

CHAPTER V.

GENERAL CONDITIONS OF LABOUR.

As mentioned in the concluding lines of the previous chapter, we shall deal with remuneration and hours of work in this chapter. How long should a worker work in a day and what should be his remuneration for the work done, will be the important questions that will be answered in this chapter.

REMUNERATION.

Wages is one of the basic areas of interest for labour and it was among the most important initiating factors in the formation of trade unions all over the world. Labour had to ensure that its price (wages) was not pushed far too below subsistence level according to the competitive forces in the market. In other words labour movement wanted to ensure that wages do not fall below a fixed minimum rate by collective agreements with employers. This implies that an imperfect labour market is to be created.

The International Labour Conference in 1928 drafted the Minimum Wage - Fixing Machinery Convention. It requests the member states to undertake to " create or maintain machinery whereby minimum wage rates can be fixed for workers employed in certain of the trades or parts of trades." (1)

In Malaya, Wages Councils Ordinance of 1947 is an attempt to fulfil the condition of the above mentioned convention and in addition to locking after the conditions of employment of workers in certain trades.

Although the general policy in Malaya is to leave wages and conditions of employment to be fixed by the system of voluntary industrial relations mentioned earlier, there are some industries and trades where trade unions either do not exist or are not adequate enough. Hence wage rates cannot be fixed by the voluntary system of industrial relations. As this could lead to employers imposing their own terms and conditions of employment on the workers, the workers may suffer from exploitation. The government, therefore, " has recognised its responsibility to secure a systematic regulation to secure a systematic regulation of wages under statutory powers " (2) Thus was passed the Wages Councils Ordinance.

Section 3 of the Ordinance empowers the Minister of Labour " to establish a Wages Council to perform the functions specified in the subsequent provisions. " This he may do either when he feels that no adequate machinery exists for the regulation of the remuneration of the workers or in pursuance of a Wages Council Recommendation.

(1) Article 1, Minimum Wage Fixing Machinery Convention, 1928

(2) P.28, Industrial Relations, Office of the Trade Union Advisor.

However the convention makes member states free to decide on the nature (3) or form of the machinery and the methods to be followed in its operation after consultation with the organisation of workers and employers.

The Ordinance provides for a procedure for the establishment of a Wages Council. The Minister may only establish a Wages Council on request for such a machinery either by a joint industrial Council (representing employers and employees) or by an organisation of workers or employers who claim to take part habitually in the negotiation for the welfare of those workers in the industry. Hence this provision takes care of the condition that the machinery should be established only after consultation with the relevant parties.

When such a request is received by the Minister (and even when no such request is made but the Minister is satisfied of such a need) he could refer the matter to a Commission of Inquiry. He approves the request or rejects it, pending on the findings of the Commission of Inquiry.

The Commission of Inquiry may either decide that the existing machinery - if any - should be strengthened to make it adequate or in the absence of such a machinery when a reasonable standard of remuneration will not be maintained, it may make a Wages Council Recommendation for the establishment of a Wages Council in respect of those workers and their employers.

The functions of a Wages Council is given in the Wages Regulations Orders. (4) Section 12 stipulate that Wages Council has the power to submit proposals to the Minister (called Wages Regulation proposals) for fixing minimum remuneration to be paid for the workers, holidays with pay and the provisions of "Superannuation Scheme" (5) The Minister then may make a Wages Regulation Order giving effect to the proposals. Remuneration fixed by a Wages Recommendation Order is called "Statutory Minimum Remuneration".

Article 4 of the Convention requires that measures are to be taken by way of a system of supervision and sanctions to ensure that statutory minimum remuneration and other provisions of the Wages Recommendation Order are adhered to.

(3) Article 3, Minimum Wage-Fixing Machinery Convention, 1928

(4) Part III, Wages Councils Ordinance 1947

(5) Any rules providing for the payment of pensions on retirement or a lump sum to the representative in case of death.

Such a machinery could be created by the Commission of Inquiry referred to earlier on its recommendation for a Wages Council. Section 11 of the Ordinance permits the creation of such a machinery called a Central Coordinating Committee which shall ensure that field of operation of the various Wages Council is clearly divided. It could also make recommendations to those Councils with respect to the principles to be followed by them.

Article 4 of the Convention also attempts to prevent the payment of wages below the minimum rates fixed i.e. below the statutory minimum remuneration. " If he is paid less than the minimum wage, the worker could recover it by judicial or legislative proceedings. " (6)

This is taken care of by Section 13 of the said Ordinance which rules that any contract of employment which provides for wages less than the statutory minimum remuneration shall be substituted by the new minimum wages. It also makes it an offence, liable to a fine of \$250/- for any employer to pay less than the statutory minimum remuneration or allow holidays less than the number of holidays fixed by the order.

Another convention on this topic is the minimum Wage Fixing Machinery (Agriculture) Convention 1951. It permits exceptions to the application of the minimum wage " in individual cases to prevent curtailment of the opportunity of employment of physically or mentally handicapped workers " (7) The Wages Council Ordinance under Section 14 fulfils this request for exception thus: " If a worker is infirm or is suffering physical incapacity, he may be requested by the employer for a remuneration less than the statutory minimum remuneration. "

Under the Ordinance, the first Wages Council was established in 1959. This Council was in respect of shop assistants, employees in coffee shops, restaurants, hotels and bars and their employers. In 1960, following a recommendation made by a Commission of Inquiry, a Wages Council was established for stevedorers, cargo handlers and their employers in Penang.

It has been pointed out ⁽³⁾ that trade unions do not accept wages councils as a substitute for the normal joint voluntary arrangements between the employers and the union. Normally statutory minimum remuneration is fixed by joint voluntary agreements between the two parties. Nevertheless, the unions consider themselves free to negotiate with the employers for terms more favourable than those laid down by the Wages Council.

(6) Article 4, Minimum Wage Fixing Machinery Convention, 1928

(7) Article 1, Minimum Wage Fixing Machinery (Agri.) Convention 1951

(8) p.12 Notes on Wages Councils Ordinance, Office of Trade Union
Advisor, Federation of Malaya,

From the above discussion one could note that the provision for the establishment serves only a limited section of the working population. This could be appreciated when we remind ourselves of the objective in formulating the Wages Councils Ordinance. The Ordinance is to be applied in cases where the joint voluntary process of negotiation is not feasible. It is implied that the voluntary system of negotiation is to be practised at normal times, when conditions are not conducive to this procedure, the Ordinance grants the government the right to step in and establish a Wages Council. Its limited area of application could be seen from the fact that so far only two Wages Councils have been established.

Having noted the system of establishing minimum wage rates in certain trades, we shall now proceed to analyse the Ordinance relating to the hours of work and holidays of workers.

HOURS OF WORK.

Early in the days of the International Labour Organisation it was realized that a Convention to ensure a day's rest in a week for workers all over the world was needed. Thus two years after its foundation, the Organisation drafted the Weekly Rest Industry Convention in 1921. It states that the member countries who ratify the convention shall ensure that " the whole staff employed in any industrial undertakings, public or private enjoy in every period of seven days a period of rest comprising at least twenty-four hours " (9) While the convention applies only to industrial undertakings, the corresponding ordinance in Malaya - The Weekly Holidays Ordinance 1950 - provides for a weekly holiday for persons employed in shops, restaurants and theatres. " Every shop not included in any class of shops mentioned in the schedule (10) to this Ordinance shall remain entirely closed on either Friday or Sunday in each week and every person employed therein shall

(9) Article 2, Weekly Rest Industry Convention, 1921

(10) Some of the shops mentioned in the schedule are:-

- a) Premises used for carrying out sale of fuel or repair of vehicles.
- b) Premises used for carrying out the jobs of pharmacists chemists or druggists.
- c) Premises used for carrying out undertakers business
- d) Premises used for sale of business
- e) Premises used for sale of fresh milk, meat, fish, bread, fruits and other perishable goods.

be given a whole holiday on such day " (11)

This provision of a day of rest in a week is essential not only because the workers' health may be effected but also because his efficiency would be affected, if he works with no rest in any one whole day in a week. In fact some sections of people have suggested two days of rest in a week. Of course, this would require working more than eight hours a day.

Unassisted shops may remain open on these days provided only the proprietor shall attend to the customers.

The Ordinance also requires the proprietor to specify the day on which his shop is closed and he is expected to exhibit such notice in the shop.

In addition to this one day a week holiday, shops are to be closed for five additional days every year. " The proprietor shall specify the days chosen and exhibit it in the shop " (12) But if any of the chosen days (out of these five days) falls on a weekly holiday, then the following day is a holiday too.

However, no deductions in the wages of workers is permitted on account of the weekly or annual holidays.

The Ordinance also empowers the Inspectors " to enter and remain in any shop, theatre or restaurant and make such examination of the records or notices or registers in pursuance of the provision of the Ordinance " (13) Contravention of the provisions regarding the weekly or annual holidays will make a proprietor guilty of an offence and is liable to a fine of \$250/-. Given below is a table of the Summary of Prosecution.

TABLE VII
SUMMARY OF PROSECUTION 1961

<u>Offences</u>	<u>Total No. of convictions on charges.</u>	<u>Total amount of fines</u>
<u>Weekly Holidays Ordinances:</u>		
Failing to close	86	\$ 2,475
Failing to display Form "A"	97	2,340
Failing to display Form "B"	49	1,290
Other Offences	69	1,770
Total	<u>301</u>	<u>\$ 7,775</u>

- (11) Section 3 (1) Weekly Holidays Ordinance 1950
 (12) Section 7 (1) Weekly Holidays Ordinance 1950
 (13) Section 10 Weekly Holidays Ordinance 1950

Source: Appendix 37, p.85, Annual Report of Ministry of Labour
1961.

A total of 301 offences were convicted in 1961. Such punishments would help to minimize the number of violations of the provisions of the Ordinance.

It has been the aim of this chapter to discuss the provision in the Ordinances to ensure statutory minimum remunerations and a weekly holiday for workers. We observed that the Wages Councils Ordinance would function only where the joint voluntary negotiation cannot function effectively. In this respect, the Ordinance cannot be applied universally. Regarding the Weekly Holidays Ordinance we noted that workers are ensured a day's rest in a week and five days of holidays with pay in a year.

From this area of General Conditions of Labour, we shall move into an area which we shall call Industrial Safety, Security and Welfare. The next chapter will analyse the provisions that guarantee workers safety, security and their welfare. The chapter will also go into detail measures that safeguard rights and privileges of women and children.

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