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BARBADOS

The Official Gazette Part A

31st May, 2021

Statutory Instrument

S.I. 2021 No. 36

Temporary Right to Severance Payment for Lay-Off or Short Time (Procedure for Settlement of Claims) Act, 2021

Act (2021-9)

**TEMPORARY RIGHT TO SEVERANCE PAYMENT FOR LAY-OFF OR
SHORT TIME (SETTLEMENT OF CLAIMS) ORDER, 2021**

The Minister, in exercise of the powers conferred on him by section 2(1) of the *Temporary Right to Severance Payment for Lay-Off or Short Time (Procedure for Settlement of Claims) Act, 2021*, makes the following Order:

1. This Order may be cited as the *Temporary Right to Severance Payment for Lay-Off or Short Time (Settlement of Claims) Order, 2021*.
2. For the purposes of this Order,
“Appendix” means the Appendix to the *Severance Payments (Tribunal) Regulations, 1974* (S.I. 1974 No. 42);
“Arbiter” means an attorney-at-law, within the meaning of the *Legal Profession Act, Cap. 370A* who has at least 5 years standing;
“applicant” means a person who has sent an application to the Arbiter;
“Board” means the National Insurance Board established by section 3 of the *National Insurance and Social Security Act, Cap. 47*; and
“respondent” means a party to the proceedings before the Arbiter.
3. The Minister responsible for Severance Payments may appoint such number of Arbiters as he thinks necessary to give effect to the provisions of this Order.

4.(1) The Forms set out in the Appendix shall be used for the purposes of this Order and the word “Arbiter” shall be substituted for the word “Tribunal” wherever it appears in those Forms.

(2) The Appendix shall otherwise be read and construed with such adaptations and modifications as circumstances may require.

5. This Order applies for the purposes of giving effect to the claims of those persons to whom section 6B of the *Severance Payments (Amendment) Act, 2020* (Act 2020-15) applied that remain to be settled.

6.(1) Proceedings for the determination by the Arbiter of the right to a severance payment and the amount thereof shall be instituted by the applicant sending to the Arbiter an application which shall be in the Form 1, 2 or 3, as the case may be, set out in the Appendix, and shall set out the grounds of the application.

(2) Where the Arbiter is of the opinion that the application

(a) does not seek; or

(b) cannot entitle the applicant to a remedy which the Arbiter has power to give,

he may give notice to that effect to the applicant stating the reasons for his opinion and inviting the applicant to state in writing whether he agrees to withdraw his application or wishes to proceed with it.

(3) An application in respect of which a notice has been given under subparagraph (2) shall not be treated as having been received for the purposes of paragraph 7 unless the applicant intimates in writing to the Arbiter that he wishes to proceed with it; and upon receipt of such an intimation the Arbiter shall proceed in accordance with that paragraph.

(4) The withdrawal of an application under this paragraph shall be without prejudice to any right of the applicant to make a further application to the Arbiter.

7.(1) Upon receiving an application under subparagraph (1), the Arbiter shall

- (a) enter particulars of the application in the Register;
- (b) immediately send a copy of the application to the respondent and to the Board, if it is not a party;
- (c) inform the applicant, the respondent and the Board, if it is not a party, in writing of the case number of the application entered in the Register, which shall thereafter constitute the title of the proceedings; and
- (d) inform the applicant of the address to which notices and other communications to the Arbiter shall be sent.

(2) The copy of the application sent by the Arbiter under subparagraph (1) to a respondent shall be accompanied by a notice in Form 4 set out in the Appendix.

8.(1) A respondent shall within 7 days of receiving a copy of the application enter an appearance to the proceedings by sending to the Arbiter a notice of appearance which shall be in Form 5 as set out in the Appendix stating whether he intends to resist the application, and, if so, on what grounds. Upon receipt of a notice of appearance, the Arbiter shall immediately send a copy of it to the other party and to the Board, if it is not a party.

(2) A respondent who has not entered an appearance shall not be entitled to take any part in the proceedings except to be sent a copy of a decision or specification of reasons or corrected decision or specification under paragraph 14(3) and 14(6), and accordingly without prejudice to the generality of this provision, he shall not be entitled

- (a) to make an application under paragraph 13;

- (b) to be given notice of the date, time and place of the hearing under paragraph 10;
- (c) to submit representations in writing for consideration by the Arbiter under paragraph 11(3);
- (d) to be heard or represented at the hearing under paragraph 12 or 13; or
- (e) to enter into a written agreement under paragraph 16(1)(d).

9.(1) Subject to paragraph 8(2), the Arbiter may, on the application of a party to the proceedings or of the Board, if it is not a party, made either by notice to the Arbiter or at the hearing of the application

- (a) require a party to furnish in writing to another party and to the Board, if it is not a party, further particulars of the grounds on which he relies and of any facts and contentions relevant thereto;
- (b) grant to a party or to the Board, if it is not a party, such discovery or inspection of documents as may be granted by the High 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 question to be determined; and may appoint the time or within which or the place at which any act required under this paragraph is to be done.

(2) A party on whom a requirement has been made under subparagraph (1)(b) or (1)(c) may apply to the Arbiter to vary or set aside the requirement.

(3) No application to vary or set aside shall be entertained, in a case where a time has been appointed in subparagraph (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.

(4) Notice of the application in accordance with paragraph 16(2) shall be given to the party on whose application the requirement was made, and, if it was not that party, to the Board.

(5) Any person who without reasonable excuse fails to comply with any requirement for the purposes of this paragraph is guilty of an offence and liable on summary conviction to a fine of \$1 000.

10. The Arbiter shall fix the date, time and place of the hearing of the application, and the Arbiter shall, not less than 14 days before the date so fixed, send to each party and to the Board, if it is not a party, a notice in Form 6 set out in the Appendix.

11.(1) Any hearing of or in connection with an application may take place in public, unless the Arbiter determines to hear the application in private or virtually.

(2) Where a hearing is held virtually and a party does not have the facilities necessary to attend the proceedings, the National Insurance Office shall do whatever is necessary to enable the party to attend the proceedings.

(3) Subject to paragraph 8(2), if a party wishes to submit representations in writing for consideration by the Arbiter at the hearing of the application, that party shall send such representations to the Arbiter not less than 7 days before the hearing, and shall at the same time, send a copy thereof to the other party and to the Board, if it is not a party.

12.(1) Subject to paragraph 8(2), at any hearing of or in connection with an application made pursuant to paragraph 6, a party may appear and may be heard in person or be represented by an attorney-at-law or by a representative of a trade union or an employer's association, or, with the leave of the Arbiter, by any other person.

(2) The Board, if it so elects, is entitled to appear and be heard at any hearing of or in connection with an application, notwithstanding that it is not a party, and may be represented by an officer from the National Insurance Office or by an attorney-at-law.

13.(1) Subject to paragraph 8(2), at the hearing of the application, the parties and the Board, if it is not a party and it elects to appear, shall be entitled to make opening statements, to call witnesses, to cross-examine any witnesses called by any other party or by the Board, and to address the Arbiter.

(2) Subject to paragraph 8(2), a party may give evidence on his own behalf.

(3) Without prejudice to the right of the Board to appear and be heard, and subject to subparagraph (4), if a party fails to appear or to be represented at the time and place fixed for the hearing, the Arbiter may dispose of the application in the absence of that party or may adjourn the hearing to a later date.

(4) Notwithstanding subparagraph (3), before disposing of an application under that subparagraph, the Arbiter shall consider any representation submitted by that party under paragraph 11(3).

(5) The Arbiter may require any witnesses to give evidence on oath.

14.(1) The decision of the Arbiter shall be recorded in a document signed by him which shall contain the reasons for the decision.

(2) Subject to subparagraph (4), the document signed by the Arbiter shall be entered in the Register, and the Arbiter shall send a copy of the entry to each of the parties and to the Board, if it is not a party.

(3) The specification of the reasons for the decision shall be omitted from the Register in any case in which the Arbiter, on the application of any of the parties, so directs, on the ground that disclosure would be contrary to the interests of that party, and in that event, a specification of the reasons shall be sent to the parties and to the Board, if it is not a party, together with the copy of the entry.

(4) The Register shall be kept at the office of the Board and shall be open to inspection at any reasonable hour by any person without payment of a fee.

(5) The Arbiter may by certificate under his hand, correct in documents recording the Arbiter's decisions, clerical mistakes or errors arising therein from any accidental slip or omission.

(6) The Arbiter shall make such 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 the parties and to the Board, if it is not a party.

15.(1) The Arbiter shall not normally award costs, but where in his opinion a party to the proceedings, and if he is a respondent, whether or not he has entered an appearance, has acted frivolously or vexatiously, the Arbiter may include in its decision

- (a) an order that that party shall pay to another party or to the Board, if it is not a party, either a specified sum in respect of the costs incurred by that other party or, as the case may be, by the Board, or, in default of agreement, the taxed amount of those costs;
- (b) an order that that party shall pay to the Board a specified sum in respect of the whole or any part of any allowances other than allowances paid to the Arbiter, to any person for the purposes of, or in connection with, his attendance before the Arbiter.

(2) Notwithstanding subparagraph (1), where on the application of a party to the proceedings the Arbiter has adjourned the hearing, the Arbiter may include in his decision an order against that party under subparagraph (1)(a) or (1)(b) in respect of any costs incurred or any allowances paid as a result of the adjournment.

(3) Any costs required by an order under this paragraph to be assessed may be assessed in the High Court in accordance with the *Supreme Court (Civil Procedure) Rules, 2008* (S.I. 2008 No. 66).

16.(1) The Arbiter may, if he thinks fit

- (a) extend the time appointed by this Order for doing any act;
- (b) adjourn the day or time fixed for the hearing;

- (c) if the applicant at any time gives notice of the abandonment of his application, dismiss the proceedings; or
 - (d) if both or all the parties and the Board, if it is not a party, agree in writing upon the terms of a decision to be made by the Arbiter, decide accordingly.
 - (2) Subject to this Order, the Arbiter may regulate his own proceedings and may, if he thinks fit, before granting an application under paragraph 9, require the party making the application to give notice of it to the other party and to the Board, if it is not a party.
 - (3) The notice referred to in subparagraph (2) 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 Arbiter.
 - (4) Any act other than the hearing of an application required or authorized by this Order to be done by the Arbiter may be done by, or on the directions of, the Arbiter.
 - (5) Paragraph 15 shall apply to an order dismissing proceedings under subparagraph (1)(c).
- 17.** The National Insurance Office shall be responsible for
- (a) maintaining a list of the applications for the settlement of claims made in accordance with this Order;
 - (b) the recording, transcription and storage of the records of proceedings conducted in accordance with this Order; and
 - (c) maintaining a record of decisions rendered by Arbiters and the dates of the decisions.

18.(1) Any notice given pursuant to this Order shall be in writing and all notices and documents required or authorized by this Order to be sent or given to any person may be sent by post or delivered,

- (a) in the case of a document directed to the Arbiter, to the Director, National Insurance Office to the parties and to the Board, if it is not a party, under paragraph 7;
- (b) in the case of a document directed to the Board in proceedings to which it is not a party, the National Insurance Office;
- (c) in the case of a document directed to a party, his address for service as specified in the application or in a notice under subparagraph (2), or, if no address for service is so specified, his last known address or place of business in Barbados, or, if the party 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 Arbiter and to the other party and to the Board, if it is not a party, change his address for service.

Made by the Minister this 31st day of May, 2021.

RYAN STRAUGHN

Minister responsible for Severance Payments

