

Dispute Settlement under New Employment Rights Act

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This week we continue to look at the recently proclaimed Employment Rights Act (ERA) and will focus specifically on the provisions for dispute settlement.

Traditionally in Barbados, employment related disputes were settled either through legal court proceedings or through the process of conciliation; where the employer or trade union has the right to make a complaint to the Chief Labour Officer (CLO). Conciliation is an extra-judicial process where disputes are settled in a friendly manner. The two opposing sides are brought together to discuss the matter with the aim of settlement. It is important to note that the conciliator, being the CLO or his designate, has no power to impose a decision or instruct either party.

The ERA upholds the time honoured system of conciliation; the employer or trade union retains the right to make a complaint to the CLO. However, the ERA has added a new element to the process, where CLO now has a time restriction of forty-two (42) days in which to settle the dispute. If the matter is not settled within the stipulated period, then it must be forwarded to the Employment Rights Tribunal (ERT). It is prudent to note that all submissions to the ERT are by way of the Labour Department.

Under the ERA, the Employment Rights Tribunal is now established as an arbitration body for employment related disputes. The Tribunal is tripartite in its composition and is constituted of nominees of the most representative organisation of employers, nominees of the most representative organisation of employees and government nominees. This structure is synonymous with typical tribunal operations in Barbados – our National Insurance Department tribunals are also tripartite.

The function of the Tribunal is to enforce the rights conferred on persons by the ERA. The tribunals are open to the public except in cases of sexual harassment;

and members of the tribunal are protected against law suits. The tribunal's decisions are given the same weight as a court decision and therefore are final and can only be challenged on a point of law. Parties are allowed to be represented at the tribunal by either an attorney-at-law, trade union or any other person that is desired.

The ERA also allows that "*where a group of employees, having the same or substantially the same interests, has a complaint, one complaint may be made in a representative capacity.*" These types of disputes would usually arise where employees believe that their rights are being infringed. This infringement could arise from terms, conditions or a custom and practice not being honoured. By applying the decision of the Tribunal to a group of employees the need for each employee to individually seek a decision from the Tribunal is avoided.

The ERA's dispute resolution mechanism only considers rights conferred by the Act. The act does however allow for employers to make a complaint to the Tribunal, this is established by section 19 subsection (2), but is limited to instances related to statements of particulars, changes and pay.

Given the length of time taken to resolve many disputes in the past, the new provision for a set time period is most welcome. As an arbitration panel, the tribunal does have the power to resolve matters through means that are not available to the law court; the ERT has the power to order reinstatement or re-engagement as a remedy if they find an employer to be guilty of unfair dismissal.

Next week's article will look at dismissal in greater detail and delve into how it is affected by the Employment Rights Act.