



A Simple Guide to the Minor Employment Claims Adjudication Board

Simple Guide

Foreword

This guide sets out in simple terms the main provisions of the Minor Employment Claims Adjudication Board Ordinance (Cap. 453). It should be noted that the Ordinance itself remains the sole authority for the provisions of the law explained.

Minor Employment Claims Adjudication Board

The Minor Employment Claims Adjudication Board (the Board) is established under the Minor Employment Claims Adjudication Board Ordinance to provide a quick, simple and inexpensive service to adjudicate employment claims arising from disputes of statutory or contractual rights of employment.

Filing claims with the Board

A person having gone through conciliation by the Labour Relations Division (LRD) of the Labour Department without a settlement may file his claim with the Board.

Direct application to the Board for adjudication without first going through conciliation by LRD will not be accepted by the Board.

Claims that are within the jurisdiction of the Board cannot be brought before any other court.

Minor employment claims

Minor employment claims are claims:

- (1) arising from disputes of statutory or contractual rights of employment;
- (2) involving a claim amount not exceeding \$15,000* per claimant; and
- (3) with not more than 10 claimants in each claim.

* If the right of action of the claim arose wholly before 17 September 2021, this claim amount was not exceeding \$8,000 per claimant.

Employment claims with claim amount or number of claimants above the jurisdictional limit of the Board shall be dealt with by the Labour Tribunal (LT).

Claims in which the Board has no jurisdiction

The Board does not have jurisdiction in any claim pursued for a cause of action founded in tort, or any claim submitted to proof in a bankruptcy or winding up.

Claims for remedies against an employer involving unreasonable dismissal, unreasonable variation of the terms of employment contract, or unreasonable and unlawful dismissal under Part VIA of the Employment Ordinance (Cap. 57) are under the jurisdiction of LT.

In addition, the Board shall not have jurisdiction to hear any claim arising more than 12 months before the date on which the claim is filed, unless the parties to the claim have, by signing a memorandum, agreed that the Board shall have jurisdiction. Otherwise, the claim should be transferred to LT.

Circumstances under which the Board can decline jurisdiction

The Board can decline jurisdiction when:

- (1) it is of the opinion that the claim should not be inquired into, heard and determined by it and therefore should be transferred to LT; or
- (2) a claim has been split or divided and pursued in separate proceedings for the sole purpose of bringing the sum claimed in each of such proceedings within the jurisdiction of the Board.

Right of audience

The following persons will have a right of audience before the Board:

- (1) any party to the claim;
- (2) an officer or employee of a corporation who is authorised in writing by the corporation to appear as its representative; or

- (3) with the permission of the Board, an office-bearer of a registered trade union or employer association who is authorised in writing by a party to appear as his representative.

No legal representation on either side would be allowed.

Hearings before the Board

Hearing is conducted in public, and in an informal manner, either in Chinese or English. If necessary, the claimant and/or the defendant of a claim can approach the Board well in advance for arranging free interpretation service at the hearing.

The Board may order the production of any document, record, book of account or other exhibit and ask parties and witnesses questions as it thinks fit.

An award or order will be made by the adjudication officer as soon as possible after the conclusion of a hearing.

Enforcing compliance in the Board's adjudication process

The adjudication officer has the same privileges and immunities as a judge of the Court of First Instance in civil proceedings in that court.

Any person commits an offence if he, without reasonable cause, fails to comply with an order of the Board to produce any document, record, book of account or other exhibit which the Board considers relevant to the claim.

It is a criminal offence for anyone:

- (1) to threaten, persuade or induce a witness or party not to give evidence in any hearing before the Board; or
- (2) to use a threatening or insulting expression or behave in an insulting manner or wilfully interrupt a hearing before the Board.

Review and appeal

An application for review must be made by a party within 7 days from the date of award or order. On such review the adjudication officer may:

- (1) rehear the claim;
- (2) call or hear fresh evidence; and
- (3) confirm, vary or reverse the award or order.

A party may, within 7 days after the day on which a written award or order is served on him (or such time as may be extended by the Registrar of the High Court on good cause), make an application for leave to appeal to the Court of First Instance against the decision on grounds that it is wrong in law or that the claim is outside the jurisdiction of the Board. With leave to appeal granted by the Court of First Instance upon application, a party may appeal to the Court of First Instance.

Enforcement of award of the Board

An award or order of the Board may be registered in the District Court to become a judgment of the District Court and be enforced accordingly.

Defaulting payment of an award of the Board is a criminal offence

Under the Employment Ordinance, if an award of the Board provides for the payment by an employer of any specified entitlement (such as wages, end of year payment, maternity leave pay and severance payment, etc.) and the employer wilfully and without reasonable excuse fails to pay the award within 14 days after the date on which the sum is payable, the employer is liable to prosecution and, upon conviction, to a fine of \$350,000 and imprisonment for 3 years.

Enquiries

Enquiry Hotline: 2717 1771 (the hotline is handled by "1823")

Homepage of the Labour Department: <http://www.labour.gov.hk>

Minor Employment Claims Adjudication Board

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