

ANALYTICAL STUDY ON SETTLEMENT OF LABOUR DISPUTES IN MYANMAR*

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Abstract

The Settlement of Labour Dispute Law was enacted in 2012 and the labour dispute resolution process becomes prominent among employers and workers because it provides a fair and well-structured way to address their grievances. Moreover, it includes exact time limitations to resolve the disputes efficiently within a short period, which can minimize the disruption of the workplace and promote workplace sustainability. The purpose of this research is to explore whether the resolution process is an effective mechanism for the workers or not, to highlight the need of exact provisions regarding the employment contract, to find a solution of reducing labour disputes. This study is based on the analytical review on the Settlement of Labour Dispute Law, 2012 including its amendment law and cases as well as the reports of the Ministry of Labour. The law provides the framework for resolving disputes through negotiation, conciliation, arbitration and legal adjudication. Most of the disputes received by the Arbitration Council are disputes on dismissal. The worker may seek remedy through the arbitration process only when the term of employment contract expired whereas during the term of the employment contract, the worker may seek remedy through legal adjudication or other relevant departments. Since the arbitration process is a process of social justice and the dispute settlement bodies have the right to decide to reinstate the worker under Article 25 of the Settlement of Labour Dispute Rules, 2012, the dispute on dismissal should be settled by the resolution process. It will be more beneficial for the workers if the disputes on dismissal can be resolved by arbitration.

Keywords: Labour disputes, negotiation, conciliation, arbitration, dispute settlement bodies

Introduction

On 28th March 2012, the Pyidaungsu Hluttaw enacted the Settlement of Labour Dispute Law as the Pyidaungsu Hluttaw Law No. 5/2012, repealing the Trade Disputes Act, for safeguarding the right of workers or having good relationship between employer and workers and making peaceful workplace or obtaining the rights fairly, rightfully and quickly by settling the dispute of employer and worker justly.

This law had been amended for twice on 30th September 2014 and 3rd June 2019 respectively. The second amendment of this law has many significant changes, e.g., defining new types of labour disputes such as right dispute and interest dispute (the former was individual dispute and collective dispute), encouraging the nature of collective bargaining and increasing the penalties for those who fail to comply the provisions of the law.

The dispute resolution process is a process free from litigation but during the process, no party shall be barred to proceed with the right to institute criminal or civil proceedings. By using this mechanism effectively especially the Workplace Coordinating Committee, the labour disputes can be settled through negotiation between employers and workers within the workplaces. Enhancing the labour dispute mechanism is an effective way to maintain peaceful and sustainable workplace.

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Research Method

The study examines qualitative research methodology to evaluate the effectiveness of the dispute resolution process of Myanmar, to highlight the need of exact and clear provisions regarding the employment contract and to find a solution in reducing labour disputes. The analysis is mainly based on the Settlement of Labour Dispute Law, 2012, the Employment and Skills Development Law, 2013, the labour disputes decided by the Arbitration Council and the data of the Ministry of Labour.

Labour Disputes and Kinds of Labour Disputes

Dispute means the labour dispute or disagreement between an employer or employers or the employer organization which represents them and a worker or workers or the labour organizations which represents them with respect to the employment, working and termination of an employer or employer organizations and of a worker or workers and labour organizations, or working or service including gratuity, bonus and allowances; or compensation for work related grievance, injuries and accidents in the workplace, deaths or occupational diseases; or any other matters of workers including workers' holiday and leave; or the benefits which should be entitled to the majority of workers.²

To be a trade dispute, the dispute must be between employers and workers, or between workers and workers, and if on either side or both sides the party to dispute is an organization, it is nevertheless treated as a dispute between employers and workers.³

Before the amendment of the Settlement of Labour Dispute Law, there were two types of labour disputes, namely; individual dispute and collective dispute. After the amendment of the law, there are two types of labour disputes; namely, right dispute and interest dispute.

The terms *individual dispute* and *collective dispute* were originally defined in sections 2(n) and 2(o) of the Settlement of Labour Dispute Law, 2012; however, these provisions were repealed following the second amendment of the law. The definitions were as follows;

“Individual dispute means a rights dispute between the employer and one or more workers relating to the existing law, rules, regulation and bye-law; collective agreement or employment agreement.”

“Collective dispute means the dispute between one or more employer or employer organization and one or more labour organization over working conditions, the recognition of their organizations within workplace, the exercise of the recognized right of their organizations, relations between employer and workers, and this dispute could jeopardize the operation of the work for social peace. This expression includes a dispute on rights in the existing labour law or interest dispute.”

After the second amendment of the Settlement of Labour Dispute Law in 2019, right dispute and interest dispute is defined as follows, repealing the individual dispute and collective dispute;

“Right dispute means any dispute related to the rights of employers or workers under the labour laws.”⁴

² Section 2 (m), the Settlement of Labour Dispute Law, 2012.

³ Sir Otto Kahn-Freund, *Labour and the Law*, London Stevens & Sons, 2nd ed., 1977, 248.

⁴ Section 2 (n), the Settlement of Labour Dispute Law, 2012.

“Interest disputes means disputes related to the collective agreement, the benefits which should be entitled to the majority workers despite not excluding rights under the labour law, and the relationship of the workplace.”⁵

A dispute related to the collective agreement was regarded as an individual dispute in the former law which can be settled by conciliation but not by arbitration while the second amendment law regarded such dispute as an interest dispute which can be settled by both conciliation and arbitration process. The former law allows the conciliation body to conciliate both individual and collective disputes and the grievance party may complain to a court for the individual dispute which is not being settled through conciliation but the second amendment law allows only interest dispute to conciliate and the grievance party may complain to the relevant departments or the court for the right dispute which the law does not allow the conciliation.

Labour Dispute Resolution Process

The labour disputes are negotiated, heard and decided by different bodies. The Settlement of Labour Dispute Law outlines a resolution process with mechanisms for settling the labour disputes at workplace, township, regional and national levels. The labour dispute resolution process of Myanmar includes four steps, namely; (1) Workplace Coordinating Committee; (2) Conciliation Body; (3) Arbitration Body; and (4) Arbitration Council.

Settlement of Labour Disputes by Negotiation

When grievances arise between labour and management, the first attempt at resolution is through direct negotiation between management and labour. The workplace coordinating committee is the first step of the dispute resolution process, and several stakeholders-on both the labour and employer side-expressed the hope that, if these bodies operated effectively and in good faith, nearly all disputes would be resolved at this level.⁶

Under section 3 of the Settlement of Labour Dispute Law, 2012, the Workplace Coordinating Committee must be formed compulsorily in any trade in which more than 30 workers are employed. The negotiation of labour disputes at the Workplace Coordinating Committee is not a mandatory process, but the law encourages the employers and workers to negotiate and settle their disputes at the workplace without interfering any third party which is the government. This is a bipartite process.

The Workplace Coordinating Committee shall promote good relationship between the employer and worker or labour organization, negotiation and coordination on the conditions of employment, terms and conditions and occupational safety, health, welfare and productivity.⁷

The employer and worker shall make a collective agreement, and send its copy to the relevant Conciliation Body if a dispute has been settled. The employer and worker may complain to the relevant Conciliation Body if a dispute has not been settled.⁸

⁵ Section 2 (o), Ibid.

⁶ Laura Ediger and Chris Fletcher, *Labour Disputes in Myanmar: From the Workplace to the Arbitration Council*, Research Report, C & A Foundation, May 2017, 6.

⁷ Section 5, the Settlement of Labour Dispute Law, 2012.

⁸ Section 9 (a) and Section 9 (b), the Settlement of Labour Dispute Law, 2012.

Collective agreement means the concluded bilateral written agreement as to the provisions of employment including the specification of the workplace and employment conditions of workers, the specification of terms and conditions of the relations between employers and workers as well as among their organizations concerned, recognition of labour organizations as legal entities and promoting guarantees of social protection for workers according to the collective bargaining.⁹

According to section 2 (k) of the Settlement of Labour Dispute Law, 2012, collective bargaining means the process of negotiation and conclusion of collective agreement among employers or employer organizations and workers or labour organizations with regard to situations of employment and terms and conditions, their labour relations or the measures for the prevention and settlement of the disputes.

The success of dispute resolution within factories depends greatly on the presence of worker leaders, either representatives of Workplace Coordinating Committee or unions who are capable of representing workers and negotiating with employers. In order for this type of dispute resolution to work, legal capacity trainings for workers are crucial.¹⁰

In this process, the collective agreement plays a crucial role for the employers and workers. The negotiation process at the Workplace Coordinating Committee shall be assumed as the collective bargaining because if the negotiation process is success, both parties must make a collective agreement, which arise from collective bargaining but the law does not provide any specific methods on how a collective bargaining should be carried out properly. But the law does not provide any exact provisions that the negotiation must be made compulsorily. In addition, a dispute arisen from the collective agreement is rarely to be found.

Settlement of Individual Dispute and Collective Dispute by Conciliation and Arbitration

If a dispute is not settled at the Workplace Coordinating Committee, the second step in the dispute resolution process is conciliation. The conciliation body is established in township level according to section 10 of the law. The law provides authority to the Conciliation Body to conciliate both individual and collective disputes. In individual dispute, if either party is not satisfied the result, he may apply to the competent court only.

Before the law was amended, a party, employer or worker, may complain individual dispute relating to his grievance to the Conciliation Body and if he is not satisfied with the conciliation of such body in accord with stipulated manners, may apply to the competent court in person or by the legal representative.

Employers or workers, may apply to the relevant departments or the competent court about their rights dispute by themselves or by their legal representatives.¹¹

Before the law was amended, the relevant Conciliation Body shall, in respect of the collective dispute known or received by the complaint of party, employer or worker, in respect of the dispute; information sent by the Minister or the Region or State Government or any other means, carry out as follows:

⁹ Section 2 (l), the Settlement of Labour Dispute Law, 2012.

¹⁰ Mari Tanaka, Virginia Minni, Hanh Nguyen and Rocco Macchiavello, 'Industrial relations and workplace communication in Myanmar garment sector', Working paper F-53407-MYA-1, March 2019, International Growth Center, 9.

¹¹ Section 23, the Settlement of Labour Dispute Law, 2012.

- (a) conciliating so as to be settled within three days, not including official holidays, from the day of knowing or receipt of such dispute;
- (b) concluding mutual agreement if the settlement is reached in conciliating under sub-section (a), before the Conciliation Body.

The relevant Conciliation Body shall, with respect to the interest dispute known or received by a complaint of the employer or worker, an information of the Ministry, Region or State Government, or Nay Pyi Taw Council or any other way, carry out as follows;

- (a) conciliating for settlement within seven days from the date of knowing or receiving the dispute;
- (b) concluding a mutual agreement before the Conciliation Body if the settlement is reached in conciliating under sub-section (a).¹²

The Conciliation Body shall refer the collective dispute which does not reach settlement to the relevant Arbitration Body and shall handover the case file within two days, not including official holidays, with detailed report including opinion on the facts which cannot be settled in carrying out conciliation.¹³

Disputes that are not resolved at the Township Conciliation Body level can be brought to the relevant Arbitration Body. An Arbitration Body is established in each region or state - a total of 15, including one for Nay Pyi Taw.¹⁴

The relevant Arbitration Body shall make decision on the collective dispute handed over by the Conciliation Body within seven days, not including the official holidays, from the day of receipt of such dispute.¹⁵

If parties are dissatisfied with the decision of the Arbitration Body, except for a decision in respect of essential services, they may:

- (a) apply to the Arbitration Council for its decision within seven days from the date of receiving the decision of the Arbitration Body: or
- (b) carrying out a lock-out or strike under the relevant law.¹⁶

The Arbitration Council was introduced in Myanmar in 2012. In the Myanmar context, the Arbitration Council is important as there is no functioning labour court and a lack of capable labour lawyers.¹⁷

The Arbitration Council hear and decide the disputes by the Tribunal, which includes one representative each from the persons selected by the Ministry of Labour, employer organizations and worker organizations.

The Tribunal shall make a decision on the dispute within 14 days or within 7 days from the date of receiving of the dispute.¹⁸

¹² Section 24 (a) and Section 24 (b), Ibid.

¹³ Section 25 and Section 26, Ibid.

¹⁴ Laura Ediger and Chris Fletcher, *Labour Disputes in Myanmar: From the Workplace to the Arbitration Council*, Research Report, C & A Foundation, May 2017, 11.

¹⁵ Section 27, the Settlement of Labour Dispute Law, 2012.

¹⁶ Section 28, Ibid.

¹⁷ Laura Ediger and Chris Fletcher, *Labour Disputes in Myanmar: From the Workplace to the Arbitration Council*, Research Report, C & A Foundation, May 2017, 10-11.

The Arbitration Body or Tribunal may carry out as follows in passing a decision in accord with the provisions of existing labour law by quoting the decisions and precedents to be fair for the employer and worker;

1. cause to reinstate the worker by the employer at the former designation or at any other suitable designation;
2. cause to pay damages for the suitable interval period relating to the matter of reinstatement decision;
3. cause to enjoy case benefit including wages and salary which the workers are entitled;
4. to determine and set the period of effectiveness of a decision or collective agreement.¹⁹

In the dispute of Daw Moe Wai (President of Tai Ye Basic Labour Organization) and Daw Nwet Yin Win (Treasure of Tai Ye Basic Labour Organion) (Applicant) v U Sein Oo @ U Nawrein Kyit (Employer), Daw Aye Mi Hlaing (Manager and Legal Representative of the Employer) of Tai Ye Co., Ltd. (Respondent)²⁰, this dispute is the dispute arisen from claiming reinstatement by the President and Treasurer of Tai Ye Basic Labour Organization. The Yangon Region Dispute Settlement Arbitration Body tried such disputes as of Dispute No. (60/2015). The said Arbitration Body drew an issue ‘are the workers entitled to reinstatement on dismissal or not’ and decided **‘to compensate the workers, including one-month notice fee, because the employer fail to inform one month in advance prior to the dismissal.’** The Tribunal drew an issue ‘does it necessary to amend the decision of the Yangon Region Dispute Settlement Body or not’ and it was found that the employer dismissed the workers on the occasion of 3 consecutive absent days of work without submitting leave to the employer. The President of Tai Ye Basic Labour Organization absented on 26 May 2015 without submitting leave and also enjoyed medical leave on 27 May 2015 without submitting any sufficient evidence. Furthermore, she attended to the training course conducted by International Labour Organization on 28 May 2015 without submitting leave. The Treasure of Tai Ye Basic Labour Organization absented on 26 May 2015 without submitting leave and also enjoyed medical leave on 27 May 2015 without submitting any sufficient evidence. Furthermore, she absented again on 28 May 2015 without submitting leave. The workers failed to submit leave and sufficient evidence of medical leave in time. Both the President and Treasurer enjoyed medical leave on 27 May 2015 but both absented the work in the next day and failed to submit the evidence for their medical leave. The Tribunal considered that the workers absented 3 consecutive days from work without submitting leave. Therefore, the Tribunal decided to confirm the decision of the Yangon Region Dispute Settlement Arbitration Body.

In the dispute of Mg Thet Hnin Aung (Applicant and Respondent) v U Sai Ba Sein, the owner of Aung Sein Cotton Dying Factory (Respondent and Applicant)²¹, this dispute is the dispute arisen from claiming reinstatement and damages for interval period. The Mandalay Region Dispute Settlement Arbitration Body tried such dispute as of Dispute No. (1/2013). The said Arbitration Body drew an issue ‘is the worker entitled to reinstatement and damages for interval period or not’ and decided **‘to reinstate the worker and to pay damages for the**

¹⁸ Section 31 (a) and Section 32 (a), the Settlement of Labour Dispute Law, 2012.

¹⁹ Rule 25, the Settlement of Labour Dispute Rules, 2012.

²⁰ Arbitration Council, Decision of the Tribunal, Dispute No. (28/2015) (decided on 28 August 2015).

²¹ Arbitration Council, Decision of the Tribunal, Dispute No. (7/2013) (decided on 20 March 2013).

interval period from the date of dismissal till the date of reinstatement.' Both the worker and the employer applied to the Arbitration Council. The Tribunal drew the same issue as the Yangon Region Dispute Settlement Arbitration Body, and it was found that the employment contract between the employer and the worker was made on 21 August 2012, but this contract was not ratified by the Department of Labour and it was ratified by U Kyaw Kyaw, a factory manager. The Tribunal considered that the fact that the worker frequently absented from work is undeniable, but the employer failed to take action properly under the rules of the employment contract. Both the employer and the worker has imperfections to follow up the procedures, and the action taken by the employer is needed to be consistent with the rules and procedures. Therefore, the Tribunal decided to reinstate the worker and not to pay damages for the interval period.

The employer applied for a writ of certiorari to the Supreme Court of the Union against the decision of the Arbitration Council. In the case of U Sai Ba Sein (Applicant) v Arbitration Council (Tribunal), Mandalay Region Arbitration Body and Mg Thet Hnin Aung (Respondent)²², the Supreme Court pointed out that the employment contract must be ratified by the Department of Labour, and the contract ratified by the factory manager, U Kyaw Kyaw was not made under the correct procedure. Moreover, the consideration of the Arbitration Council that the dismissal of the worker was found having procedural weaknesses and the decision of the Arbitration Council to reinstate the worker was found reasonable according to section 21 (a) of the Settlement of Labour Dispute Law, 2012. Therefore, the application for the writ of certiorari was dismissed.

In the case of Daw Thwe Thwe Aye v Arbitration Council and 3 others²³, the employer dismissed the worker without informing advance notice according to the employment contract. Yangon Region Arbitration Body decided to pay 600,000 kyats as one-month advance notice fee and Arbitration Council confirmed such decision. It was cleared that this is an individual dispute because the dispute arisen is a right dispute regarding with the employment contract.

From 2012 to May 2019, the Conciliation Body received 7,969 disputes, including both individual and collective disputes and settled 6,829 disputes, the Arbitration Body had received and made decisions on 891 collective disputes and the Arbitration Council had received and made decisions on 441 collective disputes. The number of cases received by the Conciliation Body, the Arbitration Body and the Arbitration Council can be seen through the following figures:

²² Civil Miscellaneous Case No.64/2013, decided on 23 September 2013.

²³ 2017, M.L.R, 255.

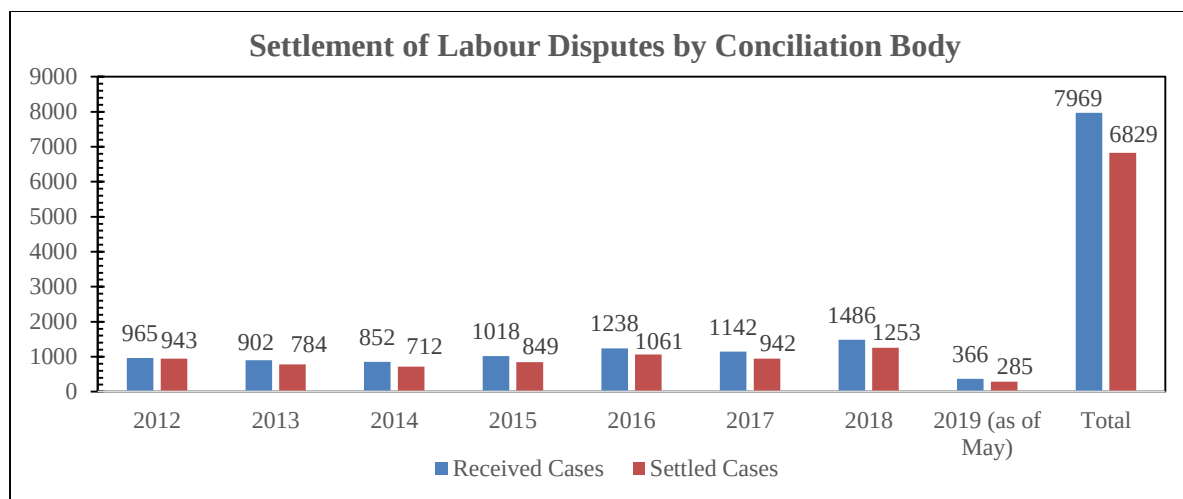


Figure 1. Settlement of Labour Disputes by Conciliation Body

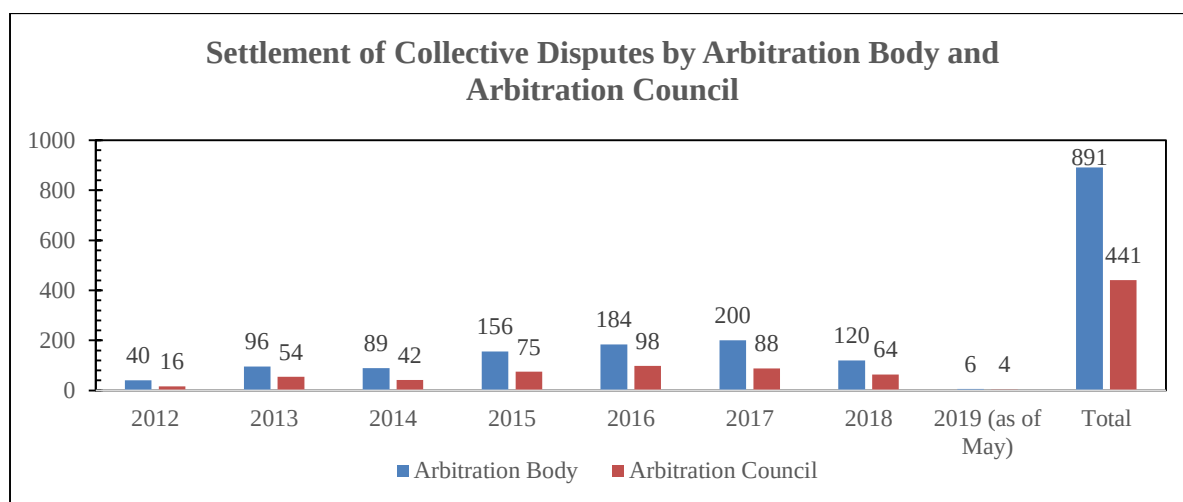


Figure 2. Settlement of Collective Disputes by Arbitration Body and Arbitration Council

Settlement of Right Dispute and Interest Dispute by Conciliation and Arbitration

After the law had been amended, the right disputes are unable to negotiate and decide by the Conciliation Body, Arbitration Body and Arbitration Council. In right dispute, even though such dispute cannot be conciliated, the grievant party has a chance to choose whether they may apply to the relevant labour departments or the competent court.

The Conciliation Body shall inform the employers or workers that they are required to submit their complaints to the relevant government departments or the court with jurisdiction if disputes are excluded from the functions of the Body, the interest disputes or the complaints are related to the rights under the existing labour laws due to without complying the collective agreement of the Workplace Coordinating Committee.²⁴

Employers or workers, may apply to the relevant departments or the competent court about their rights dispute by themselves or by their legal representatives.²⁵

²⁴ Section 12 (b), the Settlement of Labour Dispute Law, 2012.

²⁵ Section 23, Ibid.

The relevant Conciliation Body shall, with respect to the interest dispute known or received by a complaint of the employer or worker, an information of the Ministry, Region or State Government, or Nay Pyi Taw Council or any other way, carry out as follows:

- (a) conciliating for settlement within seven days from the date of knowing or receiving the dispute;
- (b) concluding a mutual agreement before the Conciliation Body if the settlement is reached in conciliation under sub-section (a).²⁶

The Conciliation Body shall refer the interest dispute which does not reach a settlement to the relevant Arbitration Body and shall transfer the case file within two days, without official holidays, with a detailed report including recommendations on the facts which cannot be settled in conciliation.²⁷

The relevant Arbitration Body shall make a decision on the interest dispute transferred by the Conciliation Body within seven days from the date of receiving the dispute.²⁸

If parties are dissatisfied with the decision of the Arbitration Body, except a decision with respect to essential services, they may:

- (c) apply to the Arbitration Council for its decision within seven days from the date of receiving the decision of the Arbitration Body: or
- (d) carrying out a lockout or strike under the relevant law.²⁹

The Tribunal shall make a decision on the dispute within 14 days or within 7 days from the date of receipt of the dispute.³⁰

The duties of the Arbitration Council are provided in section 21 (a) of the Settlement of Labour Dispute Law, 2012 as “standing and carrying out as the organisation which is independent and impartial based on social justice, decent work and principles of equity in making decisions.”³¹

In the dispute of Mr. Yang Chih Chiang (Employer) of Mountain Top Global Co., Ltd. (Applicant) v U Aung Myo Zaw and workers (Respondent)³², this dispute arises from claiming reinstatement by the workers. The Yangon Region Dispute Settlement Arbitration Body tried such dispute as of Dispute No. (48/2020). The said Arbitration Body drew an issue ‘is it suitable to reinstate the workers as a priority who had been dismissed when the factory re-operate the business or not’ and decided **‘to reinstate the former workers including U Aung Myo Zaw and 5 others as a priority when they re-apply for the job on their own will if the employer re-operate the factory.’** The Tribunal drew the same issue as the Arbitration Body and it was found that the employer permanently locked out the factory and paid the compensation and allowances, showing his sympathy to the workers. The Tribunal decided to repeal the decision of the Yangon Region Dispute Settlement Arbitration Body.

²⁶ Section 24, the Settlement of Labour Dispute Law, 2012.

²⁷ Section 25 and Section 26, Ibid.

²⁸ Section 27, Ibid.

²⁹ Section 28, Ibid.

³⁰ Section 31 (a) and Section 32 (a), Ibid.

³¹ Section 21 (a), the Settlement of Labour Dispute Law, 2012.

³² Arbitration Council, Decision of the Tribunal, Dispute No. (32/2020) (decided on 12 May 2020).

In the dispute of Mr. Masud (Employer), U Ko Ko Ye Lwin (Legal Manager and Legal Representative of the Employer) of Trinity Apparels Limited (Applicant) v Daw Thet Thet Mar and one other (Respondent)³³, this dispute is the dispute arisen from claiming reinstatement by the worker. The Yangon Region Dispute Settlement Arbitration Body tried such dispute as of Dispute No. (39/2020). The said Arbitration Body drew an issue ‘are the workers entitled to reinstatement or not’ and decided **‘to reinstate the workers at the former designation, wages and place and to pay damages for the suitable interval period’**. The Tribunal drew the same issue as the Arbitration Body, and it was found that the employer dismissed the workers on the grounds that the workers had committed a serious crime under the rules of the employment contract, but the employer was unable to submit sufficient evidence. The Tribunal decided to confirm the decision of the Yangon Region Dispute Settlement Arbitration Body.

It can be noted that the decision of both the Yangon Region Dispute Settlement Arbitration Body and the Tribunal was based more on the technicality of contract status than on the substantive fairness of the dismissal. Although the employer claimed that the workers committed a serious offence under the employment contract, it failed to provide sufficient evidence to support his allegation. Consequently, the Tribunal upheld the Arbitration Body’s decision to reinstate the workers and this decision focus on whether the employer could prove the evidence rather than an examination of whether the dismissal was fair and reasonable.

In the dispute of Mr. Zhang Shizhe (Employer), U Tay Zar Win (Legal Representative of the Employer) of Dishang Fashion (Myanmar) Co., Ltd. (Applicant) v U San Min (Respondent)³⁴, this dispute is the dispute arisen from claiming compensation on dismissal by the worker. The Yangon Region Dispute Settlement Arbitration Body tried such dispute as of Dispute No. (322/2020). The said Arbitration Body drew an issue: ‘is the worker entitled to compensation on dismissal or not’ and decided **‘to compensate the worker by the employer.’** The Tribunal drew the same issue as the Arbitration Body and considered that the dismissal of worker was based on the rules of the employment contract when the duration of the contract is still effective, so it amounts to a right dispute. The Tribunal decided to repeal the decision of the Yangon Region Dispute Settlement Arbitration Body.

This dispute also shows that the Tribunal’s decision relied primarily on the technical interpretation of the employment contract rather than on the substantive fairness of the dismissal. While the Yangon Region Dispute Settlement Arbitration Body initially ruled that the worker was entitled to compensation for dismissal, the Tribunal overturned this decision, reasoning that the termination occurred in accordance with the contractual terms while the contract was still in effect, thus framing the case as a right dispute.

In the disputes of Daw Phyu Phyu Thin and 5 others (Applicant) v Daw Khaing Sabal Soe (Employer), Daw May Cho Khaing (Human Resource Manager and legal representative of the employer) of Myanmar GF Co., Ltd. (Respondent)³⁵, this dispute is the dispute arisen from claiming to work within Yangon Region only by the worker. The Yangon Region Dispute Settlement Arbitration Body tried such dispute as of Dispute No. (34/2022). The said Arbitration Body drew an issue ‘are the worker entitled to work within Yangon Region only or not’ and decided **‘to cancel the request of the workers’** The Tribunal drew the same issue as the Yangon

³³ Arbitration Council, Decision of the Tribunal, Dispute No. (25/2020) (decided on 8 April 2020).

³⁴ Arbitration Council, Decision of the Tribunal, Dispute No. (8/2021) (decided on 29 January 2021).

³⁵ Arbitration Council, Decision of the Tribunal, Dispute No. (29/2022) (decided on 11 August 2022).

Region Dispute Settlement Arbitration Body and it was found that the term of the employment contract is expired in 2020 and both parties fail to extend their employment contract. The employer exercised a voting system in rotation to choose the workers who would like to go to the garment factories in other Regions for a short term due to its nature of work. The applicants also previously worked in other Regions under this system and rejected this time. Moreover, the Tribunal considered that only the applicants claimed to work only within Yangon Region while others did not complain, it was an inappropriate request, and the employer has the right to manage his workers. Therefore, the Tribunal decided to confirm the decision of the Yangon Region Dispute Settlement Arbitration Body.

In the dispute of Mr. Song Gi Cheon (Employer), Daw Chaw Chaw Aung (Human Resource Manager and Legal Representative of the Employer) of YJ Co., Ltd. (Applicant) v U Tin Zar Oo and the workers (Respondent)³⁶, this dispute is the dispute arisen from claiming allowances for skill proficiency and regular attendance to work. The Yangon Region Dispute Settlement Arbitration Body tried such dispute as of Dispute No. (338/2020). The said Arbitration Body drew an issue ‘are the worker entitled to allowances for skill proficiency and regular attendance of work or not’ and decided **‘(a) not to pay allowance for regular attendance and (b) to pay allowances for skill proficiency.’** The Tribunal drew two issues, the first issue is the same with the Arbitration Body and the second issue as ‘whether the decision of the Arbitration Body is ultra vires or not’ and considered that the dispute on such allowances are the disputes regarding the wages according to section 2 (a) of the Payment of Wages Law, 2016 and the decision of the Yangon Region Dispute Settlement Arbitration Body is ultra vires under clause 4 (b) of the Programmes of the Arbitration Bodies. The Tribunal decided to repeal the decision No.(b) of the Yangon Region Dispute Settlement Arbitration Body.

In the dispute of U Aung Thura and workers (Applicant) v Mr. Yeh Fu Yu (Employer), Daw May Thwe Soe (Human Resource Manager and Legal Representative of the Employer) of Very Impressive Prospect Co., Ltd. (Respondent)³⁷, this dispute is the dispute arisen from the strike regarding COVID-19. The Yangon Region Dispute Settlement Arbitration Body tried such dispute as of Dispute No. (134/2020). The said Arbitration Body drew an issue ‘does bargaining on the health circumstances amount to a strike or not’ and decided **‘it amounts to a strike on the grounds that bargaining on the health circumstances from 3 April 2020 to 8 April 2020 without working resulted in suspension of work.’** The Tribunal drew the same issue as the Arbitration Body, and it was found that an interpreter named U Aung Thura was suspected of being a Covid-19 patient, and he was sent to the hospital on 3 April 2020. The workers had stopped working and claimed to temporarily lock-out the factory. The medical result of U Aung Thura is negative of Covid-19, and the employer showed such result to the workers on 5 April 2020, but the workers still refused to work and bargained till 8 April 2020. So the employer did not pay the salary under section 54 of the Settlement of Labour Dispute Law, 2012. The Tribunal considered that even though the workers clearly knowing that the suspected patient is negative of Covid-19 and still refused to work, the act of the workers amounted to a strike under the definition provided in section 2 (i) of the Settlement of Labour Dispute Law. The Tribunal decided to confirm the decision of the Yangon Region Dispute Settlement Arbitration Body.

³⁶ Arbitration Council, Decision of the Tribunal, Dispute No. (24/2021) (decided on 27 July 2021).

³⁷ Arbitration Council, Decision of the Tribunal, Dispute No. (89/2020) (decided on 4 August 2020).

Settlement of labour dispute by arbitration is a process of social justice and the dispute settlement bodies must hear and decide the disputes in compliance with the Constitution of the Republic of the Union of Myanmar and for the benefits of both employers and workers, and to entitle the rights under the existing labour laws. It is not necessary to comply exactly to the Code of Civil Procedure and Evidence Act due to its social justice nature.³⁸

From June 2019 to 2024, the Conciliation Body received 3,462 interest disputes and settled 2,310 disputes, the Arbitration Body had received and made decisions on 702 interest disputes and the Arbitration Council had received and made decisions on 375 interest disputes. The number of cases received by Conciliation Body, the Arbitration Body and the Arbitration Council can be seen through the following figures:

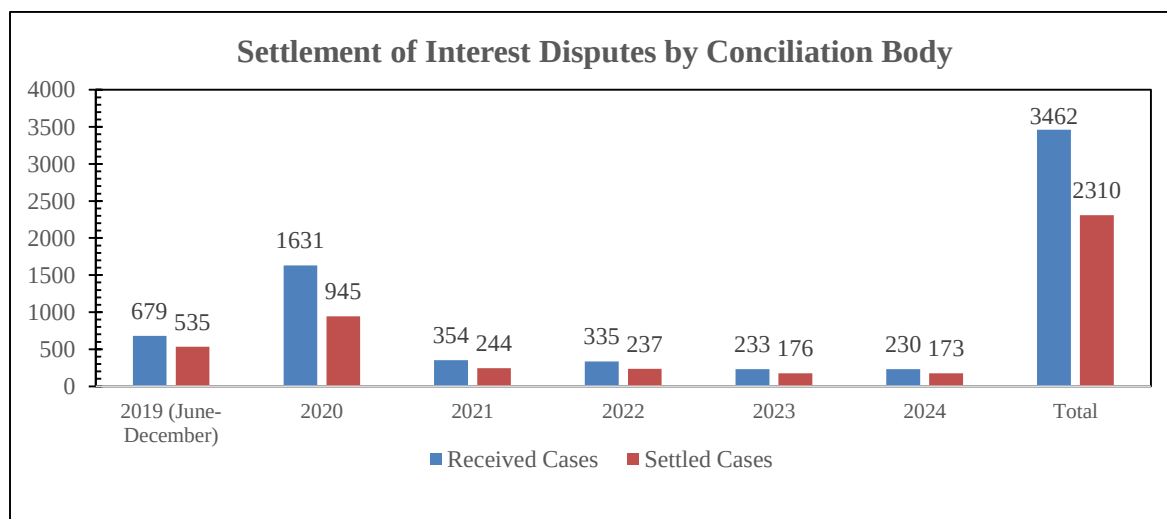


Figure 3. Settlement of Interest Disputes by Conciliation Body

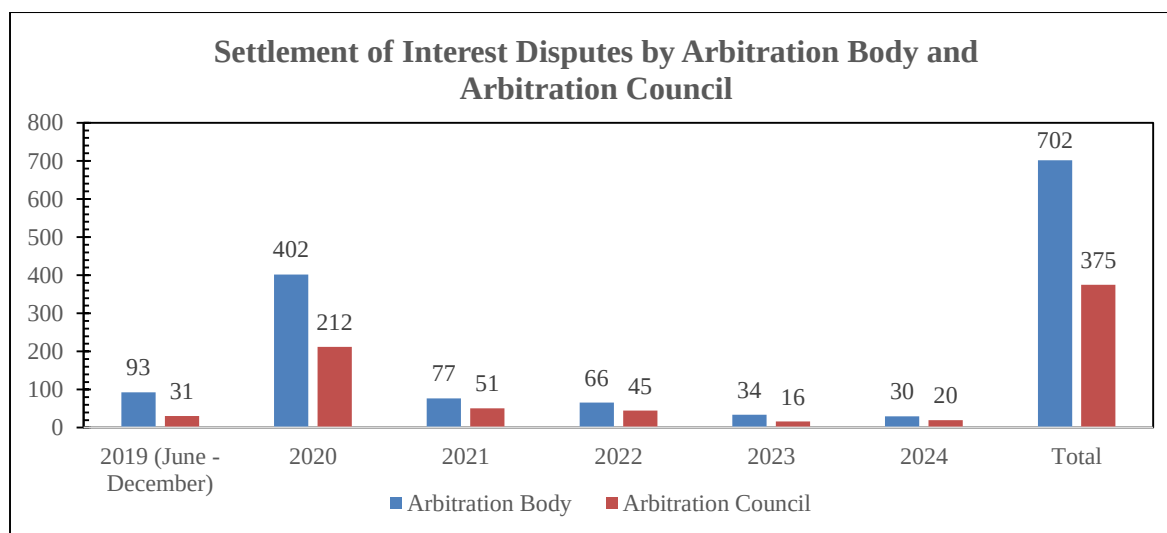


Figure 4. Settlement of Interest Disputes by Arbitration Body and Arbitration Council

Discussion

Before and after the amendment of the law, most of the disputes decided by the dispute settlement bodies were the disputes relating to dismissal or termination of work. After the

³⁸ Clause 5 (c) and (f), the Programmes of the Arbitration Bodies (17 May 2014) 18.

amendment of the law, disputes on dismissal are still decided by the dispute settlement bodies. The Arbitration Council takes into account the term of the employment contract is still effective or not. If it is still effective, it is assumed as a right dispute and if not, as an interest dispute. The consideration and performance of the Arbitration Council is fair and justice because if a worker is discharged while the contract is still effective, the concerned department has to settle such dispute. But as this law does not provide any specific measures for the extension, termination and resignation process, if a worker is discharged after the term of the contract has expired, the Arbitration Council should settle such dispute.

Since 2018 to August, 2024 (the data from 2012 to 2017 is unavailable), most of the disputes decided by the Arbitration Council are the dispute on dismissal and it can be found through the following figure:

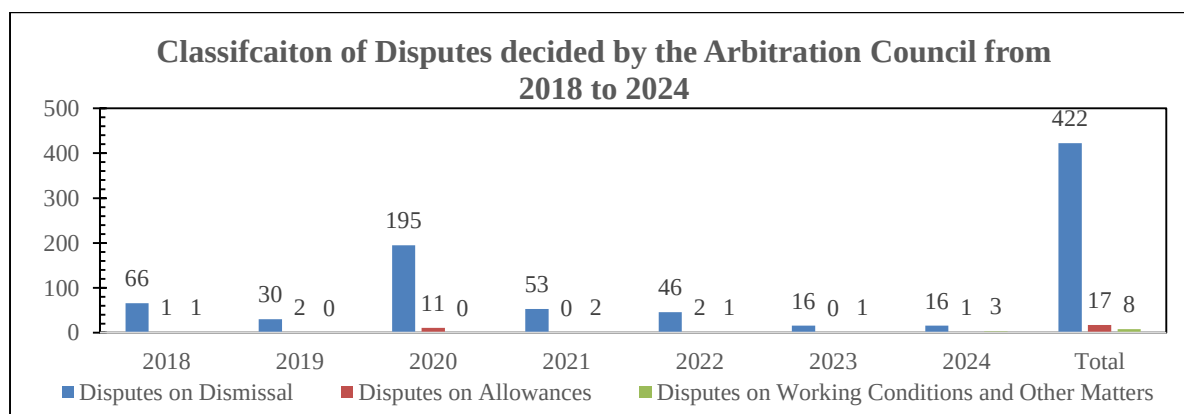


Figure 5. Classification of Disputes decided by the Arbitration Council from 2018 to 2024

The Settlement of Labour Dispute Law was amended for the second time in 2019 and at the end of this year, the Covid-19 pandemic occurred. Both effects the workplace sustainability as the second amendment to the law face some complication to identify the new types of dispute while Covid-19 caused losing jobs. According to the above figure, the Arbitration Council decided 195 disputes on dismissal on 2020 which is the Covid-19 pandemic period. Due to the pandemic but not limited to the second amendment, it can be seen that disputes on dismissal constituted 95% of all cases that year.

The Ministry of Labour, Immigration and Population (now known as the Ministry of Labour) issued Notification No. (140/2017) on 28 August 2017 and according to this notification, the employment contract must be made in any factories, workplaces, establishments, companies, enterprises where more than 5 workers are employed.

The Employment and Skills Development Law, 2013 provides that after the employer has employed a worker for any job, he shall, within 30 days of so doing, sign a Contract of Employment with the worker.³⁹ In the event that the work is completed before the duration of the Contract or if due to unforeseen circumstances the work or part of it is stopped, or for any reason the worker is discharged, the employer shall pay compensation according to the rates fixed in the Order issued by the Ministry.⁴⁰

³⁹ Section 5 (a) (1), the Employment and Skills Development Law, 2013.

⁴⁰ Section 5 (d), Ibid.

The law only provides to make the contract and did not provide any specific measures for the extension of the employment contract as well as the termination or dismissal of a worker or a right to resign by a worker and remedies on such occasions except in the employment contract template issued under notification No (140/2017). Moreover, there is no specific definition regarding the term “employment contract” in the law, and the definition can only be found at the Settlement of Labour Dispute Law, 2012 as follows:

“Employment Agreement means the bilateral written or oral agreement concluded by employer and the worker in respect of employment and working in accordance with the stipulations.”⁴¹

Clause 5 (b) of the template states that if the worker does not breach any terms of the contract, the contract may be extended, and the employer shall not refuse the extension of the contract without sufficient reasons.

Clause 15 (a) (1) and (3) states that if the assigned worker is willing to resign from the job, a resignation letter shall be sent via the in-charge person to the employer or manager or supervisor at least one month prior to the date of resignation. The employer shall approve such resignation and give remaining wages for actual working days, and provide earned leave without needing to pay compensation for the termination of employment.

Clause 15 (b) (1) and (2) states that in the event of the employer discharged the worker, the documentation process shall be carried out with sufficient reasons and shall give an order signed by himself or a responsible person. If a worker breaches the conditions specified, he shall be warned by a written notice for the first time and a second time. The third time shall be warned by signing a commitment letter. These warnings are for the breach of the minor terms of the contract. If the worker breaches such minor terms within 12 months, the employer shall dismiss the worker without needing to pay compensation for termination of employment.

Clause 15 (b) (3) states that except under clause 15 (b) (1), the employer may dismiss the worker by informing one-month advance notice and giving compensation in accordance with the existing law, rules and regulations. However, such dismissal shall not be contrary to the provisions of law and procedures.

According to the employment contract template issued under notification No (140/2017), the worker has the right to extend the employment contract, and the employer has no right to refuse it without sound reasons. On the other hand, the employer has the right to dismiss or terminate the worker by giving compensation as provided by the law. And it mentions that such dismissal shall not be contrary to any law, but the lack of explicit provisions and procedures in the law is still remaining a challenge factor.

Since the resolution process is a process based on social justice and in the absence of clear provisions regarding dismissal of a worker in the relevant labour laws, disputes on dismissal should be settled by the Arbitration Council by considering such dismissal is consistent or not with the terms of the employment contract made between employer and worker so that the workers may be entitled a legal remedy for their unemployment situations within a short period.

⁴¹ Section 2 (j), the Settlement of Labour Dispute Law, 2012.

Research Finding

According to the figures mentioned above, it can be seen that the workers mostly rely on the resolution process in seeking a legal remedy for their grievances. The settlement of labour disputes by the arbitration process is an effective mechanism for the workers, especially at the township level, it received a total of 11,431 disputes and settled 9,139 disputes, and 80% of the disputes were settled. The Arbitration Body received 1,593 disputes, and 816 disputes were referred to the Arbitration Council, and 51% of the disputes were settled in the Arbitration Body. Therefore, the resolution process can seek legal remedy effectively for the workers within a short period, especially for their termination of work.

Relevant strong provisions regarding dismissal and termination of, and resignation by, a worker should be inserted in the Employment and Skills Development Law, 2013, as well as the extension of the employment contract and relevant provisions to pay compensation to the worker. Section 5 (d) of the law should also be revised as the responsibility of the employer to pay compensation. According to the figures, it can be found that the workers totally rely on the dispute resolution system, especially when they were dismissed by the employer. But a dispute which has arisen out of the employment contract must be deemed to be a right dispute because it involves a question of whether the dismissal was justified based on the terms of the employment contract. It should be reconsidered the performance of the dispute resolution mechanism deciding the dispute on dismissal while it constitutes as a dispute which the law does not allow to hear and decide by the Arbitration Body and Arbitration Council. However, if the Settlement of Labour Dispute Law authorizes the dispute resolution mechanism the authority to settle dispute on dismissal, it will be more beneficial for the workers. In doing so, the definition of right dispute and interest dispute should be revised.

To ensure maintaining employment sustainability, developing peaceful workplace and reducing the labour disputes, it is crucially important to encourage the bipartite negotiation process of the disputes by a Workplace Coordinating Committee or between employers and workers in person within the factories and the Settlement of Labour Dispute Law, 2012 should provide compulsory measures in doing so. Moreover, since the law does not provide detailed procedures for the collective bargaining process, it should also insert some provisions regarding such a process, and an effective legal training course for the employers and workers should be conducted. Moreover, the Workplace Coordinating Committee can negotiate all types of dispute. Therefore, promoting the capacity of the committee would be a vital role in reducing the labour disputes.

Conclusion

Before the Settlement of Labour Dispute Law had been amended, the disputes heard and decided by the Arbitration Body are a mixture of individual disputes and collective disputes. After the law had been amended, the Arbitration Council can hear and decide the interest disputes only.

Before the amendment of the law, both individual dispute and collective dispute could be conciliated but after the amendment, only interest dispute can be conciliated, but not the right dispute. The second amendment of the law allows less opportunity to address the workers' grievances through conciliation.

The findings suggest that there may be more benefits in enhancing the role of arbitration in settling disputes on dismissal, regardless of the term of employment contracts. This could potentially lead to more equitable results for the workers. This research will serve as a valuable resource for understanding and enhancing the dispute settlement mechanisms in addressing workplace grievances.

The study also raises important questions about the effectiveness of current labour dispute settlement mechanisms and points to potential areas for improvement in the Settlement of Labour Dispute Law, 2012. It highlights the need for a more comprehensive approach to addressing dismissal-related disputes and emphasises the potential benefits of arbitration in achieving fair outcomes for all parties involved. Finally, this research highlights the bipartite negotiation at the Workplace Coordinating Committee is the best way to reduce labour disputes and to safeguard the benefits of both employer and worker.

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