

INDUSTRIAL ARBITRATION (AMENDMENT) ACT.

Act No. 12, 1952.

An Act to make further provisions with respect to long service leave to which employees are entitled under section 88c of the Industrial Arbitration Act, 1940-1951, and the jurisdiction of Industrial Tribunals in relation to long service leave; for these purposes to amend the said Act; and for purposes connected therewith. [Assented to, 17th April, 1952.]

Elizabeth II,
No. 12, 1952.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the "Industrial Arbitration (Amendment) Act, 1952".

Short title,
citation
and com-
mencement.

(2) The Industrial Arbitration Act, 1940, as amended by subsequent Acts and by this Act, may be cited as the Industrial Arbitration Act, 1940-1952.

(3) This Act shall be deemed to have commenced upon the first day of July, one thousand nine hundred and fifty-one.

2. The Industrial Arbitration Act, 1940, as amended by subsequent Acts, is amended—

Amend-
ment of
Act No. 2,
1940.

(a) by inserting in subparagraph (ii) of paragraph (a) of subsection one of section 88c after the word "misconduct" the words "or by the employee on account of illness, incapacity or domestic

Sec. 88c.
(Long
service
leave and
sick leave.)

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domestic or other necessitous circumstances where such illness or incapacity is, or domestic or other necessitous circumstances are of such a nature as to justify such termination”;

(b) by inserting at the end of the same section the following new subsections:—

(7) For the purposes of paragraph (a) of subsection one of this section—

(a) “service” of an employee means the period during which such an employee has served his employer under an unbroken contract of employment: Provided that a contract of employment shall be deemed not to have been broken by reason only of any interruption or determination thereof, whether occurring before or after the commencement of the Industrial Arbitration (Amendment) Act, 1952, if such interruption or determination—

(i) has been made by the employer with the intention of avoiding any obligation imposed on him by an award made pursuant to this section; or

(ii) has arisen directly or indirectly from an industrial dispute; or

(iii) has been made by the employer by reason of slackness of trade:

Provided further that the period during which the contract has been so interrupted or determined shall not by reason only of this paragraph be taken into account in calculating the period of service;

(b)

(b) where a business, undertaking or establishment or any part thereof has, whether before or after the commencement of the Industrial Arbitration (Amendment) Act, 1952, been transmitted from an employer (in this paragraph called the transmittor) to another employer (in this paragraph called the transmittee) and a person who at the time of such transmission was an employee of the transmittor in that business, undertaking, establishment or part thereof becomes an employee of the transmittee—

- (i) the continuity of the contract of employment of the employee shall be deemed not to have been broken by reason of such transmission; and
- (ii) the period of service which the employee has had with the transmittor or any prior transmittor shall be deemed to be service of the employee with the transmittee.

In this paragraph “transmission”, without limiting its ordinary meaning, includes transfer, conveyance, assignment, or succession, whether by agreement or operation of law, and “transmittor”, “transmittee” and “transmitted” have corresponding meanings.

(8) (a) The terms of every award made pursuant to this section and in force at the date of the Royal assent to the Industrial Arbitration

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Arbitration (Amendment) Act, 1952, shall be deemed to be varied, as from the commencement of such award, to the extent necessary to give effect to the provisions of paragraph (a) of subsection one of this section, as amended by the said Act, and of subsection seven of this section.

(b) As soon as practicable after the said date the registrar shall vary the terms of every award to which paragraph (a) of this subsection applies to give effect to the terms of that paragraph.

The Registrar may refer any matter arising out of this subsection to the commission for direction.

(9) Nothing contained in this section shall limit or in any way affect the powers, authorities, duties and functions conferred or imposed on the commission, or any member thereof, or on a committee, a conciliation commissioner or an apprenticeship council, by or under this Act in respect of long service leave or sick leave:

Provided that in the exercise or performance of such powers, authorities, duties or functions, the commission or any member thereof or a committee, conciliation commissioner or an apprenticeship council shall not in any award or industrial agreement whether made before or after the commencement of the Industrial Arbitration (Amendment) Act, 1952, insert any provisions relating to long service leave or sick leave less favourable to the employees than the provisions prescribed by the foregoing provisions of this section.