

The Government of the Republic of the Union of Myanmar

The Ministry of Labour

Notification No. 2/2012

The 6th Waxing Day of Kason, 1374 M.E.

(26th April, 2012)

The Ministry of Labour, in exercising the power conferred under sub-section (a) of section 59 of the Settlement of Labour Dispute Law, hereby issues the following rules with the approval of the Union Government.

Chapter I

Title and Definition

1. These rules shall be called the Settlement of Labour Dispute Rules.
2. The expressions contained in these rules shall have the same meaning as contained in the Settlement of Labour Dispute Law. Moreover, the following expressions shall have the meaning as follows:
  - (a) **Law** means the Settlement of Labour Dispute Law;
  - (b) **Damages** means the money liable to be paid by the employer to the worker for workforce reduction or lock-out due to economic, financial or raw material difficulty etc. or termination from employment or dismissal which is not in conformity with existing labour law, rules, procedures including violation of employment agreement or collective agreement by the employer;
  - (c) **Cash benefit** includes the money which is liable to be paid by the employer to the worker under the existing labour laws, rules, orders,

directives, decision of the Arbitration Body or Tribunal and mutual agreement;

- (d) **Member of the Conciliation Body** means the Chairperson, Secretary and Members contained in the Conciliation Body;
- (e) **Member of the Arbitration Body** means the Chairperson, Secretary and Members contained in the Arbitration Body;
- (f) **Form** means the form contained in these rules.

## Chapter II

### The Workplace Coordinating Committee

- 3. The member of a Coordinating Committee:
  - (a) shall have attained 21 years of age;
  - (b) if he were a worker's representative, shall be permanent worker at the relevant work and shall have a minimum of six months' service;
  - (c) if he was an employer's representative, shall be the person who takes responsibility and carry out the management at the respective work.
- 4. The number of worker's representatives to be included in forming the Coordinating Committee:
  - (a) if it is a trade which all of its workers are members of the labour organization or a trade having the workers who are not the members of the labour organization of 50 percent or less of total number of workers, it shall be two representatives each from labour organization of such trade;
  - (b) if it is a trade having the persons who are not the members of the labour organization of 50 percent or more of total workers, the total of the

number of labour organization in such trade and the same number of the representatives of the persons who are not the members of the labour organization;

- (c) if it is a trade which has no labour organization, it shall be two representatives elected by the workers of such trade.
5. The number of the employer's representatives to be included in forming the Coordinating Committee:
    - (a) if it is a trade which have labour organization, it shall be as the number of worker's representatives entitled to such trade;
    - (b) if it is a trade which have no labour organization, it shall be two.
  6. In a trade where 30 or more workers are working, the employer shall form a Coordinating Committee to negotiate on the collective agreement, compile the name list of Coordinating Committee in Form (1) and send it to the relevant Conciliation Body within 14 days. When the change of the list of Coordinating Committee occurs, it shall be amended and sent as above.
  7. The Coordinating Committee shall, in negotiating and settling in respect of the claim submitted by the side of worker or labour organization or by the side of employer, compile the record of settlement in Form (2) and send such record of settlement to the relevant Conciliation Body within seven days.
  8. In respect of the claim submitted by the workers for grievance, even though the Coordinating Committee is not formed in a trade which has less than 30 workers, the employer shall negotiate with the representatives of the workers and compile the record of settlement in Form (2-A). The employer shall send the said record of settlement to the relevant Conciliation Body when so requested.

9. In negotiating and settling in respect of a claim submitted by a worker or labour organization or by the employer at the Coordinating Committee, if the settlement cannot be reached, the employer or worker may complain to the relevant Conciliation Body in Form (3).

### **Chapter III**

#### **The Conciliation Body**

10. The member of a Conciliation Body:
  - (a) shall have attained 21 years of age;
  - (b) shall have experience in labour affairs;
  - (c) shall have good character.
11. The Conciliation Body:
  - (a) shall conciliate until the settlement is reached within three days, not including the official holidays, after knowing or receiving the dispute;
  - (b) if it cannot be conciliated until the settlement is reached within three days in accord with sub-rule (a), may conciliate until the settlement is reached if both sides request to continue the conciliation;
  - (c) shall conciliate the dispute in accord with the existing labour law including the employment agreement or collective agreement. If there is no employment agreement, it shall be conciliated in accord with the existing labour law;
  - (d) if the settlement is reached, shall cause both sides to sign in the mutual agreement as mentioned in Form (4) and send such agreement to the parties in dispute and the Township Factories and General Labour Laws Inspection Department.

12. The Conciliation Body shall, in conciliating the dispute:
  - (a) inform the parties in dispute that they can apply to the competent court relating to an individual dispute which cannot be reached settlement;
  - (b) refer the report on collective dispute in Form (5) as mentioned together with the proceedings relating to the collective dispute which cannot be reached settlement to the relevant Arbitration Body within two days, not including the official holidays.
13. The Conciliation Body shall keep the record relating to settlement of dispute in registration Form (6).

## **Chapter IV**

### **The Dispute Settlement Arbitration Body**

14. The member of an Arbitration Body:
  - (a) shall have attained 25 years of age;
  - (b)
    - (i) if he is a Chairperson, shall have experience in work of legal affairs or labour affairs;
    - (ii) if he is a person selected from the nomination list submitted by the employer organizations and labour organizations, shall have work experience;
  - (c) shall have good character.
15. The Arbitration Body, relating to the dispute:
  - (a) shall hear and decide the disputes referred by the Conciliation Body within the stipulated time contained in the Law. If not enable to pass the decision within the stipulated time, it shall submit and request to the Arbitration Council to extend the time;

- (b) shall form the branch-bodies with three members including a person each contained in clauses (ii) and (iii) of sub-section (a) of section 16 of the Law to hear the dispute when received it;
  - (c) shall intimate with Form (7) for sending claim or written statement to submit claim, written statement relating to the dispute by the parties in dispute on the stipulated date and to send the claim, written statement which they will submit to each other in advance before submitting them;
  - (d) shall intimate the summons for hearing with Form (8), by expressing that the original agreements, documents which he is desirous to submit shall be submitted accompanied with the claim, written statement of the parties in dispute.
16. The branch-body formed under sub-rule (b) of Rule 15;
- (a) may close the dispute with the approval of the Arbitration Body after dismissing the claim if the claimant fails to appear for three times on the appointed day to hear the dispute although the summon is duly served or if the summon is not served as the claimant cannot be found at the address;
  - (b) may hear the dispute ex parte if the claimant fails to appear for three times on the appointed day to hear the dispute although the summon is duly served or if the summon is not served as the claimant cannot be found at the address;
  - (c) may allow the lawyers of parties in dispute to conduct the case in accord with the stipulated terms and conditions;
  - (d) may carry out the following matters relating to the dispute:

- (i) accepting and inspection of the case referred by the Conciliation Body;
  - (ii) summons of witnesses to appear;
  - (iii) summons to produce documents and materials;
  - (iv) examination of the witnesses;
  - (v) admission of exhibit documents and materials;
  - (vi) adjournment of the date of hearing the dispute;
  - (vii) if it is necessary, going to and inspecting the relevant place and establishment;
- (e) may allow a person from the side of workers and a person from the side of employer to deliver argument if the parties in dispute are desirous to deliver closing argument when the examination of parties in dispute and witnesses is concluded;
  - (f) if both parties in dispute submit to settle by mutual consent before passing the decision, may close the dispute, with the approval of the Arbitration Body, by causing to conclude the mutual agreement with Form (4) before the relevant Conciliation Body;
  - (g) shall submit the case to the Arbitration Body after hearing.

17. The Arbitration Body:

- (a) shall decide, in deciding the dispute, by basing primarily on the evidence examined by the branch-body, questions of law arisen in the dispute and studying and considering decisions and precedents passed in the former disputes;

- (b) shall not decide beyond the issues approved in deciding the dispute. The decision shall be made by the agreement of the majority of the members of Arbitration Body;
  - (c) in deciding the dispute, the decision shall be signed by all members of the Arbitration Body including the Chairperson. After having signed as such, no addition or amendment shall be made;
  - (d) shall send the decision of the Arbitration Body with Form (9) to the parties in dispute within two days from the date of decision not including the official holidays.
18. If the Chairperson or any member is not able to continue to hear the dispute for any cause, a member shall be substituted under sub-section (a) of section 17 of the Law. The member so appointed may continue to hear the dispute as if he were appointed since the commencement of the hearing of the dispute.
19. If the decision of the Arbitration Body is the decision that does not concern with the essential services, a disputant who is not desirous to make lock-out or strike in accord with law although he is not satisfied with the decision, after receiving the decision, may apply with Form (10) to accept the decision of the Arbitration Council. If it is applied as such by a party, the remaining party shall accept the decision of the Arbitration Council.

## **Chapter V**

### **The Dispute Settlement Arbitration Council**

20. A member of the Arbitration Council:
- (a) shall have attained 35 years of age;



- (b) shall be a person who has experience in work relating to legal affairs or labour affairs or relevant work;
- (c) shall be a person who may carry out the benefit of employer and worker fairly;
- (d) shall be a person who has good character.

21. The following persons shall not include in the Arbitration Council:

- (a) government servants who are still in service;
- (b) owner of any trade who is a member of an employer organization or manager or a person who is serving as an executive committee member at a employer organization or a person who served in such employer organization within 12 months before the formation of the Arbitration Council;
- (c) a member of a labour organization or a person who is serving as an executive committee member at a labour organization or a person who served in such labour organization within 12 months before the formation of the Arbitration Council.

22. The Arbitration Council, to hear the dispute accepted:

- (a) shall form a Tribunal in two days with three members comprising a person selected by the side of employer in dispute, among the persons contained in sub-section (b) of section 19 of the Law as a member, and a person selected by the side of worker in dispute, among the persons contained in sub-section (c) of section 19 of the Law as a member, and a person selected by both members selected under sub-section (b) and sub-section (c) among the persons contained in sub-section (a) of section 19 of the Law as the Chairperson;

- (b) shall form a Tribunal with three members comprising a suitable person among the persons contained in sub-section (a) of section 19 of the Law as the Chairperson, and relevant suitable persons among the persons contained in sub-section (b) and sub-section (c) as the members if the name list of member may not be selected by the relevant employer side or worker side within the stipulated time under sub-rule (a).
23. The Tribunal, when received the dispute:
- (a) may decide the dispute after hearing the parties in dispute if desirous to hear them or without hearing;
  - (b) may recall the witnesses if it is necessary to hear and adjourn the hearing date of the dispute;
  - (c) may inspect the relevant place and establishment if it is necessary;
  - (d) shall hear and decide the dispute within the stipulated time contained in the Law;
  - (e) may approve or repeal or amend the decision of the Arbitration Body when the hearing of the dispute is complete or in deciding the dispute without hearing;
  - (f) shall submit the decision under sub-rule (e) to the Arbitration Council with Form (11);
  - (g) may close the dispute, if both parties in dispute submit that the settlement is reached between them before passing the decision, by causing to conclude an agreement, Form (4), in the presence of the relevant Conciliation Body.
24. The Arbitration Council shall substitute and appoint any person from the relevant side if the Chairperson or any member of the Tribunal is not enable

to continue to hear the dispute for any cause. The person so appointed may continue to hear the dispute as if he were appointed from the commencement of hearing of the dispute.

## **Chapter VI**

### **Decision**

25. The Arbitration Body or Tribunal may carry out as follows in passing decision in accord with the provisions of existing labour law by quoting the decisions and precedents to be fair for the employer and worker:
  - (a) cause to reinstate the worker by the employer at the former designation or at any other suitable designation;
  - (b) cause to pay damages for the suitable interval period relating to the matter of reinstatement decision;
  - (c) cause to enjoy cash benefit including wages and salary which the workers are entitled;
  - (d) to determine and set the period of effectiveness of a decision or collective agreement.
26. In the decision, the means and amounts of the damages for termination of employment or damages for dismissal or damages for lock-out shall be mentioned and such cash benefits shall be paid by the employer to the worker within 30 days from the date of decision.
27. The parties in dispute may apply and request the Arbitration Body or Tribunal within seven days from the date of decision to re-explain the unclear facts relating to the particulars contained in the decision. Such explanation, being the integral part of the decision, shall be attached to the decision.

28. The Arbitration Council shall issue and publish the decisions passed by the Tribunal in order to be known by the relevant employer, worker, labour organization, employer organization and the public by suitable manners.

## **Chapter VII**

### **Cash Benefit**

29. If a responsible person fails to pay money according to the mutual agreement concluded in the presence of Conciliation Body or the decision of the Arbitration Body or Tribunal, such money shall be recovered as if it were the arrear of land revenue.
30. (a) If the employer fails to pay the money which he is responsible to pay according to the mutual agreement or decision of the Arbitration Body or Tribunal although stipulated time for the payment of cash benefit has elapsed, he shall pay 20 percent of the money for which he is liable to pay for each month of default in addition to the original money liable to pay;
- (b) The relevant worker shall be entitled to enjoy all money collected under sub-rule (a).
31. In the case where the employer who is responsible to pay under sub-rule (a) of Rule 30 becomes a pauper under existing law or dissolve the enterprise by liquidation, the cash benefit payable to the workers, among the debts payable, shall be carried out preferentially.
32. The employer shall be prosecuted if the defaulting period to pay cash benefit is over three months. However, the employer may apply to the Arbitration Council that he should not be prosecuted on any of the following causes:

- (a) being declared the employer as pauper;
  - (b) being the work is under liquidation;
  - (c) occurrence of force majeure which cannot be prevented by the employer;
  - (d) occurrence of any other sufficient cause.
33. The Arbitration Council shall decide whether or not to prosecute against the employer within 15 days from the date of receipt of the application made under Rule 32.

## **Chapter VIII**

### **Miscellaneous**

34. The disputes being heard shall not be void on account of vacancy in office of any member of the Arbitration Body or Tribunal or any defect in appointing a member of the Arbitration Body or Tribunal.
35. The Minister may determine and issue the rate of damages from time to time, by notification, to be paid to the worker by the employer which a dispute arises due to when the employer terminates any enterprise as it can no longer operate or when the worker is dismissed from work without any cause.
36. In carrying out conciliation and decision of the dispute, the skilled interpreter may be called for and carried out if it is necessary.
37. Every member of the Arbitration Body or Tribunal shall take affirmation as contained in Form (12) before carrying out his duties and obligations.
38. The parties in dispute and witnesses shall take affirmation as contained in Form (13) in the presence of Arbitration Body or Tribunal.

39. The Trade Dispute Rules, 1963 and the Damages for Delay in Cash Benefit Relating to Trade Dispute of People's Workers Rules, 1971 are hereby repealed by this Rules.

Sd / Aung Kyi

Union Minister

Ministry of Labour