REPORTS AND ENQUIRIES

The Termination of Contracts of Employment of Salaried Employees and Technical Staff (Notice of Termination of Contracts and Compensation for Dismissal): I

The question of the termination of contracts of employment, with special reference to salaried employees and technical staff (notice of termination of contracts and compensation for dismissal) appeared on the agenda of the 4th session (held on 18 and 19 November 1936) of the Advisory Committee set up by the Governing Body of the International Labour Office early in 1930.

A discussion in which all the members of the Committee took part was followed by the adoption of a resolution expressing, in particular, the wish that "in countries where formal rules are not yet in existence they should be introduced by legislation or collective agreements, with a view to securing all desirable safeguards in regard to, among other things, the form of notice, exceptions, the conditions under which compensation is granted, and the protection of the right to notice in the event of the transfer, closing-down, or bankruptcy of the undertaking, or in the event of death." The Committee further indicated the principles which it considered should serve as a basis for international regulation.

This resolution having been communicated to the Governing Body during its 78th session, held in February 1937, the International Labour Office was instructed to consider later whether these questions are sufficiently ripe to be proposed to the Governing Body with a view to their being placed on the agenda of a session of the International Labour Conference. The Office was further instructed to place the information which has already been compiled at the disposal of those interested. For this reason it has seemed useful to publish in this Review *the documentary Report which served as a basis for the deliberations of the Advisory Committee on Salaried Employees. This Report gives a summary of the regulations in force in those countries whose legislation dealing with these questions is particularly advanced.*

Introduction

Although notice of dismissal is a matter of interest to all employed persons [1], it was felt that a special enquiry into the position of salaried

[1] For an account of the general principles which apply to such notice, cf. E. Herz: "The Contract of Employment: III", in *International Labour Review*, Vol. XXXII, No. 2, August 1935, pp. 195-208.

employees and technical staff in this respect would serve a useful purpose.

In the first place, owing to the very nature of their occupation, the right of dismissal should, in the case of such persons, be so regulated as to afford every desirable guarantee of stable employment.

Another reason for the enquiry is that in practice the regulation of notice to leave, whether by legislation or by collective agreement, is far more advanced and extensive in the case of salaried employees than in that of manual workers.

Finally, in the course of the last few years, the slackening of world trade, the depressing effect of the law of supply and demand on the remuneration and selection of salaried employees, the very large number of candidates for such employment, and the competition of women who are prepared to accept lower pay have increased the risk of dismissal, with all its consequences. In these circumstances, salaried employees' organisations have been obliged to lay particular emphasis on the question of dismissal notice when drawing up their programme of claims. There is a considerable measure of agreement in this respect between organisations of various persuasions and in different countries. The wishes they have expressed concerning the regulation of notice to leave are very similar. The claims put forward deal mainly with two fundamental points :

(1) No contract of employment or contract for the hiring of services may be terminated without adequate notice ;

(2) When a contract of employment is terminated through no fault of the employee, the latter is entitled to a leaving grant.

Having regard to the wishes expressed by the organisations, the International Association for Social Progress stated its views on these two points as follows :

(1) Salaried employees should be given at least six months' notice of dismissal from the end of the current quarter, the period of notice being prolonged proportionately to length of service ;

(2) Leaving grants should be proportionate to length of service.

When the Advisory Committee on Salaried Employees discussed at its session held on 14 and 15 April 1931 the general claims of salaried employees, it laid stress, in its resolution concerning the measures to be taken against unemployment, on the need for equitable regulations in regard to notice of dismissal. The relevant paragraph in the resolution read as follows :

The Committee further considers it necessary to take all possible steps to avoid an increase in unemployment among salaried employees. To this end it recommends, in particular, the extension of legal protection with regard to dismissal. The periods of notice should be extended, and compensation for dismissal introduced or increased where it already exists. These measures should be proportionate to the length of service, so that older salaried employees are better able to meet the difficulties of finding fresh employment.

Further, at a special meeting held on 2 March 1932 to consider the measures which would be likely to remedy unemployment among

salaried employees, the Committee on Unemployment unanimously adopted a resolution containing the following paragraph :

The Committee, without making a complete study of the questions of notice of dismissal and of dismissal allowances, recommends, in present circumstances, that the measures in force on these subjects in the different countries be applied in a liberal spirit, account being taken in particular of length of service.

It will appear from the following survey, which is necessarily brief, that a large number of countries have already accepted legislation protecting salaried employees against unfair dismissal.

Under the stress of the business depression and in their anxiety to avoid the economic and social consequences of dismissal on a large scale, certain Governments have introduced legislation regulating notice of dismissal in such a way as to afford workers a much greater measure of protection than in the past. Sometimes, indeed, the legislation adopted does not merely provide that workers shall be given long notice of dismissal and that persons dismissed without just cause shall receive compensation, which may amount to as much as one year's salary ; it also makes the employers' right to dismiss staff subject in certain cases to strict supervision and to previous permission being obtained from the representatives of public authority.

Provision for leaving grants is less common. As yet it exists only in a few countries.

In several countries there are no legal regulations concerning notice of dismissal. This is true, for instance, of Denmark, Great Britain, Norway, Spain, and Sweden. It does not necessarily mean that notice is not given in these countries. As a rule notice of dismissal is regulated by common law, by custom, or by collective or individual contracts. In these circumstances, the period of notice may vary with the category of persons, the industry, occupation or locality considered and even from one undertaking to another. The contracts may provide for other periods of notice than those which are customary and may even stipulate that no notice shall be given.

In the United States the dismissal allowances of employees and technicians are usually arranged by the parties concerned. Length of service is nearly always taken into account when fixing the amount of notice to be given and the dismissal compensation. Nevertheless a tendency may be observed for collective contracts to stipulate the terms for cancellation. A certain number of important enterprises have already made regulations to this effect.

The present enquiry covers only those countries where the number of salaried employees is high or the relevant legislation seemed particularly characteristic : Argentina, Austria, Belgium, Chile, Czechoslovakia, Finland, France, Germany, Great Britain, Greece, Italy, Luxemburg, Switzerland.

The survey is purely objective. With reference to each of the points considered, an analysis is given of the main provisions contained in existing laws and regulations and of those derived from contract law.

To facilitate comparison of the various solutions which may be adopted, the provisions have so far as possible been grouped under

the following headings (for some countries, however, it has not been possible to follow this general plan very closely) :

I. Nature of the regulations (legislative provisions, collective agreements, custom).

II. Notice of dismissal (legislation and judicial practice) :

1. *Rules as to the giving of notice :*
   (*a*) termination of contracts concluded for an indefinite period ;
   (*b*) termination of contracts concluded for a specified period.
2. *Form, period, and beginning of notice :*
   (*a*) form in which notice is given ;
   (*b*) period of notice ;
   (*c*) beginning of the period of notice.
3. *Exceptions to the rule concerning notice of dismissal :*
   (*a*) temporary appointments and periods of probation ;
   (*b*) other grounds for exceptions.

III. Compensation for dismissal :

1. Conditions governing the right to compensation for dismissal.
2. Nature and composition of the compensation for dismissal.
3. Calculation of the compensation.

IV. Settlement of disputes (competent authorities, their composition and working).

Germany

Nature of the Regulations

German legislation contains detailed provisions concerning the termination of contracts of employment. These provisions lay down certain measures of protection which may neither be suppressed nor reduced by any agreement between the parties.

The main provisions are based on the following legislation :

(1) Commercial Code (sections 59-75) (basic code of 10 May 1897).

(2) Industrial Code (section 133a-f) (basic code of 1 July 1883).

(3) Civil Code (sections 611-630) (basic code of 18 August 1896).

(4) Act of 9 July 1926 (extending the period of notice for elderly employees).

(5) National Labour Regulation Act of 20 January 1934, which contains a special division dealing with protection against dismissal.

(6) Act of 30 November 1934 supplementing the provisions of the National Labour Regulation Act of 20 January 1934 in regard to protection against dismissal.

(7) Act of 10 April 1934 concerning labour courts (in its new form).

* * *

Conditions of work for commercial employees are dealt with in the Commercial Code *(Handelsgesetzbuch)*, sections 59-75.

Conditions of employment for salaried employees and technical staff (including foremen) in industrial undertakings are dealt with in special provisions laid down by the Industrial Code *(Gewerbeordnung)*, section 133a-f.

In the case of employees who can be classified neither as commercial nor as industrial, relations between employers and employees are regulated by the provisions of the Civil Code *(Bürgerliches Gesetzbuch)*, sections 611-630. These provisions apply mainly, but not exclusively, to the following : tax collectors, persons in the employment of private individuals, etc., that is, occupational categories which are included in neither of the two main groups (commercial employees and technical staff). Certain provisions of the Civil Code also apply to office employees, a particularly large group.

The Act promulgated on 20 January 1934 is of special importance owing to the provisions it contains in regard to protection against dismissal. The Act of 30 November 1934 is also particularly worthy of note since it increased the measure of protection conferred on employees who are dismissed after they have completed a long period of service.

No special form is prescribed for the contract of employment on which relations between employers and employees are based. The contract may be either written or oral and the parties are free to agree on any conditions of employment they please provided such conditions are not contrary to law or custom. The freedom of the contracting parties is limited, however, by the fact that they must observe the principles laid down by the labour trustees *(Treuhander der Arbeit)*.

No contract of employment, whatever its legal basis, may be terminated without due regard for the legal or contractual provisions respecting notice of dismissal.

Notice of Dismissal

Rules as to the Giving of Notice

Contracts concluded for an indefinite period.

Contracts for the hiring of services which have been concluded by commercial employers and employees for an indefinite period may be terminated by either party at the end of a calendar quarter, provided the notice prescribed by law is given.

The Act of 20 January 1934, however, contains various provisions protecting employees against wrongful dismissal. These are as follows :

If an employee is dismissed after one year's employment in one and the same establishment or undertaking, and the establishment or undertaking in question employs as a rule not less than ten persons, he may lodge a complaint with the labour court within a fortnight of receiving notice to leave, applying for the revocation of the dismissal if it constitutes an undue hardship and is not necessitated by conditions in the establishment.

If a confidential council has been set up in the establishment, the complaint is to be accompanied by a certificate from the council showing that the continuance of the employment of the person in

question has been unsuccessfully raised in the council. The production of the certificate may be waived if the dismissed person shows that he appealed to the confidential council within five days of receiving notice to leave, but that the council failed to issue the certificate within five days of his appeal. If the court decrees the revocation of the dismissal, it must *ex officio* include in the sentence an award of compensation to take effect if the owner of the undertaking refuses to revoke the dismissal. The employer must inform the dismissed person within three days of the communication of the sentence whether he elects to revoke the dismissal or to pay compensation. If he fails to make this statement within the prescribed time limit, he is deemed to have elected to pay compensation. The time limit is deemed to have been observed if a letter is posted for this purpose before its expiry. If the employer elects to revoke the dismissal, this does not constitute an obstacle to his lodging an appeal against the sentence. If the complaint is disallowed on appeal, the revocation of the dismissal then ceases to be operative.

If the employer revokes the dismissal, he must pay the dismissed person his wages or salary for the interval between his discharge and the resumption of his employment. The employer may make deductions in respect of public allowances received by the dismissed person during the interval from unemployment relief or poor relief funds; he must repay these sums to the authority granting them.

If the dismissed person has in the meantime entered into a new contract of employment, he is entitled to refuse to resume his employment with his previous employer. He must make a statement to this effect to the employer immediately upon receipt of the statement from the employer mentioned above and in any case not more than three days later, either orally or by post.

If he fails to make this statement his right of refusal lapses. If he avails himself of his right of refusal he is not entitled to his wages or salary beyond the period between his discharge and the date of his entry into the new employment.

The rights and duties of industrial employees and technical staff are laid down in the Industrial Code, the provisions of which are fairly similar to those of the Commercial Code. Moreover, the provisions of the National Labour Regulation Act of 20 January 1934 are likewise applicable to such employees and staff.

Contracts concluded for a specified period.

The legal provisions concerning the termination of contracts concluded for an indefinite period apply also to contracts which have been concluded for a specified period, it being further provided that any such contract shall be deemed to be prolonged unless notice of termination is given during the period for which the contract was concluded. Any agreement to the contrary is null and void.

Obligation of the Employer in Cases of Simultaneous Dismissals

Every employer is bound to give notice in writing to the labour trustee in the following cases:

(*a*) in an establishment which as a rule employs less than 100 persons, before he dismisses more than nine persons ;

(*b*) in an establishment which as a rule employs not less than 100 persons, before he dismisses 10 per cent. of the persons usually employed in the establishment and before he dismisses more than fifty persons within four weeks.

Dismissals of which notice must be given as above do not become operative without the approval of the labour trustee until four weeks have elapsed since such notice has been given him ; the labour trustee may grant retroactive approval. He may also give instructions that dismissals shall not become operative until at most two months after notice is given. In cases where dismissals are not carried out within four weeks of the date from which they are operative it is to be held that the notice has not been given.

Form, Period, and Beginning of Notice

Form of notice.

German legislation lays down no absolute rule as to the form in which notice should be given. This may be done either in writing, by word of mouth, by telephone or telegram. Whenever they are consulted, however, the administrative or judicial authorities and occupational organisations recommend the written form of notice. In principle, if the contract is terminated by the employer, notice should be given by the head of the undertaking itself, but it may also be given by his authorised representative (*bevollmächtigter Vertreter*). In the latter case, an employee who has been dismissed may ask for proof that the person who has dismissed him was duly authorised to do so by the head of the undertaking.

The decision to terminate the contract of employment, whether taken by the employer or the employee, must be clearly expressed. It must be a definite and final decision.

Period of notice.

Under German law the period of notice may be of three different kinds : statutory, contractual, or fixed by a social honour court.

(i.) *Statutory period of notice.* — Failing any provision to the contrary in an individual contract of employment or collective agreement, the statutory period of notice is six weeks. Employers and employees may however agree either on a longer or on a shorter period, and must then respect two rules : (*a*) the period of notice must be the same for both parties ; (*b*) it may not be less than one month, except where the employment has not lasted more than three months.

On the other hand, under the Act of 9 July 1926, the following rules must be observed in terminating the contract of employment when the employee has completed several years' service.

An employer who as a rule employs more than two salaried employees, exclusive of apprentices, may not dismiss a salaried employee

whom he (or his predecessor) has employed for not less than five years, except on notice given not less than three months in advance for the end of a calendar quarter. The term of notice is increased after eight years' employment to four months, and after twelve years employment to six months. In calculating the duration of employment, years of service prior to the employee's completion of his twenty-fifth year of age are not taken into account. The reason for the last provision is that the Act of 9 July 1926 was intended to protect elderly employees who are severely affected by unemployment and arbitrary dismissal.

Finally, section 624 of the Civil Code, which applies to all classes of employees, provides that when a contract has been concluded for the lifetime of a person or more than fifty years, it may be terminated by the employee after five years. In such cases six months' notice must be given.

(ii.) *Contractual period of notice.* — In practice, the contractual period of notice is frequently longer than the average statutory period. As a general rule collective agreements fix the period of notice with reference to length of service and the importance of the duties performed. It varies from six to twenty-six weeks.

(iii.) *Period of notice fixed by social honour courts.* — The social honour courts set up by the Act of 20 January 1934 (fourth division) to deal with gross breaches of the social duties arising out of the works community may fix a different period of notice from that laid down by law or contract.

Beginning of notice.

A contract of employment may be terminated, by either party, only for the end of a calendar quarter (31 December, 31 March, 30 June or 30 September). For instance, in the case of salaried employees and technical staff who have not completed more than five years' service and who are therefore, failing any provision to the contrary in an individual contract or collective agreement, normally entitled to six weeks' notice, notice given by one party must reach the other party by 17 February (18 February in leap-years), 19 May, 19 August or 19 November.

Exceptions to the Rule concerning Notice of Dismissal

Temporary appointments.

When an employee has been appointed only temporarily, the legal rules concerning notice of dismissal do not apply unless the contract of employment is concluded for more than three months. If the contract mentions a period of notice, the period must be the same for both parties.

Serious offences.

A contract of employment may be terminated for serious reasons. The following are deemed to be serious reasons entitling the employee

to leave the employment without notice, unless the circumstances would justify another view :

(*a*) if the employee is incapable of continuing his service ;

(*b*) if the employer withholds the agreed remuneration or payments in kind ;

(*c*) if the employer refuses to fulfil the duties laid upon him by the Commercial Code ;

(*d*) if the employer is guilty of assaulting the employee or of committing immoral acts or serious offences against his honour, or if he refuses to protect the employee against such treatment by another employee or by a relative of the employer.

The following in particular are deemed to be serious reasons entitling the employer to dismiss the employee without notice, failing any circumstances which might justify another view :

(*a*) if the employee is unfaithful in his service ; if he commits a breach of trust or a breach of the legal provisions concerning the duties of employees ;

(*b*) if the employee leaves the employment for a period which in the circumstances of the case is considerable, or persistently refuses to fulfil his duties ;

(*c*) if the employee is prevented from performing his duties by a long illness or by a considerable term of imprisonment or by military service lasting more than eight weeks ;

(*d*) if the employee is guilty of assaulting the employer or his representative, or of committing serious offences against their honour.

If the contract is terminated because the employee is, as the result of an accident, but through no fault of his own, incapable for a considerable time of performing his duties, the legal or contractual rules concerning notice of dismissal are not in any way affected.

Compensation for Dismissal

Conditions Governing the Right to a Compensation for Dismissal

The labour court may, if it finds that a contract of employment was wrongfully terminated by the employer and if the latter refuses to revoke the dismissal, award the employee damages. [1]

Composition of Compensation for Dismissal

Compensation is assessed with reference to the financial situation both of the dismissed person and of the establishment. It is proportionate to length of service.

Calculation of the Compensation

Compensation is calculated with reference to the dismissed employee's annual remuneration. The labour court may fix any amount

[1] For procedure, see : " Rules as to the Giving of Notice ", p. 532 above.

between one-twelfth and one-half of annual earnings. In exceptional cases, when the labour court finds that there was clearly no justification for the employer's dismissal of an employee he has employed for many years, the compensation may, under the Act of 30 November 1934, be equal to the full amount of the annual remuneration. [1]

Apart from the provisions mentioned above, both the employer and the employee may, under the Industrial Code, bring an action for damages when a contract is abruptly terminated.

Settlement of Disputes

Disputes

Labour disputes are referred to the judicial authorities for labour questions, namely the labour courts, the labour courts of appeal, and the Federal Labour Court. [2]

The competence of these courts excludes that of the ordinary courts, irrespective of the amount of the claim, in civil actions between employers and employed persons arising out of a contract of employment.

The courts are composed of professional judges and of assessors chosen from among employers and employed persons. The assessors are officially described as labour court judges (*Arbeitsrichter*), judges of the labour courts of appeal (*Landesarbeitsrichter*), and judges of the Federal Labour Court (*Reichsarbeitsrichter*) respectively.

The expenses of the labour courts and of the labour courts of appeal are borne by the States in which they have been set up ; those of the Federal Labour Court are borne by the Federal Government.

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[1] *Note on the Act of 30 November 1934.*

Using certain principles laid down in the Works Councils Act of 1920, the National Labour Regulation Act of 20 January 1934 provides that when the court decrees the revocation of the dismissal and the employer refuses to apply the decree, the court may award the employee compensation. Previous legislation had fixed the amount of compensation at six-twelfths of the employee's last annual earnings ; the Act of 20 January 1934 reduced the amount to four-twelfths of such earnings.

The object of the Act of 30 November 1934 was to restore the maximum limit of six-twelfths and to give the judicial authority power to award damages equal to the worker's total annual earnings when the employer was found to have dismissed him arbitrarily or without sufficient justification.

In the memorandum accompanying the Act of 30 November 1934, the Minister of Labour pointed out that the protection afforded by the Act of 20 January 1934 had proved inadequate. It frequently happened that employers who were unmindful of their social duties refused to revoke the dismissal and elected to pay compensation. In order to avoid this, it seemed necessary to raise the amount of the maximum compensation, at least for the time being, until the principles laid down by the National Labour Regulation Act had been unanimously recognised.

Further, it seemed essential to strengthen the provisions protecting the workers against arbitrary dismissal, particularly when the employer dealt with a reasonable complaint or claim by dismissing the worker, or when for a single and slight breach of discipline he dismissed an employee who had completed several years' service. In order to prevent such abuses, the new Act gives the courts power in certain cases to award compensation equal to the full amount of the worker's annual earnings.

[2] According to the Labour Courts Act (Notification of 10 April 1934, amending the Labour Courts Act ; put into operation on 1 May 1934).

The labour courts are the courts of first instance.

An appeal lies from their decisions to the labour courts of appeal when the amount of the claim exceeds 300 RM. or when the labour court allows an appeal owing to the importance of the principle raised by the dispute.

Labour court procedure must be as expeditious as possible at all stages and may not be affected by legal vocations.

Managers and salaried employees of the legal advice offices established by the German Labour Front for owners of undertakings on the one hand and wage-earning and salaried employees on the other hand are admitted as attorneys-at-law or counsel in the labour courts provided that they appear only in such cases and do not in addition plead professionally in the courts; and advocates empowered by the German Labour Front in individual cases to represent a party are also admitted. Other persons who plead professionally in the courts are not admitted as attorneys-at-law or counsel.

Courts of first instance.

The labour courts are set up as independent courts by the State Department of Justice in agreement with the highest State authority for social administration. Their jurisdiction covers the area of a magistrate.

A labour court consists of the requisite number of chairmen, vice-chairmen, and assessors. The assessors are chosen in equal numbers from among employers and employees.

One chairman and one employers' and one employees' assessor constitute a quorum of each chamber of the labour court.

The number of chambers is fixed by the State Department of Justice in agreement with the highest State authority for social administration.

Separate chambers deal with disputes concerning workers and those concerning salaried employees.

Courts of second instance.

Labour courts of appeal are established in connection with the ordinary courts of first instance by the State Department of Justice in agreement with the highest State authority for social administration.

A labour court of appeal may have its headquarters in some other locality in its district than the seat of the court of first instance to which it is attached.

A labour court of appeal consists of the requisite number of chairmen, vice-chairmen, and assessors. The assessors are chosen in equal numbers from among employers and employees.

One chairman, and one employers' and one employees' assessor constitute a quorum of each chamber of the labour court of appeal.

In other respects the chambers of the labour court of appeal are assimilated to the civil chambers of the court of first instance within the meaning of the Judicature Act.

Court of highest instance.

The Federal Labour Court is established in connection with the Federal Court.

It consists of the requisite number of chairmen of commission of the Federal Court as chairmen, chairmen of commission or councillors of the Federal Court as vice-chairmen, councillors of the Federal Court as judicial assessors, and non-judicial assessors. The non-judicial assessors are chosen in equal numbers from among employers and employees.

One chairman, two judicial assessors, and one employers' and one employees' assessor constitute a quorum of each chamber of the Federal Labour Court.

Only judges who have special knowledge and experience in the field of labour legislation and social questions may be appointed as chairmen, vice-chairmen, and judicial assessors of the Federal Labour Court.

The non-judicial assessors are appointed for three years at a time by the Federal Minister of Labour in agreement with the Federal Minister of Justice.

Assessors must have attained the age of 35 years and should have been occupied as employers or employees in Germany for a considerable time. They may be removed from office by the President of the Federal Court.

Breaches of the Law and Penalties

Breaches of the legal provisions concerning dismissal are dealt with by special judicial authorities, the social honour courts.

Social honour courts are set up in the area of each labour trustee and deal with cases at the latter's request. They consist of a chairman who is an official of the judiciary appointed by the Federal Minister of Justice in agreement with the Federal Minister of Labour, with one leader of an establishment and one confidential councillor as assessors. The leader of the establishment and the confidential councillor are selected by the chairman of the honour court from lists of candidates drawn up by the German Labour Front. They are taken in the order in which they stand on the list, provided that wherever possible persons are selected who belong to the same branch of industry as the accused. Before entering on their duties assessors are sworn by the chairman to perform the duties of their office conscientiously.

Notifications of offences must be lodged in writing, together with a statement of the evidence, with the labour trustee in whose area the headquarters of the establishment are situated. If the chairman of the honour court finds that the application of the labour trustee is justified, he imposes the penalty for which the Act provides. The accused or the labour trustee may lodge an objection to this decision with the honour court, in writing or orally for record in the office of the court, within a week of the communication of the decision. If the objection is lodged in due time, a trial must be held in the

honour court, unless the objection is withdrawn before the trial begins. If the chairman of the honour court does not himself give the decision, he appoints a day for oral proceedings.

The honour court decides at its discretion in pursuance of the results of a public hearing. The defendant may cause himself to be represented at the trial by counsel holding a power of attorney in writing.

An appeal against the sentence of the honour court may be lodged by the labour trustee in each case, but may not be lodged by the defendant unless he is sentenced to a disciplinary fine exceeding 100 RM. or to dismissal. The Federal Honour Court decides respecting the appeal. The appeal must be lodged with the honour court within a fortnight of the communication of the sentence, either in writing or orally for a record in the office of the court. The appeal effects a stay.

The Federal Honour Court has its headquarters in Berlin. For the purpose of making decisions, it consists of two higher officials of the judiciary appointed by the Federal Minister of Justice in agreement with the Federal Minister of Labour, one of whom is appointed the chairman and the other an assessor, together with one leader of an establishment and one confidential councillor and one person nominated by the Federal Government who are assessors. The Court reconsiders the decision of the social honour courts in every respect; it is not bound by the findings of the honour courts and may alter the contested decision at its discretion.

The labour trustee may withdraw his application to the honour court at any time before the chairman of the court has given his decision or before the sentence of the court of first instance has been issued.

Decisions imposing disciplinary fines are carried out by the labour trustee on the authority of a certified copy of the terms of the decision supplied by the clerk of the court issuing the decision and furnished with the attestation of enforceability, in accordance with the provisions respecting the enforcement of decisions in civil cases.

The expenses of the honour courts and of the Federal Honour Court for requisites and staff are defrayed by the Federation.

The person under sentence may be required to pay part or all of the costs of the proceedings.

Argentina

Nature of the Regulations

The rules concerning notice of dismissal are contained in Act No. 11,729 of 21 September 1934, amending Sections 154-160 of the Commercial Code.

The provisions of the Act are imperative. Parties to private contracts of employment are, however, free to agree on a longer period of notice than that laid down in the Act.

The Act applies to salaried employees, agents, clerks, travellers and representatives who are employed under a contract of employment or a contract for the hiring of services.

The contract may be either oral or in writing, but in practice it is usually oral. The term " contract " applies to any agreement under which an employer, whether a company or a private person, engages a person to work in his undertaking, either in a high or in a subordinate post.

The contract may be concluded for an indefinite or a specified period.

Notice of Dismissal

Rules as to the Giving of Notice

Contracts concluded for an indefinite period.

Contracts concluded for an indefinite period may be terminated by one of the parties subject to compliance with the legal provisions concerning notice of dismissal.

Contracts concluded for a specified period.

When the contract of employment is concluded for a specified period, the parties may not terminate it before that period has elapsed unless compensation is paid for the loss suffered by the injured person.

Obligation on the employer to keep a special staff register.

Employers are required to keep a special register, every page of which is to be numbered and initialled by the National Labour Department in the Federal Capital and national territories and by the competent authorities in the provinces ; in this register are to be entered the names of the salaried employees, agents, clerks, travellers, representatives, and wage-earning employees, the date of their entry into employment, their salaries, wages, commissions, bonuses, and other remuneration, and likewise all other relevant contracts and particulars.

Form, Beginning, and Period of Notice

The contract of employment may not be terminated by the wish of either of the parties without notice or compensation in lieu of notice, in addition to any sum which may be due to the employee on account of his length of service if the contract is terminated by the employer.

Form of notice.

Notice is to be given in writing.

Beginning of period of notice.

The period of notice is to run from the last day of the month during which notice was given.

Period of notice.

Except where a longer period is fixed by agreement between the parties, the period of notiee is as follows :

One month if the length of service of the salaried employee, agent, clerk, traveller, representative or wage-earning employee does not exceed five years;

Two months if the length of service of the employee exceeds five years.

During the period covered by the notice the employee is entitled to two hours' free time during his normal hours of work without any reduction of his salary, daily wage, commission, or other remuneration.

Exceptions to the Rule concerning Notice of Dismissal

The following are deemed to be special grounds for the dismissal of an employee without the employer's being under any obligation to pay compensation for dismissal or for failure to give notice, even if a contract for a specified period is in operation:

All acts of fraud or breach of trust certified by a judgment given by a court of law;

Inability to perform the duties and fulfil the obligations which the employee undertook, unless such inability occurs when he first enters his employment;

Commercial operations by the employee on his own account or for another without the express permission of the employer if they affect the employer's interests.

The rule in regard to notice of dismissal applies in the event of the cessation or winding up of the business unless this is the result of *force majeure*.

COMPENSATION FOR DISMISSAL

Conditions Governing the Right to a Compensation for Dismissal

If an employee is dismissed without notice of the prescribed duration, the employer must pay him compensation equivalent to the remuneration due for the statutory period of notice.

In every case of dismissal, whether notice is given or not, the employer must pay the employee a compensation.

Nature and Composition of the Compensation for Dismissal

The compensation is fixed with reference to length of service.

Calculation of the Compensation; Conditions of Payment

According to the Act, the leaving grant must not be less than one half of the employee's monthly remuneration for each year of service or part of a year exceeding three months, the basis taken for the remuneration being the average of the last five years or of the whole period of service if it is less than five years. For the purpose of ascertaining the average, commission and other remuneration, and all payments in kind in the form of board and lodging are deemed to form part of the salary or wage. The compensation may in no case

be less than one month's pay or more than 500 pesos for each year's service.

The suspension of work, on the employer's orders, for more than three months in the course of one year is deemed to be dismissal.

An unjustifiable reduction of the salary, wage, commission or other remuneration, if not accepted by the employee, is deemed to be equivalent to dismissal, and entitles the employee to receive the statutory compensation.

Facilities for Employers to Insure against their Legal Liability

An employer may discharge the obligations imposed upon him by effecting insurance in favour of the persons employed by him with a company or mutual benefit society authorised by the National Executive to undertake such operations; such insurance does not affect the right of the employees covered to take direct action against their employer.

Obligations Laid on the Employee

If an employee desires to terminate his contract of employment, he must give his employer the same notice as he is entitled to receive, and in default of such notice the compensation for which the employer would be liable in similar circumstances.

Protection of the Right to a Compensation for Dismissal

(*a*) *In the event of the transfer, reduction, winding-up or bankruptcy of the undertaking.*

When a business is transferred or the organisation thereof changes, or the former employer has failed to give notice of the duration specified above, and in cases of suspension of work or unjustifiable reduction of pay, the liabilities laid down in the Act devolve upon the new employer.

If the employer becomes bankrupt, the employee is entitled to compensation for dismissal according to length of service.

Compensation for dismissal or for failure to give notice which is payable to the employee is not subject to a moratorium or attachment, and is governed by the legal provisions concerning wages and salaries. Such compensation must be given the priority laid down in the Bankruptcy Act.

(*b*) *In the event of the employee's death.*

In the event of the employee's death, his consort and relatives in the ascending and descending lines, in the order and proportion laid down in the Civil Code, are entitled to compensation according to the employee's length of service; in case of relatives in the descending lines, such compensation is restricted to persons under the age of 22 years unless they are incapable of work. In default of the relatives mentioned, brothers and sisters are entitled to compensation within the limits laid down for relatives in the descending line if the

employee was at the time of his death responsible for their maintenance. Any sums which the beneficiaries received from insurance funds or companies in pursuance of any insurance arrangement or policy entered into by the employer are to be deducted from the compensation.

Damages.

Failure to observe the contract between an employer and his employee is deemed a wrongful act provided that it is not based on any offence committed by one party against the safety, honour or interests of the other party or of his family.

The decision respecting this is in equity by the competent law court or judge with due regard for the relations which exist between superiors and subordinates.

Provisions applying both to Notice of Dismissal and to Compensation for Dismissal

Any agreement between the parties for the reduction of the liabilities laid down in the Act is null and void; these liabilities apply also to a contract of employment for a specified period, in which case notice to leave shall be given one month or two months, according to length of service, before the expiry of the contractual period; the party which fails to give such notice is deemed to accept the renewal of the contract.

If, on the expiry of the period expressly stipulated in the contract of employment, the salaried employee, agent, clerk, traveller, representative or wage-earning employee continues in his employment by tacit renewal or under a new contract, he is to be credited with the former period of service for the purpose of calculating annual leave, the period of notice or compensation equivalent thereto, and the amount of compensation for length of service; any sums which he has already received for the same reason on the expiry of preceding contracts are to be deducted from such compensation. In the same way, in the case of a contract for an indefinite period, the previous period of service is to be taken into account if a dismissed employee re-enters the service of the same employer, and any sums which the employee has received on the same grounds in respect of previous dismissals are to be deducted from the last compensation for length of service.

Settlement of Disputes

The settlement of disputes concerning the right to a compensation for dismissal or to compensation in default of notice is in principle referred to special and private " arbitration courts ". The arbitrators are appointed by the parties. If the arbitrators fail to agree on their award, the parties must appoint an umpire, and if they are unable to agree on such appointment, the competent judge of the commercial court gives the relevant decision. In such actions an employee or his dependants are entitled to sue *in forma pauperis*.

Austria

Nature of the Regulations

The conditions under which contracts of employment concluded between employers and private salaried employees and technical staff may be terminated are laid down in the following enactments :

(1) Federal Act of 11 May 1921 concerning the contracts of service of private employees ;

(2) Federal Act of 5 April 1922 concerning industrial courts, as amended by the Federal Act of 18 July 1929 and by an Order of 23 February 1934, part of which relates to industrial courts.

The provisions of the Act of 11 May 1921 concerning private employees' contracts of employment do not apply exclusively to commercial employees in the strict sense of the term. They also apply to salaried employees in banks and industrial undertakings, and to technical staff. The Act of 11 May 1921 is quite explicit in this respect, as will be seen from the following extracts :

The provisions of this Act shall apply to the conditions of service of persons employed in the business of a merchant, chiefly in the performance of work of a commercial character (commercial assistants), or in superior positions in work not of a commercial character, or in office work, in so far as the service in question is the principal remunerative occupation of the employee.

The provisions of this Act shall also apply to the conditions of service of persons chiefly employed in work of a commercial character, or in superior positions in work not of a commercial character or in office work, by undertakings, institutions or other employers of the classes mentioned below, in so far as the service in question is the principal remunerative occupation of the employee :

(*a*) in undertakings of all kinds to which the Industrial Code applies, and also in connection with associations and foundations of all kinds ;

(*b*) in credit institutions, savings banks, insurance institutions of all kinds, etc. ;

(*c*) in the editing, management or sale of a periodical publication, in advocates', notaries' and consulting engineers' offices ;

(*d*) in the business of civil engineers and of architects and surveyors ;

(*e*) in the tobacco trade, etc. ;

(*f*) in the offices of commercial brokers, private business agencies and enquiry offices ;

(*g*) in the mining of reserved minerals including establishments set up under mining concessions ;

(*h*) in private curative institutions, private educational institutions, etc.

Austrian legislation does not contain imperative provisions concerning the form of contracts of employment. The Act of 11 May 1921 merely provides that the nature and extent of the services and the remuneration due in respect of them are, in default of an agreement, regulated by existing local custom. In default of such custom,

the work performed must be reasonable in relation to the circumstances, and corresponding remuneration must be given.

Thus the contracting parties are free to lay down such working conditions as they please in the contract of employment, provided it contains nothing that is contrary to law and custom. The legal provisions concerning the termination of the contract of employment must, however, always be observed.

Agreements, whether private or collective, which do not respect these provisions are held to be null and void.

Notice of Dismissal

Rules as to the Giving of Notice

Contracts concluded for an indefinite period.

If an employee is engaged or his employment continued for an indefinite period, the employment may be terminated by notice in accordance with the legal provisions.

Contracts concluded for a specified period.

The employment terminates on the expiry of the period for which it was accepted.

If the employment was entered upon for a definite period, it may be terminated by either party without notice before the expiry of the said period, if serious reasons for doing this exist.

The following, in particular, are deemed to be serious reasons entitling the employee to leave the employment prematurely :

If the employee is incapable of continuing his service or unable to do so without injury to his health or morals ;

If the employer without due cause reduces or withholds the remuneration payable to the employee, or, in the case of payments in kind, injures him by providing unhealthy or insufficient food or an insanitary dwelling, or infringes any other essential terms of the contract ;

If the employer refuses to fulfil the duties prescribed by law for the protection of the life, health, or morals of the employee ;

If the employer is guilty of assaulting the employee or his dependants or of committing immoral acts or serious offences against their honour, or if he refuses to protect the employee against such treatment by another employee or a relative of the employer.

The following in particular are deemed to be serious reasons entitling the employer to dismiss the employee prematurely :

If the employee is unfaithful in his service ; if in the course of his activities he accepts unlawful benefits from a third party without the knowledge or consent of the employer ; in particular if he receives a commission or other remuneration, or if he is guilty of any action which shows that he is unworthy of the confidence of the employer ;

If the employee is incapable of performing the agreed work or work which is reasonable in the circumstances ;

If a commercial employee carries on an independent commercial undertaking without the consent of the employer, or if he carries on, on his own account or on account of another, commercial contracts in the employer's class of business, or if he contravenes the prohibitions laid down in the Act (prohibition of competition);

If the employee, without lawful reason, fails to fulfil his duties during a period which in view of the circumstances is considerable, or persistently refuses to fulfil his duties or to observe orders of the employer which are justifiable in view of the nature of the employment, or if he seeks to incite other employees to insubordination towards the employer;

If the employee is prevented from performing his duties for longer than the period specified in the Act by sickness or accident or through having to undergo a considerable term of imprisonment or through his being absent for a period which in the circumstances of the case is considerable;

If the employee is guilty of assaulting the employer, his representative, his relations or fellow employees, or of committing immoral acts or serious offences against their honour.

If an employee without serious reason leaves his employment prematurely or incurs premature dismissal by an offence, the employer is entitled to compensation for any injury he suffers in consequence.

As regards services already performed for which remuneration is not yet due, the employee is entitled to a corresponding fraction of the remuneration only in so far as such services have not become wholly or almost entirely valueless to the employer on account of the premature termination of the employment.

If an employer without serious reason dismisses an employee prematurely, or if the employee leaves prematurely on account of any offence on the part of the employer, the employee is, without prejudice to any other claims for compensation, entitled to the contractual remuneration for the remainder of the period of service fixed by contract or the time which would have elapsed if due notice had been given by the employer, taking into account the remuneration saved through the termination of the employment, or which the employee has earned by other employment or deliberately refrained from earning.

The right to the leaving grant due to the employee is not affected by this provision.

If the employee is engaged on the express condition that he shall begin work on a particular day, the employer may withdraw from the contract if for any reason whatever the employee fails to begin work on the day specified.

In addition to the above case, the employer may withdraw from the contract before the employee begins work if, without being unavoidably prevented, the employee fails to begin work on the day agreed upon, or if, being unavoidably prevented, he delays beginning work for more than fourteen days. This provision applies also when circumstances are present which entitle the employer to dismiss the employee prematurely.

The employee may withdraw from the contract before beginning work when circumstances are present which entitle him to leave the employment prematurely. This provision also applies if he is prevented from beginning work for more than fourteen days by the employer's fault or on account of some occurrence affecting the employer. In the latter case if the employee begins work in spite of the delay, he is entitled to remuneration from the day on which he should have begun work.

If, before the employee begins work a receiving order in bankruptcy is made against the employer, both the receiver and the employee may withdraw from the contract.

If the employer withdraws from the contract without serious reason, or if he is guilty of conduct justifying the employee in withdrawing, he must pay the employee the remuneration due to him for the period which would have elapsed before he left his employment if he had been given due notice by the employer on the day of beginning work. If the engagement was made for a specified period not exceeding three months, the employer must pay the employee the remuneration due for the whole period ; if the stipulated period exceeds three months, he must pay the part of remuneration due for three months. Any further claims to compensation are not affected by the foregoing provisions.

The employee has the same claims if the receiver in bankruptcy withdraws from the contract.

If the employee withdraws from the contract without serious reason, or if he is guilty of conduct justifying the employer in withdrawal, the employer may claim compensation.

If both parties are to blame for the withdrawal from the contract or the premature termination of employment, the judge determines at his discretion whether and to what extent compensation is payable.

Contract of employment for life or more than five years.

An employee engaged for the lifetime of a person or for more than five years may leave the employment at any time after five years provided that he gives six months' notice.

Form, Period, and Beginning of Notice

Form of notice.

The Act contains no express provision as to the form of notice. Notice may be given orally or in writing.

Period of notice.

The period of notice is six weeks, and is increased to two months after the completion of two years' service, three months after five years' service, four months after fifteen years' service and five months after twenty-five years' service.

The period of notice may not be reduced by agreement below the term fixed in the Act, but it may be agreed that it shall expire on the fifteenth or the last day of the calendar month.

In default of an agreement more favourable to him, the employee may terminate his employment on the last day of a calendar month, provided that he gives one month's notice. This period of notice may, by agreement, be extended to six months, provided that the notice to be given by the employer is not less than the period of notice fixed by agreement with the employee.

Beginning of notice.

In default of an agreement more favourable to the employee, the employer may terminate the employment at the end of any quarter on giving notice in advance.

Rules laid down by Collective Agreements

The rules as to the termination of a contract of employment which are contained in collective agreements are hardly more favourable than the provisions of the Act. The main provisions made in the collective agreements concerning the staff of private banks and the staff of the National Bank are the following:

(*a*) *Private banks.*

When an employee enters into employment for an indefinite period the employer may terminate the contract at the end of any quarter on giving six weeks' notice. After two years' service, two months' notice must be given; after five years, three months; after fifteen years, four months; after twenty-five years, five months.

The period of notice may not be reduced by agreement, but it may be agreed that the period shall expire on the fifteenth or the last day of the calendar month.

In default of an agreement more favourable to the employer, the employee may terminate his employment on the last day of the calendar month provided he gives one month's notice. This period of notice may by agreement be extended to six months, provided that the notice to be given by the employer is not less than the period of notice fixed by agreement with the employee.

Employer and employee may separate without having to give notice on either side when there are serious reasons for their doing so.

(*b*) *National Bank.*

The employment may be terminated under the following conditions, except when it is terminated as a disciplinary measure:

(i) when the official voluntarily retires, which he may do at any time without giving reasons, provided he gives the stipulated notice.

(ii) when the Bank gives notice, in which case the following rules apply.

The Bank may at any time dismiss an official employed under a temporary or permanent contract before his third year of service has expired, provided it gives the notice stipulated in the Act concerning private employees. After he has completed his third year of service,

the official may be dismissed if his private file contains three reports to the effect that he is inefficient, provided the reports have been confirmed by the Appeal Committee dealing with reports in private files, or have not been disputed by the official. He may also be dismissed after the completion of his third year of service in the event of prolonged illness, or for special reasons, or as a disciplinary measure. In such cases permanent officials must be given four months' notice unless they have completed ten years' service, when they are entitled to six months. The notice may run from the fifteenth or the last day of any calendar month.

The following rules apply to book-keepers. The Bank may at any time and without giving reasons dismiss a temporary employee subject to six weeks' notice, to expire on the fifteenth or last day of any calendar month. The same rule applies to a book-keeper employed under a permanent contract unless he has completed his fifth year of service. After five years' service an employee in this category may be dismissed only if his private file contains a report to the effect that he is inefficient or for the reasons mentioned above with regard to officials. Book-keepers employed under permanent contracts must be given two months' notice if they have completed five but not ten years' service, and three months after ten years' service. The notice may run from the fifteenth or last day of any calendar month.

Exceptions to the Rule concerning Notice of Dismissal

Temporary employment.

If the employee is only engaged to meet a temporary need, the employment may be terminated at any time during the first month by one week's notice from either party.

Other reasons for dismissal.

A contract of employment may be terminated without notice for serious reasons and more especially if the employee commits a breach of the legal provisions prohibiting competition. The Act contains the following stipulations in this respect:

A person employed in a commercial undertaking may not carry on an independent commercial undertaking or transact any commercial business on his own account or on the account of another in the employer's class of business without the consent of the employer.

If the employee commits a breach of this provision, the employer may claim compensation for the injury so caused or require that the business done on account of the employee shall be deemed to be done on behalf of the employer. As regards business done on account of another, the employer may demand that the moneys received for such business be paid to him, or that the claim for such moneys be transferred to him.

The employer's claims lapse three months after the date when he becomes aware that such business has been done, and in any case at the end of five years after the business was done.

An employee who is in the service of an engineer, architect or surveyor may not, without his employer's consent, undertake commissions within the business sphere of that employer, either on his own account or on the account of another, if the interests of the employer would be prejudiced thereby ; further, he may not, without his employer's consent, take part simultaneously with him in competition for the same object. If the employee commits a breach of this provision, the employer may claim compensation for the injury so caused. The provisions mentioned in the preceding paragraph apply correspondingly.

Compensation for Dismissal

Conditions Governing the Right to a Compensation for Dismissal

After the employment has lasted continuously for three years, the employee is entitled to a compensation on the termination of the contract.

Composition of the Compensation for Dismissal

The compensation is fixed with reference to the employee's monthly salary and his length of service.

Calculation of the Compensation

The compensation must amount to twice the remuneration due to the employee for the last month's employment, and is increased after five years' employment to three times, after ten years' employment to four times, after fifteen years' employment to six times, after twenty years' employment to nine times, and after twenty-five years' employment to twelve times the monthly remuneration.

In the event of the winding-up of an undertaking, the obligation to make a compensation lapses either wholly or in part if the personal or economic situation of the employer has become so bad that he cannot reasonably be expected to fulfil the obligation either wholly or in part.

In the event of the undertaking being transferred to another, the employees are not entitled to a compensation if they refuse to continue in employment although the purchaser of the business offers to continue to employ them under the same conditions as before and binds himself to treat the period of service under his predecessor as service under himself.

The compensation is payable on the termination of the contract provided that it does not exceed three times the monthly remuneration ; any excess over this sum may be paid from the fourth month onwards in monthly instalments payable in advance.

Sums received by the employee in pursuance of statutory insurance are deducted from the compensation only in so far as they exceed the legal minimum payments.

If the employment is terminated by the death of the employee, the leaving grant amounts only to one-half of the sum specified in the first paragraph and is due only to the legal heirs for whose maintenance the deceased was legally responsible.

The employee is not entitled to a compensation if he gives notice to leave, leaves his employment prematurely without serious reasons, or is dismissed prematurely on account of an offence.

Rules laid down in Collective Agreements

As in the case of notice of dismissal, the rules applicable in virtue of collective agreements to the staff of private banks and to that of the National Bank are given below.

(*a*) *Private banks.*

After three years' uninterrupted service the employee is entitled to a compensation equal to twice the amount of his last monthly salary.

After 5 years' service, the compensation amounts to 3 months' salary
„ 10 „ „ „ „ „ „ 4 „ „
„ 15 „ „ „ „ „ „ 6 „ „
„ 20 „ „ „ „ „ „ 9 „ „
„ 25 „ „ „ „ „ „ 12 „ „

In the event of the undertaking being wound up, the obligation to make a compensation lapses either wholly or in part if the personal economic situation of the employer has become so bad that he cannot reasonably be expected to fulfil the obligation either wholly or in part.

The employee is not entitled to a compensation if he gives notice to leave, leaves his employment prematurely without serious reasons, or is dismissed prematurely on account of an offence.

(*b*) *National Bank.*

Apart from cases in which an employee leaves the service at his own request or is dismissed as a disciplinary measure or because he has been reported as inefficient, an official or an accountant who is dismissed by the Bank is entitled to a compensation calculated as follows :

(*a*) Officials who have not reached the pensionable age and have completed one year's service but not more than three years' receive a grant amounting to four times their last monthly salary plus a proportionate share of regular allowances.

Book-keepers employed under a permanent contract, who have not reached the pensionable age and have completed not less than three years' service but not more than five are entitled to a grant equal to the amount of their last monthly salary plus a proportionate share of regular allowances.

(*b*) Officials who have not yet reached the pensionable age and have completed more than three years' service are entitled to a compensation only if they have been dismissed owing to a prolonged illness. The grant is equal to eight times the amount of their last monthly salary. Book-keepers employed under a permanent contract

who have not reached the pensionable age and have completed more than five years' service are under similar circumstances entitled to a grant equal to four times the amount of their last monthly salary.

(*c*) Officials who have reached the pensionable age are entitled to have their pension increased by an amount equal to the salary they would have received had they remained in employment, as follows :

after	3	years'	service,	2	months'	salary
,,	5	,,	,,	3	,,	,,
,,	10	,,	,,	4	,,	,,
,,	15	,,	,,	6	,,	,,
,,	20	,,	,,	9	,,	,,
,,	25	,,	,,	12	,,	,,

Book-keepers who have reached the pensionable age have their pension increased by an amount equal to the salary they would have drawn had they remained in employment, after completing more than 10 years' but less than 20 years' service, for 3 months, after completing 20 years' service, for 4 months.

Time Limit for Establishing Claims

Claims for compensation on account of premature leaving or dismissal within the meaning of sections 28 and 29 of the Act of 11 May 1921 and claims for compensation on account of withdrawal from contract within the meaning of section 31 lapse if not made judicially enforceable within six months.

The period dates in the case of claims of the first kind from the end of the day on which the employee leaves or is dismissed, and in the case of the second kind of claim from the end of the day on which work should have begun.

Settlement of Disputes

The industrial courts have jurisdiction in disputes between employers and employed in regard to conditions of employment :

(*a*) in undertakings to which the Industrial Code applies ;

(*b*) in other undertakings, establishments and business covered by sections 1 and 2 of the Act of 11 May 1921 [1] i.e. commercial undertakings of all kinds.

The disputes which more especially come within the jurisdiction of the industrial courts include :

(*a*) wage and salary disputes ;

(*b*) disputes concerning the beginning, duration and termination of employment or service.

Either the industrial court within whose area the workplace is situated or that within whose area the headquarters of the under-

[1] See above, p. 545 " Nature of the Regulations ".

taking of the employer are situated has legal competence, according to the choice of the plaintiff.

An industrial court establishes its competence *ex officio.* The competence of the industrial court excludes that of the ordinary courts. It may not be excluded by a collective agreement. The parties retain the right to refer a dispute to a conciliation board.

An industrial court consists of a chairman and one or more vice-chairmen according to requirements, together with the requisite number of assessors and their substitutes appointed from the groups of employers and employees, taking into account the branches of trade of importance to the industrial court concerned. The provisions relating to assessors also apply to their substitutes.

The court transacts its business and takes decisions in committees consisting of the chairman or one of the vice-chairmen and two assessors, of whom one must belong to the employers' group and the other to the employees' group.

In default of special provisions, the procedure before the industrial courts is governed by the provisions of the Civil Procedure Code.

Appeals may be lodged against the judgment of an industrial court under certain conditions. They are decided by the court of first instance within whose area the industrial court is situated and the decision is final.

Distraint may be effected in virtue of legally binding judgments of industrial courts and arrangements entered into before the industrial courts. At the request of either party the industrial court must certify the enforceability of the distress warrant.

(To be continued.)