

See R. G. 11-7-45 for list
Bibliographical References - p. 407

Under Suppl. R. G. 4746.
p. 413



TRINIDAD AND TOBAGO.

No. 12—1945.

[L.S.]

I ASSENT,

A. B. WRIGHT,
Acting Governor.

22nd May, 1945.

AN ORDINANCE to amend the Workmen's Compensation Ordinance, Ch. 22. No. 12.

Commence-
ment.

[On Proclamation]

Commenced 16 July 46

Enactment.

ENACTED by the Governor of Trinidad and Tobago with the advice and consent of the Legislative Council thereof.

Short title,
construction,
and com-
mencement.

Ch. 22. No. 12.

1. This Ordinance may be cited as the Workmen's Compensation (Amendment) Ordinance, 1945, and shall be read as one with the Workmen's Compensation Ordinance, hereinafter referred to as the Principal Ordinance, and shall come into force on such date as the Governor may by proclamation appoint.

2. Subsection (1) of section 2 of the Principal Ordinance <sup>Amendment
of definitions.</sup>
is hereby amended as follows :—

- (a) by inserting in the said subsection immediately after the definition of " member of a family " the following definition—

" medical referee " means a medical practitioner appointed by the Governor as a medical referee for the purposes of this Ordinance ;

- (b) by deleting the definition of " agriculture " ;

- (c) by substituting for the second paragraph in the definition of " employer " the following—

" In relation to a person engaged in plying for hire with any vehicle or vessel, the use of which is obtained by that person under a contract of bailment (other than a hire-purchase agreement) the person from whom the use of the vehicle or vessel, is so obtained shall be deemed to be the employer " .

- (d) by substituting for the definition of " workman " the following definition—

" workman " means any person who has entered into or works under a contract of service or apprenticeship with an employer, whether the contract was made before or after the commencement of this Ordinance and whether such contract is expressed or implied, is oral or in writing ; and also includes a person engaged in plying for hire with any vehicle or vessel, the use of which is obtained by that person under any contract of bailment (other than a hire-purchase agreement) in consideration of the payment of a fixed

sum or a share in the earnings or otherwise: Provided that the following persons shall not be regarded as workmen for the purposes of this Ordinance—

- (i) persons employed otherwise than by way of manual labour whose remuneration exceeds twelve hundred dollars a year; or
- (ii) persons whose employment is of a casual nature and who are employed otherwise than for the purposes of the employer's trade or business, not being persons employed for the purposes of any game or recreation and engaged or paid through a club; or
- (iii) out workers; or
- (iv) members of the employer's family dwelling in his house; or
- (v) persons in the naval or military or air service of the Crown and persons in the civil employment of His Majesty otherwise than in His Government of the Colony; or
- (vi) members of the Police Force and members of any police organisation constituted by law who have the general powers of members of the Police Force and in respect of whom provision exists in any law for the payment of a gratuity or pension in case of injury or death; or
- (vii) domestic servants employed in a private dwelling house; or
- (viii) persons employed (otherwise than in connection with any engine or machine worked by mechanical power) on an agricultural holding not exceeding 30 acres."

3. The following new section is hereby inserted in the Principal Ordinance immediately after section 2 thereof, and shall form part of the said Ordinance :—

New section
2A inserted in
Principal
Ordinance.

"Appoint-
ment and
remunera-
tion of
medical
referees.

2A. (1) The Governor in Council may appoint any member of the Medical Board of Trinidad to be a medical referee for the purposes of this Ordinance and may revoke any such appointment at any time.

See R. G. 11.7.46
P. 407 for list of
Medical Referees.

(2) Any appointment made under the preceding subsection, or any revocation of any such appointment, shall take effect on the date of its publication in the *Royal Gazette*.

(3) The remuneration of, and other expenses incurred by, medical referees under this Ordinance shall, subject to regulations made under this Ordinance and except so far as they are defrayed by fees received from the parties under this Ordinance, be paid out of moneys provided by the Legislative Council.

(4) Where a medical referee has been employed as a medical practitioner in connection with any case by or on behalf of an employer or workman or by any insurers interested, he shall not act as medical referee in that case.

(5) The number of medical referees appointed by the Governor in Council shall be at least six at any time: Provided that the reduction, below six, of the number of medical referees shall not invalidate any reference to, or any certificate given by, a medical referee".

4. Section 3 of the Principal Ordinance is hereby amended by substituting the following for subsection (1) thereof :—

Section 3 of
the Principal
Ordinance
amended.

"Employer's
liability for
compensation,

(1) If in any employment personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall, subject as hereinafter mentioned

be liable to pay compensation in accordance with the provisions hereinafter contained: Provided that—

- (a) the employer shall not be liable under this Ordinance in respect of any injury which does not disable the workman for a period of at least three days from earning full wages at the work at which he was employed;
- (b) if it is proved that the injury to a workman is attributable to the serious and wilful misconduct of that workman, any compensation claimed in respect of that injury shall, unless the injury results in death or serious and permanent disablement, be disallowed.

For the purposes of this Ordinance, an accident resulting in the death or serious and permanent disablement of a workman shall be deemed to arise out of and in the course of his employment, notwithstanding that the workman was at the time when the accident happened acting in contravention of any statutory or other regulation applicable to his employment, or of any orders given by or on behalf of his employer, or that he was acting without instructions from his employer, if such act was done by the workman for the purposes of and in connection with his employer's trade or business".

Section 4
of the Principal
Ordinance
amended.

5. Section 4 of the Principal Ordinance is hereby amended by substituting the following for paragraphs (a) and (b) of subsection (1) thereof:

- Death. (a) where death results from the injury, a lump sum of an amount calculated as follows:
- (i) if the workman leaves any dependants wholly dependent on his wages, the lump sum shall be a sum equal to thirty months wages or one thousand eight hundred dollars, which ever is less;

(ii) if the workman does not leave any dependants wholly dependent on his wages, but leaves any dependants in part so dependent, the lump sum shall be such sum not exceeding in any case the amount payable under the last preceding sub-paragraph as may be agreed upon or, in default of agreement, may be determined by the Commissioner, to be reasonable and proportionate to the injury to the said dependants ;

Permanent total disability.

(b) where permanent total disability results from the injury—

(i) in the case of an adult, a sum equal to forty-two months wages or two thousand five hundred and twenty dollars, whichever is less ; and

(ii) in the case of a minor, a sum equal to eighty-four months wages or two thousand five hundred and twenty dollars, whichever is less.”

6. Section 5 of the Principal Ordinance is hereby repealed and replaced by the following :—

Section 5 of the Principal Ordinance repealed and replaced.

“ Method of calculating wages.

5. (1) In this Ordinance and for the purposes thereof the expression “ monthly wages ” means the amount of wages deemed to be payable for a month's service (whether the wages are payable by the month or by whatever period or at piece rates), and calculated in accordance with the following rules :—

(a) Where the workman has, during a continuous period of not less than twelve months immediately preceding the accident, been in the service of the employer who is liable to pay

compensation, the monthly wages of the workman shall be one-twelfth of the total wages which have fallen due for payment to him by the employer in the last twelve months of that period.

- (b) In other cases, the monthly wages shall be thirty times the total wages earned in respect of the last continuous period of service immediately preceding the accident from the employer who is liable to pay compensation divided by the number of days comprising such period: Provided that where by reason of the shortness of the time during which the workman has been in the employment of such employer or the casual nature of the employment, or the terms of the employment, it is impracticable at the date of the accident to compute a rate of remuneration which would be representative of the workman's average monthly earnings, regard may be had to the average monthly amount which, during the twelve months previous to the accident, was being earned by a person in the same category employed at the same work by the same employer, or, if there is no person so employed, by a person in the same category employed in the same class of employment and in the same district.
- (c) Employment by the same employer shall be taken to mean employment by the same employer in the category in which the workman was employed at the time of the accident, uninterrupted by absence from work due to illness or any other unavoidable cause.

(2) If the amount of the monthly wages arrived at by a calculation in accordance with the provisions of this section exceeds ninety dollars, such monthly wages shall be deemed to be ninety dollars.

(3) A period of service shall, for the purposes of this section, be deemed to be continuous which has not been interrupted by a period of absence from work exceeding fourteen days.

(4) Upon request of the workman to the employer liable to pay compensation, that employer shall furnish in writing a list of the wages of that workman upon which the amount of the monthly wages may be calculated for the purpose of determining the amount of any payment under this Ordinance."

7. The following new section is hereby inserted in the Principal Ordinance immediately after section 11 thereof and shall be deemed to form part of the said Ordinance :—

New section
11A inserted
in Principal
Ordinance.

"Application
for reference
to medical
referee.

11A. (1) Where a workman has submitted himself for examination by a medical practitioner, or has been examined by a medical practitioner selected by himself, and the employer or the workman, as the case may be, has within six days after such examination furnished the other with a copy of the report of that practitioner as to the workman's condition, then, in the event of no agreement being come to between the employer and the workman as to the workman's condition or fitness for employment, the Registrar, on application being made to him by both parties, or, subject to appeal to the Commissioner, by one of the parties, may refer the matter to a medical referee: Provided that where the application is made by only one of the parties, the Registrar, or on appeal the Commissioner, if he is of opinion that, owing to the exceptional difficulty of the case or for any other sufficient reason, the matter ought to be settled in default of agreement by the Commissioner, shall refuse to allow the reference.

(2) In the case of an application made by both parties under the provisions of the preceding subsection, the Registrar shall refer the matter to a medical referee chosen by both parties but, if such parties cannot agree on the choice of a medical referee within such time as may be fixed by the Registrar, the Registrar shall refer the matter to a medical referee chosen by him.

(3) The medical referee to whom the matter is so referred shall, in accordance with regulations made under this Ordinance, give a certificate as to the condition of the workman and his fitness for employment, specifying, where necessary, the kind of employment for which he is fit, and that certificate shall be conclusive evidence as to the matters so certified.

(4) Where no agreement can be come to between the employer and the workman as to whether or to what extent the incapacity of the workman is due to the accident, the provisions of this section shall, subject to any regulations made under this Ordinance, apply as if the question were a question as to the condition of the workman.

(5) If a workman, on being required so to do, refuses to submit himself for examination by a medical referee to whom the matter has been so referred as aforesaid, or in any way obstructs the same, his right to compensation and to take or prosecute any proceeding under this Ordinance in relation to compensation, or, in the case of a workman in receipt of a half-monthly payment under this Ordinance, his right to that half-monthly payment, shall be suspended until such examination has taken place.

8. Section 17 of the Principal Ordinance is hereby repealed and replaced by the following :—

“Workmen in employment of Crown.”

17. (1) This Ordinance shall apply to workmen employed by or under the Crown in the same way and to the same extent as if the employer were a private person, except in the case of persons in the naval or military or air service of the Crown and persons in the civil employment of His Majesty otherwise than in His Government of the Colony.”

Section 17 of the Principal Ordinance repealed and replaced.

Saving clause.

(2) The provisions of this section shall not apply in the case of a workman in, or selected for appointment to, the service of the Government of the Colony, before the 1st of December, 1938, where, in consequence of injury received by any such workman in the discharge of his duties, a pension or gratuity which would not be payable if such injury were received otherwise, is paid to him, or in the case of his death, to any of his dependants as defined in the Principal Ordinance, under any Ordinance or regulations providing for the grant of such pension or gratuity, and in any such case the provisions of section 17 of the Workmen's Compensation Ordinance in force immediately prior to the date aforesaid shall be deemed to be still in force and to have effect.

9. The following new section is hereby inserted in the Principal Ordinance immediately after section 23 thereof and shall be deemed to form part of the said Ordinance :—

“Reference by Commissioner to medical referee.”

23A. (1) The Commissioner may, subject to regulations made under this Ordinance, submit to a medical referee for report any matter of medical character which seems material to any question arising before him in the course of the proceedings before him.

New section 23A inserted in Principal Ordinance.

(2) When the Commissioner has decided to refer a matter to a medical referee by virtue of the provisions of the preceding subsection, he shall fix the time within which the parties to ~~may come~~ an agreement as to the choice of a

medical referee, and failing such agreement, the Commissioner shall refer the matter to a medical referee chosen by him.

(3) A medical referee to whom any such reference is made shall, in accordance with regulations made under this Ordinance, give a certificate of his findings and such certificate shall be conclusive evidence as to the matters so certified.

(4) Regulations may be made by the Governor in Council for prescribing the duties of the medical referee in cases of reference made under this section and the forms to be used."

Section 29 of
the Principal
Ordinance
amended.

10. Subsection (1) of section 29 of the Principal Ordinance is hereby amended by inserting immediately after paragraph (d) thereof the following paragraph :—

" (dd) where a memorandum of agreement for the payment of a lump sum is sent for registration in accordance with the provisions of this section, the Commissioner shall have power in accordance with rules of court—

- (i) to require either party to the agreement to furnish him either orally or in writing with such information as he may consider necessary, or to require the attendance before him of any of the parties to the agreement ;
- (ii) when the information as to the workman's condition appears to him to be insufficient or conflicting, to require a report as to the workman's condition to be obtained from a medical referee chosen by both parties, or if they fail to agree as to the choice of a medical referee within the time fixed by the Commissioner, by a medical referee chosen by the Commissioner ;

and in the event of either of the parties failing to comply with any such requirement of the Commissioner, the Commissioner may refuse to record the memorandum,

Where it appears from any report made by a medical referee that the prospects of the workman's recovery from incapacity cannot as yet be approximately determined, the Commissioner may refuse to record the memorandum."

11. Section 33 of the Principal Ordinance is hereby amended by substituting the following for subsection (1) thereof :—

Section 33 of
the Principal
Ordinance
amended.

"(1) The Chief Justice, with the concurrence of a Puisne Judge, may make rules of court for—

(a) prescribing the manner in which documents are to be furnished or served and applications made under section 11A of this Ordinance, the procedure for appeals to the Commissioner under the said section, and the forms to be used for those purposes ;

(b) regulating the procedure and practice in respect of reports required by the Commissioner under paragraph (dd) of subsection (1) of section 29 and of appeals under section 32 of this Ordinance."

Passed in Council this fourth day of May, in the year of Our Lord one thousand nine hundred and forty-five.

W. J. BOOS,
Clerk of the Council.