The Contract of Employment: II[1]

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RIGHTS AND DUTIES UNDER THE CONTRACT OF EMPLOYMENT

It will be convenient to discuss the rights and duties arising out of the contract of employment under the two headings "work" and "wages". But the work and the wages are so closely connected that some questions must be dealt with partly under one heading and partly under the other in order to avoid repetition.

The Work

In spite of its essential importance, the work performed under a contract of employment has been one of the last subjects to come under legal regulation. This is scarcely to be wondered at in view of the varied forms that the work may take, as varied, indeed, as human activities themselves. For present purposes, however, the important point is that the work is done in a subordinate relation, i.e. that the worker performs it under the orders of the employer or his representative. The employer, as the person responsible for production, controls the productive process, and hence the use and discipline of the labour employed in the undertaking.

The nature of the work to be done is determined in the first place by the contract of employment, and, where its terms are not specific, by the custom of the occupation or of the locality. The details of its performance are, however, governed by the rules of employment and the employer's instructions. Owing to the worker's subordinate status, which here takes

[1] For the first part of this article, cf. *International Labour Review*, Vol. XXXI, No. 6, June 1935, pp. 837-858.

aroused by the general promises of the New Deal, by legal recognition of the right to collective bargaining in the National Industrial Recovery Act, by inclusion of labour provisions in the codes, and by governmental proposals for several forms of social insurance. Moreover, whereas early ventures in workers' education were mostly in industrial cities, there is now an increasing tendency to carry such education into regions where facilities for general education and for group recreation are more limited and the opportunities offered by workers' education ventures are proportionately more valued.

There is no question but that there is to-day a growing demand in the United States for workers' education. Questions with respect to its continuance and future development have chiefly to do with the possibilities of financing it, and with the character of workers' demands which may continue or develop as the country emerges from the depression. These demands in turn may depend on the nature of the national dealings with the present predicaments, which are responsible for a very general interest in analysis of the existing economic system and interpretation of its miscarriages, and for a heightened sense of a common life, and the desire for a wider grasp and understanding.[1]

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[1] Such literature as exists on workers' education in the United States at the present time is chiefly in the form of pamphlets and magazine articles. Some of these are noted in the following list.

" Workers' Education—A Symposium ", in *Journal of Adult Education* (New York, American Association of Adult Education), Vol. VI, No. 4, Part II, Oct. 1934. A group of timely papers.

Jean CARTER and Hilda W. SMITH : *Education and the Worker-Student.* New York, Affiliated Schools for Workers', Inc., 1934. This is a pamphlet of 70 pages with the sub-title " A book about workers' education based upon the experience of teachers and students ". It discusses in fairly concrete fashion the nature of workers' education but does not describe specific enterprises.

Reports of the Annual Conferences of Teachers in Workers' Education, Brookwood, Katonah, New York, 1924-1931. These reports reflect some of the problems of the movement as seen from the inside.

American Labour Year Books. New York, Rand School of Social Science. Published since 1916, these Year Books give notes on some major schools and educational undertakings.

Marius HANSOME : *World Workers' Educational Movements.* New York, Columbia University Press, 1931. This book describes some American undertakings. Its contents are classified on other than geographic lines and references to American enterprises are widely scattered. It was prepared over a period of years and fails to indicate the periods to which its various statements refer.

John J. HADER and EDUARD C. LINDEMAN : *What do Workers Study ?* New York, Workers' Education Bureau, 1929. This study is scarcely up to date.

The present article has drawn for the most part upon reports, prospectuses and periodicals of the schools which put out such matter, information elicited by correspondence and in interviews, and first-hand experience.

the form of having to work with others under a common discipline, it is essential that certain limits should be placed on the employer's authority. The wide differences between occupations, local customs, and the needs of undertakings have, however, stood in the way of rigid regulation, and thus prevented the legislature from intervening, so that it has been and still is the task of group agreements to furnish the worker with the necessary protection. The most important form of these is the collective agreement, but rules of employment may also be of importance, especially where the law prescribes that they must be the subject of agreement.

As regards direct intervention by the law, this is mainly negative; that is to say, as the performance of the work is primarily an obligation for the worker, this obligation has to be defined by definite rules specifying what lies outside the worker's duties, in so far as this is compatible with the employer's right to control production and is allowed by all the circumstances.

Among the points of general interest in this connection only a limited selection can be dealt with here. In particular, the question whether the work must be performed by the contracting worker in person or may be delegated to another will not be examined in detail; generally speaking, however, the worker's obligation is essentially personal, and he is no more bound to provide a substitute, if prevented from performing the work himself, than the employer is to accept one. But this principle does not always hold, and in certain circumstances even an agreement to the contrary must be regarded as reasonable. Hence no general binding rule is possible, and it is usually merely stated that the worker must do the work in person unless there is a specific agreement to the contrary or the nature of the contract itself implies some other arrangement.

The question whether the work must also be performed for the employer personally will be considered in connection with the termination of the contract of employment.

The Nature of the Work.

The nature of the work to be performed is determined, as already mentioned, by the contract itself, or by custom supplementing the contract, and, within the limits thus set, by

the instructions issued by the employer in virtue of his right to give orders. For present purposes, the important point is to determine the kinds of work on which the worker may *not* be employed. The fundamental rule is that the worker is not obliged to do any work other than what he is engaged for; any deviation from this rule by the employer constitutes a breach of the contract. The same holds good when the nature of the work is not expressly stipulated, but may be inferred from the custom of the occupation or the locality, or from the worker's previous occupation or training.

This principle is of considerable practical importance in the case of work performed during a strike. It follows from it that during a strike the employer cannot require non-strikers to take over the work of strikers (blacklegging); e.g. he cannot make salaried employees do factory work. Inversely, it follows from the same principle that non-strikers may not refuse to continue their ordinary work during a strike, even if they prejudice the strikers' success by doing so ("indirect" strike breaking; e.g. electricity workers in the event of a strike among machine tenders). The question of the actual settlement of labour disputes is of course disregarded here.

There are, however, certain exceptions to this principle, for occasions may arise when the employer cannot be expected to engage new workers and a worker may reasonably be required to undertake duties lying outside his ordinary routine. This is so, for instance, in the case of sudden disasters or other emergencies which may endanger the working of the undertaking unless prompt assistance is forthcoming. These exceptions, however, must be so strictly delimited as to leave no loopholes for evasion of the rule itself; in particular, purely economic reasons cannot be regarded as sufficient to justify the employment of a worker on different work.

The rule must also not be interpreted so narrowly as to make it impossible to employ the worker on any job other than that originally accepted by him. Changes in the organisation of the works may involve new duties for the staff as well. Here the natural limit is that the worker may be assigned only work corresponding to his previous occupation and his training. In particular, no reduction in wages may result from the change of work. Where these limits are not definitely fixed by law it is the business of collective agreements and of the courts to find a reasonable settlement.

It is hardly necessary to note that the worker can refuse to perform work that is against the law, and also work involving danger to his life or limb, unless it is lawfully covered by the contract and allowed for in fixing the remuneration.

The questions of faulty work and non-performance of work will be discussed in connection with wages, their practical effect being a reduction of wages.

Hours of Work.

The limitation of hours of work is effected not by the contract of employment but by special laws or regulations. Where these fix maximum hours of work, this does not mean that the worker is necessarily obliged to work the full amount; the hours the individual worker has to work are fixed in his contract within the statutory limits. The same exception, however, applies here as in the case of the nature of the work: in the conditions mentioned above, and within specified limits, the worker may be required to do more work than is provided by the contract of employment. A contract providing for overtime beyond the legal limits is, however, null and void. On the other hand, the employer may not reduce hours, with a consequent reduction in wages, without the consent of the worker, as this would constitute a breach of the contract.

The Place of Work.

The place where the work is to be performed is ordinarily fixed by the contract of employment. Where the contract contains no specific provision on this point, the place has to be inferred from the nature of the work. For instance, for the average worker the undertaking itself is the workplace, while a constant change of workplace is an essential feature of the work of a commercial traveller. It is thus scarcely possible to lay down any general rules on this point.

Special provisions apply when the work is to be done in a foreign country. As a result of distance from home, total or partial ignorance of the foreign language, other laws and other customs, the worker may be in a position of still greater dependence, and may be exposed to special dangers. It is therefore often urged, and is sometimes required, that for work abroad the conclusion of the contract shall be subject to special formalities. In view of what has already been said,

it would perhaps be best to provide that if the work is to be done abroad the worker may demand a written statement of the terms of his contract, unless still stricter formalities are required. [1]

A worker may refuse to work abroad if his contract provides merely for employment at home, except of course in the case of the usual frontier traffic in frontier districts.

Prevention of Disloyal Competition.

In addition to his positive duties in regard to the performance of his work, the worker's obligations also include what is legally the negative duty of refraining from any action likely to prejudice the economic interests of the undertaking. In practice this consists mainly in the duty of keeping trade secrets and refraining from competition, whether during the period of service or afterwards. From the social standpoint, the only one with which we are here concerned, the important question is how this safeguarding of the economic interests of the undertaking can be reconciled with the protection of the worker's individual freedom and of his own career. Here again, therefore, we must see where the limits are to be set to the worker's obligations.

It is clearly necessary that the trade secrets of the undertaking shall be kept, and, in particular, that anyone who unfairly acquires and exploits these secrets shall be punished. It must also be recognised that the employer is entitled to require that workers in his service shall not use knowledge gained in the course of their work to the employer's prejudice outside the undertaking. But there is the further question whether this should still apply when the worker has left the employer's service. Undoubtedly the worker should be prohibited from using unfairly acquired knowledge for his own purposes after leaving the undertaking. In the case of fairly acquired knowledge, however, the position is different. Here the worker's interests need no longer be subordinated to the employer's, and he must be left free to use this knowledge, but only so far as is necessary for his own career—this last being a necessary condition, as marking the limits of his personal interest.

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[1] Cf. Mexico, section 29 of the Labour Code (requiring attestation by the competent authorities, visa of the representative of the foreign country, etc.).

While the worker is in the service of one employer he may not at the same time work in a competing establishment unless there is specific agreement to this effect. It is sometimes provided that the employer's consent will be presumed if he is aware of the circumstances and raises no objection. [1] Is the employer entitled to forbid workers in his service to engage in any subsidiary occupation, even in a different branch of business? In principle the employer has no right to give orders to his workers concerning their conduct outside the undertaking and in matters unconnected with its economic interests. But the dividing line may be very loosely drawn when the personal element in the contract of employment is particularly strong (e.g. in the case of contracts with resident private tutors, housekeepers, etc.). As a rule agreements prohibiting the worker from engaging in a subsidiary occupation are regarded as valid. In view of the diversity of conditions, the most that any general regulation could stipulate would be that a worker is entitled to engage in any subsidiary occupation that is outside his employer's branch of business and does not prejudice the performance of his own work, unless there is a specific agreement to the contrary and provision for the payment of a corresponding rate of wages.

A point of the greatest importance is the inclusion in the contract of a radius clause. The question whether and within what limits such clauses are valid has often been discussed, and is subject to regulation in a number of countries. Internationally, it was first raised in respect of salaried employees, but it also concerns manual workers, though to a more limited extent. Space does not allow of a fuller treatment of this question here, and it must suffice to refer the reader to the proceedings and resolutions of the Advisory Committees of the International Labour Office on Salaried Employees and Professional Workers. [2]

Compulsion to Work.

It is a general principle lying at the basis of the whole organisation of work in the modern economic system that no direct

[1] Cf. Spain, Act concerning contracts of employment, section 85.

[2] Cf. also *International Labour Review*, Vol. XIX, Nos. 3 and 4, March and April 1929: "Clauses restricting Freedom of Employment ('Radius Clauses') in the Employment Contracts of Technical Workers and Salaried Employees in Industry and Commerce."

compulsion may be applied to enforce the performance of work which is the subject of a contract, and that even a legal judgment ordering the performance of work may not be carried out by applying force to the worker concerned. The application of police measures is also not permissible. It may perhaps seem unnecessary to stress this particular point to-day, but the reminder may be useful in connection with conditions in certain industrially backward countries where measures of compulsion may still be found.

Miscellaneous Protective Measures.

The specific limitation of the worker's obligations in the matter of work may be enough to protect him from certain injuries; but this protection is not always sufficient and it may also be necessary to lay certain positive duties on the employer. The important questions of accident prevention, industrial health, and protection against occupational risks are no longer within the domain of the contract of employment, the State having intervened at an early date and made the workers' protection its own special task. Sometimes, however, the employers are given some direct obligation to protect their workers. This is not of much practical importance when the State itself does what is necessary, but it becomes so when the State is for any reason unable to protect the worker, either because its protective labour legislation is defective or because the conditions for its intervention have not been satisfied, whether by oversight or by culpable negligence. In these circumstances the employer's failure to ensure adequate protection may not expose him to any penalties, and bodily injury to the worker may not involve the payment of compensation such as is provided under social insurance laws; but the worker may be able to claim damages from the employer under the Common Law. The disadvantages of a system in which the employer is merely liable for damages, as compared, for instance, with a system of social insurance, are well known; but the former has its uses when it is simply a matter of supplementing national insurance and not of replacing it. There can of course be no question of giving the worker a simultaneous claim to damages and to insurance benefits; but it seems only reasonable that the employer should be responsible to the worker and should compensate him for any injuries sustained in connec-

tion with his employment, in so far as he is not otherwise protected.

Wages

The remuneration of labour, or wages, is the element of the contract of employment which is most important from the social standpoint, and is indeed perhaps the most important of all the questions with which social policy has to deal. Measures to regulate the contract of employment, however, as defined for the purposes of this study, play a minor part in this domain, although by no means a negligible one.

The tendency noted at the beginning of this article to restrict the regulative functions of the contract of employment applies especially to wages, which are more and more being removed from the domain of the contract. It is true that so long as there is a contract of employment, its terms will include the right to wages, but the actual fixing of wages is left to it less and less often. This is indeed the aim and tendency of modern social policy. The level of wages and the method of calculating them are increasingly settled by collective agreements, wage boards, or some other form of collective regulation.

On the other hand, when wages are the object of what in the legal sense is a " free " agreement between an individual employer and an individual worker, there are no binding legal rules applying to them. Various provisions of purely directory force may in fact be found, which serve for the guidance of the parties in such cases or are intended to complete their agreements, but without prescribing any hard-and-fast course of action for them. All this belongs to the regulation of the contract of employment in a wider sense, but is outside the scope of the present article, which is confined to specifically protective regulations.

Even when these cases are ruled out, however, there is still a place for protective regulations : their task is to safeguard the claim to wages arising out of the contract of employment and to ensure that it is met. Thus, while the fixing of the wages is outside our present scope, their payment may be regarded as a suitable subject for regulations concerning the contract of employment in the sense adopted here.

The measures intended to safeguard the right to wages and their payment will be examined in so far as they are of

international interest. It is beyond all question that the worker's right to his wages, which he needs to support himself and his family, requires special protection; while not only the worker himself but also the employer, and indeed wide sections of the whole community as well, have an interest in seeing that the worker's purchasing power is effectively safeguarded.

Payment of Wages in the event of Lost Time.

Safeguards are necessary to protect the claim to wages when circumstances make it impossible to fulfil the contract of employment in the ordinary way, i.e. when for any reason the work cannot be done at all or cannot be done in the way contemplated.

This question was dealt with at first purely according to the principles of civil law. If the performance of the work was prevented through the fault of either party, the work remained undone and the other party was entitled to compensation. If neither party was to blame, the work remained undone and in most cases (*force majeure*, impossibility of performance) the claim for the consideration promised, i.e. in practice the claim for wages, also lapsed, except in the rare contingency that the contract itself contained provisions to meet the case. Socially, however, this arrangement was often unfair, and attempts were made, still by the methods of civil law, to give the worker some degree of legal protection against the loss of his wages. For this purpose recourse was had to the legal concept of "delay in acceptance" (*Annahmeverzug* or *Gläubigerverzug*) in various countries in which this is a recognised principle of law.[1] Its effect is that the debtor (worker) retains the right to the agreed consideration if he has duly offered to perform his side of the contract but the creditor (employer) has failed to accept, or has taken no steps to accept, its performance. It is not necessary that the creditor should be at fault, and no subsequent performance is required of the debtor. For instance, if a worker goes to the factory and the employer is unable to use his services, owing, say, to a shortage of raw materials, the worker retains his right to his wages. He forfeits this right, on the other hand, if performance of the work is impossible; for instance, if the factory were burnt down it would be impossible to perform the work and the worker would

[1] Austria, Germany, the Netherlands, Switzerland.

no longer have a claim to wages. The difficulty is to draw the line between " delay in acceptance " and " impossibility of performance ". This question has led to many legal disputes and has not yet reached any clear solution. Moreover, provisions on this point are usually of a directory character only, and may be deprived of their force by a clause in the contract stipulating that " payment will be made only for work actually performed ". In many countries the principle of " delay in acceptance " is quite unknown.

In order to reach a fairer solution of the problem, attempts have often been made to differentiate between individual cases and to go beyond the civil law aspect and deal with the problem from a social standpoint. In particular, exceptions have been made for certain cases of " impossibility of performance " in which the loss of the right to wages would be especially unfair to the worker; e.g. in the case of sickness or personal misfortune of the worker, or quite generally when the worker is prevented from performing his work by personal reasons. It is worthy of notice that most of the provisions of this kind are for the benefit of salaried employees. This is because the wage earner can usually be dismissed at short notice or at any time, whereas the salaried employee generally has a contract of some length, and the question of the payment of wages is closely connected with that of the termination of the contract, since it is important only while the contract is in force. Very often, however, wage earners and salaried employees are treated on the same principles, even if the regulations work out differently according to their respective contracts. In all cases, however, some time limit is imposed, and wages can be claimed only for a specified period.

In view of the fact that a solution favourable to the worker has been adopted in certain cases in which the non-performance of work is due to reasons connected with his person, it may reasonably be asked whether the same rule should not apply when the reason for non-performance lies with the undertaking, and the worker is not merely not responsible for it, but has nothing to do with it at all. The case of shortage of raw materials has already been mentioned, but there are various other causes too which may bring the undertaking to a standstill. In such contingencies the law does often explicitly secure the worker's right to his wages, or at least to part of them, and where the

law itself is not clear on the point the courts have tended to move in that direction. The judgment of the German Federal Labour Court may be cited—although it has not passed uncontested—when it attempted to settle the question without reference to the provisions of the German Civil Code concerning delay in acceptance and impossibility of performance, but rather on the basis of the social principle of the " unity of the workers with the undertaking ".

According to this judgment[1], it is the employer who must " bear the risk of such events as affect not the existence of the undertaking, but its management. Thus, for instance, he must be responsible for the regular supply of the necessary materials in sufficient quantities, as well as for such disturbances as occur generally or only under special circumstances but which can be foreseen although it may be impossible to prevent them." This, however, is accompanied by the following restriction : " However, there are disturbances which do not, as such, directly affect the existence of the undertaking, but whose indirect effects may be such as to endanger the undertaking itself in all cases in which the undertaking is not strong enough to bear the loss. In such cases the worker will also have to bear the risk." On the other hand, the workers must bear the consequences of all events lying within their own sphere of risk. " Thus it results from the unity of the working personnel that the risk of such events as are due to the conduct of the workers has to be borne by the workers as a whole, including those who are not directly responsible for the events in question. To this category belongs the case of a partial strike."

Further, the workers must also suffer the loss of their wages in the event of time lost owing to an " extraneous " event. " In consequence of the unity of the workers and of the undertaking, the former bear also as a rule the risk of such events as affect injuriously not only the management of the undertaking, but the very existence of the undertaking, namely, such as destroy the undertaking or cause a stoppage lasting for a long time. To this category belong, for instance, special circumstances operating from without, such as natural events or extraneous forces." It may also be recalled that in the case of a " general risk " of lost time, i.e. events affecting

[1] *International Survey of Legal Decisions on Labour Law*, 1928, Germany, No. 23 : Judgment of the *Reichsarbeitsgericht* of 20 June 1928.

several undertakings or a whole occupation or area, the German Bill of 1923 concerning contracts of employment proposed to give the workers the right to half their wages.

This point has been dealt with at some length in order to show the tendencies that have prevailed in the past. It may however be doubted—and this doubt seems to be confirmed by the partial solutions actually adopted in the various laws—whether a general solution of the problem can be found within the framework of the contract of employment. In the case of time lost owing to risks connected with the worker himself, experience seems to show that legal regulation may be successful. Beyond this limit, however, it is doubtful whether general rules can be laid down, for it may be noted that most of the existing statutory provisions on the subject are merely directory —that is, they represent guiding principles rather than strictly binding rules. The actual circumstances in each individual case require separate consideration and forbid any broad generalisations. At the same time it may also be doubted whether individual agreement within the contract of employment, the questionable value of which has been consistently stressed throughout this study, is capable of providing a satisfactory solution. From the social standpoint the answer must be that it is not, and intervention here is much more a matter for the collective agreement. Reference may be made to the solution proposed by the German Bill of 1923, which contained rules that were not to be binding but might be modified only by collective agreement, so that even in the absence of a collective agreement the worker would be protected. As a matter of fact, collective agreements often contain provisions on this point. [1] But sickness and accident insurance, unemployment relief, etc., also play some part in this question, diminishing the importance for it of the contract of employment. The converse is also true, and satisfactory provisions on this point in the law governing contracts of employment can at least do something to make up for omissions in protective labour legislation.

In these circumstances the general situation may be summed up as follows. The worker unquestionably has a right to wages

[1] E.g. Austria, Vereinbarung des Wiener Industriellenverbandes mit der Wiener Bezirksleitung des österreichischen Metallarbeiterverbandes vom 13. April 1921 ; England (Light Castings) General Agreement on compensation to workpeople for loss incurred owing to shortage of metal, December 1929.

when the employer is to blame for making the performance of the work impossible, while if the worker himself is to blame he loses the right to wages. If neither side is to blame, however, a distinction must be made between events falling within the employer's sphere of risk and those falling within the worker's. For the former, the solution is still a matter for judicial decisions or collective agreements rather than for legislation, although legal provisions do exist in some cases. [1] As regards the latter, the principle is gaining general acceptance that the worker shall retain his right to his wages for a specified period if he is prevented from performing his work for personal reasons for which he is not to blame, such reasons including sickness and accident affecting the worker himself, death or sickness in his family, the exercise of political duties and offices, etc. The right to wages is usually subject to a time limit. This differs for wage earners and salaried employees where the law distinguishes between these two groups; it may also vary according to the cause of absence and the worker's length of service. It ends in all cases with the contract, although, as pointed out below, the termination of the contract may not be made a means of nullifying the worker's claim, as wages must be paid for the whole period specified by the law even if the event which prevented the work from being done led also to the termination of the contract. Any social insurance benefits drawn by the worker during this period may, but need not necessarily, be deducted from his wages.

Special provisions are required to meet the case of workers who live in their employer's household. In such cases many laws make the employer responsible for providing the necessary care and medical attendance for a specified period, generally six weeks, when the worker is ill through no fault of his own. A provision of this kind also calls for consideration, although its importance is diminished by social insurance, for the law usually relieves the employer of his responsibility in this respect when provision for care and medical attendance is made by way of sickness insurance.

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[1] Apart from the German Bill already mentioned, cf. Austria, General Civil Code, section 1155; Poland, Code of Obligations, section 455; Yugoslavia, Industrial Code, section 220; Spain, Act concerning contracts of employment, sections 87 and 92.

The Protection of Wages.

The questions of the place, period, and means of payment are important from the social standpoint.

The place of payment is usually the undertaking itself, but it may also be some other place determined by the nature of the work or of the undertaking, or by some other reason. Hence positive rules of a general nature are not possible here. It is however usual for the law to prohibit the payment of wages in public-houses or places where alcoholic drinks are sold by retail, or on other similar premises, except, of course, in the case of the wages of persons actually employed in these establishments. The reasons for this provision are self-evident.

The period of payment is usually fixed by the contract of employment. The promise of hourly, daily, or weekly wages or the like relates to the method of calculating the wages, and not to the period of payment, but there is usually some relation between the two. The law often specifies a maximum pay period.

While it is important that definite dates should be fixed for the payment of wages, so that the worker shall not suffer from irregular payment, the protection this is intended to afford may become illusory if the dates so fixed are too far apart. The periods of payment have therefore to be defined more closely. They are often different for wage earners and salaried employees; where this distinction is not made, the time unit used in calculating the wage must be taken as the criterion. A useful provision is that workers engaged at hourly, daily, or weekly rates must be paid not later than the end of every week or fortnight, and those who are paid at monthly rates not later than the end of every month. For salaries calculated over periods of more than a month payment at the end of each quarter may be required. In the case of payment by results (piece rates, etc.) the worker may claim advances—usually at the ordinary pay periods for workers of the same category on time rates—even if the work concerned is not finished.[1] In this way piece workers too are ensured regular payment of wages.

Many laws prohibit the payment of wages on Sundays and holidays, and require that payment shall be made either during hours of work or immediately after. This provision is now very general.

[1] Cf. Italy, Labour Charter, section XIV.

From the social standpoint it is important that the worker should receive wages in cash. Nowhere, perhaps, is all payment in kind prohibited, but wages may not be paid entirely in kind, and the money part of the wage must actually be paid in cash, for the worker must be free to use it as his needs require. This means in practice that payment must be in the currency of the country concerned or in other legal tender. This is equivalent to saying that the wage may not be paid in the form of goods, vouchers, or other means of payment obliging the worker to accept goods instead of money. In brief, it is now generally recognised that the truck system should be prohibited, although there are technical differences in the way this principle is applied. Payment by cheque is of course permissible where this is customary, at any rate for wages or salaries above a specified minimum.

The prohibition of the truck system was among the earliest achievements of social legislation and is now very widespread. The well-known evils resulting from it are therefore mainly a matter of past history. In spite of this, however, the problem is not altogether without importance to-day, as is shown, *inter alia*, by recent investigations carried out in Argentina and the United States.[1] These enquiries have shown that in certain districts or in particular circumstances it may be necessary for the workers to be supplied with articles of daily use or consumption by the employer himself, but that abuses of the system, which may easily increase the employer's hold over the worker, must be prevented by legislation and official control. This may be regarded as a general principle applicable in all countries.[2]

It often happens that the wage received by the worker consists of a number of different elements, or that the law prescribes that various deductions may or must be made from the gross wage. It is important for the worker to know exactly how the net wage he receives is made up, and to be able to check whether it represents what is due to him. Hence it is now a

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[1] Argentina, Bill for the control of shops and canteens run by industrial undertakings, and its Explanatory Memorandum (*Diario de Sesiones, Camara de Diputados*, 14 Sept. 1934, pp. 2614 *et sqq.*).

The Economic and Social Implications of the Company Store and Scrip System. A report made pursuant to article IX, section 4, of the Code of Fair Competition for the Retail Trade. Washington, 1934.

[2] Cf. the resolution on the truck system unanimously adopted by the Nineteenth Session of the International Labour Conference (Geneva, 1935).

very common practice—and one often required by law [1]— to give the worker a voucher when his wages are being paid, showing how the net total is made up, not only for piece workers, although the system is most often prescribed for them, but for other workers also. It is a matter of local custom whether the voucher takes the form of a card, a wage envelope, a wage book, etc. What is important is that it must show clearly the gross wages, the elements making up this total, the deductions, and the net wages paid.

The protection of wages must also include measures to ensure that the worker receives his wages intact, or with the least possible deduction. Here the chief requirements are that wages should be protected against seizure by the worker's creditors, that certain deductions that may be made by the employer should be limited, and lastly, that there should be special safeguards for the payment of wages in the case of the employer's bankruptcy.

In order to achieve the purposes of these safeguards, the term " wages " must not be used in too narrow a sense. Neither the form of the remuneration nor the category of the worker can be taken as a criterion. A retired worker in receipt of a pension is really in the same position as a worker drawing wages, and retirement pensions too must be regarded as payment for services rendered ; so also must survivors' pensions. Compensation for loss of wages and indemnities payable on the termination of employment are also in practice a return for work done. In short, the wage to be safeguarded must include all payments made by the employer in return for work or on account of work. In many cases the law does not go so far as this at present, but this is merely a question of adjustment, and the more recent laws concerning the contract of employment do in fact recognise this requirement.[2]

Attachment of Wages.

In most countries the law has for a long time recognised that at least some minimum amount of the worker's income must be protected against seizure by his creditors ; that is to say, part of his wages is declared to be unattachable. The chief exceptions allowed are in respect of claims against the

[1] Cf., for example, France, Act of 4 March 1931 (amending the Labour Code, Book I, Part III, chapter 2, section 44).

[2] Cf. Spain, Act concerning contracts of employment, section 27.

worker for maintenance ; this is only natural, as the object of safeguarding the worker's income is precisely to secure the livelihood of his dependants. Exceptions are also sometimes allowed in the case of claims for taxation.

The part of the wages secured against attachment may be fixed in various ways. It may be either a fixed sum or a fraction of the total wage ; in many cases these two methods are combined, by means of a graduated scale, a fixed maximum, etc. The wage may also be declared unattachable in a general way, while the courts are left free to take a decision in each particular case.

As regards the amount of wages protected against attachment, this differs not only from country to country, but also within the same country at different times.[1]

This protection was at first accorded only to certain categories of workers, but in course of time it has been extended not only to all employed persons, but also to persons who, while not in the service of an employer in the strict sense, are dependent on their earnings for their livelihood (e.g. home workers, commercial agents).

In spite of these technical differences, however, there is common acceptance of the general principle that a minimum amount of earnings, representing the worker's livelihood and that of his dependants, should be exempt from judicial attachment, except where the purpose of such attachment is actually to fulfil the worker's liability for the maintenance of his dependants.

In order to achieve this object, all other legal transactions, such as the assignment or pledging of wages, etc., which may deprive the worker of the protected minimum portion of his wages, are placed on the same footing as attachment and similarly forbidden.

Deductions and Fines.

The prohibition of the truck system is intended to ensure that the worker really receives his wages in cash. In general, however, and except in the case of the British Truck Acts, this is not the same as ensuring that the worker really receives the whole of this cash wage, which may in fact be reduced by deductions and cuts. Here the same considerations apply as

[1] Luxemburg, for instance, has introduced the system of fixing the amount once a year.

in the case of the protection of wages against creditors, and a certain minimum income must be secured to the worker. In principle, therefore, the limits beyond which the employer may not enforce his claims against the worker should be the same as the limits permissible for attachment or assignment. In practice, however, this principle is applied in very various ways. In many cases—chiefly for historical reasons—the regulations are scattered over a wide variety of legislative texts, and therefore vary as regards the groups of persons covered, the methods applied, and their legal effects. Here, as before, it is impossible to go into technical details, although these are of great importance. Attention may however be drawn to two points of special practical interest, viz. deductions from wages for bad work, and fines.

From the legal standpoint deductions from wages for bad work represent a scaling down of the claim to wages to offset the employer's claim to damages. Theoretically, therefore, what was said above should also apply here, and deductions from wages should be permissible only to the same extent as the attachment of wages. In practice, however, the question is often settled otherwise. In the first place, under general law the employer is only entitled to claim damages when the worker is in fault, so that only in this case are deductions from wages permissible. Actually, however, many laws allow deductions on account of bad work, even when the worker is not in fault, and in a number of cases these deductions may even exceed the limit specified in the case of attachment, e.g. in the case of piece workers. It is in fact for piece workers, as indeed for all workers who are paid by results (e.g. commercial travellers on commission), that the problem is specially vital. Is it possible to establish general safeguards for some specified minimum wage ? To judge by the present state of legislation, this is the exception rather than the rule.[1] But the principle may claim general acceptance that deductions from wages for bad work are permissible only when the worker is in fault, that they should be graduated according to the degree of fault, and that they should be subject to the same limit as attachment, except where the worker has maliciously damaged his employer's interests.

[1] Buf cf. Chile, Labour Code, sections 43 *et sqq.*, and Mexico, Labour Code, sections 99 and 100. Under many collective agreements there is a guaranteed basic time rate for piece workers.

It is only fair that the worker's responsibility should end when the employer has unreservedly accepted the results of his work. This principle is chiefly of importance for piece workers. A safeguard which deserves consideration is the frequent custom, sometimes confirmed by legislation, of having a representative of the workers present to check the work on delivery. The worker should not be liable to subsequent complaints and deductions. In this connection it is desirable that no distinction should be made between obvious and concealed defects. In the case of the latter, some hardship to the employer may occasionally be involved, but the worker must be protected from having deductions made from his wages retrospectively, perhaps several months later, when it may be difficult to investigate the matter properly.

Finally, it may also be noted in this connection that the worker to whom tools and materials are entrusted, and who is responsible for their care, is neither liable to make good normal wear and tear nor responsible for damage due to defective tools or faulty materials. It is, however, his duty to notify any such damage or defect to the employer or his representative as soon as it comes to his notice. This may be regarded to-day as a generally accepted rule, and therefore calls for no further comment.

Another way in which wages may undergo reduction is by means of fines, which may be imposed not only for bad work, but also, and chiefly, for offences against rules of employment or safety regulations.[1] In several countries there are rules on this subject which may be briefly summarised as follows.

The cases in which disciplinary fines may be inflicted must be enumerated in the rules of employment. Disciplinary penalties may be imposed only for failure to comply with the rules of employment or the safety regulations. Both the accused worker and representatives of the staff must be heard before a penalty is imposed. The penalty must be notified to the offender in writing, with the signature of the responsible head of the undertaking. The fine must not exceed a specified percentage of the daily wage or, in the case of piece workers, of the average daily wage. The total of all fines imposed in the course of a month may not exceed a fixed sum, e.g. one day's wages. In no case may the wage be reduced below the limit specified for attach-

[1] Disciplinary fines are prohibited by the Mexican Labour Code (section 91).

ment. When such maxima are fixed for fines the suspension of a worker for one or more days is tacitly prohibited—a penalty which is still possible under the laws of some countries.

All fines must be used for the benefit of the workers. They may not go to enrich the employer.

All penalties must be entered, with all necessary particulars, in a special register which has to be submitted to the labour inspectors on demand.

In this way the law in most countries has succeeded in preventing the arbitrary or excessive infliction of disciplinary penalties, though it has not yet been considered possible to abolish them altogether.

Payment of Wages in the case of the Employer's Bankruptcy.

It has for many years been generally recognised that in the case of an employer's bankruptcy his workers shall not be placed on the same footing as the other creditors, but that debts in respect of wages shall be given priority over other debts. Different laws, however, vary in their definitions of the persons to whom this privilege extends, and also in the period to which this special protection of wages applies. The various ways in which wages may be defined have already been mentioned and need not be reconsidered here. There is a frequent tendency to-day to accord this right of priority for debts in respect of wages to all workers up to a specified income limit.

It need hardly be said that debts in respect of wages arising after the employer is declared bankrupt—if, for instance, the receiver continues to employ the workers or engages new ones—are treated differently. This is a question of bankruptcy law in general and cannot be discussed here.

The worker's position in the case of the winding up of a firm, or judicial liquidation to avoid bankruptcy, is similar to that described for the case of the employer's bankruptcy, though there are often no express legal provisions to this effect.[1]

(To be continued.)

[1] Debts in respect of wages are also often given priority over other debts in the case of forced sale or seizure, but as a rule only for special groups of workers, such as agricultural workers, seamen, miners, etc. Debts in respect of wages are sometimes given special preference, e.g. in Spain (Act concerning contracts of employment, section 55), and Australia (Victoria, Act of 12 February 1929).