



ANALYSIS

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1983, No. 110

An Act to amend the New Zealand Railways Corporation Act 1981

[16 December 1983]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title and commencement—(1) This Act may be cited as the New Zealand Railways Corporation Amendment Act 1983, and shall be read together with and deemed part of the New Zealand Railways Corporation Act 1981 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 1st day of February 1984.

2. Interpretation—Section 2 of the principal Act is hereby amended by inserting, after the definition of the term “service organisation”, the following definition:

“‘Society of workers’ or ‘association of workers’ or ‘organisation of workers’ means, for the purposes of sections 74C to 74K of this Act, a society or association or organisation of persons lawfully associated for the purpose of protecting or furthering the interests of employees:”.

3. New sections substituted—The principal Act is hereby amended by repealing section 74, and substituting the following sections:

“74. Right of workers to become members of service organisations—Every person who, by virtue of his employment or intended employment, is within the categories of employees of which a service organisation is constituted, shall be entitled to become a member of that service organisation on application made in accordance with its rules, and, in so far as the rules of any service organisation are inconsistent with this section, they shall be of no effect.

“74A. Voluntary union membership—(1) Nothing in any determination made under the State Services Conditions of Employment Act 1977 shall require any person—

“(a) To become or remain a member of a service organisation or of any union, society, association, or organisation of workers; or

“(b) To cease to be a member of a service organisation or of any union, society, association, or organisation of workers; or

“(c) Not to become a member of a service organisation or of any union, society, association, or organisation of workers.

“(2) Where any determination made under the State Services Conditions of Employment Act 1977, including any such determination in force on the commencement of this section, imposes or purports to impose (whether by way of an unqualified preference provision or otherwise) any requirement that contravenes subsection (1) of this section, that requirement or purported requirement shall be of no effect.

“74B. Prohibition on preference—(1) Except as otherwise expressly provided in this Act, nothing in any determination shall confer on any person, by reason of that person’s

membership or non-membership of a service organisation or of any union, society, association, or organisation of workers,—

“(a) Any preference in obtaining or retaining employment;
or

“(b) Any preference in relation to terms of employment or conditions of employment or fringe benefits or opportunities for training, promotion, or transfer;
or

“(c) Any preference in relation to the formula that will be used to assess compensation for redundancy.

“(2) Where any determination made under the State Services Conditions of Employment Act 1977, including any such determination in force on the commencement of this section, imposes or purports to impose any requirement that contravenes subsection (1) of this section, that requirement or purported requirement shall be of no effect.

“(3) Nothing in this section prevents any determination making provision for officers or employees or a service organisation or a union, society, association, or organisation of workers to hold a stop-work meeting in working hours.

“74c. **Discrimination**—It shall be unlawful for the Corporation—

“(a) To refuse or omit to employ any person by reason of the fact that that person—

“(i) Is a member of a service organisation or a union, society, association, or organisation of workers or intends to become a member of a service organisation or a union, society, association, or organisation of workers; or

“(ii) Is not a member of a service organisation or a union, society, association, or organisation of workers or intends to cease to be a member of a service organisation or a union, society, association, or organisation of workers or intends not to become a member of a service organisation or a union, society, association, or organisation of workers; or

“(b) To dismiss any officer or employee or subject him to any detriment on the grounds that that officer or employee—

“(i) Is a member of a service organisation or a union, society, association, or organisation of workers or intends to become a member of a service organisation or a union, society, association, or organisation of workers; or

- “(ii) Is not a member of a service organisation or a union, society, association, or organisation of workers or intends to cease to be a member of a service organisation or a union, society, association, or organisation of workers or intends not to become a member of a service organisation or a union, society, association, or organisation of workers; or
- “(c) When determining whether an officer or employee will be dismissed by reason of redundancy, to have regard to whether that officer or employee—
- “(i) Is a member of a service organisation or a union, society, association, or organisation of workers or intends to become a member of a service organisation or a union, society, association, or organisation of workers; or
- “(ii) Is not a member of a service organisation or a union, society, association, or organisation of workers or intends to cease to be a member of a service organisation or a union, society, association, or organisation of workers or intends not to become a member of a service organisation or a union, society, association, or organisation of workers; or
- “(d) When determining, in relation to any officer or employee, the formula that will be used to assess compensation for redundancy, to have regard to whether that officer or employee—
- “(i) Is a member of a service organisation or a union, society, association, or organisation of workers or intends to become a member of a service organisation or a union, society, association, or organisation of workers; or
- “(ii) Is not a member of a service organisation or a union, society, association, or organisation of workers or intends to cease to be a member of a service organisation or a union, society, association, or organisation of workers or intends not to become a member of a service organisation or a union, society, association, or organisation of workers.

“74D. **Restraint on making of determinations, etc.**—(1) No determination made under the State Services Conditions of Employment Act 1977 shall contain any provision that contravenes any of the provisions of section 74A or section 74B of this Act.

“(2) Where any determination made under the State Services Conditions of Employment Act 1977 contains a provision that contravenes any of the provisions of section 74A or section 74B of this Act, that provision shall, notwithstanding the making of that determination, be of no effect.

“74E. **Undue influence**—(1) No person shall exert undue influence on any officer or employee with intent to induce him—

“(a) To become or remain a member of a service organisation or a union, society, association, or organisation of workers; or

“(b) To cease to be a member of a service organisation or a union, society, association, or organisation of workers; or

“(c) Not to become a member of a service organisation or a union, society, association, or organisation of workers; or

“(d) On account of the fact that he is, or, as the case may be, is not, a member of a service organisation or a union, society, association, or organisation of workers, to resign any position or to leave any employment.

“(2) Every person who contravenes subsection (1) of this section shall be liable,—

“(a) If an employee or other person to whom the following paragraphs of this subsection do not apply, to a penalty not exceeding \$300:

“(b) If an officer or member of the committee of management of any union, society, association, or organisation, or of the branch (if any) concerned, to a penalty not exceeding \$1,500:

“(c) If a person acting on behalf of an employer, to a penalty not exceeding \$1,500:

“(d) If a union, society, association, organisation, or employer, to a penalty not exceeding \$3,000.

“(3) The Public Sector Tribunal shall have full and exclusive jurisdiction to deal with all actions for the recovery of penalties under this section.

“(4) For the purposes of this section, every reference to the Public Sector Tribunal shall be read as a reference to the Chairman of that Tribunal acting alone.

“(5) A penalty recoverable under this section shall be recovered in the same manner, with all necessary modifications, as a penalty for a breach of an award under the Industrial

Relations Act 1973; and sections 151 to 157 of that Act (except subsections (1), (5), and (6) of section 151) shall apply accordingly with all necessary modifications.

“(6) An action for the recovery of a penalty under this section may be brought only by the employee or by a body to which the employee belongs (being a service organisation or a union, society, association, or organisation of workers).

“(7) The Public Sector Tribunal may delegate to any District Court Judge named by it its powers and functions to deal with an action under this section and the provisions of section 49 of the Industrial Relations Act 1973 (except those of subsection (6)) shall, with all necessary modifications, apply accordingly.

“(8) Without limiting the meaning of the term ‘undue influence’ in subsection (1) of this section, it is hereby declared that, for the purposes of that subsection, a person exerts undue influence on any officer or employee if that person—

“(a) Threatens the officer or employee or any relative of the officer or employee with violence, or with any loss or detriment; or

“(b) Indulges in an intimidatory course of action towards the officer or employee or any relative of the officer or employee; or

“(c) Directly or indirectly causes the officer or employee or any relative of the officer or employee to suffer any loss or detriment.

“(9) In this section ‘relative’ has the meaning given to it by section 2 of the Human Rights Commission Act 1977.

“74F. **Relief in respect of unlawful discrimination—**
(1) Where the Corporation contravenes section 74C of this Act, the Corporation shall be liable to a penalty not exceeding \$500 to be recovered at the suit of the person or employee in relation to whom the section is contravened.

“(2) The Public Sector Tribunal shall have full and exclusive jurisdiction to deal with all actions for the recovery of penalties under this section.

“(3) A penalty recoverable under this section shall be recovered in the same manner, with all necessary modifications, as a penalty for a breach of an award under the Industrial Relations Act 1973; and sections 151 to 157 of that Act (except subsections (1), (5), and (6) of section 151) shall apply accordingly with all necessary modifications.

“(4) Where an action is taken under this section, the Public Sector Tribunal or the duly appointed delegate of that Tribunal

shall set a date for the hearing of the action as a matter of urgency.

“(5) In any action for the recovery of a penalty under this section in which it is proved that the Corporation—

“(a) Refused or omitted to employ the person; or

“(b) Dismissed the employee; or

“(c) Determined that the employee would be dismissed by reason of redundancy,—

it shall be for the Corporation to prove that it did not contravene section 74C of this Act.

“(6) If any action for the recovery of a penalty is taken under this section, and judgment is given against the Corporation, the Public Sector Tribunal, in addition to or instead of imposing a penalty under this section,—

“(a) May make an order for the reimbursement to the person or employee of a sum equal to the whole of the wages lost by the person or employee as a result of the contravention of section 74C of this Act; and

“(b) May also, in its discretion, make an order for—

“(i) The reinstatement of the person or employee in his former position or in a position not less advantageous to him; or

“(ii) The payment to the person or employee by the Corporation of such sum as the Tribunal thinks fit by way of compensation; or

“(iii) Both such reinstatement and such payment.

“(7) For the purposes of this section, every reference to the Public Sector Tribunal shall be read as a reference to the Chairman of that Tribunal acting alone.

“(8) The Public Sector Tribunal may delegate to any District Court Judge named by it its powers and functions to deal with an action under this section and the provisions of section 49 of the Industrial Relations Act 1973 (except those of subsection (6)) shall, with all necessary modifications, apply accordingly.

“(9) Every penalty recovered in an action under this section shall be paid to the Public Sector Tribunal and not to the plaintiff.

“(10) The Public Sector Tribunal may order that the whole or any part of any penalty recovered shall be paid to the plaintiff.

“74G. **Contribution or indemnity in respect of unlawful discrimination**—(1) Where—

“(a) The Corporation is liable to pay any penalty or other sum under section 74F of this Act; and

“(b) Any person has, before the contravention, threatened expressly or by implication that unless the Corporation contravenes section 74C of this Act that person will, alone or in concert with others, do any act, or omit to do any act, being an act or omission likely to affect adversely the conduct of the Corporation’s business,—

that person shall be liable to make contribution towards any penalty or other sum ordered to be paid under section 74F of this Act.

“(2) Where any person who is liable to make contribution under this section purported to act at any material time on behalf of or in the name of any service organisation or any union, society, association, or organisation of workers, that service organisation or union, society, association, or organisation of workers shall also be liable to make contribution under this section towards any penalty or other sum ordered to be paid under section 74F of this Act.

“(3) In any proceedings for contribution under this section, the amount of the contribution recoverable from any person or any service organisation or any union, society, association, or organisation of workers shall be such as may be found by the Public Sector Tribunal to be just and equitable having regard to the extent of the responsibility of that person or service organisation or union, society, association, or organisation of workers for the Corporation’s contravention of section 74C of this Act; and the Public Sector Tribunal shall have power to exempt any person or service organisation, or union, society, association, or organisation of workers from liability to make contribution, or to direct that the contribution to be recovered from any person or service organisation or union, society, association, or organisation of workers shall amount to a complete indemnity.

“(4) Where a defendant claims as against any person or service organisation or union, society, association, or organisation of workers not already a party to proceedings for the recovery of a penalty under section 74F of this Act (in this section called the third party)—

“(a) That he is entitled to contribution; or

“(b) That any question or issue in the proceedings should properly be determined not only as between the plaintiff and the defendant, but also as between the plaintiff, the defendant, and the third party, or as between any or either of them,—

the defendant may apply to the Public Sector Tribunal on notice for leave to issue and serve a third-party notice, and shall attach a copy of the proposed third-party notice to the application.

“(5) The procedure set out in Part XIII of the District Courts Rules 1948 shall, with all necessary modifications, apply in respect of every application made and notice issued under subsection (4) of this section.

“74H. **Breach of order for reinstatement**—(1) Every person shall be liable to a penalty not exceeding \$5,000 who—

“(a) Wilfully fails to comply with an order for reinstatement under section 74F (6) (b) (i) of this Act; or

“(b) Wilfully does or omits to do any act for the purpose of aiding any person to fail to comply with an order for reinstatement under section 74F (6) (b) (i) of this Act; or

“(c) Abets any person in his wilful failure to comply with an order for reinstatement under section 74F (6) (b) (i) of this Act; or

“(d) Incites, counsels, or procures any person to fail to comply with an order for reinstatement under section 74F (6) (b) (i) of this Act.

“(2) The Public Sector Tribunal shall have full and exclusive jurisdiction to deal with all actions for the recovery of penalties under this section.

“(3) For the purposes of this section, every reference to the Public Sector Tribunal shall be read as a reference to the Chairman of that Tribunal acting alone.

“(4) A penalty recoverable under this section shall be recovered in the same manner, with all necessary modifications, as a penalty for a breach of an award under the Industrial Relations Act 1973; and sections 151 to 157 of that Act (except subsections (1), (5), and (6) of section 151) shall apply accordingly with all necessary modifications.

“(5) An action for the recovery of a penalty under this section may be brought only by a person or employee who alleges that he has not been reinstated under the order to which the action relates.

“(6) The Public Sector Tribunal may delegate to any District Court Judge named by it its powers and functions to deal with an action under this section and the provisions of section 49 of the Industrial Relations Act 1973 (except those of subsection (6)) shall, with all necessary modifications, apply accordingly.

“(7) Where an action is taken under this section, the Public Sector Tribunal or the duly appointed delegate of that Tribunal, as the case may require, shall set a date for the hearing of the action as a matter of urgency.

“(8) Every penalty recovered in an action under this section shall be paid to the Public Sector Tribunal and not to the plaintiff.

“(9) The Public Sector Tribunal may order that the whole or any part of any penalty recovered shall be paid to the plaintiff.

“74i. Strikes and lockouts in respect of union membership—(1) Every person is liable to a penalty not exceeding \$5,000 who, being an employee, strikes for the purpose, wholly or partly, of inducing an employer to contravene section 74C of this Act.

“(2) Every person is liable to a penalty not exceeding \$5,000 who, being an employer, locks out any employees for the purpose, wholly or partly, of inducing those employees or any of them—

“(a) To become or remain members of a union, society, association, or organisation; or

“(b) To cease to be members of a union, society, association, or organisation; or

“(c) Not to become members of a union, society, association, or organisation.

“(3) Every person who incites, instigates, aids, or abets a breach of subsection (1) or subsection (2) of this section, or who incites, instigates, or assists any person who has struck or locked out in breach of subsection (1) or subsection (2) of this section to continue to be a party to a strike or lockout shall be liable—

“(a) If an employee or other person to whom the following paragraphs of this subsection do not apply, to a penalty not exceeding \$300:

“(b) If an officer or member of the committee of management of any union, society, association, or organisation, or of the branch (if any) concerned, to a penalty not exceeding \$1,500:

“(c) If a person acting on behalf of an employer, to a penalty not exceeding \$1,500:

“(d) If a union, society, association, organisation, or employer, to a penalty not exceeding \$3,000.

“(4) Every person who is a party to, or incites, instigates, aids, or abets a strike or lockout of a kind mentioned in

subsection (1) or subsection (2) of this section shall, in addition to any penalty to which he may be liable under subsection (1) or subsection (2) or subsection (3) of this section, be liable at the suit of any person suffering any loss or damage thereby or apprehending the suffering of any loss or damage thereby to any or all of the remedies available in civil proceedings in tort, and to the same extent as if the strike or lockout were a tort independently of this section.

“74j. Secondary strikes and lockouts in respect of union membership—(1) Every person is liable to a penalty not exceeding \$5,000 who, being an employee, strikes for the purpose, wholly or partly, of expressing opposition to the membership or non-membership of any union by any other worker or workers in the employment of any other employer.

“(2) Every person is liable to a penalty not exceeding \$5,000 who, being an employer, locks out any employees, for the purpose, wholly or partly, of expressing opposition to the membership or non-membership of any union by any worker or workers in the employment of any other employer.

“(3) Every person who incites, instigates, aids, or abets a breach of subsection (1) or subsection (2) of this section, or who incites, instigates, or assists any person who has struck or locked out in breach of subsection (1) or subsection (2) of this section to continue to be a party to a strike or lockout shall be liable,—

“(a) If an employee or other person to whom the following paragraphs of this subsection do not apply, to a penalty not exceeding \$300:

“(b) If an officer or member of the committee of management of any union, society, association, or organisation, or of the branch (if any) concerned, to a penalty not exceeding \$1,500:

“(c) If a person acting on behalf of an employer, to a penalty not exceeding \$1,500:

“(d) If a union, society, association, or organisation, or employer, to a penalty not exceeding \$3,000.

“(4) Every person who is a party to, or incites, instigates, aids, or abets a strike or lockout of a kind mentioned in subsection (1) or subsection (2) of this section shall, in addition to any penalty to which he may be liable under subsection (1) or subsection (2) or subsection (3) of this section, be liable at the suit of any person suffering any loss or damage thereby or apprehending the suffering of any loss or damage thereby

to any or all of the remedies available in civil proceedings in tort, and to the same extent as if the strike or lockout were a tort independently of this section.

“(5) Nothing in section 74I of this Act shall affect any liability under this section, save that when a penalty has been imposed on, or a judgment has been obtained against, any person under this section no further proceedings shall be taken or continued against him under section 74I of this Act in respect of the same act.

74K. Proceedings relating to strikes and lockouts (including secondary strikes and lockouts) in respect of union membership—(1) The Public Sector Tribunal shall have full and exclusive jurisdiction to deal with all actions for the recovery of penalties under section 74I or section 74J of this Act.

“(2) For the purposes of this section, every reference to the Public Sector Tribunal shall be read as a reference to the Chairman of the Tribunal acting alone.

“(3) A penalty recoverable under this section shall be recovered in the same manner, with all necessary modifications, as a penalty for a breach of an award under the Industrial Relations Act 1973; and sections 151 to 157 of that Act (except subsections (1), (5), and (6) of section 151) shall apply accordingly with all necessary modifications.

“(4) An action for the recovery of a penalty under section 74I or section 74J of this Act in respect of a strike or lockout may be brought only by a person or employee who alleges that he has suffered loss or damage thereby.

“(5) Where, in any action for the recovery of a penalty under section 74I or section 74J of this Act in respect of a strike or in any civil proceedings taken under section 74I (4) or section 74J (4) of this Act in respect of a strike, it is proved that the employee was a party to the strike and that there are reasonable grounds for believing that the strike was—

“(a) For the purpose, wholly or partly, of inducing the Corporation to contravene section 74C of this Act; or

“(b) For the purpose, wholly or partly, of expressing opposition to the membership or non-membership of any union by any other worker or workers in the employment of any other employer,—

the burden of proving that the strike was not wholly or partly for that purpose shall lie on the defendant.

“(6) Where, in any action for the recovery of a penalty under section 74I or section 74J of this Act in respect of a lockout or in any civil proceedings taken under section 74I (4) or section 74J (4) of this Act in respect of a lockout, it is proved that the employer locked out employees and that there are reasonable grounds for believing that the lockout was—

“(a) For the purpose, wholly or partly, of inducing those employees or any of them—

“(i) To become or remain members of a service organisation or a union, society, association, or organisation of workers; or

“(ii) To cease to be members of a service organisation or a union, society, association, or organisation of workers; or

“(iii) Not to become members of a service organisation or a union, society, association, or organisation of workers; or

“(b) For the purpose, wholly or partly, of expressing opposition to the membership or non-membership of a service organisation or a union, society, association, or organisation of workers by any worker or workers in the employment of any other employer,—

the burden of proving that the lockout was not wholly or partly for that purpose shall lie on the defendant.

“(7) The Public Sector Tribunal may delegate to any District Court Judge named by it its powers and functions to deal with an action under section 74I or section 74J of this Act for the recovery of a penalty and the provisions of section 49 of the Industrial Relations Act 1973 (except those of subsection (6)) shall, with all necessary modifications, apply accordingly.

“(8) Where an action for the recovery of a penalty is taken under section 74I or section 74J of this Act, the Public Sector Tribunal or the duly appointed delegate of that Tribunal, as the case may require, shall set a date for the hearing of the action as a matter of urgency.

“(9) Every penalty recovered in an action under section 74I or section 74J of this Act shall be paid to the Public Sector Tribunal and not to the plaintiff.

“(10) The Public Sector Tribunal may order that the whole or any part of any penalty recovered shall be paid to the plaintiff.

“74L. **Appeal on a question of law**—(1) Any person who is directly affected by any decision of a delegate of the Public

Sector Tribunal acting under the authority of section 49 of the Industrial Relations Act 1973 as applied by section 74E (7) or section 74F (8) or section 74H (6) or section 74K (7) of this Act and who is dissatisfied with that decision as being erroneous in point of law may, within such time and in such manner as may be prescribed, appeal to the Public Sector Tribunal on that question of law only.

“(2) Every appeal under this section shall be dealt with in accordance with regulations made under this Act.”

4. Regulations—Section 102 (1) (b) of the principal Act is hereby repealed.

5. Revocation—The New Zealand Railways Corporation (Staff) Regulations 1982 are hereby consequentially amended by revoking regulation 15.

This Act is administered in the New Zealand Railways Corporation.
