

## CHAPTER 387

### THE SECURITY OF EMPLOYMENT ACT

[PRINCIPAL LEGISLATION]

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### CHAPTER 387

#### THE SECURITY OF EMPLOYMENT ACT

An Act to provide for the establishment of Workers' Committees in certain businesses and undertakings, to restrict the powers of employers, businesses and 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 related matters.

[1st May, 1965]

[G.N. No. 159 of 1965]

R.L. Cap. 574

Acts Nos.

62 of 1964

45 of 1969

1 of 1975

13 of 1991

## PART I

### PRELIMINARY PROVISIONS (ss 1-4)

#### [PCh387s1]1. Short title and commencement

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

(2) Subject to the provisions of sections 2 and 55, 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 1.

#### [PCh387s2]2. Application of Part IV

The Minister may, by notice published in the Gazette, apply Part IV of this Act to Tanzania generally or may restrict its application to any part of Tanzania, or to any category or description 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 business or by the employers of the relevant category or description, as the case may be.

[PCh387s3]3. Application to the United Republic and the President

(1) 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 Public 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.

(2) Notwithstanding the provisions of subsection (1), the provisions of the Public Service Act \*, or the regulations made thereunder, or the Laws regulating the Public Service this Act binds the United Republic and 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 Public Service in relation to employees in such services.

[PCh387s4]4. Interpretation

(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 defined in the laws, regulations, orders and instructions regulating the

public service of the United Republic but does not include judicial officers within the meaning of the Judicial Service Act \*;

"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 15;

"Disciplinary Code" means the Code of disciplinary offences set out in the first column of the Second Schedule to this Act, as varied to in accordance with any order under section 54;

"disciplinary penalty" means summary dismissal, deduction from wages by way of punishment, and a formal severe 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 21; 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;

"employee" has the meaning ascribed to it in the Employment Act \* 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) [Omitted: R.E. 1995.];
    - (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 IV, V, VI or VII of the Employment Act \* by an order made under subsection (3) of section 1 of that Act, in respect of his employment as such employee except where such exemption is by reason only of such person being in receipt of wages of any sum of money in excess of the sum of money specified in such order or any other order amending or replacing the same; or

- (c) a casual employee; or
- (d) an apprentice under a contract made in accordance with Vocational Education and Training Act \*; or
- (e) any employee who, in the opinion of the labour officer, is employed in the management of the business of his employer;

"employer" has the meaning ascribed to it in the Employment Act \* 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;

"field branch" means a branch of the Union established in accordance with the provisions of section 8;

"General Secretary" means the General Secretary of the Union;

"labour officer" means a person holding office in the service of the United Republic as a principal labour officer, senior 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 in 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;

"Minister" means the Minister 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 \*;

"Union" means the Organisation of Trade Unions;

"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 Act \*.

(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 (ss 5-19)

#### (a) Establishment and Functions of Workers' Committees (ss 5-10)

##### [PCh387s5]5. Workers' Committees

(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 made under section 56, 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.

[PCh387s6]6. Functions of Committees

(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;

(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 Act 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 employer's 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 temporary or casual employment for reasons, other than for a breach of the Disciplinary Code;

(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 39.

[PCh387s7]7. Dissolution and suspension of Committee

(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.

[PCh387s8]8. Union to establish field branches

(1) The Union shall, not later than 31st December, 1976, establish in every business in which ten or more Union members being employees within the meaning of this Act are employed, a branch of the Union (hereinafter referred to as a "field branch") for that business:

Provided that—

(a) where the General Secretary so directs, there shall be established two or more field branches for one business or one field branch for two or more businesses of the same employer;

(b) where there is already in existence a branch of the Union in any business, the General Secretary may, by writing under his hand, designate such branch to be the field branch for that business established pursuant to this section.

(2) The constitution and proceedings of a field branch shall be regulated by rules which the Union may make in that behalf.

(3) Upon an application made in that behalf by the General Secretary and upon being satisfied that a field branch has been established for any business, the Minister shall, by order in writing, dissolve the Committee established under section 5 for that business, and upon such order being made, and with effect from the date upon which it is expressed to come into operation—

(a) the Committee shall stand dissolved;

(b) all the functions of the Committee under this Act shall vest in such field branch;

(c) the provisions of this Act shall take effect and apply *mutatis mutandis*, as if references therein to a Committee established under section 5 were references to such field branch:

Provided that the provisions of section 5, subsection (2) of section 6, subsection (1) of section 7, the proviso to subsection (1) of section 10 and the First Schedule to this Act shall not apply to or in relation to any field branch.

[s. 7A]

[PCh387s9]9. Duties of employers in relation to Committees

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 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.

[s. 8]

[PCh387s10]10. Financial expenses

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

Provided that nothing in this subsection or in any other law shall authorise 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.

[s. 9]

(b) Establishment and Functions of Conciliation Boards (ss 11-19)

[PCh387s11]11. Establishment of Boards

(1) The Minister shall, by order published in the Gazette, establish throughout Tanzania 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.

(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.

[s. 10]

[PCh387s12]12.       Composition of Boards

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

(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 Public Service Act \*;

(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, an employer shall be appointed from amongst persons nominated for the purpose by the Association of Tanzania 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 persons 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 the 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.

[s. 11]

[PCh387s13]13. Notification of reference and right to be heard

(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 noticed 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, except 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.

[s. 12]

[PCh387s14]14. Proceedings in camera

The proceedings of a Board shall be held in camera.

[s. 13]

[PCh387s15]15. Evidence

(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 authorised 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, and he shall not 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 commits an offence and is liable on conviction to a fine not exceeding five hundred shillings.

[s. 14]

[PCh387s16]16. Decisions of a Board

Where the hearing of a reference is concluded before two members of a Board in addition to the chairman and such two members agree 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.

[s. 15]

[PCh387s17]17. Board to keep record of proceedings

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.

[s. 16]

[PCh387s18]18. Procedure

Except as provided in this Act or in any regulations made under this Act, a Board may regulate its own procedure.

[s. 17]

[PCh387s19]19. Expenses

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

[s. 18]

### PART III

RESTRICTION ON THE SUMMARY DISMISSAL AND FINING OF EMPLOYEES, AND  
THE ADMINISTRATION OF THE DISCIPLINARY CODE (ss 20-33)

(a) Disciplinary Penalties (ss 20-21)

[PCh387s20]20. Restriction on summary dismissal and fine

Subject to the provisions of section 3 but notwithstanding the provisions of any other law, no employer shall—

(a) summarily dismiss any employee; or

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

except 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.

[s. 19]

[PCh387s21]21. Disciplinary penalties

(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—

(a) dismiss an employee summarily;

(b) impose a fine of an amount not exceeding one day's pay of the employee and recover such fine by deduction from the wages of the employee:

Provided that the fine imposed by the employer may exceed the employee's one day's pay in any case in which the Second Schedule provides for a fine of such greater amount;

(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 22, or the subject of a report to a labour officer under section 23; 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 22 or 23, 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 therefor, 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.

[s. 20]

(b) Imposition of Disciplinary Penalties by Employers (ss 22-24)

[PCh387s22]22. When a Committee is, or is required to be, established

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

Provided 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;

(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 cases authorised by subsection (3).

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

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

(b) 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 fourteen days has expired after the employee is so informed and the employee has not informed the employer that he intends to make a reference to the Board and has not made a reference accordingly; or

(ii) where a reference is made within a period of fourteen days unless 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 representations with the Committee; but no employee shall be entitled to be suspended.

[s. 21]

[PCh387s23]23. Where no Committee is, or is required to be, established

(1) This section applies to businesses in which no Committee is, or is required to be, established.

(2) Where an employer imposes a disciplinary penalty, other than summary dismissal, on an employee for a breach of the Disciplinary Code, he shall—

(a) explain the reasons to the employee; and

(b) report the disciplinary penalty, together with the reasons and circumstances, in writing to the labour officer,

and a report under this section may, if the employee is willing to sign the report, include an acknowledgement by the employee that the employer has informed him of the disciplinary 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 therefor in writing and shall report the proposal, 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 fourteen 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 a period of fourteen days, 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.

[s. 22]

[PCh387s24]24. Employee may refer dismissal, etc., to a Board

(1) 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 Saturdays, Sundays and public holidays) of the reference being received by it.

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

Provided that in a case to which section 23 applies and in which the employer is informed in accordance with that section that an employee whom the 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 doubt it is hereby declared that an employee may make a reference to the Board in the circumstances specified in paragraph (a), (b) or (c) of subsection (1) whether or not the employer has complied with the provisions of this Part.

[s. 23]

(c) Functions and Powers of Boards and the Minister under this Part (ss 25-27)

[PCh387s25]25. Powers of Boards

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

(a) shall decide whether the summary dismissal, proposed summary dismissal or deduction from wages, as the case may be, is, having regard to the circumstances of the breach and to any previous 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 authorise the imposition of a lesser disciplinary penalty;

(c) may order the refund to the employee of any deduction and may authorise 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-instatement, it may 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 40 in a case where a Board is not satisfied that 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 a disciplinary penalty has 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 otherwise 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.

[s. 24]

[PCh387s26]26. Implementation of certain decisions

(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 reinstated, as the case may be) re-engage or re-instate the employee in his former employment, and such re-engagement or re-instatement 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 authorises 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.

[s. 25]

[PCh387s27]27. Further reference to Minister

(1) Where—

(a) the summary dismissal or proposed summary dismissal is confirmed by the Board;  
or

(b) the summary dismissal or proposed summary dismissal of an employee is not confirmed by a Board,

the employer may, within twenty-eight days after receiving notice of the decision of the Board, refer the decision 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 25; in so far as they are applicable to the reference to him; and the provisions of section 26 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.

[s. 26]

(d) Miscellaneous provisions (ss 28-33)

[PCh387s28]28. Finality and effect of decisions of Board and Minister

(1) The decision of the Minister on a reference to him under section 27, 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—

(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 orders as are 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).

[s. 27]

[PCh387s29]29. Exclusion of the jurisdiction of the courts

(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 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 setoff and any civil proceeding under Part XII of the Employment Act \*.

[s. 28]

[PCh387s30]30. Criminal proceedings

(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 charge, no proceedings for the imposition of the disciplinary penalties of summary dismissal or deduction from wages under this Act shall be instituted against the employee for a breach of the Disciplinary Code which is 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 on half pay any employee 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 on half pay pursuant to the provision of this section shall not extend later than the acquittal of the employee on such charge unless another such charge is pending and no employee shall be entitled to be so suspended or shall be suspended on less than half pay.

[s. 29]

[PCh387s31]31. Stay of certain orders on further reference to Minister

Notwithstanding the provisions of subsection (1) of section 26, where the employer makes a reference to the Minister against the refusal of the Board to confirm the summary dismissal or proposed summary dismissal of an employee, such employer shall not be required to give effect to the provisions of subsection (1) of section 26 unless he abandons such reference, or until the reference has been determined by the Minister, and the provisions of subsection (1) of section 26 in relation to the decision of the Board shall be subject to any decision made by the Minister.

[s. 30]

[PCh387s32]32. Employer may exercise disciplinary powers notwithstanding reference pending in respect of other breaches of Disciplinary Code

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 to the provisions of this Part, summarily dismissing or suspending such employee, or informing him that he proposes to dismiss him summarily, or imposing a lesser penalty for any other breach of the Disciplinary Code.

[s. 31]

[PCh387s33]33. Summary dismissal for lawful cause

For the avoidance of doubt 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 22, or such report to a labour officer as is provided for in section 23, 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 or proposed summary dismissal of an employee is confirmed by 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 been summarily dismissed for lawful cause.

[s. 32]

#### PART IV

#### ADDITIONAL COMPENSATION ON TERMINATION OF EMPLOYMENT IN CERTAIN CASES (ss 34-44)

[PCh387s34]34. Payment of additional compensation in certain cases

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 40, 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 36:

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.

[s. 33]

[PCh387s35]35. Meaning of "termination of employment"

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

- (a) the termination of an oral contract of service by an employer;
- (b) the determination of a written contract—
  - (i) under subsection (1) of section 52 of the Employment Act \* on the grounds that the employer is unable to fulfil the written contract;
  - (ii) under subsection (3) of section 52 of the Employment Act \* if the application therefor 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, except for the purposes of section 38, 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 employments; or

(ii) the termination of employment at the conclusion of a contract expressed to be for a fixed 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 9 of the Severance Allowance Act \*, or any other law which declares that that Act shall apply to the parties to a contract of employment in the same manner as it applies to cases set out in that 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 Vocational Education and Training Act \*; or

(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 doubt 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 Act \* or otherwise by operation of any other 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.

[s. 34]

[PCh387s36]36. Statutory compensation

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, 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.

[s. 35]

[PCh387s37]37. The statutory terms

The statutory terms—

(a) in the case of an employee who has completed an oral contract of service, his terms shall not be 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, his terms shall not be less favourable to the employee than those of the contract then completed, including the liability of the employer at the completion of the employment to 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.

[s. 36]

[PCh387s38]38. Notification of employee of circumstances of termination

(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's 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.

[s. 37]

[PCh387s39]39. Reference of claims to statutory compensation to Board

(1) 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—

(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.

[s. 38]

[PCh387s40]40. Orders for statutory compensation

(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 employer to pay the statutory compensation to the employee.

(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 Tanzania; or

(b) the total or partial suspension of work for reasons outside the control of the employer, including the non-availability of raw material, the breakdown of machinery, adverse climatic conditions, earth-quake, 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 fulfil the duties incumbent upon him under the contract of employment or under the employer's works' rules applicable to the place 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 behind 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 employer 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 21; 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.

[s. 39]

[PCh387s41]41. Reference to the Minister

(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 that order 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 40 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.

[s. 40]

[PCh387s42]42. Board may order re-instatement

(1) Notwithstanding any other provision of this Act or of any other written law, where an employer terminates the employment of any employee or summarily dismisses any employee and the employee is aggrieved by such termination or dismissal, the employee may at any time before the expiration of fourteen days from the date on which such termination or dismissal takes effect, refer such termination or dismissal to the Board and the Board may, if it is satisfied that—

- (a) the termination was manifestly unreasonable and unconscionable; and
- (b) the circumstances in and on account of which the employment of the employee was terminated by the employer are not circumstances of the kind specified in subsection (2) of section 40; and
- (c) the employee did not consent to the termination or that the termination was not at the instance of the employee; and
- (d) the employee has not accepted any statutory compensation to which he may be entitled under this Act; and
- (e) the employee has not taken up any other employment; and

(f) it will not be unreasonable or unjust to order the employee's re-instatement or re-engagement by the same employer,  
  
order the employer to re-instate or re-engage the employee.

(2) Notwithstanding the provisions of subsection (1) where a reference is made to a Board under that subsection against a summary dismissal, the Board may proceed to determine the reference as if it were a reference made under section 24.

(3) If either the employer or the employee is aggrieved by the decision of a Board on a reference under subsection (1) he may, within twenty-eight days of such decision, refer the decision to the Minister and upon any such reference the Minister shall, as soon as practicable give a decision thereon and in the performance of his functions under this subsection, the Minister may exercise the powers conferred upon the Board by subsection (1) or subsection (2) of this section.

(4) Where in the exercise of its or his powers under this section a Board or the Minister orders—

(a) re-instatement of an employee, the employer shall re-instate the employee in his former employment, and such re-instatement shall have effect for the purposes 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 termination of the employee's employment or his summary dismissal, as the case may be, but the employer may deduct from any wages due on or after the re-instatement, the wages in respect of the number of days during which the employee remained absent from work during, and including, the day on which the termination or dismissal

took effect and the day on which the re-instatement is ordered by the Board or, in the case of a further reference to the Minister, the day on which re-instatement is confirmed or ordered by the Minister;

(b) re-engagement of the employee, the employer shall, subject to any direction of the Board or, as the case may be, of the Minister in that behalf, re-engage the employee on statutory terms with effect from the date on which such re-engagement is ordered.

(5) Where a re-instatement or re-engagement has been ordered under this section and the employer refuses or fails to comply with the order—

(a) in the case of an order made by a Board against which no reference has been made to the Minister, within twenty-eight days of the order being made; or

(b) in the case of an order made by the Minister on a further reference to him, within fourteen days of the order being made by the Minister,

the employer shall be liable to pay the employee compensation of an amount equal to the aggregate of—

(i) the statutory compensation computed in accordance with section 36; and

(ii) a sum equal to twelve months' wages at the rate of wages to which the employee was entitled immediately before the termination of his employment or, as the case may be, his dismissal,

and such compensation shall be recoverable in the same manner as statutory compensation, the payment of which has been ordered under section 40.

[s. 40A]

[PCh387s43]43.       Finality and effect of decisions of Minister and Board

The decision of the Minister on a reference to him under section 41 or section 42 and, subject to any decision on a further reference to the Minister therefrom, the decision of a Board under section 40 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.

[s. 41]

[PCh387s44]44.       Exclusion of jurisdiction of courts

(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) No order of statutory compensation or re-instatement or re-engagement made under this Part shall be subject to review by any court. [ss. (1A)]

(3) In this section "civil proceeding" includes a cross suit or counterclaim, any set off and any civil proceeding under Part XII of the Employment Act \*. [ss. (2)]

[s. 42]

## PART V

### GENERAL PROVISIONS (ss 45-56)

[PCh387s45]45.       References to the Minister

The parties making 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 the Minister.

[s. 43]

[PCh387s46]46.       Delegation

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

[s. 44]

[PCh387s47]47.       References under other law

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

(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.

[s. 45]

[PCh387s48]48. Certificate by the Minister and Chairman of a Board

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 reference thereto,

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

[s. 46]

[PCh387s49]49. Act to prevail over other legislation relating to employment disputes

(1) The provisions of this Act shall have effect notwithstanding anything contained in the Industrial Court of Tanzania Act \*, the Public Service Act \*, or the Local Government Service Act \*.

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

[s. 47]

[PCh387s50]50.       Application of Part XII of Employment Act

Subject to the provisions of this Act which exclude the jurisdiction of the courts, the provisions of Part XII of the Employment Act \* 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.

[s. 48]

[PCh387s51]51.       Criminal proceedings

(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.

(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.

[s. 49]

[PCh387s52]52.       Offences

(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 commits an offence and is liable upon conviction to a fine not exceeding twenty-five thousand shillings:

Provided that no person shall be proceeded against for an offence under 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, commits an offence and is liable upon 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, except in accordance with such procedure or except for some purpose authorised by law, commits an offence and is liable upon conviction to a fine not exceeding two thousand shillings.

(4) Where an offence under 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 commits 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.

[s. 50]

[PCh387s53]53.       Forms

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.

[s. 51]

[PCh387s54]54.       Amendment of the Disciplinary Code

(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.

[s. 52]

[PCh387s55]55.       Amendment of other laws

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:

Provided that—

(a)     [Omitted.];

(b) the provisions of this section in relation to the amendments set out in Part C of the Third 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 Tanzania or certain categories or descriptions of business or employers, shall have effect only in respect of the employees in relation to whom the said Part IV has effect.

[s. 53]

[PCh387s56]56. Regulations

(1) The Minister may make 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 or 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.

[s. 54]

## FIRST SCHEDULE

### CONSTITUTION OF A WORKERS' COMMITTEE AND SUPPLEMENTARY PROVISIONS

(Section 5(6))

#### (a) Constitution

##### 1. Constitution

(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—

| 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 employed).

Over 100 union members      5 members plus one 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 subparagraph.

(b) Elections

2.      Members to be elected

(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.

### 3. Elections

(1) An ordinary election shall be held—

(a) in the case of a business to which section 5 applies at the commencement of Part II 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 place 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 II 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, section 5 applies, as soon as practicable after that 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) Except where an ordinary election is required to be held under item (c) of subparagraph (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.

4. Nomination of candidates

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

(3) A candidate's nomination paper shall be in writing and 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—

Where the number of such union members is      Number of signatures required for nomination

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 and the latter shall thereupon submit the nominations to the branch secretary of the Union for the area who shall satisfy himself that they 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 number of nominated candidates equals or is less than the number of vacancies

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 and where the number of candidates properly nominated is less than the number of vacancies, the election procedure for the remaining vacancies shall commence anew.

6. Election of candidates

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

7. Procedure at election

(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 authorises 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 subparagraph (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.

(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 and 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 supervisors shall write the name on a voting paper and place the same folded in the ballot box;

(b) when every qualified voter who has attended has given his vote, the ballot papers shall be counted (papers 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 of those candidates for whom the greater numbers of votes have been recorded;

(c) when an equality of votes 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.

#### 8. Tenure of office

(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 years:

Provided that where members are elected in an election held in the circumstances described in item (a), (b) or (c) of subparagraph (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 of office 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

9. Proceedings of Committee

(1) In addition to the meetings prescribed by sections 6 and 9 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 except 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 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.

#### 10. Notices

Where an employer is required to give notice of any matter under this Schedule, 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.

#### 11. Disputes between employer and local representatives

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.

### SECOND SCHEDULE

(Sections 20 and 21)

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 workplace during working hours without his employer's permission; | Written warning | Reprimand | Severe reprimand | Fine | S u m m a r y |
|     | dismissal                                                                            |                 |           |                  |      |               |

| 1st breach | 2nd breach | 3rd breach | 4th and subsequent breach |
|------------|------------|------------|---------------------------|
|------------|------------|------------|---------------------------|

|     |                                               |      |                                                                                                                                              |                                                                                                                                    |                   |
|-----|-----------------------------------------------|------|----------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------|-------------------|
| (c) | is absent from work without reasonable cause; | Fine | of an amount not exceeding the employee's pay for the number of days during which he has remained absent from work without reasonable cause. | Fine of an amount not exceeding the employee's pay for the number which he has remained absent from work without reasonable cause. | 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 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; S u m m a r y  
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 employer's 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