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The Labour Court and Industrial Arbitration Act

Labour Court Act No. 106 of 26 February 2008

Part 1
The Labour Court

Section 1. The jurisdiction of the Labour Court covers the consideration and settlement of the cases referred to in section 9.*Subsection 2.* The Court has its seat in Copenhagen, but may be opened elsewhere in the country if deemed appropriate.

Section 2. The Labour Court consists of 12 ordinary judges and 31 substitutes, as well as 1 president and 5 vice-presidents.
Subsection 2. The Minister of Employment may decide, upon the recommendation of the president and the ordinary judges, to increase the number of vice-presidents to a maximum of 7.

Section 3. The Court's ordinary judges and substitute judges are appointed by the Minister of Employment upon the recommendation of the following organisations and authorities:

1. 3 ordinary members and 6 substitutes to be recommended by the Confederation of Danish Employers.
2. 1 ordinary member and 4 substitutes to be recommended by the Danish Confederation of Employers' Associations for Agriculture and the Danish Employers' Association for the Financial Sector jointly.
3. 2 ordinary members and 4 substitutes to be recommended by the Ministry of Finance, Danish Regions and Local Government Denmark jointly.
4. 4 ordinary members and 10 substitutes to be recommended by the Danish Confederation of Trade Unions.
5. 2 ordinary members and 7 substitutes to be recommended by FTF (the Confederation of Professionals in Denmark), the Danish Confederation of Professional Associations and the Danish Association of Managers jointly.

Subsection 2. The appointments, which are valid for five years from 1 January, shall be made every five years based on the recommendations submitted to the Court by the organisations and authorities. If a recommendation is not received before the end of December, the Minister of Employment will appoint the missing judge(s) on his or her own initiative.
Subsection 3. Judges may be reappointed.
Subsection 4. If an ordinary judge or substitute resigns during the five-year term, another judge shall be appointed for the remaining part of the term upon the recommendation of the relevant organisation or authority.

Section 4. The president and vice-presidents of the Court shall all meet the general conditions for being a judge. They shall be appointed by the Minister of Employment upon the recommendation of the ordinary judges of the Court. Appointments shall be valid until the expiry of the month in which a judge attains the age of 70 years.
Subsection 2. The president and vice-presidents of the Court shall be included in the list mentioned in Section 27(1).

Section 5. The Labour Court shall be assisted by a secretariat. The head of the secretariat shall meet the general conditions for being a judge and be appointed by the Minister of Employment upon the recommendation of the president of the Court.

Section 6. The rules on the disqualification of judges for reasons of personal involvement provided by the Danish Administration of Justice Act apply to the judges and substitute judges as well as to the presidency and the Head of Secretariat of the Labour Court.
Subsection 2. Judges participating in the adjudication of a case shall on his or her own initiative ensure that the rules on disqualification are observed.
Subsection 3. Objections against the competence of a judge shall, if possible, be raised immediately after the receipt of the notification stating the names of the judges who will participate in the full-court hearing, and in any case before the beginning of the full-court hearing. The president of the Court shall rule on the competence of a judge. During the full-court hearing, however, such ruling shall be given by the entire Court. A judge against whose competence an objection has been raised shall not be excluded from participating in such ruling.

Section 7. A member of the presidency, acting as chairman of the Court, and three ordinary judges or substitute judges representing the employers' and the employees' side, respectively, shall participate in the full-court hearing of the Labour Court, cf. however section 8.

Section 8. The president of the Court may rule, upon request by either party or on his or her own initiative, that the presidency is to consist of three presidents during a full-court hearing.

Subsection 2. Parties not attached to any of the organisations or authorities mentioned in section 3(1) may demand that the case be heard and adjudicated without the participation of ordinary judges and substitute judges. In such case only the president of the Court shall participate in the adjudication; the president may decide to rule in accordance with subsection 1.

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Kommende Hovedforhandlinger

29. september 2010 kl. 13.00.
Sag nr. AR2010.0051
3F mod Murermester Ebbe Bernth

8. oktober 2010 kl. 14.30.
Sag nr. AR2009.0683
Finansforbundet mod Nordea Bank Danmark A/S

28. oktober 2010 kl. 10.00.
Sag nr. AR2010.0169
Faglig Fælles Forbund - Den Offentlige Gruppe mod Kolding Kommune

26. november 2010 kl. 09.30.
Sag nr. AR2009.0469
Fag og Arbejde mod Falck Danmark A/S

1. december 2010 kl. 14.30.
Sag nr. AR2010.0435
HK Danmark mod SuperBest

8. december 2010 kl. 13.00.
Sag nr. AR2010.0443
Fødevareforbundet NNF mod Arbejdsgiverforeningen Konditorer, Bagere og Chokolademagere

13. december 2010 kl. 14.30.
Sag nr. AR2010.0034
Blik og Rør Arbejderforbundet mod Carl Christensen & Co.

13. december 2010 kl. 14.30.
Sag nr. AR2010.0036
Blik og Rør Arbejderforbundet mod Carl Christensen og Co

Seneste domme

AR2010.0147 (15-09-2010)
Ikke godtgjort at virksomhed havde handlet organisationsfjendtligt ...

AR2010.0039 (02-09-2010)
Arbejdsgivere ikke forpligtede til at betale for chaufførers lovpligtige...

AR2009.0454 (06-05-2010)
Pålæggelse af det maksimale sagsomkostningsbeløb til Arbejdsretten. ...

AR2009.0136 (31-03-2010)
Interessentskab, der var etableret ved fusion, kunne i

Section 9. The Labour Court hears cases dealing with

1. breach and interpretation of a basic agreement adopted by the Confederation of Danish Employers and the Danish Confederation of Trade Unions and of the corresponding industry-wide/sectoral and basic agreements between the central organisations,
2. breach of collective agreements regarding salary or labour matters,
3. the lawfulness of collective industrial actions for which a notice has been issued and of notices issued in this connection where the central organisation of a party or a party that is not a member of an organisation has submitted an objection to the organisation or individual enterprise in question against the lawfulness of such industrial action or notice by registered letter within five days of receiving the notice whose formal or material lawfulness is the subject of the objection,
4. whether a collective agreement has been concluded,
5. the lawfulness of using collective industrial actions in support of a demand for a collective agreement in areas where no collective agreement has been concluded
6. disputes regarding the competence of the official conciliators,
7. disputes as to whether an agreement on industrial arbitration has been concluded, and regarding the interpretation of agreements on industrial arbitration, and
8. refusal comprised by section 32.

Subsection 2. Work stoppages shall be reported to the organisations immediately, and a joint meeting attended by the organisations to discuss such work stoppage shall be held on the day following the launch thereof, unless the work stoppage ceases before the joint meeting is held.
Subsection 3. Cases subject to subsection 1(nos. 1-3) may only be brought before the Labour Court if the breach was made or notice of the industrial action given or the industrial action launched by an employers' organisation or several members of such organisation, by an individual enterprise (sole proprietor, firm, limited liability company or public institution) or by a labour organisation or by members of such organisation jointly. Moreover, the authority to bring such actions before the Labour Court is conditional upon no provisions to the contrary existing in the relevant collective bargaining arrangement.
Subsection 4. In addition to the cases mentioned in subsection 1, cases involving disagreements between employers and employees may be brought before the Labour Court if the Court gives its approval, and the relevant employers' and labour organisations, or an individual enterprise and a labour organisation have concluded an agreement to that effect.

Section 10. When a case belongs under industrial arbitration in its entirety, cf. section 21, the Labour Court may dismiss the case. If the parties agree, however, the Court may settle the case. If the case belongs partially under industrial arbitration, the Court may adjourn the hearing of the case until an arbitral award has been made.
Subsection 2. The Labour Court may hear a case brought before the Court pursuant to section 9, even though decisions on legislative issues are of importance for the settlement of the case.

Section 11. Cases belonging under the authority of the Labour Court pursuant to section 9 may not be brought before the ordinary courts of law, cf. however subsections 2 and 3.
Subsection 2. An employee may institute proceedings regarding back pay etc. before the ordinary courts of law, provided the employee is able to prove that the relevant trade union organisation does not intend to initiate industrial arbitration proceedings to deal with the claim.
Subsection 3. An employer may institute proceedings regarding alleged claims before the ordinary courts of law if the employer is able to prove that the relevant employers' organisation does not intend to initiate industrial arbitration proceedings to deal with the claim. However, this does not apply to public authorities and institutions that are tied by a collective labour agreement concluded by or subject to the authority of the Ministry of Finance, Danish Regions or Local Government Denmark.

Section 12. In cases comprised by section 9(1) (nos. 1 and 2), and (2) (nos. 1 and 2) and (4), the Labour Court may order the party to the illegal action to pay a penalty to the complainant. Such penalty can also be imposed on a party wrongfully resisting the hearing of a case by industrial arbitration, cf. section 32.
Subsection 2. No penalties can be imposed on parties participating in a work stoppage who resume work before the joint meeting referred to in section 9(2) has been held or comply with a request from this meeting to resume work without delay, unless the Court is satisfied that the work stoppage lacks reasonable justification or is to be considered as part of a systematic action.
Subsection 3. If the breach of the collective agreement consists of an omission to pay an amount due, the judgment may order payment of the relevant amount instead of a penalty.
Subsection 4. Unless otherwise agreed in advance, legal responsibility can only be imposed on an organisation when it is a party to the matter complained of.
Subsection 5. The penalty shall be fixed with due regard to all aspects of the case, including to which extent the breach was venial on the part of the infringer. Hence it should be taken into consideration when judging an illegal work stoppage whether the work stoppage is to be considered as an understandable reaction to circumstances on the part of the countperpart.
Subsection 6. Under particularly mitigating circumstances the imposition of a penalty that is otherwise justified may not apply, and it shall be nil and void when illegal behavior on the part of the counterpart is deemed to have offered reasonable grounds for a work stoppage. This shall also apply when it is proved that a work stoppage is due to wellbeing factors for which the counterpart is responsible.
Subsection 7. The infringer's refusal to have the case settled by arbitration, actions in contravention of an arbitral award and the existnence of a judgment delivered by the Labour Court shall be considered as particularly aggravating circumstances.
Subsection 8. In cases of injunctions caused by alleged breaches of a collective agreement and of imposition of penalties for this, the Court may postpone the question of the penalty for later settlement.

Section 13. Actions shall be brought by and against the relevant employers' or labour organisation irrespective of whether the breach was made or notice of a collective action given or a collective action launched by or against individual members of the organisation. If an organisation is a member of a more comprehensive organisation, the case shall be

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brought by and against the latter organisation. If the employer party is an individual enterprise, cf. section 9(3), not affiliated to an employers' organisation, the action shall be brought by or against such individual enterprise.
Subsection 2. There are no limitations to the parties' authority to be represented in the Labour Court by a process agent.

Section 14. Actions shall be lodged by filing of a written complaint with the Labour Court.
Subsection 2. The complaint shall contain

1. the names and addresses of the parties,
2. the claimant's claim,
3. a brief outline of the facts supporting the claim, and
4. a specification of the documents and other evidence on which the claimant intends to rely.

Section 15. The secretariat shall as soon as possible forward a copy of the complaint as well as any exhibits to the defendant and at the same time request the defendant to submit its defence as well as any exhibits. If required, the secretariat shall have the complaint served on the defendant in accordance with the rules on service of the Administration of Justice Act.
Subsection 2. The defence shall contain

1. the defendant's claim,
2. a brief outline of the facts supporting the claim, and
3. a specification of the documents and other evidence on which the defendant intends to rely.

Section 16. The action is prepared for a possible full-court hearing in one or more preliminary hearings.
Subsection 2. During the preliminary hearings the Court will be presided over by the president, one of the vice-presidents or the head of the secretariat.
Subsection 3. Subject to the parties' consent the Court may settle the action in a preliminary hearing. The resulting ruling may, subject to the parties' consent, be given by decision.
Subsection 4. The preliminary hearings shall be held behind closed doors, cf. however subsection 5. Subject to the parties' consent, the president may, however, allow others than the parties' representatives to attend the hearings.
Subsection 5. Hearings held with a view to settling the action pursuant to subsection 3 shall be held in open court. However, the president may in exceptional cases resolve that the hearing shall be held behind closed doors.

Section 17. The rules of the Administration of Justice Act on full-court hearings in civil actions in courts of First Instance, with the necessary adjustments, shall apply to the full-court hearing.
Subsection 2. The full-court hearing shall be held in open court. However, the president may in exceptional cases decide to hold the hearing behind closed doors for reasons of peace.

Section 18. The judgment shall be decided by voting following preceding consultation. The consultation and the voting shall be verbal, and the presiding judge shall always vote last. Only the judges having attended the verbal proceedings in their entirety shall participate in the vote. An extract of the votes cast shall be registered in the voting record.
Subsection 2. The decision shall be made by majority of votes.
Subsection 3. The presiding judge shall prepare a draft judgment, and the final wording shall then be agreed upon by the participating judges.

Section 19. The judgment, which shall be pronounced in public session by reading of its conclusion, shall be reasoned, but may not contain any information on the various opinions during voting.
Subsection 2. The judgment shall impose on the losing party to pay an amount for partial coverage of the costs of the Labour Court. The Court may in exceptional cases impose on both parties to pay part of the amount.

Section 20. The provisions of the Administration of Justice Act on the effect of the non-appearance of a party, on the possibility of having a civil action, settled by a judgment, in default reopened, and on the extraordinary reopening of civil actions shall apply by analogy in actions tried by the Labour Court.

Subsection 2. 3 members of the presidency of the Labour Court may in exceptional cases authorise that actions decided by the president of the Court pursuant to section 16(3) shall be reopened, when

1. there is every probability that the case, without any fault on the part of the applicant, has been incorrectly elucidated, and that the case, if reopened, will produce a materially different outcome,
2. it may be taken for granted that the applicant may only in this manner avoid or make up for a loss significant to him or her, and
3. the overall circumstances speak in favour of reopening the case.

Part 2
Industrial arbitration

Section 21. The following cases can be submitted to industrial arbitration:

1. cases dealing with the interpretation and understanding of collective agreements, apart from basic agreements and industry-wide/sectoral agreements, cf. section 9(1) (no. i),
2. cases comprised by section 9(1) (nos. 1-4), when the parties have agreed by a collective agreement, according to practice or in an individual case that the case is to be settled by industrial arbitration, cf. section 9(3) (no. 2), and
3. cases, including cases dealing with legislative issues, that the parties have agreed

by a collective agreement, according to practice or in an individual case to have settled by industrial arbitration.

Section 22. Cases under section 21(1) (nos. 1 and 2) may not be brought before the ordinary courts of law. Section 11(2) and (3) however, shall apply similarly.
Subsection 2. Whether a case under section 21 (no. 3) may be brought before an ordinary court of law depends on what has been agreed. If the agreement is to be taken to mean that the case cannot be brought before the ordinary courts of law, section 11(2) and (3) shall apply similarly.

Section 23. The parties to an industrial arbitration are the organisations that are party to a collective agreement or the organisations and individual enterprises that are parties to a collective agreement. These parties may agree to entrust a more comprehensive organisation, one or more employers' or labour organisations that are party(ies) to a collective agreement or a member organisation or a member enterprise of such organisation to act as party.
Subsection 2. There are no limitations to the parties' right to be represented by a process agent in an industrial arbitration tribunal.

Section 24. The industrial tribunal can try a case submitted pursuant to section 21, even though decisions on legislative issues are of importance for the outcome of the case.
Subsection 2. In cases brought before the Court pursuant to Section 21 (no. 2) the industrial arbitration tribunal may impose sanctions for breach of a collective agreement pursuant to the rules of section 12.
Subsection 3. To the extent it is prescribed by Community law provisions on reference by national courts of preliminary questions to the European Court of Justice, such reference may or must, respectively, be made by an industrial arbitration tribunal.

Section 25. An industrial arbitration tribunal consists of an umpire to be appointed by the president of the Labour Court, cf. section 27, and of 4 other members, two of whom shall be appointed by the employees' side and two by the employers' side. The umpire shall act as the presiding judge of the tribunal.
Subsection 2. The parties may decide to set up the court of arbitration with only one member from either side or without any members appointed by the parties.*Subsection 3.* The parties may decide that the presidency of the Court is to consist of 3 umpires.

Section 26. Persons personally interested in an employment issue that is the subject of a case cannot be members of an industrial arbitration tribunal.
Subsection 2. The rules on disqualification of judges of the Administration of Justice Act shall apply to the umpire of the industrial arbitration tribunal.

Section 27. To have a judge appointed as umpire of the industrial arbitration tribunal the parties must submit a request to that effect to the president of the Labour Court. The president of the Labour Court shall then appoint an umpire from a restricted list of judges, normally in compliance with the parties' recommendation. The list shall be established in accordance with the recommendations of the organisations and authorities mentioned in section 3, by the ordinary judges of the Labour Court in cooperation with the presidency of the Labour Court.
Subsection 2. To have a judge appointed who is not included on the list mentioned in subsection 1, the parties shall contact the president of the Labour Court who will then make a decision on the appointment.
Subsection 3. If the parties wish to have an umpire who is not a judge, the president of the Labour Court will appoint the umpire in accordance with the parties' recommendation, unless special circumstances apply.

Section 28. If the members appointed by the parties or a majority of them agree on the outcome of a case, the arbitration tribunal shall rule accordingly. The decision shall generally be taken by the umpire.
Subsection 2. Decisions according to subsection 1 shall be in the form of an award. Awards shall be given as soon as possible and no later than 6 weeks after the case has been prepared for the final award, unless special circumstances apply.
Subsection 3. The members of the arbitration tribunal appointed by the parties may agree to settle the case by a compromise, or by the complainant withdrawing the complaint. Such agreements may be concluded until an award has been given in the case.
Subsection 4. The umpire may give a verbal advisory opinion on the outcome of the umpire's award immediately after the voting of the members of the industrial tribunal appointed by the parties. In such case the members appointed by the parties may agree to end the case by a compromise in accordance with this advisory opinion and may in that connection agree that a written version of the umpire's advisory opinion shall have the same effect as an award. The umpire will then draw up an entry stating the written advisory opinion and the compromise. The rule in subsection 2 (no. 2) shall apply by analogy to such entry, however with a time limit of four weeks.
Subsection 5. Awards pursuant to subsection 2 shall be motivated. If the parties agree, their statements as well as the evidence and the rendering of the parties' argumentation may be omitted.
Subsection 6. Moreover, the industrial arbitration tribunal will end the case if

1. the claimant withdraws its claim, unless the defendant objects to the case being ended, and the industrial arbitration tribunal finds that the defendant has a justified interest in a final settlement of the dispute,
2. the parties agree to end the case brought before the industrial arbitration tribunal, or
3. the industrial arbitration tribunal finds that it has for other reasons become unnecessary or impossible to continue the case.

Subsection 7. Awards may be published subject to anonymisation in accordance with the rules in force from time to time.

Section 29. The rules of the Administration of Justice Act on full-court hearings in civil actions in the First Instance apply to the hearing of arbitration cases, with the necessary adjustments and with the deviations agreed upon.
Subsection 2. The hearings of the industrial arbitration tribunal are public. However, the umpire or the parties may in exceptional cases resolve, with due regard to the nature and

circumstances of the case, that the hearing shall be held behind closed doors.

Section 30. 3 members of the presidency of the Labour Court may in exceptional cases authorise that cases settled by an industrial arbitration tribunal be reopened, provided

1. there is every probability that the case, without any fault on the part of the applicant, was incorrectly elucidated, and that the case will, following a reopening, produce a materially different outcome,
2. the overall circumstances speak in favour of reopening the case.

Subsection 2. If the Labour Court authorises the reopening of the case, the presidency of the arbitration tribunal will, if requested by either party, consist of the 3 umpires.

Section 31. The fees and costs of the umpire shall be shared equally between the parties. Each party shall defray its own costs in connection with the consideration of the arbitration tribunal.

Section 32. If a party refuses to have the case considered by an industrial arbitration tribunal in accordance with the rules of this Act, either party may submit the question of the justification of such refusal to the Labour Court.

S**ection 33.** The provisions of this Part shall apply unless the parties to a collective agreement have adopted satisfactory provisions that the case shall be heard by an industrial arbitration tribunal.
Subsection 2. Besides, the Rules Governing the Hearing of Industrial Disputes (the Norm) agreed from time to time between the Confederation of Danish Employers and the Danish Confederation of Trade Unions shall apply, unless the parties to a collective agreement have adopted satisfactory rules for the hearing and settlement of labour disputes.

Part 3
Execution, entry into force and amendments to other acts

Section 34. The judgments of the Labour Court, rulings pursuant to section 16(3), as well as decisions regarding legal costs and decisions made in connection with conciliation, organisation and joint meetings and by the industrial arbitration tribunals, including the boards of dismissal, can be executed in accordance with the rules of the Administration of Justice Act on the execution of judgments.
Subsection 2. Settlements concluded in the Labour Court and the industrial tribunals and boards can be executed in accordance with the provisions of the Administration of Justice Act on the execution of settlements made before a court.
Subsection 3. The provisions of the Administration of Justice Act on objections to the correctness of judgments etc. and settlements shall, by analogy, be applied to objections raised during the execution of the decisions and settlements mentioned in subsections 1 and 2.

Section 35. The Act shall enter into force on 1 March 2008.
Subsection 2. Act no. 183 of 12 March 1997 on the Labour Court is repealed.
Subsection 3. The Act shall apply to industrial arbitration initiated after the entry into force of the Act. Section 34 shall apply to decisions made after the entry into force of the Act, and to decisions made before the entry into force of the Act that could have been executed according to Act no. 183 of 12 March 1997 on the Labour Court.
Subsection 4. The ordinary judges and substitute judges who are appointed for 5 years as from 1 January 2008 pursuant to section 3 of Act no. 183 of 12 March 1997 on the Labour Court shall continue until the expiry of their appointment.
Section 36. The Act shall not apply in the Faroe Islands and Greenland.

Section 37.-40. (Left out)

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