

# OFFICE OF THE PRESIDENT

No. 2083 2 December 1994

## NO. 50 OF 1994: AGRICULTURAL LABOUR AMENDMENT ACT, 1994.

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:

### GENERAL EXPLANATORY NOTE:

Words between asterisks indicate omissions from existing enactments.

Words between pointed brackets indicate insertions in existing enactments.

### ACT

To amend the Agricultural Labour Act, 1993, so as to substitute the provision relating to the construction of certain provisions of the Labour Relations Act, 1956; and to amend the provision amending certain provisions of the Basic Conditions of Employment Act, 1983; and to provide for matters connected therewith.

(Afrikaans text signed by the President.) (Assented to 23 November 1994.)

**BE IT ENACTED** by the Parliament of the Republic of South Africa, as follows:-

#### **Substitution of section 2 of Act 147 of 1993**

1. The following section is hereby substituted for section 2 of the Agricultural Labour Act, 1993:

"Construction of certain provisions of Act 28 of 1956

2. The Labour Relations Act, 1956, shall for the purposes of section 1, be construed as if-

(a) in section 1(1)-

(i) after the definition of 'agreement' the following definition had been inserted: ' " agricultural labour court" means the court established by section 17E;';

(ii) for the definition of 'determination' the following definition had been substituted: ' "determination" means a determination made under section 17E, 46, 76 or 77, as the case may be;'; and

(iii) after the definition of 'employers' organization' the following definitions had been inserted: ' "farm" includes fresh water and sea water in so far as farming activities are carried on therein or thereon; "farming activity" means any activity on a farm in connection with agriculture, including stock breeding, horticulture and forestry;';

(b) in section 2(2) the words 'in farming operations or' had been deleted;

(c) in section 17-

(i) the following paragraphs had been inserted after paragraph

(bC) of subsection (11):

'(bD) to decide any appeal lodged with it in terms of section 17E(7) **and, in deciding to hear the dispute, to make such order as may be necessary to have the matter set down for determination by the industrial court in the manner prescribed in section 17E(7A)**;

(bE) to determine any dispute referred to it by the agricultural labour court in terms of section 17E(5)(b) or (c);

(bF) for the purposes of an appeal made to it in terms of section 17E(7)(c) to hear such evidence as it deems necessary concerning the order for reinstatement or compensation, or the dismissal of a prayer for reinstatement or compensation, as the case may be;';

(ii) after subsection (11) the following subsection had been inserted:

'(11A) The industrial court shall deal with any dispute contemplated in subsection (11)**(bD)**, (bE)**and (bF)** as if it had been referred to it in terms of section 46(9).'; and

(iii) the following paragraphs had been inserted after paragraph

(b) of subsection (12):

'(c) In considering an order as to costs in terms of paragraph (a), the industrial court shall take into consideration whether or not, in its opinion, the dispute should, considering its nature, have been referred to the agricultural labour court instead of to the industrial court.

(d) The industrial court may, on application, order a party to furnish security for costs if it considers that a dispute should, considering its nature, have been referred to the agricultural labour court instead of to the industrial court.';

(cA) after subsection (2) of section 17B the following subsection had been added:

'(3) *The provisions of subsection (2) shall apply mutatis mutandis to the proceedings in the agricultural labour court.*'; (d) after section 17D the following section had been inserted:

'Agricultural labour court

17E. (1) (a) There is hereby established a court to be known as the agricultural labour court.

(b) The agricultural labour court shall consist of-

(i) a president, who shall be the president of the industrial court;

(ii) a deputy president, who shall be the deputy president of the industrial court; and

(iii) such other member or members as the Minister may from time to time determine. (2) (a) The provisions of section 17(1)(b) to (e), (2), (6), (8), (10), (13), (14), (17), (18), (19), (20), (20A) and (22)(a), (b), (c)(i), (ii), (vii) and (ix), and (d) shall apply mutatis mutandis in relation to the agricultural labour court.

*(b) The rules board of the industrial court constituted in terms of section 17(22) shall make rules for the agricultural labour court and for this purpose one person representing the interests of employers engaged in farming activities and one person representing the interests of employees engaged in farming activities shall be appointed to the rules board by the Minister for a period of three years.*

*(c) The two persons referred to in paragraph (b) shall be appointed from persons nominated by organisations representing employers and employees, respectively.*

(3) Whenever a dispute exists between an employer and an employee engaged in farming activities concerning an alleged unfair labour practice, any party to the dispute may refer the dispute to the agricultural labour court for determination.

*(3A) Unless the agricultural labour court on good cause shown decides otherwise, a dispute contemplated in subsection*

*(3) shall be referred to the agricultural labour court within 180 days from the date on which the alleged unfair labour practice has commenced or ceased, as the case may be, or such later date upon which the parties to the dispute may agree.*

(4) The agricultural labour court shall as soon as possible after receipt of the reference in terms of subsection (3), determine the dispute on such terms as it may deem reasonable, including but not limited to the ordering of reinstatement or compensation: Provided that in determining the dispute the agricultural labour court shall take into consideration the specific farming situation.

(5) (a) Any party to a dispute referred to the agricultural labour court may, prior to the commencement of the hearing of the dispute, apply to the agricultural labour court-

(i) for an order that the dispute be **determined by** referred to the industrial court for determination-

(ii) for a **decision on whether the agricultural labour court has jurisdiction to hear the dispute** ruling that the agricultural labour court does not have jurisdiction to determine the dispute.

**(b) If an application contemplated in paragraph (a) is granted on good cause shown** An order may be granted in terms of paragraph (a) (i) on good cause shown and if granted the agricultural labour court shall refer the dispute to the industrial court for determination.

(c) The agricultural labour court may of its own motion at any time refer a dispute to the industrial court for determination.

(d) Any dispute referred to the industrial court in terms of paragraph (b) or (c), shall be determined by the industrial court as if the dispute had been referred to the industrial court in terms of section 46(9).

(6) The agricultural labour court shall not be a court of record but the presiding officer shall take minutes or cause minutes to be taken of any determination made by it in terms of this section *and the succinct reasons for such determination.*

(7) Any decision or determination of the agricultural labour court is final: Provided that any party to the dispute may appeal to the industrial court against an order or ruling of the agricultural labour court-

(a) *where a dispute has been referred to the industrial court in terms of subsection (5) made in terms of subsection (5) (a) (i); or*

(b) *where the agricultural labour court made a decision] in respect of its jurisdiction in terms of subsection (5)(a)(ii); or*

(c) *if the agricultural labour court ordered ordering reinstatement or compensation or dismissed dismissing a prayer for reinstatement or compensation.*

(7A) (a) *The industrial court may in respect of any appeal heard by it in terms of subsection (7)-*

(i) *make any appropriate order or ruling including the referral of the dispute back to the agricultural labour court for determination, or itself determine the dispute if expedient to do so;*

(ii) *make any order as to costs on the ground of unreasonableness or frivolity on the part of a party to the appeal.*

(b) *No appeal shall lie from an order or ruling of the industrial court made in respect of an appeal to it in terms of subsection (7) save that where the industrial court itself makes a determination of a dispute referred to it by the agricultural labour court, in which case section 17(21A) shall mutatis mutandis be applicable.*

(8) The agricultural labour court may not make any order as to costs.

(9) In addition to the matters referred to in section 17(22)(c)(i), (ii), (iii), (vii) and (ix), the Rules Board may make rules as to-

(a) mediation by the agricultural labour court prior to the hearing of a dispute referred to the agricultural labour court;

(b) the period within which and the manner in which an appeal under subsection (7) shall be noted;

(c) the period within which and the manner in which *amatter dispute* is to be referred by the agricultural labour court to the industrial court in terms of subsection (5)(b) or (c) for determination.

(10) (a) An order by the agricultural labour court for the payment of money shall be deemed to be an order made by the appropriate magistrate's court.

(b) *Any other decision, award, order or determination of the agricultural labour court may be executed as if it is a decision, award, order or a determination made by the Supreme Court.';*

(e) section 43 had been amended by the deletion of the word 'and' at the end of subparagraph (iv) of paragraph (b) of subsection

(4) and the insertion after subparagraph (v) of the said paragraph (b) of the following subparagraph: '(vi) the specific farming situation,'; section 46 had been amended by-

(i) the substitution for **subsection subsections (1) and (2)** of the following **subsection subsections**:

'(1) (a) For the purpose of this section, the expression employer referred to in subsection (1)" means-

(i) any employer or group of employers engaged in farming activities; or

(ii) any employers' organization acting on behalf of one or more employers referred to in subparagraph (i) who is a member or who are members of that organization and the expression "employee referred to in subsection (1)" means-

(iii) any employee or group of employees employed in farming activities by an employer referred to in subparagraph (i); or

(iv) any trade union acting on behalf of one or more employees referred to in subparagraph (iii) who is a member or who are members of that trade union.

(b) Any one or more employers referred to in subsection (1) or any employers' organization acting on behalf of one or more such employers who is a member or who are members of that organization, on the one hand, and any group of employees referred to in subsection (1), or a trade union acting on behalf of such employees, who are employed by such employer or employers, on the other hand, may agree in writing that the provisions of subsections (2) to (6) of this section shall not apply to them.

(2) Whenever an industrial council or a conciliation board which has had under consideration a dispute in which the parties are one or more of the employers referred to in subsection (1) and one or more of the employees referred to in subsection (1)-

(a) has failed to settle the dispute within a period of 30 days reckoned from the date on which the dispute was referred to the industrial council or the date on which the application for the establishment of a conciliation board was lodged, as the case may be, or within such further period or periods *as the industrial court may fix or, in the case of a conciliation board, on which the parties to the dispute may agree, or the period or periods as the Director-General may from time to time fix on good cause shown; or*

(b) before the expiry of that period or further period or periods has resolved that further deliberations will not result in the settlement of the dispute, *it the secretary of the industrial council or, in the case of a conciliation board, the chairman or the inspector defined by regulation, shall report accordingly to the Director-General, and who shall direct that the dispute shall be referred to arbitration in accordance with the provisions of this section: Provided that a dispute concerning an unfair labour practice shall be dealt with in terms of section 17(11)(a), 17E, 43 or 46(9) unless the parties to the dispute agree that it be referred to arbitration.*;

(ii) the deletion of subsection (7); and

(iii) the substitution for paragraph (c) of subsection (9) of the following paragraph:

'(c) The industrial court shall as soon as possible after receipt of an application in terms of paragraph (b) determine the dispute on such terms as it may deem reasonable, *and taking into consideration the specific farming situation, including but not limited to the ordering of reinstatement or compensation and the provisions of sections 49 to 58, 62 and 71 shall mutatis mutandis apply in respect of any determination made in terms of*

this subsection in so far as such provisions can be applied: Provided that such determination may include any alleged unfair labour practice which is substantially contemplated by the referral to the industrial council or with the terms of reference of the conciliation board, determined in terms of section 35(3)(b).';

(g) section 61 had been amended by the addition to subsection (1) of the following proviso: 'Provided that an inspector shall only after previous notice enter any dwelling premises on a farm.'; and

(h) section 65 had been amended by the substitution for paragraph (c) of subsection (1) of the following paragraph:

'(c) if the employees and employers who are or would be concerned in the strike or lockout, are employees and employers referred to in **section 46(1)(a) subsection (1) of section 46**, unless they have concluded an agreement as contemplated in paragraph (b) of that subsection; or' "

### **Amendment of section 4 of Act 147 of 1993**

2. Section 4 of the Agricultural Labour Act, 1993, is hereby amended-(a) by the insertion after paragraph (a) of the following paragraph: "(aA) the substitution in section 1(1) for the definition of 'farm worker' of the following definition: ' "farm worker" means an employee who is employed mainly in or in connection with farming activities, and includes an employee who wholly or mainly performs domestic work on dwelling premises on a farm; ... ;

(b) by the substitution for paragraph (b) of the following paragraph:

"(b) the substitution for subsection (1) of section 6A of the following subsection:

*'(1) An employer may conclude a written agreement with a farm worker or a domestic worker, signed by both parties, in terms of which the ordinary working hours for a period agreed upon, but-*

*(a) in the case of a farm worker, not exceeding four months in any continuous period of 12 months, are extended, but not by more than eight hours per week: Provided that the ordinary working hours shall be reduced in such a way that over the same period of 12 months the average ordinary working hours shall not exceed 48 hours per week; and*

*(b) in the case of a domestic worker, not exceeding 26 days in any continuous period of 12 months, are extended, but not by more than four hours per week: Provided that the ordinary working hours shall be reduced by a corresponding number of hours during a period of the same duration as that during which the extended hours were in force, and in the same period of 12 months.'*

### **Short title and commencement**

3. This Act shall be called the *Agricultural Labour Amendment Act, 1994*, and shall come into operation on a date fixed by the President by proclamation in the Gazette.