PUBLIC SERVICE ARBITRATION AMENDMENT BILL 1978

Date Introduced: 10 May 1978
House: House of Representatives
Presented by: Hon. A.A. Street, M.P.,
Minister for Employment and
Industrial Relations

Short Digest of Bill

Purpose

To amend the powers of the Public Service Arbitrator and to make provision for the consequences that are to attend standing down.

Background

In November 1977, vacancies for Employment Officer (Class 4) positions in the Commonwealth Employment Service (CES) were advertised both inside and outside the Public Service. In December the N.S.W. Branch of the Administrative and Clerical Officers Association imposed bans on handling job applications from persons outside the Public Service until a right of appeal was granted against appointees from outside the Service above the base grade level (then, as now, an appeal can only be made if the promotee is within the Service).

The matter went to the Deputy Arbitrator who did not deal with the question of a right of appeal because in his view it was beyond his jurisdiction. He did, however, order the cessation of the bans and the standing down without pay of any officer or employee of CES who refused to perform his duties. The unions took the matter to the High Court which held that the Deputy Arbitrator did have the power to grant a right of appeal and as the orders made were based on the assumption that there was no jurisdiction to deal with the union's claim, they could not stand. The High Court decision implied that the Public Service Arbitrator could affect recruitment and promotion within the Public Service. The Government considers that this should be beyond the Arbitrator's powers. The High Court also cast some doubt as to the capacity of the Arbitrator to make stand down orders. The Government has decided that the Arbitrator's powers in this regard should be specified and further that the consequences which flow from a stand down order should be set out.

Last year the Government passed the Commonwealth Employees (Employment Provisions) Act 1977 which enabled Commonwealth Government
employing authorities to suspend or dismiss employees who take
industrial action and to stand down without pay employees whose work
is disrupted by industrial action. This Act has yet to be proclaimed.

Main Provisions

The Public Service Arbitrator is precluded from altering
or affecting recruitment into, or promotion within, the Public Service
by an amendment to the definition of "Conditions of employment" in
s.3 of the Public Service Arbitration Act 1970.

The power of the Public Service Arbitrator to order the
standing down of officers or employees who are concerned in, or
affected by, an industrial situation is made specific by the inclusion
of a new paragraph 12D(2)(c).

Proposed new sub-sections 2A, 2B, 2C, 2D and 2E in section
12D set out the consequences which flow from a stand down order. A
person stood down is not entitled to salary, wages or other remunera-
tion and allowances in the nature of salary or wages for the period
of the stand down (new sub-section (2A)). Further, the stand down
period will not count as service for the purposes of recreation
leave or sick leave (new sub-section (2C)) nor long service leave
although for long service leave purposes the period of stand down
does not break a person's continuity of employment (new sub-section
(2B)). Methods of calculating the loss of recreation leave or sick
leave are stipulated (new sub-sections (2C) and (2D)). There is also
an additional power given to the Public Service Arbitrator to give
directions concerning other conditions of employment of stood down
persons (new sub-section (2E)).

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