to examine cases of non-implementation or partial, delayed or defective implementation of labour laws, awards and settlements. The Division also makes a scientific evaluation of the results of these various measures. The state Governments, All-India Organizations of Employers and Workers and Members of Parliament have been requested to furnish information concerning such non-implementation. This Division also studies the observance of the Code of Discipline in industry by employers and employees.

SUGGESTIONS AND RECOMMENDATIONS

I. Adoption of a rule authorising reopening of a conciliation case after failure report

Neither the Industrial Disputes Act, nor the rules framed thereunder, has any provision for re-opening of conciliation proceedings after the submission of failure report by the Conciliation Officer. But in practice the Chief Labour Commissioner or the Ministry, on receipt of a failure report of the Conciliation Officer, occasionally directs the Regional Labour Commissioner to intervene after giving the parties adequate notice. In such cases, the Regional Labour Commissioner initiates conciliation proceedings *de novo* and sometimes succeeds in persuading the parties to come to a settlement.[104] The object of the Act in bringing about industrial peace and the policy of the Government in settling disputes by voluntary means without resorting to compulsory adjudication are fulfilled by this practice. But there is no stated basis for this practice. The view can be taken that, if it is announced, the parties to dispute would tend to rely on it and to be more adamant in their position during the original proceeding. At the same time the accepted principle in conciliation that all possible efforts be made to settle disputes should lead to formal recognition of the actual practice. A rule that specified it would be desirable.

II. The conciliation officers should reduce preliminary correspondence with the parties and should convene joint meetings of the parties at the earliest opportunity

In practice, as has been noted, the Conciliation Officer is rarely able to conclude the proceedings before him within the statutory period

104. An examination of the files of failure of conciliation cases from January 1, to June 30, 1959, reveals that out of a total of 208 cases, only in 9 cases the officers of the Central Industrial Relations Machinery re-opened conciliation proceedings after submission of failure report. Out of these 9 cases, in 5 cases holding of conciliation proceedings *de novo* resulted in an amicable settlement. In the remaining cases, the subsequent conciliation attempts were unsuccessful.

of fourteen days. The Act itself permits extension of the period by agreement of the parties. During the period of his investigation, the Conciliation Officer invites the written comments of the management on the charter of demands of the workmen and delays often occur because of the failure of the management to reply. Partly on this account, preliminary investigation alone requires fifteen to thirty days. Whenever such delaying tactics occur,[105] the Conciliation Officer should convene at the earliest opportunity a joint meeting of the parties to learn the full details of the dispute by personal discussion instead of sending repeated written reminders as at present. An instruction to this effect should be issued.

III. The conciliation officers should keep close watch over the progress of mutual negotiations entered into by the parties after the commencement of conciliation proceedings

In some cases [106] the workmen after approaching the Conciliation Officer enter into negotiations with the management to settle the dispute and inform the Conciliation Officer about these negotiations; but it often happens that the parties fail to reach agreement. While the negotiations are going on in such cases, the Conciliation Officer should keep a close watch over their progress, so that if he finds that no useful purpose would be served by prolonging them he may notify the parties to meet with him.

IV. The conciliation officers should not ordinarily give more than two adjournments

One of the causes that delay conciliation proceedings is adjournments taken by the parties. On the dates fixed for joint meetings, more often than not either the management or the representatives of labour do not turn up. On the basis of study of cases of one year it was found that management has been more responsible for adjournments

105. Out of 373 cases of failure of conciliation, from July 7, 1958, to June 30, 1959, in 99 cases the management alone was responsible for the delay of conclusion of conciliation proceedings either by not sending the comments to the demands of workmen or by asking for adjournments which were granted.

106. Out of 208 cases of failure of conciliation from January 1 to June 30, 1959, in 11 cases the Conciliation Officer gave time to the parties for mutual negotiations after receiving the charter of demands from the workmen. Only in 1 case out of the 11 were the mutual negotiations partially successful and the parties drew up a memorandum of settlement before the Conciliation Officer. In these 11 cases the average time taken from the receipt of demands to the conclusion of conciliation proceedings is 205 days.

than labour.[107] Sometimes the parties, whether or not they appear, request adjournments. Long adjournments of thirty to forty days are sometimes given. The Conciliation Officer is in a weak position to resist delay, since he has not been empowered to compel the appearance of parties. It is suggested that the Conciliation Officer should ordinarily not give more than two adjournments, but should do so only when there is reason to believe that the parties might really come to a settlement if more adjournments were given. A hard and fast rule, limiting the adjournments to two, is not feasible; but an instruction covering the matter should be issued.

V. The Ministry should endeavour to reduce the time taken in passing its final order

There are strong reasons to urge that the Ministry make every effort to decide within fourteen days of the receipt of the recommendations of the Chief Labour Commissioner whether or not to refer the dispute; but it must be recognized that in some situations there may be adequate and genuine reasons for delay because of the prospect that the parties may be able to reach a settlement. At the ministerial level, diligence by the staff, without hard and fast rules, should be continuously sought.

VI. The number of conciliation officers should be increased in certain areas in Bihar, West Bengal and Orissa

Closely allied to delay in conciliation proceedings is the pressure of work on conciliation officers in some areas. The monthly statement of conciliation cases by all the conciliation officers which is received in the Chief Labour Commissioner's Office shows that there is especially heavy work for conciliation officers in Dhanbad I and II, Hazaribagh ,Asansol and Jharsuguda. These areas are in Bihar, West Bengal and Orissa and are studded with coal mines where a larger number of disputes arise than the conciliation officers can cope with. According to the monthly reports on file a larger number of cases are almost invariably pending at the end of each month than at the beginning in these areas; and the effect is cumulative.[108] Hence additional conciliation officers should be appointed there.

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107. Out of a total of 373 cases of failure of conciliation from July 7, 1953, to June 30, 1959, in 199 cases both parties to the industrial disputes, *viz.*, the Labour and Management, were responsible for delay. In 99 cases, the management alone caused delay. In the remaining cases either there was no delay or the proceedings had to be adjourned by the conciliation officers themselves.

108. See Appendix 'G'.

VII. The Industrial Relations Machinery should be vested with the duty of verifying the implementation of settlements

Under sec. 11(4) of the Industrial Disputes Act as amended in 1956, the Conciliation Officer may call for and inspect any document which he has ground for considering (a) to be relevant to the industrial dispute or (b) to be necessary for the purpose of verifying the implementation of any award or (c) to be relevant for carrying out any other duty imposed on him under the Act. He cannot, however, require the production of documents to verify the implementation of settlements. To overcome this deficiency the Conciliation Officer must take the circuitous route of treating such complaints of non-implementation as industrial disputes and initiate conciliation proceeding. Only then can he order the parties to produce the documents essential for verifying the implementation of settlements. It is suggested that the Industrial Relations Machinery should be empowered by statute to verify the implementation of settlements.

VIII. The Conciliation Officer should in appropriate cases launch a criminal prosecution against a party who intentionally omits to produce documents required by him through the issue of appropriate processes contemplated by the Civil Procedure Code and should be instructed to base adverse inferences on such an omission

The Conciliation Officer has power under sec. 11(4) of the Act to compel the production of documents and for that purpose he has the same powers as are vested in a Civil Court under the Civil Procedure Code, 1908. Often the Conciliation Officer is faced with difficulty in compelling the management to produce documents necessary for verifying the implementation of awards. The question is how the party in default should be made to obey and be penalised for disobeying the orders of a public servant made in the course of discharging his duties. A civil court, under such circumstances, may issue a warrant for the arrest of the party, attach and sell his property or impose a fine not exceeding Rs. 500/- or order him to furnish security for his appearance and in default commit him to the civil prison.[109] It appears that so far the Central Industrial Relations Machinery has not made use of these penal provisions against any person. This reluctance is understandable, because persuasion, the heart of conciliation, ends where coercion begins. The civil courts often draw adverse inferences against parties who refuse to produce documents, and this practice should be enjoined upon the conciliation officers in an

109. Section 32, The Code of Civil Procedure.

instruction by the Chief Labour Commissioner. After the conciliation proceeding has ended, use might well be made of the remedy provided in sec. 175[110] of the Indian Penal Code, under which a criminal prosecution can be launched against a party who intentionally omits to produce documents in response to appropriate processes contemplated by the Civil Procedure Code.[111]

IX. Incorporation of certain instructions into rules

There are certain instructions which, as has been pointed out, are of sufficient general concern to parties to disputes to make it desirable for them to be known not only to officials but also to the public. These should be incorporated into the rules. The following two instructions may be considered here :

(i) *Insertion of a rule that the conciliation officers should acknowledge in writing the receipt of notice of strike or lock-out.*

The receipt by the conciliation officers of notice of strike or lock-out given under sec. 22 of the Industrial Disputes Act, 1947, in public utility case should according to the instructions be acknowledged in writing, specifying the date on which the notice was received. The date of receipt of such a notice commences the conciliation proceeding and the period during which under sec. 22 the parties are prohibited from placing the strike or lock-out into effect. For this reason a rule providing for the written acknowledgment should be inserted, possibly after rule 74.

(ii) *A rule should be added that conciliation officers should not serve as arbitrators.*

Both the Industrial Disputes Act and the rules are silent regarding arbitration of disputes by conciliation officers. It is the settled policy of the Government that the conciliation officers should not serve as arbitrators, and the policy seems valid under the Government's power to administer the Act and govern public service.

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110. Section 175, Indian Penal Code:

Omission to produce document to public servant by person legally bound to produce it :	Whoever, being legally bound to produce or deliver up any document to any public servant, as such, intentionally omits so to produce or deliver up the same, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both ;
	Or, if the document is to be produced or delivered up to a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

111. Section 33(c) of the Act provides for the collection of any money due to the workmen from employers as arrears of land revenue.

The policy should, however, be made known explicitly and a rule to that effect could be adopted.

X. The Central Industrial Relations Machinery shuld maintain a panel of arbitrators

It would be better if the Central Industrial Relations Machinery maintained a panel of competent arbitrators. In preparing the panel, the Ministry should invite the views of the leading organizations of employers and the four All-India Trade Union Organizations. If a panel were so established, the parties to a dispute, on failure of conciliation, might more readily be persuaded by the conciliation officers to submit their case to voluntary arbitration with selection of arbitrators from the panel. [113]

XI. The Industrial Disputes Act should be amended to exempt labour in Railways and Defence from its application, and the existing arrangement of permanent negotiating machinery should be given statutory force

The Ministries of Railways and Defence of the central Government have set up permanent negotiating machinery for the settlement of disputes arising between these departments and their labour. The machinery in both ministries is arranged in three tiers. Although it has worked far from perfectly and the Industrial Disputes Act applies to industries generally in the public as well as the private sector of the economy, in practice the machinery provided by the Act has no actual operation as to the Railways and Defence Establishments. Since Railways constitute public utilities under the Act a strike notice affecting them requires the appropriate conciliation officer to initiate conciliation proceedings, and he simply forwards a failure report to the Ministry of Labour so as to comply with the provisions of the Act. As to the Defence workshops, which are not public utilities, the

113. Both in the U.S.A. and in England, it is the policy of the Government not to allow their conciliation officers to arbitrate because that would tend to impair the effectiveness of conciliation machinery as a mediation agency. In the U.S.A., the Federal Mediation and Conciliation Service in discharging its duty of conciliation and mediation promotes arbitration as a method of settling issues which cannot be solved by bargaining or conciliation. It maintains an arbitration unit which, upon request, furnishes a list of persons whom it believes to be highly competent, experienced and acceptable to both parties. If the parties are unable to agree, the arbitrator may be designated by the Service. Arbitrators nominated by the service are private individuals; when they accept the office of arbitrator, they bear a relationship to the parties. See Kurt Braun, *Labour Disputes and Their Settlement*, (1955) p. 210 and Allan Flanders and H. A. Clegg, *The System of Industrial Relations in Great Britain*, (1954) p. 90.

conciliation officers use their statutory discretion to refrain from inaugurating conciliation proceedings. Because of the impracticability of subjecting these two areas of employment to the Act, it should be amended to expressly exempt Railways and Defence Labour from its application. The existing arrangement of the permanent negotiating machinery could, if thought desirable, be given statutory force.

XII. Six months' training for newly appointed conciliation officers under senior conciliation officers, together with refresher courses should be given in two years

The work of a conciliator requires him to perform a difficult task. He must understand and familiarise himself with the complex particulars and with the often far-reaching economic and social background of the dispute that comes before him. He must be a person with a thorough knowledge of labour relations and labour economics, as well as a person of maturity and judgment, to enable him to analyse and comprehend the implications of the demands of workmen and the stands taken by employees, and also to put forth effective conciliation proposals.

At present the conciliation officers of the Central Industrial Relations Machinery are appointed by the Union Public Service Commission, subject to the minimum qualification of a B. A. Degree with Economics. Completion of a specialized course in labour welfare is desired but not requisite. There is a feeling that if more senior men than are now employed in this work were available, they might command greater regard from major industrial employers and trade unions, and that better results could be reasonably expected. The relatively junior status of conciliation officers, coupled with the legal position that a failure to reach agreement before them will normally lead only to further sparring in an adjudication proceeding, creates a tendency in some of the major worker and employer interests to take an indifferent attitude towards conciliation proceedings. It is likely, however, that there is a dearth of experienced personnel qualified for the posts of conciliation officers. Hence it may be necessary to add to their qualifications after appointment. A six months' training course under a senior and experienced Conciliation Officer soon after selection, followed by refresher courses once in two years for all conciliation officers, are two of the many possible methods that might further improve a good service. Such course would also provide a forum for exchange of views and experiences of different conciliation officers. In that way, the efficiency of the conciliation machinery could probably be increased.