication to the employer of the decision of the Board on the reference, whichever first occurs."

Passed in the National Assembly on the third day of December, 1964.

P. MSEKWA,
Clerk of the National Assembly

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