

MALTA

ATT Nru. XVI ta' l-2007

ACT No. XVI of 2007

ATT mahruġ b'liġi mill-Parlament ta' Malta.

AN ACT enacted by the Parliament of Malta.

ATT li jemenda l-Ordinanza dwar il-Haddiema tal-Port, Kap. 171.

AN ACT to amend the Port Workers Ordinance, Cap. 171.

I assent.

(L.S.)

EDWARD FENECH ADAMI
President

27th July, 2007

ACT No. XVI of 2007

AN ACT to amend the Port Workers Ordinance (Cap. 171)

BE IT ENACTED by the President, by and with the advice of the House of Representatives, in this present Parliament assembled, and by the Authority of the same as follows:-

1. (1) The short title of this Act is the Port Workers Ordinance (Amendment) Act, 2007, and it shall be read and construed as one with the Port Workers Ordinance, hereinafter referred to as “the principal law”. Short title and coming into force.

(2) This Act shall be deemed to have come into force on 1st June, 2007.

2. Article 2 of the principal law shall be amended as follows: Amendment of article 2 of the principal law.

(a) the definition “Board” shall be substituted by the following definition:

“ “Board” means the Port Workers Board established under article 10;”;

(b) the definition “Council” shall be deleted;

(c) immediately after the definition “Director” there shall be inserted the following new definition:

Cap. 352.

“ “employer of port workers” means a person so authorized or licensed by the Authority in accordance with the provisions of the Malta Maritime Authority Act to provide services including the loading, unloading, transshipment, storage and the movement of general cargoes and other materials in a port and includes a terminal operator;”;

(d) the definition “port worker” shall be substituted by the following definition:

“ “port worker” means a person employed in a port in the provision of services of a temporary nature involving the handling of cargo in the process of loading or unloading cargo on or from a ship, from or to any place on shore, a person so employed or authorized by the Authority or so employed by an employer of port workers to handle cargo in a warehouse and a person employed in the handling of cargo, as the Minister may from time to time prescribe, from a transit shed or stack or open quay to vehicle or in the consolidation, groupage or dismantling of goods in or from a unit load in a port, and “port work” for the purposes of this Act shall be construed accordingly.”; and

(e) immediately after the definition “prescribed” there shall be inserted the following new definition:

“ “Service Level Agreement” means an agreement concluded between port workers and employers of port workers in connection with the provision of services by port workers;”.

Amendment of article 3 of the principal law.

3. Sub-article (3) of article 3 of the principal law shall be deleted and sub-articles (4) and (5) thereof shall be renumbered (3) and (4) respectively.

Amendment of article 4 of the principal law.

4. In article 4 of the principal law, immediately after sub-article (5), there shall be inserted the following new sub-article:

“(6) In order to ensure safety, increase in efficiency and develop flexibility, it shall be the duty of port workers to undergo periodic training programmes as is considered necessary.”.

5. Article 7 of the principal law shall be substituted by the following:

Substitution of article 7 of the principal law.

“Establishment
of a Port
Work
Appeals
Board

7. (1) There shall be established a Port Work Appeals Board, hereinafter referred to as “the Appeals Board”, which shall exercise and perform functions assigned to it by this Ordinance.

(2) The Appeals Board shall be appointed by the Minister and shall consist of a Chairman of recognized standing and two members being persons who in the opinion of the Minister have experience in maritime, financial or administrative matters. The Minister shall also appoint a person to act as a secretary to the Board with no voting powers.

(3) The Chairman and members of the Appeals Board shall be appointed for a period of three years and shall be eligible for reappointment.

(4) The Chairman and members of the Appeals Board shall have no direct financial or other interests in matters concerning the management of ports and may be challenged or abstain for any of the reasons for which a judge may be challenged or abstain in accordance with the Code of Organization and Civil Procedure. In such cases the Minister shall appoint a person, having the qualifications of the Chairman or members challenged or abstaining, to sit in substitution.

(5) A judge, or magistrate or a member of the House of Representatives or of the European Parliament or of a Local Council shall be disqualified from being appointed or acting as Chairman or member of the Appeals Board as long as he holds that office.

(6) The Chairman and members of the Appeals Board shall for a period of one year following the termination for whatever reason of his appointment not engage in any activity which because of conflict of interest would have been incompatible with the exercise of his functions. Any person who acts in breach of this sub-article shall be guilty of an offence against this Ordinance and shall, on conviction, be liable to a fine (*multa*) of not less than one thousand liri and not more than five thousand liri.

(7) The procedures, offences, and other similar matters concerning the Appeals Board shall be regulated by the provisions of the First Schedule to this Act which may be amended by regulations made by the Minister from time to time:

Provided that any offence provided for in regulations made under this sub-article shall not be liable to a fine (*multa*) of more than one thousand liri or to imprisonment for a period of not more than six months or to both such fine and imprisonment.”.

Substitution of article 8 of the principal law.

6. Article 8 of the principal law shall be substituted by the following:

“Functions of the Port Work Appeals Board.

8. (1) The functions of the Appeals Board shall be the following:

(a) to hear appeals by employers of port workers or port workers for a review of any decision or directive taken by the Authority with regards to the tariffs for transshipment operations; and

(b) to decide upon any dispute as may be referred to it by the Minister regarding transshipment tariffs.

(2) Any decision or directive issued by the Authority relating to transshipment tariffs payable to port workers shall only come into effect fifteen days after being officially communicated to the port workers and the employers of port workers concerned in order to allow for possible appeals under sub-article (1) of this article:

Provided that:

(a) if no appeal as aforesaid is filed during the said period of fifteen days the decision of the Authority shall come into effect immediately after the lapse of the abovementioned period of fifteen days; and

(b) if an appeal as aforesaid is filed the decision or directive of the Authority shall not come into force until the appeal is finally determined by the Appeals Board.

(3) A decision taken by the Appeals Board relative to an appeal made under sub-article (1) shall be final and binding.

(4) In arriving at a decision on an appeal under sub-article (1), the Appeals Board shall seek to balance the application of the following principles, namely that –

(a) tariffs charged are based on sound economic and commercial facts, including consideration of the interests of consumers and industry in general and other parties involved in port activity, including, where applicable, the rate of inflation since the charges were last revised, and any other relevant unexpected economic circumstances;

(b) tariffs shall be reasonably related to costs, including depreciation and a return on capital employed;

(c) port operators, or other persons involved in port activity, are to be encouraged to invest in port facilities to meet demand;

(d) tariffs should be comparable to those levied at other ports competing with Malta;

(e) the achievement of service standards especially those applicable internationally.”.

7. Paragraph (a) of sub-article (2) of article 9 of the principal law shall be substituted as follows: Amendment of article 9 of the principal law.

“(a) except where otherwise provided in a Service Level Agreement, supply, in accordance with such system as is established in an order which is in force under article 11, and subject to such conditions as may be prescribed, port workers to any port work authorized by the Director in such numbers, order and priority as may be determined by the Director;”.

8. Article 10 of the principal law shall be substituted by the following: Substitution of article 10 of the principal law.

“Constitution of Port Workers Board.

10. (1) There shall be established a Port Workers Board, hereinafter referred to as “the Board”, which shall exercise and perform the functions assigned to it by this Ordinance.

(2) The Board shall consist of the following members:

(a) a Chairman of experience in, amongst other matters, port matters appointed by the Minister;

(b) two members nominated by the employers of port workers;

(c) two members nominated by the port workers;

(d) a secretary with no voting powers to be appointed by the Minister.

(3) The Chairman and members of the Board shall be appointed by the Minister for a period of three years and shall be eligible for reappointment:

Provided that where the employers of port workers or the port workers fail to nominate the members at paragraphs (b) and (c) of sub-article (2) hereof, the Minister may proceed to appoint the members he deems fit, but who have the qualifications and, or experience to act in the capacity of their representation on the Board.

(4) Where it appears to the Minister that more than one Board is required to deal with the volume of work involved, he shall take such action as he considers necessary in accordance with this Ordinance to appoint more than one Board depending on the prevailing case load before the main Board, and, for these purposes, he may direct that such Board or Boards be appointed for a specific term as he deems fit of three year or less.”.

Substitution of article 11 of the principal law.

9. Article 11 of the principal law shall be substituted by the following:

“Functions of the Port Workers Board.

11. (1) The functions of the Board shall be –

(a) the discipline of port workers other than disciplinary measures contemplated in the relative Service Level Agreements;

(b) the review from time to time as provided by regulations issued under the Ordinance of the

complement of port workers required by employers of port workers to satisfy the demands of industry;

(c) the selection of persons eligible to fill a vacancy for a port worker in accordance with regulations issued under the Ordinance;

(d) to determine –

(i) the conditions of employment of port workers including tariffs related thereto;

(ii) the system under which port workers shall be supplied to employers of port workers for any port work;

(iii) the organization of port workers:

Provided that the Board shall not exercise the functions specified in paragraph (d) above where it is specifically agreed to in writing between employers of port workers and port workers in the determination of the matters specified in the said paragraph shall be done in any other manner;

(e) to advise the Authority on such matters relating to labour in the port as may be referred to the Board from time to time;

(f) to make recommendations to the Director concerning the deregistration from the Port Workers Register of persons working at a port in accordance with paragraphs (b), (c) and (d) of sub-article (1) of article 14 hereof; and

(g) to perform such other functions as may be prescribed.

(2) Without prejudice to the provisions of any other law, in cases falling under paragraph (a) of sub-article (1) hereof, in the event that a person is convicted of theft committed during or in connection with port work or contravenes or fails to comply with the provisions of this Ordinance, or grossly misbehaves or misconducts himself in the course of or in connection with his port work, then, without

prejudice to the provisions of article 18, or to the provisions of any other law, the Board may -

(a) suspend him from work for a period not exceeding three months; or

(b) give him a fortnight's notice of cancellation of his registration; or

(c) cancel his registration forthwith.

(3) The conclusions of the Board relative to matters under sub-article (1) (d) and (e) hereof shall be by agreement between the representatives of employers of port workers and of the port workers on the Board.

(4) If the two sides are unable to agree on matters under sub-article (1) (d) and (e) hereof, they may agree to refer the question for a decision by an umpire appointed by the Minister responsible for labour upon their joint recommendation.

(5) The Board shall take all decisions by majority vote in accordance with the provisions of the Second Schedule.

(6) Without prejudice to any right of appeal to the Port Work Appeals Board where such right exists, any conclusion of the Board relating to any tariff or to the conditions of employment of port workers or to the supply of port workers and any other matter which in the opinion of the Chairman of the Board involves principles of importance, shall be submitted to the Minister for approval and when approved by him shall be published by order in the Gazette and shall be binding on all employers of port workers and on port workers from the date of publication as may be appointed by the Minister;

Provided that the Minister may delegate in writing the powers conferred upon him by this sub-article to a public officer or to an officer in the Authority:

Provided further that the Minister may recall for his own determination on any matter that may be pending before the Board.

(7) Nothing in this article shall preclude recourse to conciliation or arbitration proceedings under the provisions of the Act, and, or any other relevant law, where the employers of port workers side and the workers' side have failed to reach agreement under sub-articles (3) and (4) hereof.

(8) A memorandum of the terms of a settlement of a trade dispute made in accordance with the provisions of the Act, and, or such other relevant law, shall, for the purposes of this Ordinance, be deemed to be an order made and published under sub-article (6), and, notwithstanding the provisions of the Act, and, or such other relevant law, such memorandum, award or decision may be superseded by an order made by the Minister publishing an approval by him of a determination or decision arrived at in accordance with the provisions of sub-articles (3), (4) or (5) hereof.”.

10. Article 12 of the principal law shall be substituted by the following:

Substitution of article 12 of the principal law.

“Board to decide work disputes.

12. (1) Notwithstanding the provisions of article 11, the Board shall also decide on specific disputes which may arise between the employers of port workers and port workers in connection with port work in accordance with –

(a) conditions of employment established in an order which is in force under the provisions of paragraphs (d) and (e) of article 11; or

(b) such standards as may seem reasonable to the Board, where no such conditions of employment are applicable to a particular dispute:

Provided that where a Service Level Agreement has established procedures under which a particular dispute between an employer of port workers and port workers can be resolved, the Board may decide not to take cognizance of any such dispute referred to it if it considers that all procedures under the said Service Level Agreement have not been exhausted.

(2) Any decision given by the Board shall be final and binding in respect of the particular dispute but it shall not have the force of approved conditions of employment for the purposes of any future dispute of a similar nature.

(3) Every decision of the Board under this article shall be distributed to the parties involved in the dispute.

(4) Unless the Minister directs otherwise, the procedures relative to matters under this article shall be regulated by the provisions of Part Two of the Second Schedule, which provisions may be amended by regulations made by the Minister from time to time.”.

Substitution of article 13 of the principal law.

11. Article 13 of the principal law shall be substituted by the following:-

“Procedures of the Port Workers Board.

13. Subject to the provisions of article 12 (4), the procedures and other similar matters concerning the Board shall otherwise be regulated by the provisions of the Second Schedule, which provisions may be amended by regulations made by the Minister from time to time.”.

Amendment of article 14 of the principal law.

12. Article 14 of the principal law shall be amended as follows:-

(a) in sub-article (1), for the words “registration of a port worker” there shall be substituted the words “registration of a person in the Port Workers Register”;

(b) sub-article (2) thereof shall be deleted;

(c) sub-article (3) thereof shall be re-numbered as sub-article (2); and

(d) sub-articles (4) and (5) thereof shall be deleted.

Amendment of article 15 of the principal law.

13. In sub-article (1) of article 15 of the principal law for the words “sub-article (3)” there shall be substituted the words “sub-article (2)”.

Amendment of article 17 of the principal law.

14. Article 17 of the principal law shall be amended as follows:

(a) in paragraph (a) thereof, the words “or to the contractor in respect of the services of foremen employed by him” shall be deleted; and

(b) in paragraph (f) thereof, for the words “Port Disputes Board” there shall be substituted the words “Port Workers Board”.

Substitution of the First Schedule to the principal law.

15. For the First Schedule to the principal law there shall be substituted the following:

“FIRST SCHEDULE

Article 7 (7)

PROCEDURES OF THE PORT WORK APPEALS BOARD

1. (1) Subject to the provisions of paragraph 3 hereof, an appeal in accordance with the provisions of article 8 of this Ordinance shall be made by the applicant and shall be filed with the secretary of the Port Work Appeals Board in a written form by registered post or delivered by hand to the secretary.

(2) An appeal under paragraph (1) hereof shall contain the following main information –

(a) the details concerning the appeal with relevant supporting documentation annexed as necessary;

(b) a brief statement of facts, and

(c) the grounds of the appeal.

(3) The application for an appeal shall be filed with the secretary of the Board in triplicate, a copy of which shall by not later than three days be served separately through the secretary on the Authority and on any other affected party.

(4) The Chairman of the Board may, at any time, allow an amendment to be made in the application only for the purpose of making it clearer:

Provided that the Chairman shall not take cognizance of such amendments on grounds other than those submitted in the first application.

(5) Whenever a copy of an application of appeal is served on the Authority or any other affected party in accordance with paragraph (3) hereof, the Authority, or any other affected party, shall file with the secretary of the Board within the time limit indicated by the Chairman in his communication (which in no case shall exceed fifteen days) a reply in duplicate stating the reasons for contesting the appeal, one copy of which shall by not later than three days be served by the secretary on the applicant.

(6) The Chairman of the Board shall as soon as practicable appoint a day for the hearing of the appeal, which saving as the Chairman

may otherwise direct for reasons of commercial confidentiality, be heard in public.

(7) Nothing shall prevent the Board, either before the hearing or at any time during the hearing of an appeal, from summarily dismissing or disallowing an appeal without hearing it or without hearing any further, as the case may be, on the grounds that the appeal is frivolous or vexatious or one that should not have been brought or made before it.

(8) Notice, warrants, orders issued by the Board shall –

(a) be signed by the Chairman and countersigned by the secretary;

(b) be delivered by registered mail or by any other form that the Chairman may determine.

(9) In conducting its proceedings, the Board shall ensure –

(a) that the affairs of the Board and its proceedings are carried out in an impartial and transparent manner;

(b) that the proceedings are concluded within a reasonable time;

(c) that the final decision is signed by the Chairman, and the original is kept in the registry of the Board with the complete record of the proceedings of the case;

(d) that the final decision is concurrently submitted by the Chairman of the Board to the Minister and the Chairman of the Authority.

(10) If considered necessary, the Chairman of the Board may summon witnesses, appoint experts to assist the Board, and, where applicable, hear evidence on oath.

(11) The Board may at its own discretion order any party, or parties, to an appeal before it to bear the reasonable costs related to the Board's performance of its functions under these regulations, including, where applicable, the costs of retaining appropriate consultants and, or experts necessary to carry out their duties and functions in a proper manner. The Board may, when delivering its decision, also determine which, or in what proportion, are the parties to pay such costs.

(12) The Board shall endeavour to determine an appeal within forty days from the date of the first submission of the appeal by an applicant:

Provided that the Minister may for valid reasons establish further extensions for the Board to conclude its deliberations after application by the Chairman of the Board.

(13) With regard to the conduct of proceedings before it, the Board shall have all the powers that are vested by the Code of Organization and Civil Procedure in the Civil Court, First Hall.

(14) Any person –

(a) who fails to provide the Board with the relevant information requested within the time specified in a written notice, and, or

(b) who knowingly provides false information to the Board,

shall be guilty of an offence under this Ordinance.

(15) A person who –

(a) commits an offence under paragraph (14) (a) of this Schedule shall be liable, on conviction, to a fine (*multa*) not exceeding two hundred and fifty liri, and, in the case of a second offence or subsequent offence, to a fine (*multa*) not exceeding five hundred liri;

(b) commits an offence under paragraph (14) (b) of this Schedule shall be liable, on conviction, to a fine (*multa*) not exceeding one thousand liri or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.”.

16. For the Second Schedule to the principal law there shall be substituted the following:

Substitution of the
Second Schedule to
the principal law.

“SECOND SCHEDULE

Articles 12 and 13

PROCEDURES OF THE PORT WORKERS BOARD

PART ONE

With regard to matters falling under paragraphs (a) and (f) of
article 11 (1)

1. (1) The Board shall hold its sittings in public and have the
power to –

(a) summon witnesses;

(b) take expert advice;

(c) administer oaths, which shall be administered by the
Chairman of the Board; and

(d) require any person who appears to it to have special
knowledge of the matter under consideration to furnish orally or
in writing such particulars in relation thereto as the Board may
require.

(2) In the exercise of its powers, the Board shall have the
powers which are conferred by Law on the First Hall of the Civil Court:

Provided that -

(a) the Board shall not in any case be enabled to order the
detention of any person; and

(b) the duties of a court usher and of a court marshal
respectively shall be performed by members of the Executive Police
detailed for the purpose by the Commissioner of Police.

(3) Any fine inflicted by the Board shall be recoverable by the Authority as a civil debt due to it.

(4) Every summons shall be signed by the Chairman of the Board and may be served either personally or by registered post, and in the latter case, in proving service, it shall be sufficient to prove that the summons was properly addressed and posted.

(5) The meetings of the Board shall be called by the Chairman as often as is necessary.

(6) The minutes of the meetings shall be kept by the secretary and approved at a meeting of the Board. All approved minutes are to be signed by the Chairman.

(7) Half the number of members for the time being constituting the Board shall form a quorum. Decisions shall be adopted by a simple majority of the votes of the members present and voting. The Chairman shall have an initial vote and in the event of an equality of votes, a casting vote.

(8) The Board shall give the person appearing before it the opportunity of presenting his case.

(9) During the proceedings the person appearing before the Board shall be allowed to be represented by a person of his own choice.

(10) Subject to the provisions of sub-article (2) of article 14 and the provisions of sub-article (2) of article 15, the decisions of the Board shall otherwise be final.

(11) The Board may otherwise regulate its other procedures.

PART TWO

With regards to matters falling under paragraphs (b), (c), (d) and (e) of article 11 (1) and matters under article 12

1. (1) Subject to the provisions of paragraph (4) hereof, the meetings of the Board shall be called by the Chairman as often as may be necessary on his own initiative or at the request of any of the members of the Board, but the Board shall meet at least once a month to discuss any matter of interest related to port work as part of its functions under paragraphs (b), (c), (d) and (e) of article 11.

(2) Half the number of members for the time being constituting the Board shall form a quorum.

(3) Subject to the provisions of sub-articles (3), (4) and (5) of article 11 and sub-article (2) of article 12 of the Ordinance, all other decisions of the Board shall be by a simple majority of the votes of the members present and voting. For this purpose the Chairman shall have an initial vote and in the event of an equality of votes, a casting vote.

(4) In matters falling under article 12 concerning work disputes at a port, the Board shall be convened following delivery to the secretary of the Board of a notice in writing stating that a specific dispute has arisen between an employer, or employers, of port workers and port workers. The notice shall state the nature of the dispute and shall be signed by the person, or persons, referring the matter to the Board.

(5) When delivering the notice referred to in paragraph (4) hereof, the person delivering the notice shall be required to deposit with the secretary a sum of fifty liri representing the fee relative to the meeting of the Board. The Board, may, when delivering its decision, determine which, or in what proportion, are the parties to pay the said costs.

(6) In matters falling under article 12, the Board shall be empowered to –

(a) summon witnesses,

(b) administer oaths, and

(c) require any person who appears to it to have special knowledge of the matter under consideration to furnish orally or in writing such particulars in relation thereto as the Board may require.

(7) Oaths shall be administered by the person chairing the Board.

(8) In the exercise of the powers in accordance with the provisions of paragraph (6) (a) and (b) hereof, the Board shall have the powers that are conferred by law on the First Hall of the Civil Court:

Provided that –

(a) the Board shall not in any case be enabled to order the detention of any person, and

(b) the duties of a court usher and of a court marshal respectively shall be performed by members of the Executive Police detailed for the purpose by the Commissioner of Police.

(9) Any fine inflicted by the Board shall be recoverable by the Authority as a civil debt due to it.

(10) Every summons under article 12 shall be signed by the Chairman and may be served personally or by registered post, and, in the latter case, in proving service, it shall be sufficient to prove that the summons was properly addressed and posted.

(11) Any claim arising out of a dispute between an employer of port workers and port workers under article 12 shall –

(a) be rejected by the Board if the person or persons making such a claim, when duly summoned to appear before the Board, fails or fail to appear before it without any valid reason within one hour of the time fixed for the hearing of the claim;

(b) be deemed to have been admitted by default if the Board is satisfied that the person or persons against whom the claim is brought had failed to appear before it without any valid reason within one hour of the time fixed for the hearing of the claim.

(12) The minutes of the meetings shall be kept by the secretary after being confirmed at a meeting of the Board and signed by the Chairman.

(13) The Board shall otherwise regulate its other procedures.”.

Deletion of the
Third Schedule to
the principal law.

17. The Third Schedule to the principal law shall be deleted.

Transitory
provisions.

18. (1) The retrospectivity of the provisions enacted by this Act shall not affect the validity of anything done during the period in respect of which this Act is brought into force retrospectively under the principal law as in force prior to the coming into force of this Act.

(2) The Port Workers Board as established prior to the coming into force of the amendments to the principal law enacted by virtue of this Act may continue to carry out the functions, as assigned to it under the principal law as in force prior to the coming into force of this Act until such time when the Port Workers Board is established in terms of article 10 of the principal law as amended by this Act and nothing done by the said Board shall be deemed to be invalid due to the fact that it was done after the coming into force of this Act.

Passed by the House of Representatives at Sitting No. 553 of 18th July, 2007.

ANTON TABONE
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives