

**Panel on Administration of Justice and Legal Services and
Panel on Manpower**

Review of the Labour Tribunal and related issues

**Summary of views of deputations/members of Panels
and the Administration's response**

Views/suggestions	Administration's response
1. Role of the Labour Tribunal and the Labour Department in employment dispute resolution	
(a) The mode of operation of the Labour Tribunal (LT) is moving more and more towards that of a formal court, contrary to the objective of setting up the Tribunal as a quick, cheap, simple and informal forum for resolving employment disputes. An assessment of whether the existing operation of LT is consistent with the original policy intent should be conducted.	—
(b) The Administration should undertake a review with a view to improving the overall employment dispute resolution mechanism, including the mechanism for conciliation and the role of the Minor Employment Claims Adjudication Board of the Labour Department (LD).*	—
(c) A one-stop service should be provided by LD to assist employees to initiate proceedings in employer's insolvency cases to recover their legal entitlements and apply for ex-gratia payment from the Protection of Wages on Insolvency Fund.	—

* Given the composition and terms of reference of the Working Party on the Review of the Labour Tribunal, it focused primarily on the review of the practice and procedure of the Tribunal. It had not endeavoured to embark upon such wider issues as the practice and procedure in handling employment disputes before a claim is filed in the Tribunal including the role of conciliation, and the role of the Minor Employment Claims Adjudication Board in the overall mechanism of employment dispute resolution in Hong Kong (paragraph 1.12 of the Report of the Working Party).

2. Jurisdiction of the Labour Tribunal	
<p>(a) It is necessary to assess the implications of the recommendation of the Working Party to amend the Schedule to the Labour Tribunal Ordinance (LTO) to put it beyond doubt that LT has jurisdiction to deal with both liquidated and unliquidated claims [<i>Recommendation 1</i>]. The amendment may lead to increase in the number of counter-claims made by employers involving complex issues of law being filed in LT, and hence cause delays in the disposal of the more simple claims made by employees.</p>	<p>Two different High Court judgments on the scope of LT's jurisdiction exist. The Presiding Officers (POs) of LT usually follow the line that a claim for "a sum of money" referred to in Schedule 1 of LTO could extend to damages unliquidated in law but quantified in practice. The proposed amendment is merely to clarify, for avoidance of doubt, that LT has jurisdiction to deal with both liquidated and unliquidated claims. The amendment would not change the original scope of jurisdiction. Moreover, the clarification would ensure that counter-claims made by the employers which might otherwise be referred to other courts would be dealt with by LT. This would benefit the parties as LT can dispose of cases more speedily than other courts.</p>
<p>(b) The Working Party's recommendations to extend LT's jurisdiction to cover claims brought by the Mandatory Provident Fund Authority (MPFA) under the Mandatory Provident Fund Schemes Ordinance and to enable LT to include the employee's contribution under the Ordinance as part of an award are supported [<i>Recommendations 2 and 3</i>]. The relevant legislative amendments should be introduced as soon as possible.</p>	<p>Discussions with MPFA on implementation of the relevant legislative amendments are in progress. The timetable for finalizing the legislative amendments has yet to be worked out.</p>
<p>(c) Some form of protection should be afforded to self-employed people such as small contractors. They should be allowed to pursue claims in LT provided that, for example, the amount of the claim involved does not exceed an upper limit.</p>	<p>—</p>

3. Resolving employment disputes by settlement

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| <p>(a) Where the Labour Relations Division (LRD) of LD has attempted conciliation, further attempt at settlement at the call-over hearing in LT would delay the disposal of the case. The role of LT should be confined to adjudication instead of conciliation.</p> | <p>LT is required under LTO to attempt settlement of a case prior to adjudication. Attempts at settlement are beneficial to both parties.</p> |
| <p>(b) Regardless of whether LRD has attempted conciliation, there should not be more than one attempt at settlement at the call-over hearing conducted by the PO.</p> | <p>The Working Party recommends that there should only be one attempt at settlement at the call-over hearing in cases where the parties had previously sought the assistance of LRD [<i>Recommendation 5</i>]. Where the LRD has not attempted conciliation before the claim is brought in the Tribunal, the Settlement Tribunal Officer (TO) will assist the parties to attempt settlement if the parties wish to do so before the call-over hearing [<i>Recommendation 7</i>]. The Working Party considers that this is a desirable and balanced approach. The views of the Working Party are set out in <i>paragraphs 5.40 to 5.44</i> in its Report.</p> |
| <p>(c) LT should not persuade the employees to accept terms of settlement which are less favourable than their legal entitlements.</p> | <p>In attempting settlement, the POs and TOs where appropriate, would assist the parties in analysing the issues and making an informed decision as to the best way to pursue their cases.</p> |
| <p>(d) More intensive training to enhance the mediation and inter-personal skills of POs and TOs, as well as their knowledge in employment and livelihood matters, should be provided so as to make attempts at settlement more effective and acceptable to the parties.</p> | <p>The Judicial Studies Board and the Judiciary Administration are organising relevant training courses for POs and TOs on a continuous basis.</p> |

4. Hearings in the Tribunal	
<p>(a) The Working Party's recommendation to amend section 13(1) of LTO to provide that a claim should be fixed for hearing not earlier than 20 days and not later than 45 days from the filing of claim [<i>Recommendation 15</i>] is not acceptable, as this represents a retrogressive step in improving the efficiency and efficacy of LT.</p>	<p>The existing time limit (i.e. listing of the first hearing on a date not earlier than 10 days and not later than 30 days from the filing of claim) is unrealistic to enable a claim to be properly prepared for the first hearing. This has led to unnecessary adjournments and delays. The proposed amendment would in practice expedite the adjudication process.</p>
<p>(b) Listing of call-over hearings should be increased from two separate sessions per day to four separate sessions per day to reduce the waiting time. (Under <i>Recommendation 16</i> of the Working Party's Report, call-over cases should be listed separately in the morning and afternoon sessions. The arrangement should be reviewed on a regular basis.)</p>	<p>The proposal to increase the listing of call-over hearings to four separate sessions per day will be considered by the Judiciary.</p>
<p>(c) Pre-trial hearings should be avoided as far as possible as they would lengthen the adjudication process.</p>	<p>The purpose of pre-trial hearing is to examine, where necessary, the availability and completeness of evidence to decide whether the case is ready to proceed to trial. The Working Party recommends that pre-trial hearings should be reduced and should be dispensed with in simple claims. For claims that are not simple, one pre-trial hearing should be the norm [<i>Recommendation 25</i>].</p>
<p>(d) LT should set a target time limit for the disposal of certain cases.</p>	<p>Imposing a time limit for conclusion of cases by LT would give rise to the perception that the Tribunal is pressurizing the parties to settle. In fact, more than 80% of the cases in 2003 were concluded within three months from filing of the claims.</p>
<p>(e) Subject to certain conditions, e.g. with the consent of the parties concerned, certain cases may be concluded in one trial without an appeal.</p>	<p>—</p>

5. Supply of background information	
The new claim form to contain background information required by LRD and LT should be revised to facilitate a claimant to supply all the relevant information at the stage of LRD so that it would not be necessary for him to provide further information and complete a “Statement by Claimant” at LT.	As the majority (more than 60%) of the cases handled by LRD were successfully settled and needed not be referred to LT, it would be a waste of time and resources if claimants were required to provide information or give statements which might not be used by LRD.
6. Enforcement of Tribunal awards	
(a) The procedure for claimants to apply for the Bailiff’s service should be simplified. The deposit for the use of the service should be paid by the Government and recoverable from the defaulting party with an additional penalty payment. Other costs incurred from execution of awards should also be borne by the defaulting party.	—
(b) An independent review on measures to improve the existing mechanism for enforcement of award of LT should be conducted as soon as possible, instead of deferring the matter to an overall review of enforcement of court judgments generally as suggested by the Working Party (<i>Paragraph 5.137</i> of the Report). The Administration may consider the practicality of introducing measures similar to that adopted in New Zealand, where the Employment Court has substantive powers on enforcement of judgments (e.g. power to imprison defaulters for failure to comply with a compliance order, order payment of a fine or to have the person’s property sequestered).	The introduction of new measures on enforcement of Tribunal awards involves policy considerations which need to be examined in the light of the possible impact on other non-employment related civil claims.

7. Appeals	
(a) The high costs of appeal and the possibility of being ordered costs if unsuccessful in appeal cases have deterred many employees from pursuing their claims. The costs on appeal should be capped or limited.	The Working Party considers that there is no compelling justification to support the “Capped Costs” and “No Order as to Costs” proposals [<i>Recommendations 30 and 31</i>]. The arguments for and against the proposals and the Working Party’s position are detailed in <i>paragraphs 5.122 to 5.130</i> in the Working Party’s Report.
(b) A system similar to that in the United Kingdom, where there is an Employment Tribunal to adjudicate cases and a separate Employment Appeal Tribunal to handle appeals, may be considered.	—
8. Legal aid for employees	
(a) The Director of Legal Aid (DLA) should have the power to waive the means test on employees applying for legal aid to initiate proceedings for winding up employers who defaulted in the payment of wages and other related entitlements to the employees.	Before May 1997, the Legal Aid Department did not carry out means test on employees referred by LRD to apply for legal aid to take these proceedings as it considered that there would invariably be an employee qualifying for free legal aid among the affected employees. While such arrangement served to expedite the whole matter for the employees, it also caused confusion and misunderstanding as to whether DLA had the statutory power to waive the requirement of a means test. The conduct of means test in such cases resumed since May 1997.
(b) DLA should have the discretionary power to waive the means test for legal aid in respect of employees involved in appeals brought by their employers against the decisions of LT.	—

9. Location and premises of the Tribunal	
(a) Relocation of LT should be considered having regard to factors such as convenience to the public and cost-effectiveness.	LT will be relocated to the old South Kowloon Magistrates Court Building which is conveniently located and more spacious. Funding has been obtained and plans are being drawn up to implement the relocation.
(b) A separate waiting area within the court premises should be provided for the witnesses.	—
10. Others	
(a) The meaning of “courts” under Article 35 of the Basic Law includes tribunals. Since litigants should have the right to legal representation in courts, the prohibition against legal representation in LT may be seen as a violation of such right.	—
(b) In cases involving claims for wages and statutory entitlements with prima facie evidence to establish the claims, the PO should have the power to order the giving of security by the employer before adjudication, if he is satisfied that the employer is guilty of deliberately withholding the payment.	The proposal is not consistent with the operation of LT as a quick, cheap, simple and informal forum for resolving employment disputes.
(c) The existing mechanism for the same PO to review the award or order and re-open or re-hear the case should be strengthened and improved. For example, the review and re-hearing could be done by two to three POs, including the most senior PO, of the Tribunal.	—
(d) TOs should act more proactively in assisting claimants in preparing their cases for trial, obtaining relevant information and documents from the parties and making inspections at places of work to collect evidence where necessary.	—

<p>(e) Written judgments of LT should be provided to the parties to facilitate their consideration of whether or not to appeal. The reasons for verdict should be published on the Judiciary's website for reference of the public.</p>	<p>—</p>
<p>(f) More manpower resources should be provided to LT at different levels.</p>	<p>—</p>

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