

**INDUSTRIAL ARBITRATION.**

1° AND 2° GEO. VI., No. XXVI.

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**No. 26 of 1937.****AN ACT to amend Part IXA of the Industrial Arbitration Act, 1912-35, and for other purposes incidental thereto.**

[Assented to 18th January, 1938.]

**B**E it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited as the *Industrial Arbitration Act Amendment Act (No. 2)*, 1937, and shall be read as one with the Industrial Arbitration Act, 1912-1935, as reprinted in the Appendix to the sessional volume of the Statutes for the year 1935, hereinafter referred to as the principal Act.

Amendment  
of s. 147.

2. Section one hundred and forty-seven of the principal Act is amended as follows:—

- (a) by inserting in paragraph (ii) of the proviso to the section after the word "but" in line eleven of the said paragraph the words "subject to paragraph (iii) of this proviso";

(b) by adding to the proviso to the section a further paragraph as follows:—

(iii) Nothing in this section shall confer or be deemed to confer upon the court any jurisdiction or power to review, nullify, modify, or vary the placing by the Commissioner of the office held by a particular Government officer appointed under the Public Service Act, 1904-1935, in a particular class in any scheme of classification made or adopted by the Commissioner under the provisions of the said Act, or the placing by any other employer of the office held by a particular Government officer under his control in a particular class in any scheme of classification lawfully made or adopted by such other employer, if and so long as the classes prescribed in such scheme of classification are not inconsistent with classes which have been defined in relation to the employment of the Government officers affected by such scheme of classification by an award or order of the Court in the exercise of its jurisdiction under paragraph (a) of this section, or with classes which have been defined in relation to the employment of the Government officers affected by such scheme of classification by an agreement which has been made between the Association and the Commissioner or other employer and deposited with the Registrar as hereinafter in this Part provided for; but this paragraph shall not in any way limit or restrict the right of the Court to define classes conferred upon the Court by paragraph (a) of this section.

3. Section one hundred and forty-nine of the principal Act is amended by adding thereto a subsection as follows:—

Amendment  
of s. 149.

(2.) Every award or order of the Court, whereby under paragraph (a) of section one hundred and forty-seven of this Act classes are defined in relation to the employment of Government officers, shall for the purpose of facilitating compliance therewith, the enforcement thereof and the placing correctly in the classes so defined of the offices of the Government officers to which such classes relate, state

therein the fundamental basis or principle upon which such classes are defined, either alone or in relation to the other classes, and upon which the placing of the offices of such Government officers in the various classes defined as aforesaid shall be determined.

Amendment  
of s. 151.

4. Section one hundred and fifty-one of the principal Act is amended by inserting therein, after subsection (3) a new subsection, as follows:—

(3a.) Where by any agreement mentioned in subsection (3) of this section classes are defined in relation to the employment of Government officers such agreement shall, for the purpose of facilitating compliance with such agreement, the enforcement thereof and the placing correctly in the classes so defined of the offices of the Government officers to which such classes relate, contain a statement of the fundamental basis or principle upon which such classes are defined either alone or in relation to the other classes and upon which the placing of the offices of such Government officers in the various classes defined as aforesaid shall be determined. Unless and until any such agreement contains the statement aforesaid the Registrar shall refuse to receive the agreement under subsection (3) of this section; and if the parties cannot agree upon the terms of any statement aforesaid, a dispute shall be deemed to have arisen which shall be determinable by the Court under and in accordance with the provisions of this Part.

Amendment  
of s. 152.

5. Section one hundred and fifty-two of the principal Act is amended by inserting therein after subsection (4) a new subsection, as follows:—

(4a.) Where, by any agreement mentioned in subsection (4) of this section, classes are defined in relation to the employment of Government officers such agreement shall, for the purpose of facilitating compliance with such agreement, the enforcement thereof and the placing correctly in the classes so defined of the offices of the Government officers to which such classes relate, contain a statement of the fundamental basis or principle upon which such classes

are defined, either alone or in relation to the other classes and upon which the placing of the offices of such Government officers in the various classes defined as aforesaid shall be determined. Unless and until any such agreement contains the statement aforesaid the Registrar shall refuse to receive the agreement under subsection (5) of this section, and if the parties cannot agree upon the terms of any statement aforesaid, a dispute shall be deemed to have arisen, which shall be determinable by the Court under and in accordance with the provisions of this Part.

6. Section one hundred and fifty-three of the principal Act is amended by inserting therein, after subsection (3), a new subsection, as follows:—

Amendment  
of s. 153.

(3a.) Where, by any agreement mentioned in subsection (3) of this section classes are defined in relation to the employment of Government officers, such agreement shall, for the purpose of facilitating compliance with such agreement, the enforcement thereof and the placing correctly in the classes so defined of the offices of the Government officers to which such classes relate, contain a statement of the fundamental basis or principle upon which such classes are defined, either alone or in relation to the other classes and upon which the placing of the offices of such Government officers in the various classes defined as aforesaid shall be determined. Unless and until any such agreement contains the statement aforesaid the Registrar shall refuse to receive the agreement under subsection (4) of this section, and if the parties cannot agree upon the terms of any statement aforesaid a dispute shall be deemed to have arisen, which shall be determinable by the Court under and in accordance with the provisions of this Part.

7. Where, at the time of the commencement of this section, any agreement has already been made and deposited with the Registrar under and in accordance with the provisions of section one hundred and fifty-one or section one hundred and fifty-two, or section one hundred and fifty-three of the principal Act, and is still subsisting, and such agreement defines classes in relation

Provisions  
relating to  
agreements  
already exist-  
ing and de-  
posited with  
the Registrar.

to the employment of Government officers but does not contain a statement of the fundamental basis or principle upon which such classes are defined, either alone or in relation to the other classes, and upon which the placing of the offices of the Government officers to which such classes relate shall be determined, the following provisions shall apply, that is to say—

- (a) the parties to the agreement already made and deposited with the Registrar as aforesaid may agree mutually upon the fundamental basis or principle upon which the classes defined in the said agreement shall be deemed to have been defined and upon which the placing of the offices of the Government officers to which the said classes relate in such classes defined as aforesaid shall be determined;
- (b) when the parties have agreed upon a fundamental basis or principle as provided for in paragraph (a) hereof, the Association or the other party shall cause such agreement to be reduced to writing, such written agreement shall then be executed by the Association and the other party to the agreement, and shall be deposited with the Registrar and a copy thereof shall be published by the Registrar in the *Government Gazette*;
- (c) when an agreement referred to in paragraph (b) hereof has been deposited with the Registrar as aforesaid such agreement shall be deemed to be supplementary to and incorporated with and shall be read as one with and shall subsist concurrently with the agreement already previously executed and deposited with the Registrar as aforesaid to which it relates and as from the date it is so deposited and during the currency of the agreement to which it relates, but no longer, shall operate as and have the effect of an award of the Court;
- (d) unless and until the parties to the agreement already prior to the commencement of this section deposited with the Registrar as aforesaid, arrive at, execute and deposit with the Registrar a mutual agreement supplementary to the said deposited agreement, as provided for in paragraphs (a), (b), and (c) of this section, then,

while the said deposited agreement continues in force and operation and for the purpose of facilitating compliance with the said deposited agreement, the enforcement thereof and the placing correctly in the classes defined by such agreement of the offices of the Government officers to which such classes relate, the said classes shall be deemed to have been defined and the placing correctly in such classes of the offices of such Government officers shall be determined in accordance with the nature and responsibility of the duties of the office as the fundamental basis or principle so that an office, which in comparison with other offices to which the said classes relate carries the least onerous and the least responsible duties shall be placed in that class for which the lowest rate of salary is fixed by the agreement, an office which, in comparison with other offices to which the said classes relate, carries the most onerous and the most responsible duties shall be placed in that class for which the highest rate of salary is fixed by the agreement, and the other offices to which the said classes relate shall consistently with the placing of offices in the lowest and highest classes as aforesaid be placed in the various other classes intervening between the said lowest and highest classes, according as the nature and responsibility of the duties of such offices vary in comparison with the other offices to which the said classes relate;

- (e) when the placing of an office in a defined class is to be determined in accordance with paragraph (d) hereof on the basis of the nature and responsibility of the duties of the office, then in the course of such determination consideration shall be given *inter alia* to the following matters, namely:—

(i) the degree of skill, training, and initiative required for the work and/or for supervising the work or the degree of responsibility for public safety;

(ii) the financial or administrative importance of decisions to be made, actions to be taken,

books to be kept or documents to be prepared by the officer holding the office;

(iii) the effect of the work of the office upon revenue and/or expenditure; and

(iv) the financial or administrative effect of mistakes which may be made by the officer in the performance of the duties of the office.

Amendment  
of s. 162.

8. Section one hundred and sixty-two of the principal Act is amended as follows:—

(a) by adding at the end of subsection (4) the words “and any reference to an award shall be deemed to be a reference to an award or order made by the Court under this Part and also, subject to subsection (5) of this section, to an agreement deposited with the Registrar and in force under the provisions of this Part”;

(b) by adding to the section, after subsection (4) a new subsection as follows:—

(5) Nothing in this section shall confer or be deemed to confer upon the Court any jurisdiction, authority, or power, whether upon an application for an interpretation or for the enforcement of an award or an agreement or otherwise to hear and determine any matter which relates to any decision of the Commissioner in relation to the placing of the office of a Government officer employed under the Public Service Act, 1904-1935, in a particular class in a scheme of classification made by the Commissioner under the provisions of the said Public Service Act, 1904-1935, which affects the Government officer concerned, or which relates to any decision of any other employer in relation to the placing of the office of a Government officer under his control in a particular class in a scheme of classification lawfully made by such employer, which affects the Government officer concerned: Provided that nothing in this subsection shall in any way limit, affect, or prejudice the jurisdiction of the Court to hear and determine whether upon an application for interpretation or for the enforcement of an award or of an agreement or otherwise any

allegation by the Association that in any scheme of classification made by the Commissioner under the provisions of the Public Service Act, 1904-1935, the classes into which the Government officers affected by such scheme of classification have been divided are not in conformity with the classes defined by an award of the Court or by an agreement deposited with the Registrar under the provisions of this Part then in force and relating to the said Government officers or that in such scheme of classification the rates of salary fixed in respect of any class prescribed therein are not in conformity with the rates of salary fixed for such class by an award of the Court or by an agreement deposited with the Registrar under the provisions of this Part then in force and affecting such scheme of classification.

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