



By CA Anushri Agrawal (AIR 6)

anulohia.agrawal@gmail.com

www.anushriagrawal.com

SETTLEMENT OF INDUSTRIAL DISPUTES

Machinery for the prevention and settlement of industrial disputes in India

PREVENTIVE MACHINERY

- Collective bargaining
- WPM
- Personnel department
- Standing orders
- Code of discipline
- Model Grievance Code
- Tripartite Agencies

SETTLEMENT MACHINERY

- Voluntary Conciliation
- Court of enquiry
- Arbitration
- Adjudication

■ Personnel

- to achieve peace, harmony, goal congruency and satisfaction in employees and productivity.
- works as the linking pin between the workers and the management
- Happiness and rationality
- Personnel department can emerge as the earliest preventive tool for Industrial dispute.

According to NIPM, Kolkata:

Personnel department in an organization has the following three broad functional roles:

- 1) Personnel function
- 2) Welfare function
- 3) IR function

Weakness in functioning

- Over emphasis on disputes settlement
- The lack of job satisfaction among personnel department managers
- Overload on Personnel Department
- V.V. GIRI
“The personnel Department role prior to handling IDs is often lost sight of, whereas PD can be a much more valuable in harmonious IR, if its roles and services are properly appreciated and utilized, before the disputes actually arise.”

Standing Orders

- Officially declared terms and conditions of employment
- Rules and regulations which govern the conditions of employment and which specify the duties and responsibilities of both the parties.
- Industrial Employment Standing Order Act, It is obligatory that S.O. duly certified under the act shall govern the conditions of employment.

Code of Discipline

- Discipline refers to orderly behaviour of individuals towards the desired goals of the group or the organization.
- ID refers to the willing co-operation and observance of rules and regulations of the organization by the management and the workers.
- Two Approaches – Positive and Negative

PRINCIPLES of Code of discipline

- No strikes or lock outs without proper notice
- No unilateral action on IR matters
- Neither party will take recourse to coercive tactics, intimidation, violence or instigation
- Parties will avoid go slow tactics, strikes in any form and litigation
- No deliberate damage shall be caused to plant, machinery or property
- The Existing machinery for dispute settlement should be utilized expeditiously in case of any dispute
- Awards and settlements should be speedily implemented
- Any action that disturbs cordial industrial relations shall be avoided.

Objectives

- Maintaining peace and order
- Avoiding work stoppages
- Encouraging recognition of importance of each other's rights and responsibilities
- Discouraging unilateral and irrational behaviour
- Settlements through mutually agreed and voluntary measures
- Considered action rather than adhoc action

Grievance Procedure

- Grievance : Keith davis, “Any real or perceived feeling of personal injustice which the employee has concerning his employment realtions.”
- Promptness
 - ✓ Encouraging a two way communication
 - ✓ Adopting an open door policy
 - ✓ Posing a step ladder policy
- Effectiveness
 - ✓ Patient listening
 - ✓ Freedom of expression
 - ✓ Identification of root cause
 - ✓ Sensitivity towards the aggrieved party
 - ✓ Showing care and anxiousness to really solve the grievance
 - ✓ Genuine solution

Grievance redressal mechanism in India

- Industrial Employment (standing order) act 1946
- Factories Act 1948
- Model Grievance procedure

Settlement

- Works committee
- Conciliation
- Court of enquiry
- Arbitration
- Adjudication

Works Committee

- Resolves disputes on day to day basis, on the spot resolution.
- Matters like wage payment, discipline etc.
- Provided legally through Industrial Disputes Act , 1947

Conciliation

- First level of dispute settlement mechanism
- Non binding process in which a third party called “mediator” helps the disputed parties to reach a settlement.
- Means making minds one or bridging the gulf of differences
- Works at psychological and intellectual level of both workers and management
- It aims at helping both the parties
- Two ways: conciliation officer, Board of conciliation.

Conciliation officer

- Single person
- Resolve dispute within 14 days or inform appropriate ministry
- Helping in collective bargaining or negotiation.

Board of conciliation

- 3 persons body
- If CO not able to resolve the dispute, then the matter comes to the BOD
- Resolve the dispute within 2 months or inform appropriate authority.

Court of enquiry

- Fact finding authority
- 6 months time

Arbitration

- Where the dispute is submitted to one or more arbitrators, who is duly appointed by both the parties.
- Arbitrator hears from both worker and the management and gives award, binding on both the parties.
- No space for compromise and conciliation (informally it is done.)
- Voluntary
- Any person can be appointed as an arbitrator
- Award is filed with appropriate authority, then binding for 1 year or the period mentioned in award.
- Most preferred

Benjamin Franklin, " When will mankind be convinced and settle their difficulties by arbitration "

Adjudication

- Compulsory Arbitration
- One of the parties applies to the appropriate government.
- Leaves no scope for strike and lockouts
- Deprives both the parties of their very important and fundamental rights
- The government may refer the dispute to a board of conciliation, court of enquiry, a labour court, or a tribunal.

Difference between Arbitration and Adjudication

▪ ARBITRATION

- Voluntary
- Initiative by disputant parties only
- May be single person or multiple person court
- Adopted before adjudication
- Not a civil court
- Award is binding if filed with appropriate government
- This is preferable on account of flexibility, voluntary by nature

▪ ADJUDICATION

- Compulsory
- Initiation by appropriate government
- It is single person court
- There may be 2 assessors in case of IT & NT
- A tool of last resort
- It is a civil court
- Always binding
- This is least preferred
- It is discouraged seriously by IR thinkers and practitioners, even court itself.

- V.V.Giri laid great emphasis on collective bargaining and voluntary arbitration than on compulsory arbitration.
- Let the trade unions become strong and self reliant and learn to get on without the assistance of the policeman.
- Any decision by a third party cannot be as good as one evolved from within and based on mutual trust.
- As long as the compulsory adjudication exists as a machinery for the settlement of disputes, the voluntary system can hardly succeed.

Principles of Adjudication

- In order to prevent misuse of provisions of sec 10 and sec 10 (IA) by appropriate government and also to ensure right use of reference power, certain principles are devised by judiciary from time to time besides by indian labour conference. These are :
 - 1) Generally, reference should be made on an application by either party.
 - 2) Except following situations disputes should not be referred for adjudication.
 - All efforts of conciliation have failed and no further alternate is available
 - Both the parties do not agree for arbitration
 - Strike or lockout is not held illegal
 - Dispute is pending for long
 - 3) In case of public utility services, reference should be made.
 - 4) Reference should be made on the principle of necessity rather than just existence of the dispute.

Adjudication

Favour

- Exploited working class
- National emergency or economic crisis before the nation
- Serious dissatisfaction of the public with regard to present state of IR
- Involvement of industry of strategic importance of the nation.
- When the workers are unorganized or weak or employees are dominant

against

- Harm to mutuality and cooperation
- Making unionism weak and collective bargaining irrelevant
- V.V. Giri's Policeman role (court acts as police)

Conclusion

- Compulsory adjudication should be used as a tool of last resort particularly where there is possibility of loss to a society or industry or the notion or chances of exploitation
- Preferably, voluntary arbitration or CB should be adopted for resolution of disputes.

“An effective grievance handling procedure is one that is preventive rather than curative.” Comment.

anulohia.agrawal@gmail.com