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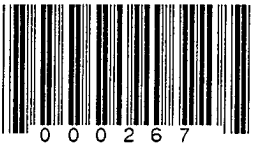
The Compulsory Adjustment of Industrial Disputes in Germany



by

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The system devised by Germany for the adjustment of industrial disputes[1] *is in general accordance with the principles adopted in recent years by the other industrial countries of Europe. The only important peculiarity of the German system is that it admits the possibility of compulsory enforcement of the awards made by the conciliation committees. It might at first seem that this arrangement, introduced in January 1919, was wholly dependent on the special economic difficulties of the demobilisation period and the consequent period of the depreciation of the currency, and that it would come to an end with the special circumstances of that year. But as the Conciliation Order of 30 October 1923*[2] *maintained the system of declaring awards binding, and as this system continues to play an important part after the stabilisation of the currency, as it did before, other countries will probably be interested in hearing further details about the system and how it has been found to work. As the International Labour Office proposes to make a general study of systems of adjustment of industrial disputes, the present article will deal only with the special peculiarity of the German system, namely, the enforcement of awards by a declaration that they are binding on the parties to the dispute.*

NECESSARY CONDITIONS

THE German method of adjusting industrial disputes does not follow the wages board system but is based on the principle of freedom of contract. The conciliation committees have to

[1] Cf. *International Labour Review*, Vol. V, No. 1, Jan. 1922, pp. 51-65 : " Methods of Adjustment of Industrial Disputes in Germany "; Vol. VI, No. 4, Oct. 1922, pp. 511-526 : " The Law of Collective Bargaining in Germany ", by Dr. Fritz SITZLER.

[2] *Reichsgesetzblatt*, 1923, I, p. 1043. English translation in INTERNATIONAL LABOUR OFFICE : *Legislative Series*, 1923, Ger. 6.

help the parties to disputes to conclude collective agreements. The awards made by them are proposals for such agreements, which the parties are in the first instance free to accept or reject. But if an award is rejected by one or both parties, it may be declared binding under certain specified conditions. An award is thus not necessarily binding, but becomes so only in consequence of a decision which the competent authority may take under specified conditions. These conditions, as already recognised by administrative practice, were formulated by the Conciliation Order of 30 October 1923, which says (I, § 3) that an award may be declared binding " if the settlement contained therein appears just and reasonable with due consideration for the interests of both parties, and if its application is desirable for economic and social reasons. "

The first condition to be satisfied before an award can be declared binding is thus that it shall contain a " just and reasonable " settlement of the dispute. The authority charged with the decision must examine the award and form an opinion as to whether the proposed settlement represents a reasonable compromise between the interests of the two parties. But this examination is to be made solely in order to decide whether the award shall be declared binding ; it is in no sense a repetition of the adjustment procedure before a kind of higher court. Accordingly the award can only either be declared binding or not ; it cannot be cancelled or modified.

But it is not sufficient for the settlement to be just and reasonable. A further essential condition is that the application of the award must be " desirable for economic and social reasons ". A declaration that an award is binding is not so much intended to satisfy the demands of the parties to the dispute, as rather to avert possible injury to the community. It is in fact only this regard for the public interest which can justify state encroachment on the admitted principle of freedom of contract. The Federal Minister of Labour recently made this quite clear by comparing the system of declaring awards binding with expropriation, where paramount public interests also justify encroachment on the otherwise inviolable right of private property.

The reasons of public interest which seem to make the application of an award desirable may be either economic or social. Cases do in fact occur where the violent outbreak of a dispute might have an unfavourable effect on the particular industry in question or on industry in general, or where it might lead to an intolerable worsening of the condition of the workers. Primarily this is so

when the industries or branches of industry concerned are large and of importance for the community. But the application of an award may affect public interests even in less important branches of industry[1].

There is a third condition which is not indeed explicitly stated in the Conciliation Order, but is a direct consequence of its whole attitude to the question of the adjustment of disputes. The declaration that an award is binding is intended to be a rare exception, a last resource, which may only be applied when there seems to be no possibility of the parties reaching a voluntary agreement and there is no other way of averting the economic and social dangers which threaten the community. It is precisely on the strict observance of this condition that the success of the system principally depends. The Federal Ministry of Labour has accordingly given repeated instructions to the conciliators to see that it is strictly observed[2].

Competence

The power of deciding whether awards should be declared binding was at first placed in the hands of the Demobilisation Commissioners and the higher demobilisation authorities. The Order of 30 October 1923 transferred this power to a number of permanent conciliators (*Schlichter*) — a new post created by the Order — and to the Federal Minister of Labour.

The conciliator is a person appointed by the Federal Minister of Labour for the adjustment of important industrial disputes in a specified economic area, usually covering the areas of several conciliation committees (*Schlichtungsausschüsse*). He is also competent to declare binding the awards of conciliation committees if the area covered by the proposed agreement is within his jurisdiction or extends only slightly beyond it. His decision as to whether an award shall be declared binding, which he takes alone and without assessors, is final.

In all other cases the Federal Minister of Labour is competent; his jurisdiction thus includes awards of conciliation committees covering areas which extend considerably beyond the jurisdiction of a conciliator, and all awards made under the chairmanship of a conciliator.

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[1] Cf. Resolution of the Federal Minister of Labour dated 3 March 1924 (*Reichsarbeitsblatt*, 1924, p. 107).

[2] See e.g. the Circulars of the Federal Minister of Labour dated 30 January and 27 May 1924 (*Reichsarbeitsblatt*, 1924, pp. 107 and 222).

In the draft Conciliation Order laid before the Reichstag in the spring of 1922 by the Federal Government after long discussion in the Federal Economic Council and the Reichsrat, but not passed, it was proposed that the power to declare awards binding should be given to a special Board set up in connection with the district and central adjustment authorities. This Board was to consist of an impartial chairman, economic experts, and representatives of employers and workers ; its decisions were to be taken by vote of a specified majority. The present Order, on the contrary, adopts the principle of administrative decision by a single individual ; in this way it not only simplifies and accelerates the procedure, but also takes into account the fact that the state has a valid right to insist on an award being declared binding in the interests of the community.

Awards made not by the official adjustment authorities but by authorities set up by agreement between the parties may also be declared binding. In practice, however, little use is made of this provision.

Procedure

Fuller details on the procedure to be followed in declaring awards binding are contained in sections 23 to 25 of the Second Administrative Order issued under the Conciliation Order, dated 29 December 1923[1]. The first step in the proceedings is normally an application from one of the parties which has accepted the award. Proceedings may be initiated by the authorities only if this is required by the public interests. Awards rejected by both sides are however not infrequently declared binding ; in 1924, for instance, the Federal Minister of Labour declared ten awards binding without an application being made by either party.

Before a decision is taken the parties are given an opportunity of expressing their views, normally by word of mouth, exceptionally also in writing. When the proceedings are oral a new attempt is always made to reach an agreement, and experience proves that this is often successful. In estimating the value of the system of declaring awards binding, the numerous agreements reached at this stage of the proceedings must certainly not be left out of account.

The only decision to be made is whether or not the award shall

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[1] *Reichsgesetzblatt*, 1924, I, p. 9.

be declared binding. Under the Order of 30 October 1923, it is no longer possible to refer an award back to the adjustment authorities for new negotiation[1]. An award may be modified only by agreement of both parties, in particular as concerns the date named in the award for its coming into force. Part of an award may be declared binding only if there is no essential connection between such part and the remainder of the award.

The decision is recorded in writing, and is usually accompanied by a short statement of the reasons on which it is based.

Results

The decision as to whether an award shall or shall not be declared binding is final, and can therefore not be annulled or modified either by the authority taking the decision or by any higher authority. As the decision is an administrative act, it is true that a complaint may be lodged against it with the higher authorities ; but the complaint can lead only to the issue of general instructions, not to a change in the decision taken in any particular case. The courts, too, are bound to uphold these decisions, and above all are not competent to question their expediency. The only case where a decision can of course not be enforced is when it is in itself null, in particular when an inoperative award is declared binding, or when there has been some essential flaw in the proceedings.

The declaration that an award is binding replaces its acceptance by either or both parties. An award which has been declared binding is in every respect equivalent to an award which has been accepted by both parties. This holds not merely for that part of the award which concerns the conditions of labour and fixes the terms of the labour contracts, but equally also for the mutual obligations between the parties to the dispute which are imposed by the award. If the award is the result of negotiations between employers or employers' associations and trade unions, then, when it is declared binding, a collective contract comes into existence which under the usual conditions fixed by the law can be extended to outsiders by being declared generally binding. If the negotiations are between an employer and a body which legally represents his workers, then an award which is declared binding gives rise to a works agreement, with legal consequences similar to those of a collec-

[1] New negotiations can of course be instituted if necessary for the public interests.

tive contract, but not as yet definitely elucidated in German law.

These results show how a binding award can be enforced. So far as it regulates working conditions, e.g. by fixing wages or hours of work, the declaration that it is binding makes its provisions into legal obligations which are inserted in the labour contracts as an automatic and unmodifiable effect of the collective contract, so that individual employers and workers can have their rights under it upheld by the courts. So far as the award contemplates mutual obligations between employers or employers' associations and trade unions, the persons concerned must take the same steps to see that these are carried out as in the case of voluntarily concluded collective contracts. This holds in particular for the so-called *Friedenspflicht*, i.e. the obligation to abstain from any violent action in connection with the questions which have been settled by the award.

It follows that the declaration that an award is binding contains no clause conferring enforceability, nor are any penalties provided to secure its enforcement. It is the persons concerned, on the contrary, who must themselves enforce their rights under the award by bringing the case before the courts. The question whether this machinery has been sufficient to secure the necessary recognition everywhere for these decisions backed by the power of the state can in general be answered in the affirmative. Cases of refusal to carry out the terms of a binding award have occurred on the part of both employers and workers; but they have been rare in comparison with the number of awards declared binding, and have become still rarer since the Federal Court expressly recognised the legitimacy of such decisions (a point which originally was often questioned) and the Conciliation Order of 30 October 1923 placed them on an incontestable legal basis. When an award was rejected, the parties usually explained their attitude to the public by maintaining either that the declaration that the award was binding was inoperative on account of some formal defect, or else that its application was impossible for economic reasons. The result was usually an action before the courts, but these proceedings ordinarily lasted so long that in practice the ultimate decision was long out of date by the time it was reached. Improvements in this respect may certainly be expected in the near future, both through the impending Labour Courts Act, which will provide a simple and rapid procedure for dealing with complaints arising out of collective contracts, and also through the new Act on collective contracts, which is intended to lessen the practical difficulties of enforcing claims for satisfaction for the non-fulfilment of obligations.

Application of the System

There have been wide variations in the use made of the system of declaring awards binding. When the value of the mark was at a very low point, these declarations were one of the most important factors in maintaining a level of wages which should represent conditions that were at least to some extent tolerable. At that time state compulsion could be applied with less hesitation, and weighed less heavily on the victims, in proportion as the rapidly increasing rate of depreciation of the currency continued to lower the real value of wage increases.

After the stabilisation of the currency an attempt was made to limit as far as possible the number of awards declared binding, and to reintroduce personal responsibility of employers and workers in place of state compulsion. The Federal Minister of Labour submitted the applications received to the severest scrutiny, and, in his Circulars dated 30 January and 27 May 1924[1], he also impressed on the conciliators that awards were to be declared binding only as an exception in cases of urgent necessity. The number was in fact considerably reduced. But none the less the system is still of considerable importance in Germany, and every outbreak of unrest of any gravity in the labour and wages market is clearly mirrored in the increased number of awards declared binding.

Declarations primarily apply to the most important industries and branches of industry, in particular essential public utility undertakings in which a stoppage involves the most immediate danger of economic injury to the community. But in addition there are smaller groups of workers, who are too weak to be able to fight successfully for the necessary standard of working conditions, which instead is secured to them by a decision backed by the power of the state. For instance, a whole series of collective contracts for employees, which the employers had refused to accept as they objected on principle to this method of fixing working conditions, were declared binding, and in this way came into and remained in force. The awards declared binding are not confined to questions of wages and salaries, but deal with the whole field of working conditions ; in particular with hours of work, since the Order of 21 December 1923[2] allowed an extension of working hours under specified conditions.

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[1] *Reichsarbeitsblatt*, 1924, pp. 107 and 222.
[2] *Reichsgesetzblatt*, 1923, I, p. 1249.

Statistics of the number and nature of the awards declared binding are in course of preparation but have not yet been published. In 1924 the Federal Minister of Labour declared 153 awards binding, 74 on the application of employers, 69 on that of workers, and 10 on his own initiative. In 77 cases the dispute was settled by agreement between the parties. The number of awards declared binding by the conciliators varies widely in the different districts. In 1924, for instance, the numbers in various districts were as follows; Greater Berlin, 31 (130 disputes settled by agreement); Westphalia, 57; Rheinland, 28 (78 by agreement); Bavaria, 49 (81 by agreement); Saxony, 146 (101 by agreement); Württemberg, 6; Hesse, 30; Upper Silesia, 4; Pomerania, 22; East Prussia, 35. In 1925 there seems to have been a considerable decrease in the number of awards declared binding.

Attitude of the Parties Concerned

Such a high-handed interference with the freedom of contract as is represented by the system of declaring awards binding naturally rouses opposition.

The attitude of the trade unions is not uniform and varies according to whether the circumstances make them think the possibility of state intervention desirable or not. The free trade unions are undoubtedly the most opposed to it[1].

The employers' associations have always been definitely opposed to the system, even though in practice they make almost as much use of it as the workers by lodging applications to have awards declared binding. After the stabilisation of the currency the Federation of German Employers' Associations organised a campaign against "compulsory agreements" (*Zwangstarife*), which for

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[1] Cf. for instance the resolution of the Central Committee of the German General Confederation of Trade Unions (*Allgemeiner Deutscher Gewerkschaftsbund*) in the *Gewerkschafts-Zeitung*, 1924, No. 13, 29 March:

"The Central Committee of the German General Confederation of Trade Unions recognises in the compulsory settlement imposed by the law of collective disputes between workers and employers a grave danger for the vital interests of the workers and the trade union movement. Without prejudice to their opinion that all available possibilities of adjustment must be tried before a stoppage of work, the trade unions cannot renounce the right to use the strike if need be as the last weapon in the fight for justifiable demands made by the workers.

"The Central Council therefore declares that the clauses in the Conciliation Order which impose the compulsory settlement of disputes are incompatible with the interests of the trade unions. It is not opposed to the legal regulation of the procedure for adjusting disputes, even including the possibility of declaring awards binding under certain circumstances."

some time were a subject of hot general discussion. But owing to the restrictions then introduced as to the cases when awards might be declared binding, this question soon lost its importance.

The arguments advanced by the employers against the system are mainly economic, and include everything that has ever been urged against state control and in favour of self-regulation for industry. The employers also point out that the burden of a binding award falls solely on them, as in practice the civil law procedure for enforcing such awards is nugatory as regards the workers. Finally, they are afraid that state intervention may paralyse the will of the parties to reach a settlement by agreement, and so injure the basic conception of the collective agreement and the joint industrial association.

Various proposals have recently been put forward to make the official machinery for declaring awards binding superfluous by setting up voluntary conciliation authorities whose decisions the parties would normally have to accept. The Federal Minister of Labour has also recommended an arrangement of this kind to both sides. So far, however, little progress has been made in this direction.

Advantages and Disadvantages

The advantages of the system of declaring awards binding are easily seen. It is an effective means of putting a speedy end to labour disputes. It can prevent the violent outbreak of disputes with the harm they do to industry in general and the disturbances of public order which often accompany them. It provides a quicker way of adapting conditions of labour to changes in the economic situation, and above all secures a higher standard of these conditions than would be achieved by natural development. It enables the state to give effective help to one party in a labour dispute, so as to prevent its being completely worsted, and to bring about such a reasonable compromise between opposing views as may be in the interests of the community.

Against these may be set a number of disadvantages. It is quite correct that over-frequent application of state compulsion undermines the will of employers and workers to reach a settlement by agreement and their readiness to accept responsibility. An association which is sure that an award will most probably be declared binding will be only too ready not to make itself responsible for imposing an unwished-for burden, but to leave this respon-

sibility to the state authorities. And individual employers and workers lose interest in their organisation when they find over and over again that while the system does ensure for them conditions of labour which the conciliation committee considers reasonable, it prevents them from trying to gain further improvements. Settlement of disputes by authority will never have the same educational value as voluntary collaboration of the opposing organisations. It easily leads to a misunderstanding of what is economically possible and hence to discontent, directed not so much against the other party to the contract as against the authorities and the state which is behind them. If collective contracts depend for their support for any great length of time solely on the system of declaring awards binding, there is a danger that the conditions of labour so imposed may cease to correspond with the economic situation and the relative strength of the parties.

The success of the system of declaring awards binding accordingly depends primarily on whether it is applied with the necessary prudence. Its usefulness as a rare exception and last resource is proportional to the harm it must do if too frequently used. An important condition for success is therefore that the handling of this extraordinarily powerful tool should be entrusted only to persons of generally recognised impartiality, authority, and economic and social experience. And a last important consideration is the extent to which the employers' associations and the trade unions have their members under control, and the general attitude of these bodies to the authority of the state.