

REPUBLIC OF KIRIBATI
(No. 10 of 2010)

I assent,

Beretitenti
Assent published: 6th December 2010

AN ACT TO AMEND THE INDUSTRIAL RELATIONS CODE (1998)

Commencement:
2010

MADE by the Maneaba ni Maungatabu and assented to by Te Beretitenti

1. Short title

This Act may be cited as the Industrial Relations Code (Amendment) Act, 2010.

2. Amendment of Section 3

Section 3 of the principal Act is amended by amending the definition of the words "trade dispute" by inserting after the word "dismissal" and before the words "or suspension" the word "termination", with a comma immediately before and immediately after such word as follows:

“,termination,”.

3. Amendment of section 14

Section 14 of the principal Act is amended as follows:-

- (a) at subsection 2 (b) by inserting a comma after the word "salary" and before the word "wages" and by repealing the word "construct" and substituting the word "contract";
- (b) at subsection 3 by repealing the entire subsection and substituting the following subsection 3,

"(3) (a) The Tribunal shall not have the power to award to any party to a dispute damages, compensation or costs or to compel any employer to reinstate an employee or former employee, except as provided in subsection (b).

(b) Where an employee, or a former employee has his contract of service terminated by his employer, the Tribunal may order that the employee or former employee be reinstated if the Tribunal finds on the balance of probabilities that the employer has exercised its power to terminate wrongfully, unjustifiably or the decision to terminate is based upon irrelevant considerations; and may in addition, award such employee whatever salary, wages or allowances or any other sum of money whatsoever payable under a contract of service in force at the time the award is made."

INDUSTRIAL RELATIONS CODE (AMENDMENT) ACT 2010

EXPLANATORY MEMORANDUM

Over the past sittings, the Maneaba ni Maungatabu had been vigorously debating whether the employees or former employees who had their contracts of service terminated, as opposed to their being dismissed, should be accorded an avenue to dispute their terminations as they feel that the power of termination exercised by their employers had been blatantly abused and in most cases unjustified. Most of the grievances aired emanated from the Government's owned companies. The debates centred around giving anyone in authority the power to reverse or to review the decision of the employers in cases of termination. The method proposed in the debate is to address the matter individually by each employing or corporations or agency concerned to have in place whether by way of agreement or contract between them and their respective employees, or by other means where the employer is subjected to being reviewed in its decision concerning the termination of the contract if services of its employees. The methodology cannot function if an individual employing organization, corporation or agency refuses to have in place such reviewing clause.

A more unilateral approach is to legislate it. The most appropriate legislation to put such concept in is the Industrial Relations Code (1998), which figured strongly in the previous debates in the Maneaba. In an attempt to insert such concept in the legislation an amendment is proposed to be made to the Industrial Relations Code by extending the definition of "trade dispute" to cover termination in order for the Tribunal established under the said Code to be able to deal with matters concerning termination. Section 14 of the Code which addresses this very issues in the negative must be refined. The Act does that by refining subsection (3) to address the issue of "termination" specifically. Whilst the opportunity arises, a cosmetic amendment is made to subsection (2) (b) by correcting the word "construct" to "contract".

The bottom line is that where an employee has his or her contract of services terminated by his or her employer as opposed to being dismissed, and such employee feels that the exercise of such power to terminate by his or her employer has been exercised wrongly, unjustified or based on irrelevant consideration, he or she can take it up to the Industrial Tribunal as an "industrial dispute" and may be able to ask for reinstatement and other payments that were supposed to be paid to him or her by way of wages or salary or other allowances.

Titabu Tabane
Attorney General