

Panel on Manpower

Enforcement of Labour Tribunal Awards

Background

Members of the Panel on Manpower are following up the issue concerning the enforcement of awards of the Labour Tribunal (“the Tribunal”). To assist the Panel in pursuing the matter, the Judiciary Administration is requested to provide the following information:

- (a) an assessment of the problems encountered in the enforcement of Tribunal awards;
- (b) the number of Tribunal awards for which enforcement proceedings had been initiated in the past three years, the number of such awards which had not been successfully enforced and the reasons for failure to do so; and
- (c) the average time taken for an award of the Tribunal to be enforced.

2. This paper sets out the information requested by the Panel and the responses of the Judiciary Administration to the matter.

Present Practice of Enforcing Labour Tribunal Awards

3. The Labour Tribunal deals with monetary disputes between employees and employers. Legal representation is not allowed. The Labour Tribunal adjudicate disputes according to the law and as in the case of all civil actions, the parties bear the responsibility of enforcing the judgment if it is not complied with.

4. In the event that the judgment debtor does not pay in full or at all, the judgment creditor can enforce the award. For that purpose, the judgment creditor has to take the following steps:

- (a) he has to obtain a certificate of award from the Tribunal. The certificate sets out the amount awarded, interest

payable, and individual liabilities in cases involving multi-judgment debtors; and

- (b) he must then register the award in the District Court, which must be made within 12 months of the making of the award. An award not so registered may only be enforced by way of a separate claim commenced in either the Small Claims Tribunal or the District Court or the Court of First Instance, depending on the amount of the award in question.

5. Where the judgment creditor executes the award, he has a choice of several modes of execution. Among them are:

- (a) a Charging Order against the landed properties of the judgment debtor. The judgment creditor has to execute the award by registering the Charging Order with the Land Registry; or
- (b) a Garnishee Order so that monies held by a third party (such as a bank) for the judgment debtor can be applied to satisfy the award. In this case, the judgment creditor has to execute the award by serving the Garnishee Order on the third party concerned; or
- (c) a Writ of Fieri Facias to seize the goods and chattels on the premises of the judgment debtor. In this case, the judgement creditor would apply to the Bailiff Office of the Judiciary Administration to execute the Writ.

These modes of execution are applicable to all civil judgments of monetary amounts at all levels of court.

6. Of the various modes of execution, execution by means of a Writ of Fieri Facias is the most common (see paragraph 10 below). As with all Writs of Fieri Facias, the Writ will be executed by the bailiff on the instruction of the judgment creditor. Hence, the judgment creditor has to bear the costs of the execution. A deposit of \$5,200 is payable to the Bailiff Office as eight days' security guard fees, together with a further deposit of \$400-\$800 as the bailiff's travelling expenses depending on the location for execution. The judgment creditor may recover such fees and expenses from the judgment debtor if the proceeds of the sale of goods and chattels are sufficient to cover the judgment debt plus the costs incurred. The bailiff's responsibility is to carry out execution of the court order or judgment upon the judgment creditor's

instructions. It is not the duty of the bailiff to trace the whereabouts of the judgment debtor or to ensure that the sum awarded to the judgment creditor is recovered.

Problems Encountered in Enforcement

7. In June 2003, the Chief Justice appointed a Working Party to review the operation of the Labour Tribunal and to recommend improvements thereto. The Working Party was chaired by Madam Justice Chu and comprised judges and judicial officers who were familiar with the operation of the Tribunal. The Working Party published a report in June 2004 with 37 recommendations which had all been accepted by the Chief Justice.

8. The Working Party had considered, among other things, the problems faced by judgment creditors in enforcing the Tribunal awards. The Working Party notes that :

- (a) the time limit of 12 months for registration of award does not exist for other civil claims. In the High Court and District Court, a judgment or order for the payment of money may be enforced by writ of execution within 6 years, after which leave of the court will have to be obtained for the issue of the writ of execution;
- (b) a judgment creditor has to go first to the Tribunal and then to the District Court to apply for execution by the bailiff;
- (c) the need to pay a deposit for the use of the bailiff's services may sometimes cause hardship to parties with limited means; and
- (d) on occasions, the execution turns out to be futile because the judgment debtor has insufficient means to satisfy the claim.

9. The Panel on Manpower had considered the Working Party report jointly with the Panel on Administration of Justice and Legal Services at two meetings on 9 November 2004 and 13 December 2004.

Number of Labour Tribunal Awards Enforced

10. The table below shows the figures on the enforcement of Tribunal awards for the past three years.

Mode of Enforcement	2003	2004	2005
Charging Order	8	4	1
Garnishee Order	12	4	10
Writ of Fieri Facias	147	97	61

Results of Execution

11. Charging Orders and Garnishee Orders are executed by the judgment creditors themselves. The Judiciary has no information on the result of such modes of enforcement.

12. As regards Writs of Fieri Facias which are enforced by the Bailiffs on the instruction of the judgement creditors, the result of execution is as follows :

	2003	2004	2005
Total no. of Writs of Fieri Facias executed	147 (100%)	97 (100%)	61 (100%)
I. Effective execution			
Award paid (wholly recovered the debts)	69	42	30
Goods sold (sufficient sale proceeds to cover the debts)	2	-	-
Goods sold (insufficient sale proceeds to cover the debts)	2	3	3
Action withdrawn after seizure	14	5	2
Sub-total:	87 (59%)	50 (51%)	35 (57%)

	2003	2004	2005
II. Execution not attempted			
Action withheld with no instruction to proceed further	3	2	3
Action withdrawn before seizure	25	24	6
Sub-total:	28 (19%)	26 (27%)	9 (15%)
III. Ineffective/frustrated execution.			
Nothing belonging to the judgment debtor could be found at the location of execution	12	7	5
Goods with insufficient value for seizure	0	1	-
Judgment debtor could not be contacted/identified at the location of execution	20	13	12
Sub-total:	32 (22%)	21 (22%)	17 (28%)

Waiting Time

13. In 2004, the average waiting time for executing a Writ of Fieri Facias was about 10 days from the receipt of the writ by the Bailiff's Office. In 2005, the waiting time was shortened to about 7 days.

Improvements Recommended by The Working Party

14. The time limit of 12 months for registering a Labour Tribunal award does not exist for other civil claims. Madam Justice Chu's Working Party sees no reason for distinguishing an award of the Labour Tribunal from other civil claims. This is particularly so because the judgment creditor in an award may have given indulgence to the judgment debtor by allowing the latter to pay by instalments, and inadvertently allow the 12 months to elapse. To require the judgment creditor to start a new action to enforce the award will not be reasonable

and will cause him inconvenience. The Working Group therefore recommends that Rule 12 of the Labour Tribunal (General) Rules should be repealed so that an award of the Labour Tribunal may be registered and enforced within 6 years. A draft amendment Rule is being prepared.

15. In assisting judgment creditors to take steps to enforce Labour Tribunal awards, the Working Party recommends that pamphlets or booklets be published to explain the steps in clear terms. When being sent the Tribunal awards, the judgment creditors should also be informed that they can apply for the certificate of award immediately after the Tribunal has made the award so as to minimize any possible inconvenience. The Judiciary Administration is preparing three pamphlets to that effect on (a) General Guidelines for Preparation for Trial; (b) Review and Appeal Procedures; and (c) Execution of Labour Tribunal Awards. These pamphlets will be published in a few months' time.

16. The Working Party has also considered the venue (currently the District Court) for enforcing of Labour Tribunal awards. It notes that the District Court is also the venue for enforcing Small Claims Tribunal awards. It has the advantage of centralizing all enforcement facilities of the Bailiff Office. The Working Party does not recommend any change in this aspect.

17. As regards the payment of a deposit, the Working Party notes that this is necessary to cover the expenses of the bailiff, such as their travelling expenses and the fees for arranging security guard services. The requirement applies to execution of all civil judgement, irrespective of whether the judgment or order sought to be enforced is made by a tribunal or by a court. Given that it is a requirement for execution of judgment and order of all levels of court, the Working Party does not consider it appropriate to review such requirement and/or make recommendation solely in the context of Labour Tribunal awards. It notes that the issue of whether the requirement may be waived in part or in whole is more appropriately left to an overall review of enforcement of judgments generally. Moreover, Members of the Panel on Manpower may wish to be informed that the Panel on Administration of Justice and Legal Services is following up the matter of execution of court judgments generally.

Post-Working Party Developments

18. Subsequent to the conclusion of the deliberations of the Working Party, the Judiciary has been considering what further or continuous improvements could be made within its purview to help address concerns relating to the enforcement of Labour Tribunal awards. In doing so, the Judiciary takes the view that whatever improvement measures are to be introduced, the impartial role of the Labour Tribunal in adjudicating labour disputes fairly between employers and employees must not be compromised.

19. During the past 12 months or so, the Judiciary has come up with additional recommendations which are set out in the following paragraphs.

(a) Filing of Enforcement Application at the Premises of the Labour Tribunal

20. Noting the Working Party's comments at paragraph 16 above, the Judiciary considers that it should explore the feasibility of enabling a judgment creditor to register his award and to file an enforcement application at the premises of the Labour Tribunal by extending the service of the District Court in this regard to the premises of the Labour Tribunal. Under this proposed arrangement, the District Court will remain the centralised court for enforcement but it will also accept filing of enforcement application at the premises of the Labour Tribunal. This will save the judgment creditor of the Tribunal of having to make a separate trip to the District Court which is located on the Hong Kong Island.

(b) Application for Certificate of Award

21. The current practice is that a judgment creditor has to visit the Labour Tribunal in person to apply for a certificate of award and to collect it. He has to make two visits to the Tribunal for this purpose. In future, the Judiciary suggests that the judgement creditor may apply for a certificate of award by fax, email or phone. He will then collect the certificate from the Labour Tribunal in person. He may, at the same time, register the award and file an enforcement application upon the implementation of the measure set out in paragraph 20 above. Taking the initiatives at paragraphs 20 and 21 together, this can reduce the number of visits of the judgement creditor to the Labour Tribunal and the District Court from three to one.

22. Alternatively, the judgment creditor may apply for a certificate of award in person from the Labour Tribunal and may request the certificate to be sent to him by post or collected by his authorised representative. However, in this case, if he wants to enforce the award, he will have to visit the Labour Tribunal or the District Court for one more time to register the award and file an enforcement application.

(c) Interest on Claims and Awards

23. It is mandatory that:

- (a) an award for arrears of wages shall carry interest from the date on which the wages become due to the date of actual payment in pursuance of section 25A(1) of the Employment Ordinance; and
- (b) an award for all other claims shall carry interest from the date of the award/judgement until satisfaction in pursuance of section 39(3) of the Labour Tribunal Ordinance.

24. As regards pre-judgment interest on all other claims, the Presiding Officers have discretion to make an award pursuant to section 39(1) of the Labour Tribunal Ordinance. Interest may be awarded, on the whole or any part of the amount claimed, for the whole or part of the period, from the date when the cause of action arose to the date of the award. It is noted that there was no uniform practice in the Labour Tribunal in the past. The Chief Magistrate has reminded all Presiding Officers to ensure that interest would be awarded under this section in appropriate cases.

(d) Payment of the Amount of an Award through the Labour Tribunal

25. There is no statutory provision to stipulate that payment of the award must be made through the Tribunal. At present, most awards are ordered to be paid through the Tribunal. It is however common for parties to agree on how the award should be paid, as this would achieve greater flexibility and efficiency in effecting payment. In 2005, the Tribunal issued 5,349 awards for monetary payments. In about 48% of these awards, the judgment debtors paid the judgment creditors through the Tribunal.

26. It is believed that ordering the judgment debtor to pay the judgment creditor through the Labour Tribunal would assist the judgement creditor in recovering the amount awarded. The Chief Magistrate has reminded the Presiding Officers to order payment of awards through the Labour Tribunal unless both parties expressly agree on other methods of payment.

Judiciary Administration
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