In the second place, in the case of civilian war victims there is only a very limited presumption of causal connection between the infirmity and the war action to which that infirmity is attributed.

According to Section 2 of the Act relating to civilian victims, the presumption of causal connection is limited to wounds resulting from war operations. Wounds, whether fatal or not, are deemed to be due to war action if they are received during military operations carried on by the allied or enemy armies, or are due to acts of violence committed by the enemy.

The following are also deemed to be due to war action : injuries or death, even after the conclusion of military operations, as a result of the explosion of projectiles, the collapse of buildings, or any other acts which can be ascribed to war conditions because of the state of the premises in which the injury is received ; and death occurring or injuries received during the performance of work imposed on the individual by the enemy, either in captivity or in occupied territory.

In the case of infirmities or death resulting from a disease contracted during hostilities and due to brutality suffered at the hands of the enemy, or to ill-treatment in a fortress or prison camp, the applicant or his representatives must show adequate proof of the facts alleged and of the causal connection between those facts and the infirmities in question.

Compensation for civilian war victims is always paid at the rate applicable to privates or their dependants.

Military Service and Contracts of Employment

Introduction

In continuation of the series of articles on the contracts of employment of workers called up for military service, begun in an earlier issue of the *Review* [1], the following article explains the provisions in force in Belgium, Hungary, and Italy.

In all three countries the essential purpose of the regulations is to ensure the reinstatement of workers, but in Hungary and in Italy there are also certain rules concerning the payment of wages.

In accordance with the legal systems of these countries, the regulations—a term which includes collective agreements in the case of Italy—sometimes make distinctions between different groups of workers, and more particularly between salaried employees and manual workers.

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[1] See *International Labour Review*, Vol. XL, No. 5, Nov. 1939, pp. 654-665.

Belgium

There are two sets of regulations in Belgium for the protection of workers called up for military service: (*a*) the legislation concerning contracts of employment, including the Workers' Contracts of Employment Act of 10 March 1900 and the Salaried Employees' Contracts of Employment Act of 9 August 1922; and (*b*) two special Acts, one of 24 October 1919 concerning the right to reinstatement of persons called up for military service, and the other of 24 July 1939 concerning the rights of citizens recalled for service in exceptional circumstances.

These Acts deal with the right to reinstatement after military service, but they make no reference to the payment of wages or of any special allowance during the period of service.

The nature and extent of the protection granted by the regulations vary according to the circumstances which lead to the individual's being called up. In the case of active military service or a period of military instruction, the protection differs according to whether the individual is a manual worker or a salaried employee. In the case of wartime mobilisation or the recall of men to the colours in exceptional circumstances, the regulations are the same for the two groups of workers.

Active Military Service and Periods of Instruction

Salaried Employees.

The Act of 7 August 1922 provides that when a salaried employee is called up for military service his contract of employment is merely suspended.

Whenever he is called up for active service or recalled to the colours, whether for a period of instruction or because of mobilisation or some other circumstance, his contract is again suspended. If the contract is for an indefinite period, the employer may not terminate it, even with the statutory period of notice, until the employee has been discharged.

A contract concluded for a specified time or piece of work expires when the prescribed period has elapsed or when the work is completed.

Any person replacing an employee who is on service must be engaged by a written contract, and may be dismissed without the statutory notice when the employee is released from military service and returns to his employment.

Workers.

According to the Contracts of Employment Act of 1900, the obligations arising out of a contract of employment lapse in cases of *force majeure*. When, however, the events constituting the *force majeure* are by their nature such that they only temporarily suspend the carrying out of the contract, they do not involve its termination.

It follows that when a worker is called up for military service his contract of employment is terminated, but if he is recalled for a

period of instruction the contract is considered merely as being temporarily suspended.

Wartime Mobilisation and Recall in Exceptional Circumstances

The provisions concerning these two cases are the same for workers and salaried employees.

Wartime Mobilisation.

The Act of 24 October 1919 concerning the right to reinstatement of persons called up for active service applies to all employed persons, including those in the mercantile marine and the shipping industry, but excluding workers in undertakings holding concessions for public services.[1]

When a worker under contract is called up, his contract may not be terminated by the employer on the ground of *force majeure.* An employer who wishes to dismiss a worker engaged for an indefinite period must give not less than three months' notice, unless there is some good reason justifying the dismissal.

The contract of a worker engaged for a specified period is deemed to be prolonged by the whole duration of his period of service. If the unexpired period of his contract is less than three months, it may be prolonged at the end of that period if the worker applies for an extension when he notifies the employer of his return to civil life or his recovery from any war injuries.

Conditions for reinstatement. The worker must apply for reinstatement within 15 days of his release from active service or of his recovery from any illness or wound; if the undertaking has been closed, he must apply within 15 days of the date on which it reopens.

The obligation of the employer lapses when reinstatement is impossible. The legislation makes a distinction between permanent and temporary impossibility. Reinstatement is deemed to be permanently impossible: (*a*) when the undertaking has been destroyed, or there is a shortage of equipment or raw materials, or orders are entirely lacking or insufficient; (*b*) when the worker has lost the whole or part of his fitness for his particular job as a result of mutilation, infirmity, or illness; (*c*) in other circumstances beyond the control of the employer.

If the reinstatement of the worker is only temporarily impossible, the employer must notify him as soon as it becomes possible. The worker is then required to intimate within eight days whether he intends to return to his job or not. The burden of proof that reinstatement is impossible rests on the employer.

Substitutes. A worker may not be refused reinstatement on the grounds that a contract has been concluded with a substitute, unless the substitute is a member of the employer's family living in his

[1] The reinstatement of persons in these services called up during the war of 1914-1918 was dealt with in an Act of 3 August 1919.

household. The employer must give 14 days' notice when terminating the contract of the substitute.

Penalties. An employer who refuses to reinstate a worker must pay damages equal to the remuneration for the statutory three months' notice, in the case of contracts for an indefinite period, or, in the case of a contract for a specified period, the remuneration corresponding to the unexpired period, unless the worker asks to have the contract extended.

Recall in Exceptional Circumstances.

The Act of 24 July 1939 deals with persons recalled to the colours in exceptional circumstances in accordance with Section 53 of the Militia Act—that is to say, when the Government suspends or changes its decision to send a militiaman on leave for an indefinite period, or temporarily recalls to the colours the whole or a certain proportion of some classes.

The Act provides that when a worker is recalled in these circumstances his contract of employment is merely suspended for the period of his service. The text applies to all employed persons without distinction, but it expressly mentions that the Act of 7 August 1922 applies to the contracts of salaried employees ; it will be remembered that the provisions of that Act referred to persons called up for service in peace-time or in wartime. The legislation thus fills the gap that formerly existed owing to the fact that the Salaried Employees' Contracts of Employment Act was restricted to that category of workers and the 1919 Act referred only to mobilisation in the event of war.

The new text, which follows the principles of the 1922 rather than of the 1919 legislation, prescribes that contracts concluded for a specified period or job must be carried out only in so far as the worker returns to his employment before the time limit specified in the contract has expired. There is, therefore, no possibility of prolongation.

In contrast with the methods adopted in 1919, no attempt has been made to issue detailed regulations. The preamble to the legislation states that employers must bear in mind that the recalling of workers to the colours merely suspends their contracts, and that consequently the contracts automatically come into force again as soon as the workers in question are released from service.

Substitutes. The contract of a substitute automatically terminates on the day on which the original worker is re-engaged, provided always that it is expressly mentioned in the substitute's contract that he was engaged to replace a worker on military service.

Penalties. The provisions of the Act are deemed to be a matter of public policy, and consequently any agreement to the contrary is null and void.

HUNGARY

Workers called up for national defence in Hungary are protected by the National Defence Act (No. II of 1939) and the Administrative Regulations (No. 9300, of 5 October 1939) concerning compulsory service for national defence, as well as by a number of Orders issued in October 1938 in connection with the exceptional military measures taken at that time, these Orders having been declared applicable, with certain slight changes, to the situation in the autumn of 1939.

The measures in question deal with two problems : the worker's right to reinstatement and the payment of wages during military service. They do not apply to all workers, but only to certain categories, in accordance with the legislation relating to contracts of employment which is in force or in course of preparation for the different groups of workers concerned.

Right to Reinstatement

In the case of certain groups of workers, the law prohibits termination of contracts by the employer. Apart from that, and in a more general way, employers are required to reinstate workers of certain groups when they are released from service.

Termination of Contract.

Order No. 7800 of 29 October 1938 relating to farm bailiffs and Order No. 7400 of 15 October 1938 relating to farm servants (the latter amended by Order No. 8260 of 1 September 1939) provide that the employer may not terminate a contract, even with the prescribed period of notice, if the worker concerned is undergoing a period of special instruction, or has been recalled to the colours for compulsory service in the reserve or the supplementary reserve.

The National Defence Act provides that the contracts of employment of public employees may not be terminated because of military service.

Guarantee of Reinstatement.

According to the National Defence Act and the administrative regulations thereunder, the employer is obliged to reinstate workers of the following categories when they are released from service : (*a*) salaried employees (professional workers) in industrial and commercial undertakings ; (*b*) domestic servants (Act No. XIII of 1876) ; (*c*) farm servants (Act No. XLV of 1907) ; and (*d*) factory workers, journeymen, and shop assistants, as defined in Act No. XVII of 1884 (excluding transport workers, miners, and persons employed in the liberal professions).

This rule applies whenever the worker is called up for military service or for compulsory service for national defence, whether in time of peace or in time of war. Workers are not protected, however, unless they have worked uninterruptedly for not less than

one year in the same establishment, except in the case of those recalled for a period of military instruction or for compulsory service in time of peace.

Conditions of Reinstatement.

The following conditions are laid down for the application of the principle :

(1) The worker must return to his employment within 15 days of his release from service.

(2) The employer's obligation lapses if a substantial change in the situation of the household, works, or undertaking, since the departure of the worker, makes it impossible for him to be employed on his former job, or if the reinstatement of the worker will be likely to ruin the employer.

(3) The legislation restricting the economic activities of the Jewish population (Administrative Regulations No. 7720 of 1939) gives employers the right to refuse to reinstate a Jewish employee after his military service if by so doing they would bring the number of their Jewish employees above the statutory limit.

Payment of Wages

The regulations in force relating to wages apply only to salaried employees in industry and commerce and to farm bailiffs and farm servants. All other workers, including domestic servants, are excluded from this protection.

Salaried Employees in Industry and Commerce.

The rights of salaried employees were laid down in Order No. 7777 of 28 October 1938, which applies also to certain groups treated as salaried employees, such as shop assistants, foremen, etc.

The following advantages are guaranteed to these workers when recalled to the colours in the exceptional circumstances mentioned above :

(1) The employee receives his full salary for the month during which he is required to rejoin the army. If he is paid weekly, he receives twice his weekly wage for the week during which he is called up.

(2) If the family of an employee who is not an officer is destitute, the employer must pay an allowance towards the family expenses. The amount of the allowance is equal to 50 per cent. of the employee's salary if he has one member of his family to support and rises by 10 per cent. for each additional member. The allowance may not, however, exceed the employee's total remuneration, or the limit of 100 pengö a month in the case of professional workers and 70 pengö a month in the case of wage earners treated as salaried employees.

(3) Any accommodation supplied by the firm must remain at the disposal of the employee or his family during the whole period of military service.

Agricultural Workers.

In accordance with the Orders of 1938 already mentioned, farm servants and farm bailiffs who are recalled to the colours retain their right to the following allowances in kind : accommodation and fuel, land for cultivation, and the amount of fodder stipulated in their contracts. This privilege is not granted to farm servants unless they have family responsibilities (a wife, children, or other persons living with them). When a farm servant is called up for compulsory service in peace-time, he retains his dwelling and the land granted him for cultivation under his contract.

A farm bailiff receives in addition : (1) half his cash salary, if he has no family responsibilities and is not an officer ; (2) half his cash salary and half his allowance in kind, if he has one person to maintain ; (3) three-quarters of his remuneration in cash and in kind, if he is responsible for the maintenance of several persons.

ITALY

There are separate regulations for salaried employees and for manual workers who are called to the colours in Italy.

The position of salaried employees is governed by the Legislative Decree of 13 November 1924 relating to contracts of employment, the Decree of 15 June 1936 relating to the legal and material situation of salaried employees recalled to the colours or enlisting voluntarily as a result of a military emergency, and the Royal Decree of 14 August 1936 giving effect to the preceding Decree.

Workers are protected by the collective agreements concluded between the various general confederations of employers and workers and, in the case of certain groups of workers, by special collective agreements.

The two sets of regulations differ greatly in scope, but they all prescribe the right to reinstatement and the payment of wages.

Right to Reinstatement

Salaried Employees.

The Legislative Decree of 13 November 1924 makes a distinction between employees called up for their period of military training and those recalled to the colours. In the first case, the contract of employment is deemed to be terminated unless it contains a stipulation to the contrary ; in the second case, the employer must keep the post open. In addition, any time spent on military service by employees recalled to the colours is reckoned towards their seniority for all purposes.

That, in brief, is the situation in normal times.

When, as in the present circumstances, workers are called up because of a military emergency—the existence of which must be determinated by the Ministry of Corporations—the position of salaried employees who are mobilised is governed by the provisions of the Legislative Decree of 15 June 1936, which automatically replace those of the Legislative Decree of 13 November 1924.

Scope. The Legislative Decree of 15 June 1936 applies not only to salaried employees as defined in the Decree of 1924 who are recalled to the colours, but also to those who voluntarily enlist or offer their services before their class is called up, and to those who join the colours without having gone through a period of military service. The Legislative Decree apparently does not apply to those called up for their period of military training.

Workers who, under collective agreements, receive a salary equal to or higher than that prescribed for salaried employees by the Decree of 1924 are treated as salaried employees.

Purpose of the regulations. If a person falling within the scope of the Decree is employed under a contract for an indefinite period, he is entitled to reinstatement and to seniority in respect of his period of military service. The Legislative Decree provides that the contract of employment shall be deemed to be suspended until the end of hostilities, and that all time spent with the colours shall be reckoned towards seniority for all purposes. It follows that an employee is entitled to return to the post which he actually held before being recalled to the colours, and also to all the advantages attaching to that post under laws, customs, or collective agreements. On his return, therefore, he automatically enjoys all the advantages of seniority as laid down in the Legislative Decree relating to contracts of employment, such as salary increments, increased sickness benefit, extended annual holidays with pay, a longer term of notice, an increase in the amount of the seniority allowance, etc.

If the worker is on probation, the fact of being recalled to the colours or of enlisting voluntarily suspends the contract of employment, but in this case the time spent with the colours is not taken into account for the purposes of seniority.

If the worker's contract is concluded for a specified period, he is entitled to have his post kept open for the whole of the unexpired period of his contract from the time of being mobilised until the contract expires.

Conditions for reinstatement. A worker who is recalled to the colours or who voluntarily enlists must, within thirty days after the cessation of his military service, offer to return to the service of his employer, failing which he will be considered as having resigned his position.

Substitutes. In order to replace persons who are called up or who have voluntarily enlisted, the employer may temporarily engage other workers, provided that he notifies them in writing at the time of their engagement that the employment is subject to the provisions of the present regulations.

If a mobilised worker or volunteer returns to work, one of the workers thus temporarily engaged may be dismissed with a fortnight's notice and without compensation. With this exception, the termination of the contract of employment of a worker engaged temporarily is governed in every case by the provisions of the

Legislative Decree of 13 November 1924, for salaried employees, or by the provisions of collective agreements, for other workers.

Workers.

Section XVIII of the Labour Charter of 21 April 1927 laid down the following principle: "A worker shall not be dismissed because he has been called up for service in the army or the militia". In reality, this principle involved a moral obligation, but no definite legal obligation. An effort was made indirectly to enforce this obligation by the Legislative Decree of 6 May 1928 relating to the registration and publication of collective agreements, Section 8 of which provided that the publication—and consequently the coming into force—of collective agreements was subject to their containing definite provisions to give effect to the principles of the Labour Charter, including the principle concerning persons called up for military service.

At the present time, all collective agreements in Italy do contain clauses on this subject. In order to ensure uniform treatment for all workers, the various general confederations of employers and workers have entered into collective agreements containing uniform stipulations applying to all employers and workers in any given branch of the economic system.

The position of workers in commerce is governed by the collective agreements of 15 March 1935 and 15 June 1936, that of workers in industry by the agreements of 25 June and 17 September 1935 and 27 March 1936, that of agricultural workers by an agreement of 17 September 1935, and that of settlers and share-farmers by an agreement of 16 June 1939.

Purpose of the regulations. All these agreements provide that when workers (as distinct from salaried employees) are recalled to the colours or enlist voluntarily their posts shall be kept open and their period of military service shall be reckoned for purposes of seniority with all the advantages which this implies under the different agreements.

This protection also covers the families of settlers (*coloni*) and share-farmers (*mezzadri*) whose remuneration consists mainly in the produce of the holding which they cultivate. The landlord may not terminate share-farming or settlement contracts during the period of military service except on grounds specifically mentioned in the contract as justifying its termination without notice.

If a landlord considers that he must give notice for other reasons to a family of settlers, some of whose members are called up for military service, the reasons must be examined by a joint committee composed of representatives of the organisations of agricultural employers and workers and presided over by a representative of the Federal Secretary of the National Fascist Party.

Conditions for reinstatement. Except in cases of *force majeure* which can be proved by the worker, the latter is obliged to resume his service in the undertaking in which he formerly worked within a

period ranging from ten to twenty days of his demobilisation, failing which he loses his post and the allowances payable for termination of contract.

Payment of Wages

Salaried Employees.

Salaried employees and commercial workers treated as such are entitled to the following allowances during the whole of their period of military service.

Employees who are not officers or non-commissioned officers receive: (*a*) one-third of their salary, if they are unmarried or widowers without children; (*b*) one-half their salary, if they are married without children or unmarried but responsible for the maintenance of parents, brothers, or sisters; (*c*) if they are married or widowers with children to maintain, two-thirds of their salary if the number of children does not exceed three, and otherwise three-quarters of their salary.

An employee who is an officer or non-commissioned officer receives the allowances mentioned above—due account being taken of his family situation—only if his civilian salary exceeds the pay of an officer or non-commissioned officer, including all supplements, family allowances, cost of living bonuses, etc.

In fixing the remuneration on which the allowances will be calculated, account must be taken not only of the actual salary but also of allowances for family responsibilities, cost of living bonuses, any regular fixed allowances, commission, bonuses on output, and shares in profits.

If the worker is remunerated wholly or partly on a commission basis, or by means of output bonuses or a share in profits, the value of this remuneration will be calculated on the basis of the average for the three preceding years, or of the average over the whole period of service if the worker has been in the same employment less than three years.

The employer, in accordance with the regulations laid down in the Decree of 14 August 1936, is solely responsible for the cost of paying the above allowances.

In order to secure an equitable distribution of the expenditure involved by these provisions among all the employers concerned, the Decree of 14 August 1936 provides that the employers' contributions, which are based on the number of employees in each undertaking and the amount of their salaries, must be paid into a central fund held by the Fascist National Institute of Social Welfare, which distributes the appropriate amounts to the beneficiaires.

A Ministerial Order of 15 August 1936 fixed the contribution at 1.20 lire for every 100 lire of wages paid to employees and assimilated workers.

Workers.

In the case of manual workers the regulations concerning the payment of wages differ for the main branches of economic activity.

Commerce. According to the agreements concluded between the employers' and workers' confederations for commerce, workers who are recalled to the colours or who enlist voluntarily are entitled to receive a grant equal to one month's wages in addition to their wages for the current pay period.

This grant is made also to categories of workers whose position is not governed by collective agreements and to those who are entitled only to the retention of their posts but not to wages if they are called up.

In the case of workers who are entitled to have their posts kept open and to receive their wages, the first month's wages must be paid in advance, at the date of mobilisation, along with the wage for the current pay period.

Workers who have not completed their period of military service and who voluntarily enlist will be covered by the regulations contained in the collective agreements for those who are called to the colours to perform their normal military service.

Workers belonging to categories not covered by collective agreements, who enlist voluntarily before their class is called up for exceptional military reasons, will be granted a single lump-sum payment of a fortnight's wages.

Apart from these general rules, special collective agreements lay down fixed rates of wages to be paid to certain large groups of workers, as follows:

(1) Workers in commercial undertakings dealing in food and drink, clothing, fabrics, glass and pottery, hides and skins, art products, iron, metals, machinery, watchmaking and jewellery, printing and paper, motorcycles, agricultural produce, cereals, seeds and fodder, mineral oil, lubricants, and motor fuel, electrical and hydraulic power, chemical products, wood, and furniture, are entitled to receive their full wage for the first month and one-half of their wage for the next two months.

(2) Workers in private establishments for the care and treatment of the sick are entitled to one-half of their wages for the first three months.

(3) Workers in wholesale or retail commercial establishments dealing in horticultural produce and citrus fruits fall into two groups: the non-manual subordinate staff, including messengers, watchmen, night watchmen, etc., receive their full wage for the first two months and one-half of their wage for the third month; the others are entitled to their full wage for the first month and one-half of their wage for the next two months.

(4) Workers employed by agricultural syndicates are entitled to their full wages for 45 days and one-half of their wage for the following 45 days.

(5) Workers in wholesale and retail commercial establishments dealing in groceries and drysaltery receive their full wage for the first month and one-half of their wage for the following month.

Industry. According to the collective agreements concluded between the General Confederation of Employers in Commerce and Industry and the General Confederation of Workers in Commerce and Industry, industrial workers who are called to the colours or who voluntarily enlist are entitled to have their posts kept open and receive, in addition, a grant of six day's wages if they have less than one year's seniority, nine days' wages if they have from one to two years, 12 days' wages if from two to three years, and 14 days' wages for any longer period.

Workers employed in industrial undertakings represented by the Fascist Confederation of Commercial Workers are treated as industrial workers.

Agriculture. According to a collective agreement concluded on 17 September 1935 between the general confederations of employers and workers in agriculture, agricultural workers, irrespective of whether they have family responsibilities or not, are entitled to one week's wages in addition to any wages due at the moment when they are recalled to the colours.

In addition, the family of the mobilised man is entitled to the free use of the house and outbuildings during the validity of the contract, even when it has been necessary to find a substitute for the mobilised worker. If, however, on this account the employer is unable to keep the family on his land, he may provide them with free quarters outside the undertaking. The employer may not make any change during the current year in profit-sharing arrangements made with the mobilised man's family.