

Legislative Council

Panel on Administration of Justice and Legal Services

Panel on Manpower

Practice and Procedure in the Labour Tribunal

Introduction

This paper outlines the practice and procedure from filing a claim in the Labour Tribunal (“the Tribunal”) to delivering judgment upon conclusion of trial. It also explains the role of the Presiding Officers in the proceedings.

Jurisdiction of the Tribunal

2. The Tribunal has civil jurisdiction to deal with a claim which arises from the breach of a contract of employment or failure to comply with the provisions of the Employment Ordinance, Cap. 57. The Tribunal only hears a claim exceeding \$8,000 or where there are 10 or more claimants. Minor claims are normally dealt with by the Minor Employment Claims Adjudication Board under the Labour Department.

Filing claims

3. If claimants decide to file a claim in the Tribunal, they will book an appointment through a 24-hour computerised telephone appointment bookings system. Such appointments are necessary because the Tribunal wants to ensure that adequate staff resources are mobilised and appropriate attention is given to the claimants, in particular those in groups with large numbers, when they turn up to file their claims.

4. In 2000, the Tribunal set a target of 30 days for the period from booking an appointment to filing a claim. Before this target was established, the waiting time was 38 days in 1999. It has been greatly improved in recent years and the average waiting time was 19 days in 2002.

Inquiries by Tribunal Officer

5. When a claimant files a claim, he will be interviewed by a Tribunal Officer, whose duties are prescribed by the Labour Tribunal Ordinance, Cap. 25. The Tribunal Officer has a duty to make inquiries into the claim. He will interview the parties, take statements from them and gather relevant evidence. He then prepares a summary of facts for the Presiding Officer.

Conciliation Certificate

6. The Tribunal Officer is also responsible for dealing with conciliation. By virtue of section 15(1) of the Labour Tribunal Ordinance, the Tribunal shall

not hear a claim unless a conciliation certificate signed by a Tribunal Officer or an authorised officer is filed with or produced to the Tribunal to the effect that:

- (a) one or more of the parties has refused to take part in conciliation;
- (b) conciliation has been attempted but no settlement has been reached;
- (c) conciliation is unlikely to result in a settlement being reached; or
- (d) conciliation may prejudice the interests of a party.

If settlement can be reached, the terms will be reduced to writing and signed by the parties. If there is no settlement, the matter is left to the Presiding Officer, who will hear the matter in court.

Callover hearing

7. This is the first hearing conducted by the Presiding Officer for claims which have not been settled or withdrawn.

8. Under section 20 of the Labour Tribunal Ordinance, the hearing of a claim shall be conducted in an informal manner. The Presiding Officer shall investigate any matter which he may consider relevant to the claim, whether or not it has been raised by a party. He may subpoena witnesses, order the production of documents and exhibits and put to a party or witness such questions as he may think fit.

Pre-trial mention

9. Having made enquiries at the callover hearing as to the readiness of the claim to proceed to trial, the Presiding Officer will set down the matter for trial in a trial court right away if the dispute is simple. If the matter is not straight-forward and requires the parties to provide more evidence, he will set it down for pre-trial mention in order to examine any further evidence or documents to decide whether the matter is ready to proceed to the trial stage.

Transfers to other courts

10. In some cases, the Presiding Officer may be of the opinion that the matter before him is outside the jurisdiction of the Tribunal or that the matter should not be heard or adjudicated by him. He may then transfer the claim to the Court of First Instance, the District Court or the Small Claims Tribunal as appropriate.

Trial

11. During trial, the Presiding Officer hears each party's case, allows them to examine witnesses and, if necessary, orders them to provide further evidence or call more witnesses.

12. Simple claims can usually be disposed of in one hearing. More complicated matters will require more hearings. In 2002, for cases heard with judgment rendered, the average number of appearance in court in each case was 2.1 compared to 2.7 for 2001. In terms of the number of days from callover to rendering judgment, the average was 44 days for 2002 compared to 69 days for 2001.

Payment of Award

13. The Presiding Officer may specify how the judgment debtor is to make payment to the judgment creditor. If the judgment debtor fails to pay, the judgment creditor may apply to the District Court within 12 months from the date of the award to enforce the judgment.

Appeal

14. Either party may apply to the Court of First Instance of the High Court for leave to appeal within 7 days after the date on which the written award was served on him, or within such extended time as may be allowed by the Registrar of the High Court on good cause. However, an appeal can only be lodged on the grounds that the award is erroneous in point of law or outside the jurisdiction of the Tribunal.

15. A refusal by the Court of First Instance to grant leave to appeal is final. If leave is granted, the Court of First Instance will hear and determine the appeal.

Role of Presiding Officer

16. It has sometimes been suggested that Presiding Officers in some instances exert pressure on parties to settle rather than adjudicate their dispute. This is a misconception.

17. It must be appreciated that the Labour Tribunal is obliged by law to operate an informal and inquisitorial procedure and no legal representation is allowed. The Presiding Officer has a duty to investigate. Very often, more evidence will be reviewed in the course of investigation. Because parties are not legally represented, the Presiding Officer is obliged to explain the law and issues involved to help them understand the nature and extent of their dispute. He will explain the procedure and evidence. He will also make parties aware of the possible consequences of continuous litigation including the time involved, the appeal procedure and the cost implications of possible appeals.

18. As the hearing progresses, parties have a better understanding of the merits of their case. They may like to reconsider the question of settlement and may like to pursue further negotiations for settlement at that stage. The Presiding Officer will give them full opportunity to do so. Parties can have all the time they need to consider settlement and to seek such advice as they think appropriate, e.g. from their union.

19. All Presiding Officers fully appreciate that their duty is to adjudicate and to dispose of a claim as soon as practicable in the interest of justice. They understand that any impression that they are trying to pressurize parties into settlement should be avoided.

Staffing Support

20. The caseload of the Tribunal has shown no signs of easing off. It may be worsened by the recent outbreak of atypical pneumonia which has greatly affected the business of many sectors of the economy. Although the Judiciary is under budgetary constraints, to cope with the likelihood of a significant increase in demand on the Tribunal, the Judiciary has plans to re-deploy its internal resources to enhance the strength of Tribunal Officers, so as to increase the capacity for pre-trial work. The Judiciary has similarly examined the capacity of the Presiding Officers and is of the view that the present strength would still be able to cope without compromising the quality of justice.

Judiciary Administration
April 2003