

# REPORTS AND ENQUIRIES

## The Legal Position of Commercial and Industrial Travellers and Representatives : II <sup>1</sup>

THE SITUATION IN THE DIFFERENT COUNTRIES (*cont.*)

### France

#### *Legal Provisions*

The legal position of commercial travellers, representatives, and local salesmen is established by a number of legislative provisions and decisions of the courts. In order to determine in which of these occupations the status of employee is recognised, reference must be made to the provisions embodied in some of the laws adopted in this connection in recent years, and in particular to the Act of 2 August 1927 (amending the Act of 8 October 1919) concerning occupational identity cards, section 1 of which reads as follows :

“ Every person carrying on the occupation of commercial traveller or representative on French territory whose sole and regular employment is to act as an intermediary for the sale of goods between producers, manufacturers, persons engaged in commerce, and all other persons, when such goods are needed by the purchasers for the exercise of their trade, is required to have an occupational identity card. ”

Thus, in order to have the status of commercial traveller, representative, or local salesman a person must work for one or several firms, must act as an intermediary for the sale of goods, and must give his whole time to this occupation.

This definition has, however, given rise to a certain amount of controversy.

Generally speaking, it may be said that travellers, representatives, and local salesmen are considered to be employees, with the exception of those who work on their own account and who are therefore obliged to obtain a licence.

---

<sup>1</sup> For the first part of this report (dealing with the situation in Germany, Austria, and Belgium), cf. *International Labour Review*, Vol. XXXII, No. 2, Aug. 1935, pp. 209-229.

Those whose position entitles them to be considered as employees are subject to all the regulations concerning the contract for the hire of services. They are entitled to a period of notice of dismissal. They fall within the jurisdiction of the Probiviral Courts.

Travellers, representatives, and local salesmen come within the scope of the social insurance laws (Act of 5 April 1928, as amended by the Act of 30 April 1930). According to this Act "all employees of either sex whose total annual remuneration, irrespective of its nature, but exclusive of family allowances, does not exceed 15,000 francs, shall be compulsorily affiliated to the social insurance scheme". It has been decided in the case of commercial representatives that any expenditure entailed by the exercise of their occupation is to be left out of account in calculating their total annual remuneration for purposes of the Act.

For purposes of unemployment relief, representatives paid on a commission basis, even if they work for several firms, are recognised as employees, and as such are as a rule admitted to the relief funds. This ruling has, however, been contested by certain departmental committees responsible for the supervision of the distribution of the unemployment funds. The trade organisations have asked the Ministry of Labour and Social Welfare to intervene so as to obtain a uniform ruling in favour of representatives.

It has finally been decided (Ministerial Circular of November 1934) that in determining whether commercial representatives shall or shall not be granted the right to unemployment allowances no account is to be taken of whether they are paid on a commission basis or otherwise. The only point to be determined is whether the representative is bound to his employer by a contract of employment, no distinction being made between those in receipt of fixed remuneration and those receiving commission only.

Travellers, representatives, and local salesmen are entitled to a seat on the Superior Labour Council among the manual workers' and salaried employees' delegates (Decree of 1 July 1913).

In order to secure the protection for travellers and representatives which the trade organisations had long been demanding, the Act of 8 October 1919 introduced the occupational identity card. Administrative regulations issued by a Decree of 29 November 1919 laid down the conditions governing the form and the issue of this card.

The Act of 1919 was very wide, and included even persons carrying on the occupation of commercial representative only occasionally or as an additional source of revenue. This Act was amended by the Act of 2 August 1927, which was more restrictive. As mentioned above, the latter Act defines the persons who must have an identity card. The Act adds that this card is not required by persons who occasionally sell goods from door to door, who are within the scope of the provisions of the Act of 31 December 1921. An applicant for an identity card must produce all the necessary papers in proof of his statements. He must also produce a written certificate which he is entitled to demand from the producers, manufacturers, or other persons employing him, or from their representative if the applicant

works with or for the latter. After the papers produced by the applicant have been duly examined and checked, this certificate must be countersigned by the Chamber of Commerce in whose area the concern represented or its main branch is situated, and by the Chamber of Commerce of the area in which the applicant is domiciled if he is domiciled in the area of another Chamber of Commerce. On the cancellation of the engagement between the employer and the employee the two parties are required to notify the authorities issuing the card within the space of one month.

Identity cards are issued by the prefectural authorities of the area in which the applicant is domiciled, and when necessary by the sub-prefect or the mayor. They must be renewed each year.

These regulations have given rise to a certain amount of criticism. It has been asserted that they debar a large number of professional representatives and salesmen from carrying on their occupation, that they free persons occasionally carrying on the occupation of representative from all control, and that they encourage unfair and illegal competition by non-professional representatives. A Bill to amend the Act of 2 August 1927 has even been prepared by one of the organisations concerned. After the promulgation of the Act, a number of legal decisions were issued. One of the most important of these was an Order issued by the State Council in 1932, which laid down that the identity card was intended to be issued only to persons acting as intermediaries for the fulfilment of contracts for the sale of goods, and that the administrative authorities were not entitled to issue this card to persons not satisfying this condition. At the same time this Order annulled a decision taken by the Prefect of Police and approved by the Ministry of Commerce, which authorised the issue of identity cards to persons whose occupation is to act as an intermediary for the conclusion, not of sales contracts, but of insurance contracts.

#### *Remuneration*

##### *Method of Payment.*

Commercial and industrial travellers and representatives working within the country are remunerated as follows.

The system of remuneration by a fixed salary only is very rare. It is generally applied only in the case of new articles which are being placed on the market, the sale of which is therefore uncertain; in this case the traveller is generally given travelling expenses as well.

Remuneration by a fixed salary, with travelling expenses and a percentage on turnover, is the commonest rule for travellers or representatives who are permanently engaged.

Remuneration by means of a percentage on turnover, with a guaranteed minimum salary and with payment of travelling expenses, is also very common, especially in the first months of the engagement, when the traveller or representative has to make his connection or get to know his customers before his sales can reach their full development.

The form of remuneration consisting in the refund of travelling expenses and a percentage on turnover is less common than the preced-

ing methods, but it applies to certain travellers who are attached to one firm and are subordinate to its orders, but are at the same time authorised to represent other firms.

Remuneration by a percentage on turnover without a guaranteed fixed minimum salary or travelling expenses applies less to travellers and representatives attached to one firm than to those working on their own account without being subordinate to the orders of their employer, since such travellers generally represent several firms and are therefore independent workers and not employees.

The only distinction which might exist with regard to remuneration between wholesale and retail travellers is generally in the rate of commission, which varies very widely with the articles sold.

The fixed salary is discussed between the representative and his firm; it is only in rare cases that any increments are provided according to the number of years of service.

Travelling expenses are generally settled by the grant of a fixed sum: so much per day for hotel expenses and so much per day for travelling expenses. In some cases, the travelling expenses are refunded when an account is submitted by the traveller showing his railway or motor expenses. Travellers usually demand an advance on their travelling expenses, with periodical settlements at fixed intervals.

The conditions of remuneration are fixed by individual contracts.

The Act of 23 April 1924 provides that "the commission due to commercial travellers and representatives must be paid at least once every three months". This Act, which completes section 94 of Book I of the Labour Code, relating to the payment of wages and salaries of wage-earning and salaried employees, thus recognises that commission constitutes a wage or salary.

For travellers and representatives working abroad, the conditions of remuneration are as follows.

In the case of travellers working for a single firm the most frequent form of remuneration is a fixed salary with payment of travelling expenses and a percentage on turnover (commission). When there is no fixed salary the commission is higher.

A traveller for several firms, or for a group of firms having an arrangement with each other, is treated in the same way as above, the expenses being divided between the different firms, either according to a scale drawn up in advance, or in proportion to the orders received by each firm. In the latter case, the correspondence, the orders, and the despatch of funds to the traveller must be dealt with in a central office.

When the traveller is working for several firms which have no arrangement with each other, he receives from one, several, or all of these firms a fixed salary determined by independent agreements with each firm, since in many cases the firms are not acquainted with each other. In this case the traveller pays part of his expenses. The commission is higher in the case of firms that do not pay any expenses.

Sometimes the traveller works for several firms and pays his own expenses, but receives an advance on his commission to meet these expenses. In this case the commission is higher. A traveller of this

type enjoys great liberty and is practically free to determine his itinerary and the length of his stay in different places.

The commonest system is as follows. The traveller works for a single firm or for several firms without having any of his expenses paid. He receives a commission and has complete liberty as regards the period and date of his departure, his itinerary, the length of his stay in various places, etc. Practically the only thing that is fixed for him is the countries, or in rare cases the towns, that he must visit. Since he himself undertakes all the risks of the journey, the manufacturers who entrust their business to him run only the risk of getting no orders from the countries visited. It should be noted that, in general, the traveller selects certain articles from the available stocks before leaving, and generally takes only those which he considers likely to sell well.

There is no distinction between wholesale and retail travellers from the point of view of remuneration, because a traveller who deals with wholesale customers in certain countries may deal with retail customers in others, or he may visit both kinds of customers in the same area. Moreover, at present it is very difficult to classify certain buyers. In addition to traders who buy in order to sell again, there are co-operative societies, ship chandlers, shipping companies, large banking undertakings, etc., which require a great variety of articles to meet their special needs.

There is no definite rule for the fixed salary, which is even more variable than the commission. In principle, increments are provided after a certain number of years of service, but in practice they are rarely granted.

Every possible method of paying travelling expenses is to be met with, the details varying according to the individual agreements, which are generally merely verbal. These expenses are usually payable in advance.

The conditions of remuneration are quite often regulated by contract, but these contracts are always individual.

The principles applicable to the deposit of security are laid down in the Act of 18 October 1917, as amended by the Act of 1 February 1928 (section 32 of Book I of the Labour Code). This Act states that any person engaged in commerce or industry who causes to be delivered to him as security by his wage-earning or salaried employees any sums of money in cash of an amount equal to or less than the maximum amount fixed for deposits in savings banks by the laws in operation must :

(a) enter the said sums in a special register, which must be shown on request to the factory inspectors, and which must be countersigned by the wage-earning and salaried employees concerned ;

(b) deposit these sums within a fortnight with a savings bank in the name of the employees concerned, obtaining in return a bank book in their name.

The Act further stipulates that when the security is in cash and exceeds the maximum amount fixed for deposits in savings banks,

or if it is composed of stocks and shares (whatever its value), an entry with respect to it must be made in the above-mentioned register, and the security must be deposited by the employer within a fortnight with the Deposit and Trust Fund. Only stocks and shares recognised by the Bank of France may be used as a guarantee of security.

Fines varying from 16 to 500 francs may be imposed for breaches of these regulations.

If an employer withholds or uses for himself or for the requirements of his business the money or stocks and shares deposited with him as security, he is liable to the penalties laid down in section 408 of the Penal Code, which deals with abuses of confidence.

The question of the exoneration of travellers and representatives from payment for a licence to carry on their occupation was definitely settled by the Act of 16 April 1930 in the following terms (section 60) :

“ Persons exonerated from payment for a licence to carry on their occupation in virtue of section 17 of the Act of 15 July 1880 shall include commercial and industrial travellers, representatives, and local salesmen, whether such persons work for one or for several firms, whether they are paid by means of a fixed salary or of commission in proportion to the business transacted by them, provided always that they do not transact any business on their own account, and that they are bound to the firms they represent by a written contract indicating the goods to be sold by them, the district in which they must exercise their activities and the rate of the proportional commissions or payments allowed them. ”

#### *Privileged Claims.*

The Act of 17 June 1919, amending section 549 of the Commercial Code, states that when an employer fails, goes into bankruptcy, or becomes insolvent, salary and commission due to travellers, representatives, and local salesmen are preferential claims in the same way as wages of domestic staff covered by section 2101 of the Civil Code.

#### *Termination of the Contract*

##### *Period of Notice.*

The period of notice for the termination of a contract concluded for an indefinite period is governed in the case of travellers, representatives, and local salesmen by the provisions of ordinary law (Act of 19 July 1928 amending section 23 of the Labour Code). The Act of 19 July 1928 states that the period of notice is fixed by custom and by the contract. The Act imposes certain restrictions in this connection, forbidding in particular the making of exceptions by individual contracts. Any such exceptions must be made by collective agreements.

In the Parisian area, a traveller or representative with a fixed salary and a percentage on turnover is entitled by custom to one month's notice. If he merely receives a lump sum to cover his travelling expenses, which is not regarded as a fixed salary, or if he works solely on a commission basis, he is not entitled to notice.

*Compensation for Dismissal.*

Compensation for dismissal is also governed by the provisions of the Act of 19 July 1928. According to this Act, the termination of a contract concluded for an indefinite period by the will of one only of the contracting parties may give rise to damages. In fixing the amount of damages, due account must be taken of custom, the nature of the services performed, and the length of service, in relation to the age of the wage-earning or salaried employee, any deductions from pay or contributions paid with a view to a retiring pension, and in general all circumstances likely to prove the existence or determine the extent of the loss incurred.

The organisations concerned consider that the regulations introduced by the Act of 19 July 1928 are totally inadequate to ensure the effective protection of travellers and representatives. Bills have been submitted to Parliament to remedy this state of affairs.

*Radius Clause.*

The inclusion of a radius clause in contracts concluded between employers and travellers, representatives, and local salesmen is fairly frequent. In the absence of any special legislation on this subject, it is the Courts which decide to what extent such clauses are valid. A study of legal practice shows that agreements embodying a general and absolute prohibition are consistently held to be null and void. As a rule, the legality of a radius clause is upheld in the Courts if it restricts the right to work in such a way as to protect the employer against unfair competition. In this field also, the organisations of travellers and representatives are demanding better measures of protection, and a number of Bills on the subject have been submitted to Parliament during the course of recent years.

*Settlement of Disputes*

Disputes arising out of the contract of employment between employers and commercial travellers are dealt with by Probiviral Courts. These Courts are also competent to deal with disputes between employers and representatives or local salesmen who are eligible to be considered as employees.

The Probiviral Courts, the functions of which were defined by the Act of 21 June 1924, are composed of equal numbers of wage-earning or salaried employees and of employers. They were set up to settle disputes by way of conciliation. They give judgment in cases in which conciliation has proved ineffectual, under specified conditions of competence.

*General Questions*

Of the various Bills which have been introduced into Parliament with a view to the definite establishment of the legal position of travellers, representatives, and local salesmen, the most important is certainly that submitted on 17 January 1930 to the Chamber of Deputies

by Mr. Lamoureux under the following title : " A Bill for the regulation of the occupational status of commercial travellers, representatives, and local salesmen." This Bill has led to a large amount of controversy among the occupational organisations concerned. A number of meetings were held at the Ministry of Labour with a view to coming to some agreement. The text ultimately adopted was incorporated in a Bill submitted to Parliament on 28 February 1935, which proposes to add the following sections to the Labour Code (Book I, Part II, Chapter II) :

" Section 29*b*. Agreements concluded between manufacturers and merchants on the one hand, and travellers, representatives, and local salesmen on the other, shall be deemed to be contracts for the hire of services when the said travellers, representatives, or salesmen do not transact any business on their own account and the contracts between them and the firms they represent indicate the nature of the goods to be sold, the district in which they must exercise their activities, and the rates of remuneration, commission, and proportional payments allowed them.

" In the absence of any undertaking on the part of travellers, representatives, and local salesmen not to work for several firms, the above-mentioned contracts shall, unless both parties expressly waive this requirement, contain a list of the firms or goods, if any, which they already represent, as well as an undertaking to notify the other party of any further firms or goods which they may be called upon to represent while the contract is still in force.

" The contracts may also prohibit the traveller, representative, or local salesman from representing specified firms or goods.

" These provisions shall apply whether the travellers, representatives, or local salesmen work for one firm or for several firms, whether they are remunerated by proportional payments or fixed salaries, provided that they regularly exercise the trade of traveller, representative, or local salesman to the exclusion of all other business.

" They shall not apply to employees who have to call on customers in addition to their work on the premises of the firm, provided that the remuneration of such employees consists wholly or mainly of a fixed salary, that their travelling expenses are paid by the firm, and that their business with the firm's customers is directed and checked daily by their employer.

" Section 29*c*. The contracts referred to in the previous section shall be concluded in writing. In accordance with section 19 of the present Book, they shall be exempt from the payment of stamp and registration fees.

" The unjustified refusal of one of the parties to convert a verbal agreement, the application of which has been begun, into a written agreement in accordance with the requirements of this section may give rise to a claim for damages by the other party.

" Verbal agreements concluded prior to the promulgation of the Act shall be converted into written agreements in accordance with the requirements of this section within three months from the date of promulgation. The unjustified refusal of one of the parties to comply with this provision may give rise to a claim for damages by the other party.

" Section 29*d*. Section 23 of the present Book shall apply to the above-mentioned contracts when they are concluded for an unspecified period.

" These contracts shall fix the length of the period of notice of dismissal in all cases.

" The period thus fixed shall be at least equal to that fixed by collective labour agreements or, in their absence, by custom. In no case shall it be less than one month during the first year of validity, two months during the second year, and three months after the second year.

" The period of notice for travellers and representatives employed outside France shall be prolonged by the normal duration of the return journey when the termination of their contract entails their return to France.



"The period of notice shall not be required in cases of serious fault, or during the probationary period, the length of which shall be fixed by the written contract and, for the purposes of the present section, shall not be longer than the period fixed for this purpose by collective agreements or, in their absence, by custom.

"Section 29e. On the termination of a contract concluded for an unspecified period, or on the expiry of a contract for a specified period, the traveller, representative, or local salesman shall be entitled, by way of salary under the terms of the contract, to the commission or allowances on future orders which are the direct outcome of his work before the end of the contract.

"Section 29f. On the termination of a written contract concluded for an unspecified period, either by the employer or on account of *force majeure*, when such termination is not due to serious fault on the part of the traveller, representative, or local salesman, the latter shall be entitled to compensation in proportion to the number and value of the customers personally obtained, found, or developed by him, due account being taken of any special remuneration granted during the operation of the contract for such work.

"Such compensation shall be independent of any other amounts which may be due for the abusive cancellation of the contract under the provisions of section 23 of the present Book.

"When the traveller, representative, or local salesman is engaged by a contract for a specified period, the contract shall stipulate that on its expiry or in case of its premature cancellation by the employer without serious fault on the part of the traveller, representative, or local salesman, the latter shall be entitled to the compensation specified in the first paragraph of the present section, without prejudice to the compensation due in case of premature cancellation for failure to comply with obligations arising out of the contract concluded for a specified period.

"Section 29g. The privilege established by section 2101 (4) of the Civil Code shall apply to the compensation mentioned in the present text. It shall apply likewise, in the case of a contract for a specified period, to a fraction of the compensation, if any, granted for premature cancellation equal to the compensation which would be due for failure to give due notice under a contract for an unspecified period.

"Section 29h. All agreements concluded with intent to evade the provisions of the present text shall be null and void.

"Section 29i. The provisions of the present text shall be applicable to contracts in force."

### Great Britain

#### *Legal Provisions*

From the legal point of view a traveller is considered to be an employee when his remuneration consists partly in a fixed salary. In the absence of any special agreement he is subject to the common law on the relations between master and servant.

The distinction between an employee (servant) and a commercial agent rests on the following bases.

A servant is a person who is under the direct orders and supervision of his master and is bound to carry out all reasonable orders given in the course of his work. A commercial agent, on the other hand, is a person who undertakes to produce a specified result employing his own means and is not deemed to be a servant of the employer. As a general rule agents receive no salary but are remunerated by a commission on the orders they place with the employers under their agreement.

Commercial travellers are in principle liable to insurance against sickness and unemployment under the national legislation (except when the occupation is only of an auxiliary character).

From the point of view of occupational accidents, if the relation of master and servant exists between the parties and if the employee's remuneration does not exceed £350 a year, he is entitled to the benefits of the Workmen's Compensation Act. This Act does not apply to independent agents.

Commercial travellers, like all other persons, come under common law as regards their conditions of employment. Commercial travellers who sell for forward delivery either wholesale or retail are not liable for any special fees for the right to carry on their occupation. Opinions vary as to the desirability of such fees, and in general commercial travellers seem to be opposed to them.

#### *Method of Payment.*

#### *Remuneration*

The most usual method of remuneration of travellers and representatives is a fixed salary with payment of travelling expenses and a percentage on turnover (commission).

The following methods of remuneration are also in use : a fixed salary with payment of travelling expenses ; a percentage on turnover ; payment of travelling expenses and a percentage on turnover ; a guaranteed minimum salary with payment of travelling expenses and a percentage on turnover.

There are a certain number of travellers whose earnings consist of a share, which is usually 50 per cent., of whatever profit they can make on the cost price charged to them by the firm they represent for the articles they are handling.

It is found that employers have a marked tendency, probably due to the existing extent of unemployment, to engage travellers paid solely on a commission basis, who in many cases are also asked to pay their own travelling expenses.

No distinction as regards the method of payment is made between wholesale and retail commercial travellers. As a general rule the scale of salaries is slightly lower for retail travellers, and when the remuneration consists solely of a percentage on turnover it is obvious that the wholesale traveller, on account of the large sums involved, will be able to earn more than a retail traveller dealing with smaller orders.

There are no general rules for determining the fixed salary. This depends on many conditions : the trade in which the traveller is engaged, the status of his firm and of the traveller himself, and the amount of profit which the goods handled can carry. In numerous cases it may be said that travellers receive different remuneration for the same work. This is due to the fact that they are engaged by individual negotiations and not by trade union action.

The question of increments of salary is generally regulated by agreement between the contracting parties. There is no general scale of annual increments according to the number of years of service.

Travelling expenses are generally paid in advance, and the usual custom now is that an advance of an agreed sum corresponding to the amount of expenses that have to be incurred is made week by week. Expenses are vouched for at the end of the week and the amount of the advance is then fixed for the following week's journey. In certain trades, such as the drapery trade, where the travellers have to carry a fairly large bulk of samples, the general procedure is to agree to a lump sum as covering the expenses. If there is a balance in any period from this lump sum the traveller is not called upon to account for it; if, on the other hand, he spends more, he must find the difference himself.

The conditions of remuneration for commercial travellers are in practically every case fixed by individual agreements between the contracting parties. There is no such thing as a collective agreement or a general rate applicable to any category or group of travellers, though, of course, in cases where firms employ a large number of travellers, say, 300 or 400, the remuneration for all of them would be based on an agreed minimum and the variations from that minimum would depend almost entirely upon the turnover of each traveller. Standard agreements are applied by numerous firms prescribing the conditions of employment, but not necessarily specifying a fixed salary or agreed rates.

#### *Period of Notice. Termination of the Contract*

There is no legislative provision concerning a legal period of notice for dismissal in the case of a commercial traveller. Like every other servant without a special contract he is entitled to a reasonable notice to terminate his services, and decisions in contested cases have fixed the general period of such notice at three months. In certain trades where the notice provided in special contracts is, say, one month, as is the general rule in the grocery trade, a traveller engaged in the trade without a contract would be subject to such shorter notice, if it is shown that this notice is the generally accepted term provided for by special contracts.

### **Italy**

#### *Legal Provisions*

The status of commercial travellers and local salesmen employed by undertakings represented by the Fascist Confederation of Commerce is regulated by a collective agreement which came into force in April 1928 and has since been renewed every two years.

Commercial travellers and local salesmen employed by undertakings represented by the Fascist Confederation of Industry are not yet covered by a national agreement. Pending the conclusion of such an agreement they are covered by the provisions of the Legislative Decree of 13 November 1924 concerning private salaried employees in so far as they are considered to be employees.

Under the second clause of the collective agreement mentioned above, a commercial traveller is defined for the purposes of the agreement as anyone who is regularly required, in virtue of a relationship of subordination entered into with an undertaking, to travel in specified areas with a view to selling the articles in which the undertaking deals, whether he travels at his own or the undertaking's expense, whether he receives a fixed salary or is remunerated wholly or partly on a commission basis, and whether or not he himself bears his expenses.

Persons who travel for several firms at once, with the consent of these firms and in virtue of a relationship of subordination contracted with each, are also considered to be commercial travellers.

On the other hand, the collective agreement does not apply to persons who, while covering a specified district, enjoy complete freedom in the performance of their work and in the choice of their route and the employment of their time.

Solely with a view to making incorporation in a trade union possible, a Ministerial Decree of 11 January 1931 included within the definition of employers persons who are personally, i.e. directly, liable for the payment of income tax; and within that of workers, persons who pay this tax through the medium of the employers, who are required to make the necessary payments in proportion to the wages paid to their staff.

The status of representatives of foreign firms or commercial establishments is governed by sections 367-376 of the Commercial Code and is the same as that of agents.

Commercial agents, representatives, sub-representatives, travellers, and local salesmen are organised in a single national trade association affiliated to the Fascist Confederation of Commercial Workers.

There is no occupational identity card for this occupation. As a rule employers provide their representatives with an act of procuratorship or agency or with letters of introduction.

Commercial travellers, representatives, and agents are compulsorily insured by their employers against unemployment, invalidity, old age, and tuberculosis in accordance with the law, unless their salaries are more than 800 lire a month, when insurance is voluntary.

In the event of sickness, representatives, travellers, and agents in the service of commercial establishments enjoy the treatment prescribed by the rules of the National Sickness Fund for Commercial Employees. Those who are not employed by commercial establishments enjoy the advantages provided under section 6 of the Legislative Decree of 13 November 1924.

#### *Method of Payment.*

#### *Remuneration*

The remuneration of travellers employed by commercial and industrial firms may take one of the following forms: a fixed salary and repayment of day-to-day expenses (travelling expenses, hotel bills, and luggage expenses); a fixed salary, a daily allowance for expenses, and commission on business done; commission on business

done and repayment of the price of the railway season ticket ; commission only.

The system of a guaranteed minimum salary and that of payment of a commission with the repayment of day-to-day expenses are practically never applied.

Some firms conclude a contract for a limited period with their representatives under which the salary, daily allowance, and travelling expenses are lumped together in one amount.

As regards the remuneration of commercial travellers, there is no difference between those employed by wholesale and retail firms respectively.

Commercial travellers may be divided into three categories :

(a) travellers in the service of large industrial undertakings (materials, hats, hardware, etc.), whose remuneration usually consists of a fixed salary, a daily allowance, and a small percentage commission on sales ; the commission is sometimes replaced by an end-of-year bonus based on the profits of the undertaking ;

(b) commercial travellers in the service of wholesale firms selling materials, haberdashery, etc., who are paid in the same way but receive a very small fixed salary, repayment of expenses, and a larger commission ;

(c) travellers for food-manufacturing firms, travellers in the service of small wholesalers, and house-to-house salesmen are nearly always paid on commission ; the employer frequently pays the cost of their railway season ticket.

The method of remuneration of these three main categories naturally varies considerably from one undertaking to another, certain firms in the first category paying their travellers solely on commission, while some of those in the third pay only a fixed salary.

There are no periodical increments, but a gradual increase in salary is customary in the vast majority of undertakings. Generally speaking, the remuneration of travellers reaches a practically stable level after a few years, except for the end-of-year bonuses, which are proportional to the firm's profits.

In undertakings which have retained the custom of repaying travelling expenses one of the following two methods is usually applied :

(a) repayment of the cost of the railway season ticket and payment of a fixed daily allowance specified in advance and covering all expenses (board and lodging, porters, luggage, etc.) ;

(b) a daily allowance based on an account of expenses submitted weekly to the employer and including travelling expenses, taxis, etc.

In addition to travelling expenses the employers nearly always grant advances on salary, paying the balance at the end of the month or quarter on a kind of current-account system.

The clauses of the collective agreement for travellers and local salesmen employed by commercial establishments merely fix the minimum salary.

Where the traveller is paid solely on a commission basis he may work for several undertakings, provided that they do not compete with each other.

Commission is paid quarterly or half-yearly ; monthly advances are sometimes made.

An agent representing a single establishment may be included in the category of commercial travellers so far as his legal status is concerned.

No special taxes or fees are payable by commercial travellers, except, of course, ordinary income tax.

#### *Holidays with Pay.*

The length of annual holidays and the conditions under which they are granted are defined as follows in the collective agreement referred to above (section 7).

Commercial travellers are entitled to annual leave of 10 days after 1 and not more than 2 years' service ; 15 days after 2 and not more than 8 years' service ; 20 days after 8 and not more than 15 years' service ; 25 days after 15 and not more than 20 years' service ; 30 days after more than 20 years' service.

Those who have completed their probationary period but not a full year's service are entitled to one-twelfth of the minimum leave (10 days) for every month of effective service, only complete months being counted.

During his annual leave a commercial traveller receives his usual fixed salary.

Leave is normally due during the period May to October and must be granted as to at least two-thirds in a continuous spell, save in exceptional cases where a special agreement has been concluded between the employer and the traveller.

Special leave granted for serious family reasons or sick leave granted on a medical certificate is not deducted from the annual leave.

The order in which annual leave is taken is fixed by the employer in accordance with the convenience of the undertaking.

In case of dismissal the traveller is entitled to one-twelfth of his annual leave for every month actually worked during the year concerned.

If owing to distance a traveller is prevented for more than a month from returning home, he is entitled, instead of the weekly rest day, to a period of leave equal to the number of rest days not used, with the possibility of returning home at the firm's expense.

Commercial travellers abroad enjoy the treatment specified above in so far as the distance allows and in accordance with the special agreements concluded with the undertaking.

#### *Privileged Claims.*

In the event of the firm's bankruptcy, salaries are treated as preferential claims in the sense of section 15 of the Legislative Decree of 18 November 1924, section 773 of the Commercial Code, and section

19 of the collective agreement in force for commercial travellers and agents in the service of commercial establishments.

*Period of Notice. Termination of the Contract*

In the event of dismissal notice must be given in conformity with the provisions of section 10 of the Legislative Decree of 13 November 1924, and, for employees of commercial establishments, of sections 13, 14, 16, 17, and 18 of the collective agreement. In a number of provinces more favourable conditions are in force in virtue of local custom and usage.

Section 13 of the collective agreement stipulates that the termination of a contract for the hire of services must be preceded by notice regularly given in writing, whether the traveller is dismissed by the undertaking or resigns of his own accord. For travellers within the country the periods of notice are as follows: one month for those who have completed their probationary period but not yet performed 5 years' service; 45 days for those who have completed 5 and less than 10 years' service; 2 months for those who have completed 10 years' service.

The above periods of notice are doubled for travellers working abroad.

Failing notice duly given as specified above, compensation equal to the remuneration corresponding to the period of notice is due.

The period of notice of dismissal runs from the middle or the end of the month.

In addition to the period of notice specified above or, failing such notice, in addition to the corresponding compensation, the traveller is entitled on dismissal to compensation equal to twenty-five thirtieths of his monthly salary for each year of service. Where payment is made wholly or partly in the form of commission, bonuses on results, or profit-sharing bonuses, the compensation is calculated on the basis of the average for the last three years or, if the traveller has not completed three years' service, on the basis of the average for his whole period of service (section 10 of the Legislative Decree of 13 November 1924).

*Compensation for Dismissal.*

In calculating the compensation for dismissal and length of service payable under a contract for an indefinite period, the whole of the time spent in the service of the same undertaking, whether under contracts of specified or of indefinite duration, is always taken into account.

This provision does not apply to the first contractual relation governed by a contract of limited duration if the total period of service does not exceed two years. Nevertheless, this period is also taken into consideration in calculating the above compensation provided that a contractual relation of some kind exists between the traveller and the undertaking.

Compensation for dismissal must be paid at once to the traveller on the cessation of his employment. In the event of delay due to a contested claim or to any other reason whatever, interest at the commercial rate must be paid from the date on which the employment actually ceased (section 17 of the collective agreement).

If the undertaking changes hands or undergoes any kind of change, or if the original undertaking fails to give the notice or pay the compensation provided by the agreement in case of dismissal, the new undertaking which succeeds it is bound, if it does not intend to meet the obligations and retain the services of the traveller with all the rights acquired by him during his previous service, to fulfil all the liabilities incumbent on the previous undertaking in virtue of the collective agreement in the same way as if notice of dismissal had actually been given (section 18 of the collective agreement).

#### *Radius Clause.*

Under section 36 of the collective agreement competition is treated as a serious offence, which may be held in certain cases to constitute a reason for dismissal without compensation.

#### *Settlement of Disputes*

In the event of dispute, if the compulsory conciliation procedure conducted by the competent trade association in accordance with the Royal Decree of 21 May 1934 fails to bring about agreement, the case may be submitted to the competent judicial authority, which in this case is the Labour Tribunal.

*(To be continued.)*

## **Labour Inspection in Hungary, 1928-1933**

### **ORGANISATION**

Labour inspection in Hungary is organised in thirteen districts, for which in 1933 there were 38 inspectors. The districts vary greatly in relative importance; on account of the centralisation of industry in the neighbourhood of the capital, the Budapest district by itself included, in 1933, 39.6 per cent. of the undertakings and 63.5 per cent. of the workers subject to labour inspection, whereas other districts included only from 2.9 to 3 per cent. of the undertakings and 0.8 to 1.5 per cent. of the workers. Also as a result of the geographical distribution of industry, the number of undertakings per inspector varied, according to the district, from 298 to 783, the average for all the districts being