

Employment

INDUSTRIAL TRIBUNAL RULES

Rules made under s.12.

1932-16
Repealed
Subsidiary
1974/060

INDUSTRIAL TRIBUNAL RULES

Repealed by L.N. 2016/200 as from 13.10.2016¹

(LN. 1974/060)

14.6.1974

Amending enactments	Relevant current provisions	Commencement date
LN. 1991/218	–	21.11.1991
Act. 2001-20	rr. 3(2), 7, 14(4) & 18	31.10.2002
LN. 2013/124	r. 7(3)	22.8.2013

¹ For Savings and transitional provisions, refer to s.86 of the Employment Tribunal (Constitution and Procedure) Rules 2016.

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INDUSTRIAL TRIBUNAL RULES ARRANGEMENT OF RULES.

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Title.

1. These rules may be cited as the Industrial Tribunal Rules.

Interpretation.

2. In these rules, unless the context otherwise requires,—

“applicant” means a person who, in pursuance of these rules, has sent an originating application to the secretary;

“chairman” means the chairman of the tribunal appointed under the provisions of rule 7;

“register” means the register kept in accordance with the provisions of these rules;

“respondent” means any party to proceedings before the tribunal other than the applicant;

“secretary” means the secretary of the tribunal appointed under rule 3;

“tribunal” means the Industrial Tribunal established under rule 3.

Establishment.

- 3.(1) There is hereby established an Industrial Tribunal.

(2) The Minister may by notice in the Gazette appoint a secretary of the tribunal.

Originating application.

4. Proceedings for the determination of any complaint by the tribunal shall be instituted by the applicant sending to the secretary an originating application which shall be in writing and shall set out—

- (a) the name and address of the applicant; and
- (b) the names and addresses of the person or persons against whom relief is sought; and
- (c) the grounds on which that relief is sought.

Action upon receipt of originating application.

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5.(1) Upon receiving an originating application the secretary shall enter particulars of it in the register and shall forthwith send a copy of such application to the respondent and inform the parties in writing of the case number of the originating application entered in the register (which shall thereafter constitute the title of the proceedings). Every copy of the originating application sent by the secretary under this rule shall be accompanied by a written notice which shall include information, as appropriate to the case, about the means and time for entering an appearance, the consequences of failure to do so, and the right to receive a copy of the decision. The secretary shall also notify the parties that the services of the Director as a conciliation officer are available to them.

(2) The secretary shall forthwith send copies of all documents and notices to the Director.

Appearance by respondent.

6.(1) A respondent may within fourteen days of receiving the copy originating application enter an appearance to the proceedings by sending to the secretary a written notice of appearance setting out his full name and address and stating whether or not he intends to resist the application and, if so, on what grounds. Upon receipt of a notice of appearance the secretary shall forthwith send a copy of it to any other party.

(2) A respondent who has not entered an appearance shall not be entitled to take any part in the proceedings except—

- (i) to apply under rule 17(1) for an extension of the time appointed by this rule for entering an appearance;
- (ii) to be called as a witness by another person;
- (iii) to be sent a copy of a decision or specification of reasons or corrected decision or specification in pursuance of rule 14(6),

and accordingly (without prejudice to the generality of this provision) he shall not be entitled—

- (a) to make an application under rule 10;
- (b) to notice of date, time and place of the hearing in pursuance of rule 11;
- (c) to submit representations in writing for consideration by the tribunal in pursuance of rule 12(2);

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- (d) to be heard or to be represented at the hearing in pursuance of rule 13;
- (e) to enter into a written agreement in pursuance of rule 16(2)(d);
- (f) to apply for directions in pursuance of rule 17(2) and to receive a notice in pursuance of rule 17(4);

(3) A notice of appearance which is sent to the secretary after the time appointed by this rule for entering appearance shall be deemed to include an application under rule 16(2) (by the respondent who has sent the notice of appearance) for an extension of the time so appointed. Without prejudice to rule 16(4), if the tribunal grants the application (which it may do notwithstanding that the grounds of the application are not stated) the secretary shall forthwith send a copy of the notice of appearance to any other party. The tribunal shall not refuse an extension of time under this rule unless it has given the person wishing to enter an appearance an opportunity to show cause why the extension should be granted.

Chairman.

7.(1) Upon receipt of a notice of appearance or upon the expiry of the time for entering an appearance laid down by rule 6(1) the secretary shall notify the Minister and send him a copy of the original application and the notice of appearance.

(2) Upon receipt of a notification under subrule (1) the Minister shall appoint a chairman of the tribunal for the purpose of hearing such application.

(3) The chairman of the tribunal shall be paid £100 for each session of the tribunal, which sum shall be reviewed in accordance with the annual increase in the index of retail prices produced by the Government of Gibraltar.

Joinder of third parties.

8.(1) The tribunal may, either on the application of any person or of its own motion, direct any third party to be joined as a party to the proceedings and in either case may give such consequential directions as it considers necessary.

(2) Where the tribunal has directed that a third party shall be joined, the secretary shall inform that third party in writing of the direction and shall send to the third party a copy of the original application and of the notice of appearance (if any).

Conciliation.

9. The tribunal may postpone the hearing of the originating application for such period as the tribunal may think fit for the purpose of giving an opportunity for the complaint to be settled by way of conciliation and withdrawn.

Power to require further particulars and attendance of witnesses and to grant discovery.

10. (1) Subject to rule 6(2) a tribunal may on the application of a party to the proceedings made either by notice in writing or at the hearing of the originating application—

- (a) require a party to furnish in writing to the person making the application further particulars of the grounds on which he or it relies and of any facts and contentions relevant thereto;
- (b) grant to the person making the application such discovery or inspection of documents as might be granted by the Supreme Court; and
- (c) require the attendance of any person (including a party to the proceedings) as a witness or require the production of any document relating to the matter to be determined,

and may appoint the time at or within which or the place at which any act required in pursuance of this rule is to be done.

(2) A party to whom a requirement has been made under subrule (1)(b) on an ex parte application and a person to whom a requirement has been made under subrule (1) (c) may apply to the tribunal to vary or set aside the requirement.

(3) No such application to vary or set aside shall be entertained in a case where a time has been appointed under subrule (1) in relation to the requirement unless it is made before the time or, as the case may be, the expiration of the time so appointed. Notice of the application in accordance with rule 18(3) shall be given to the party on whose application the requirement was made.

(4) A person who without reasonable excuse fails to comply with any requirement under subrule 1(b) or (c) is guilty of an offence and is liable on summary conviction to a fine of £10; and the requirement shall contain a reference to that fact.

Time and place of hearing.

11. The tribunal shall fix the date, time and place of the hearing of the originating application and the secretary shall not less than fourteen days (or such shorter time as may be agreed by him with the parties) before the date so fixed (subject to rule 6(2)) send to each party a notice of hearing which shall include information and guidance as to attendance at the hearing, witnesses and the bringing of documents (if any), representation by another person and written representations.

The hearing.

12. (1) Any hearing of or in connection with an originating application shall take place in public unless in the opinion of the tribunal a private hearing is appropriate for the purpose of hearing evidence which relates to matters of such a nature that it would be against the interests of national security to allow the evidence to be given in public.

(2) Subject to rule 6(2), if a party shall desire to submit representations in writing for consideration by the tribunal at the hearing of the originating application that party shall send such representations to the secretary not less than seven days before the hearing and shall at the same time send a copy of it to the other party or parties.

(3) Where a party has failed to attend or be represented at the hearing (whether or not he has sent any written representations) the contents of his originating application or, as the case may be, of his entry of appearance may be treated by the tribunal as representations in writing.

(4) Subject to rule 6(2) at any hearing of or in connection with an originating application a party may appear before the tribunal and may be heard in person or be represented by counsel or by a representative of a trade union or an employer's association or by any other person whom he desires to represent him.

Procedure at hearing.

13. (1) Subject to rule 6(2) at the hearing of the originating application the parties shall be entitled to make opening statements, to call witnesses, to cross-examine any witnesses called by the other party and to address the tribunal.

(2) Subject to rule 6(2) a party may if he so desires give evidence on his own behalf.

(3) If a party shall fail to appear or to be represented at the time and place fixed for the hearing, the tribunal may dispose of the application in the absence of that party or may adjourn the hearing to a later date.

Provided that before disposing of an application in the absence of a party the tribunal shall consider any representations submitted by that party in pursuance of rule 12(3).

(4) The tribunal may require any witness to give evidence on oath or affirmation and for that purpose there may be administered an oath or affirmation in due form.

Decision of tribunal.

14.(1) The decision of the tribunal shall be recorded in a document which shall contain the reasons for the decision.

(2) The secretary shall enter the document in the register and shall send a copy of the entry to each of the parties.

(3) The specification of the reasons for the decision shall be omitted from the register in any case in which evidence has been heard in private and the tribunal so directs and in that event a specification of the reasons shall be sent to the parties.

(4) The register shall be kept at the Ministry of Employment and shall be open to the inspection of any person without charge at all reasonable hours.

(5) The tribunal shall have power by certificate under hand to correct in documents recording the tribunal's decisions clerical mistakes or errors arising therein from any accidental slip or omission.

(6) The secretary shall as soon as may be make correction as may be necessary in the register and shall send a copy of the corrected entry or of the corrected specification of the reasons, as the case may be, to each of the parties.

(7) If any decision is corrected under subrule (5) the secretary shall alter the entry in the register to conform with any such certificate or order and shall send a copy of the new entry to each of the parties.

Costs.

15. (1) Subject to subrules (2) and (3), the tribunal shall not normally award costs but where in its opinion a party to any proceedings (and if he is a respondent whether or not he has entered an appearance) has acted frivolously or vexatiously the tribunal may make an order that that party shall pay to another party either a specified sum in respect of the costs incurred by that other party or, in default of agreement, the taxed amount of those costs.

(2) Notwithstanding the provisions of subrule (1) where on the application of a party to the proceedings the tribunal has postponed the day or time fixed for the hearing or has adjourned the hearing, the tribunal may make orders against that party as at subrule (1) as respects any costs incurred as a result of the postponement or adjournment.

(3) Any costs required by an order under this rule to be taxed may be taxed in the magistrates' court according to the scales prescribed for proceedings in such court.

Miscellaneous powers of tribunal.

16.(1) Subject to the provisions of these rules, the tribunal may regulate its own procedure.

- (2) The tribunal may, if it thinks fit—
- (a) subject to rule 10(3) extend the time appointed by these rules for doing any act notwithstanding that the time appointed may have expired;
 - (b) postpone the day or time fixed for, or adjourn, any hearing;
 - (c) if the applicant shall at any time give notice of the abandonment of his originating application, dismiss the proceedings;
 - (d) if both or all the parties agree in writing upon the terms of a decision to be made by the tribunal, decide accordingly.

(3) The tribunal may, if it thinks fit, before granting an application under rule 10 or rule 17 require the party making the application to give notice of it to the other party or parties. The notice shall give particulars of the application and indicate the address to which and the time within which any objection to the application shall be made being an address and time specified for the purposes of the application by the tribunal.

(4) Rule 15 shall apply to an order dismissing proceedings under subrule (2)(c).

Extension of time and directions.

17. (1) An application to the tribunal for an extension of the time appointed by these rules for doing any act may be made by a party either before or (subject to rule 10(3)) after the expiration of any time so appointed.

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(2) Subject to rule 6(2) a party may at any time apply to the tribunal for directions on any matter arising in connection with the proceedings.

(3) An application under the foregoing provisions of this rule shall be made by sending to the secretary a notice of application, which shall state the title of the proceedings and shall set out the grounds of the application.

(4) Subject to rule 6(2) the secretary shall give notice to both or all the parties of any extension of time granted under rule 16(2) (a) or any directions given in pursuance of this rule.

Notices, etc.

18. (1) Any notice given under these rules shall be in writing and all notices and documents required or authorized by these rules to be sent or given to any person hereinafter mentioned may be sent by post (subject to subrule (3) of this rule) or delivered to or at—

- (a) in the case of a notice or document directed to the secretary at the Ministry of Employment;
- (b) in the case of a notice or document directed to a party, his address for service specified in the originating application or in a notice under subrule (2) or (if no address for service is so specified), his last known address or place of business in Gibraltar or, if the party is a corporation, the corporation's registered or principal office;
- (c) in the case of a notice or document directed to any person (other than a person specified in the foregoing provisions of this subrule) his address or place of business in Gibraltar, or if such a person is a corporation, the corporation's registered or principal office,

and if sent or given to the authorized representative of a party shall be deemed to have been sent or given to that party.

(2) A party may at any time by notice to the secretary and to the other party or parties change his address for service under these rules.

(3) Where for any sufficient reason service of any document or notice cannot be effected in the manner prescribed under this rule, the tribunal may make an order for substituted service in such manner as it may deem fit and such service shall have the same effect as service in the manner prescribed under this rule.

Enforcement.

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19. (1) When the whole or any part of any sum payable by way of compensation awarded by the tribunal has not been paid within twenty-eight days of being awarded, or within such further time as the tribunal may have allowed for payment, any person in whose favour the award was made may call upon the secretary to transmit the copies of the award to the Court of First Instance*.

(2) Where an application has been transmitted in accordance with the provisions of subrule (1) the award shall be registered as an award of the Court of First Instance* and such award may be enforced as if it had been a judgment of that Court.

* *Court of first Instance Act repealed by the Administration of Justice Act 2004 (2004-11) s.3 as from 1.9.2004. All references to the Court of First Instance shall be read as if it were a reference to the Supreme Court (see Act 2004-11 s.7).*