

or alter the conditions of employment of any *protected workman* (union officer) during the pendency of the industrial dispute unless he has secured the express permission in writing of the Conciliation Officer before whom the proceeding is pending.⁵¹ Where on an application for permission to dismiss an employee, the Conciliation Officer finds that the employer has made out a prima facie case he has no option but to grant the application. He cannot enter into the question of the quantum of punishment and if the employee has any grievance against the order of his dismissal, it is for him to raise an industrial dispute.⁵²

Boards of Conciliation

The Industrial Disputes Act, 1947, also provides for the constitution of Boards of Conciliation by the appropriate Government for promoting the settlement of industrial disputes. A Board consists of a Chairman and two or four other members as the appropriate Government thinks fit who are appointed in equal numbers to represent the parties to a particular dispute. A person appointed to represent a party is to be appointed on the recommendation of that party or if a party fails to make a recommendation within the prescribed time, the appropriate Government is to appoint such persons as it thinks fit to represent that party.⁵³ The quorum for conducting the proceedings is

51. Section 33(3)(a) and (b), The Industrial Disputes Act, 1947.
A protected workman, in relation to an establishment, means a workman who, being an officer of a registered trade union connected with the establishment, is recognized as such in accordance with rules made in this behalf.
52. *M/s. Atherton West and Co. Ltd., Kanpur v. The Regional Conciliation Officer, Kanpur*, A.I.R. 1959 All. 406.
53. Section 5, The Industrial Disputes Act, and rule 6, The Industrial Disputes (Central) Rules, 1957.
Rule 6 :
 - (i) If the Central Government proposes to appoint a Board, it shall send a notice in Form 'B' to the parties requiring them to nominate within a reasonable time persons to represent them on Board.
 - (ii) The notice to the employer shall be sent to the employer personally, or if the employer is an incorporated company or a body corporate, to the agent, manager or other principal officer of such company or body.
 - (iii) The notice to workmen shall be sent : (a) in the case of workmen who are members of a Trade Union to the President or Secretary of the Trade Union and (b) in the case of workmen who are not members of a Trade Union, to any one of the five representatives of the workmen who have attested the application made under Rule 3, and in this case a copy of the notice shall also be sent to the employer who shall display copies thereof on notice boards in a

two where the strength is three and three where the strength is five. ⁵⁴

It appears that the Boards are preferred to conciliation officers, where a dispute is complicated and the issues involved are important and require special handling. However, in recent years no Board has been constituted by the central Government. ⁵⁵

The jurisdiction of boards of conciliation compared to that of conciliation officers depends on reference of disputes to them by the appropriate Government under sec. 10(1)(a). A conciliation proceeding before a Board is deemed to have commenced on the date of the order referring the dispute to the Board. ⁵⁶

A Board to which a dispute has been referred must investigate the dispute and all matters affecting the merits (and the right settlement thereof) and do all things it thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement without delay. ⁵⁷

If a settlement is arrived at, the Board should send a report to the appropriate Government along with a memorandum of the settlement signed by the parties to the dispute. ⁵⁸ If no settlement is reached, the Board must send a full report together with its recommendations for the determination of the dispute. ⁵⁹

In case of failure of settlement by a Board, the appropriate Government may refer the dispute to a Labour Court, Tribunal or National Tribunal, just as after a report of failure by a Conciliation Officer. The Government is not bound to make a reference. But where the Government does not make a reference in a public utility service case from a Board, it must record and communicate to the parties concerned its reasons for not doing so. ⁶⁰

A Board has to submit its report within two months of the date on which the dispute was referred to it or within such shorter period as may be fixed by the appropriate Government. The time-limit for

conspicuous manner at the main entrance to the premises of the establishment.

54. Section 5(4) and rule 14(i).

55. This statement is based on information gathered by the Institute staff at interviews.

56. Section 20(1), The Industrial Disputes Act, 1947.

57. Section 13(1), *ibid*

58. Section 13(2), *ibid*

59. Section 13(3), *ibid*

60. Section 13(4), *ibid*

the submission of a report can be extended by the Government or by agreement in writing of all the parties to the dispute.⁶¹

Members of boards of conciliation act in a judicial capacity and enjoy more powers than conciliation officers. Under sec. 11(3), every Board of Conciliation enjoys the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, when trying a suit. It can enforce the attendance of any person and examine him on oath; compel the production of documents and material objects; issue commissions for the examination of witnesses, discovery and inspection; grant adjournment; and receive evidence taken on affidavit.⁶² Every investigation by a Board is deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code,⁶³ and sections 480 and 482 of the Code of Criminal Procedure, 1898.⁶⁴ Thus recalcitrance before a Board may lead to prosecution for perjury or contempt proceedings, although Conciliation Officer is not empowered to administer oaths or compel the attendance of any person,⁶⁵ he can require the production of documents.

A Board can accept, admit or call for evidence at any stage of the proceedings before it and in such manner as it thinks fit.⁶⁶ The rules regarding representation of the parties before boards of conciliation are the same as before conciliation officers. Legal practitioners are prohibited from representing the parties before boards also.⁶⁷ The representatives of the parties have the right of examination, cross-examination and addressing the Board when any evidence has been

61. Section 13(5), The Industrial Disputes Act, 1947.

62. See rule 24, The Industrial Disputes (Central) Rules, 1957.

63. Section 193, Indian Penal Code : Whoever intentionally gives false evidence in any stage of judicial proceeding or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.

Section 228, Indian Penal Code: Whoever intentionally offers any insult or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment which may extend to six months or with fine or with both.

64. These sections deal with the Court's power to punish for contempt of court.

65. In the State of Madhya Pradesh, the Conciliators are empowered to administer oaths and to summon and compel the attendance of any person before them: Section 29(2)(a)(i) to (iv), Central Provinces and Berar (Industrial Disputes Settlement) Act, 1947.

66. Rule 15, The Industrial Disputes (Central) Rules, 1957.

67. Section 36(3), The Industrial Disputes Act, 1947.

called.⁶⁸ The proceedings before boards are normally held in public, but the Board can at any stage direct that any witness be examined or proceedings be held in camera.⁶⁹

If without sufficient cause being shown, any party to proceedings before a Board fails to attend or to be represented, the Board may proceed as if the party had duly attended or had been represented.⁷⁰ A question arising for decision at any meeting of a Board is decided by a majority of the votes of the members thereof present at the meeting. In the event of an equality of votes the Chairman casts the deciding vote.⁷¹

The rules requiring the conciliation officers to keep certain matters confidential in their reports⁷² and the rules which make it incumbent on employers to get the permission in writing of the Conciliation Officer to alter the conditions of service during the pendency of conciliation proceeding apply to Boards of Conciliation also.⁷³

Organization and staffing of the Central Industrial Relations Machinery.

Under the Industrial Disputes Act, the Central Government is the appropriate Government in relation to any industrial dispute concerning any industry carried on by or under the authority of the central Government or by a railway company or concerning any such controlled industry as may be specified by the central Government or concerning a banking or insurance company, a mine, an oil field or a major port.⁷⁴

To carry out the provisions of the Act dealing with conciliation of industrial disputes, the central Government has set up Industrial

68. Rule 29, The Industrial Disputes (Central) Rules, 1957.

69. Rule 30, *ibid.*

70. Rule 22, *ibid.*

71. Rule 27, *ibid.*

72. Section 21, The Industrial Disputes Act, 1947.

73. Section 33, *ibid.*

74. Section 2(a)(i), *ibid.* The Central Industrial Relations Machinery conciliates to avoid precipitation of industrial unrest in,—

- (a) Public Sector (Central Government Establishments): (i) Mints; (ii) Posts & Telegraphs; (iii) Central Tractor Organization; (iv) Railways; (v) Government Press; (vi) Major Ports & Docks; (vii) Construction Works & Depots;
- (b) Private Sector: (i) Oil fields; (ii) Mines & quarries; (iii) Banks & Insurance Cos.