

10 GEORGE VI.

CHAP. 63.

An Act to provide for the Reinstatement in Civil Employment of discharged members of His Majesty's Forces and other designated classes of persons.

[Assented to 31st August, 1946.]

HIS Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

SHORT TITLE.

1. This Act may be cited as *The Reinstatement in Civil Employment Act, 1946.*

INTERPRETATION.

2. In this Act and in any order or regulation made thereunder, unless the context otherwise requires,

- (a) "applicant" means a person who is or claims to be entitled to reinstatement under this Act;
- (b) "employer" in relation to any person accepted for service in His Majesty's forces, means a person carrying on any undertaking or service in which the person accepted for service had been employed for at least three months immediately prior to the date on which he was accepted for service, or in which on that date he had employee status or a recognized position by reason of an agreement between one or more employers and one or more trade unions or groups of employees; and references to an employer shall be construed as including references to any person for the time being carrying on any undertaking or service with which has been amalgamated the undertaking or service in which the person accepted for service was employed when so accepted or in which it was comprised when the employee's service in His Majesty's forces began;

"Minister."

"reinstated employee."

"reinstatement."

"Reinstatement Officer."

"reinstatement period."

"Selective Service Officer."

"service in His Majesty's forces".
Naval, military or air forces.

1940, c. 13.

Merchant seamen.

Proviso.

(Civilian) Canadian Fire Fighters.

1940, c. 13.

- (c) "Minister" means the Minister of Labour;
- (d) "reinstated employee" means an employee who has been reinstated under this Act;
- (e) "reinstatement" means reinstatement under this Act;
- (f) "Reinstatement Officer" means a person designated as such under this Act;
- (g) "reinstatement period" means the period of three months after discharge in Canada from the service or from hospital treatment following discharge in Canada, or the period of four months after discharge overseas or from hospital treatment following discharge overseas;
- (h) "Selective Service Officer" means a National Selective Service Officer appointed under the National Selective Service Civilian Regulations; and
- (i) "service in His Majesty's forces" means,
(i) service on active service in World War II in the naval, military or air forces of His Majesty or in the naval, military or air forces of any of the nations allied with His Majesty, or any period of training, service or duty in consequence of having been called out under *The National Resources Mobilization Act, 1940*;
- (ii) service in the capacity of merchant seaman by any person who is a British subject and a citizen of and resident in Canada engaged in such capacity on or since the ninth day of September, one thousand nine hundred and thirty-nine, on a vessel sailing in coastwise waters or in waters outside the territorial limits of Canada, whether under Canadian registry or licence or registry or licence of any other country other than a country at war with the nations allied with His Majesty, and after such service for a continuous period of at least six months including layoff periods and after discharge or release from such service, or other termination thereof; Provided that, with the exception of persons who were undergoing training in Dominion Government Marine and Engineering Training Schools for the purpose of fitting themselves for engagement as merchant seamen on the seventh day of May, 1945, such service in the capacity of merchant seaman shall have commenced before the seventh day of May, 1945;
- (iii) service as a member of the Corps of (Civilian) Canadian Fire Fighters for Service in the United Kingdom during the period of such service or any period of training, service or duty in consequence of having been called out under *The National Resources Mobilization Act, 1940*.

- (j) World War II means the war waged by His Majesty and His Majesty's Allies against Germany and Germany's Allies which, for the purpose of this Act shall be deemed to have commenced on the first day of September, nineteen hundred and thirty-nine.

World War II defined.

TERMINATION OF SERVICE.

3. (1) For the purpose of this section, "member of an interim force" means a member of the naval, military or air forces of Canada who has offered to serve in any of the said forces for a specific period terminating on or after the thirtieth day of September, one thousand nine hundred and forty-seven, and who, having been accepted for such service, is so serving.

"member of an interim force".

Termination of service.

(2) Where a person was, immediately before becoming a member of an interim force, on active service in the present war in the naval, military or air forces of Canada, his service shall, for the purposes of section five of this Act, be deemed not to have terminated whether or not he continues on active service as long as he continues to perform fulltime duties as a member of one of the said forces until

Where service deemed not terminated.

(a) the thirtieth day of April, one thousand nine hundred and forty-six; or

(b) if he has applied for retirement or discharge from the said service before the thirtieth day of April, one thousand nine hundred and forty-six, until actual termination of his service.

(3) For the purposes of section five of this Act the service of a member of the interim force shall be deemed to have terminated on the thirtieth day of April, one thousand nine hundred and forty-six, unless he has, prior to that date, applied for retirement or discharge.

Date of service termination for reinstatement purposes.

4. For the purposes of section five of this Act, service by any person in the capacity of merchant seaman, in any case where such service is not terminated prior to the thirty-first day of December, one thousand nine hundred and forty-six, shall be deemed to have terminated on the said day, unless, on the said day he is engaged in such capacity on a voyage in coastwise waters or in waters outside the territorial limits of Canada, in which case such service shall be deemed to have terminated on the day that voyage is concluded.

Termination of service.

Merchant seamen.

REINSTATEMENT.

5. (1) It shall be the duty of an employer by whom a person accepted for service in His Majesty's forces was employed when accepted for such service, to reinstate him

Duty of employer to reinstate employee.

in employment at the termination of his service in such occupation and position as would be consistent with the true intent and purposes of this Act and under conditions not less favourable to him than those which would have been applicable to him had he remained in the employment of that employer: Provided, that the right to reinstatement shall be subject to established rules of seniority in the employer's establishment, with retention of seniority rights during the employee's period of service with His Majesty's forces, or, in an absence of such rules, to preference according to dates of first employment in the employer's service with due consideration to continuity of employment in that service: And Provided, further, that for determining the employee's rights to pension or other benefits, service in His Majesty's forces shall be deemed to have been service with the employer.

Proviso.

Proviso.

Acceptance for service.

(2) For the purposes of this Act, where a man has,

(a) upon being served with an order requiring him to report for military training, service or duty under regulations made by the Governor in Council, or

(b) in the belief that he has been or will be accepted for service in one of His Majesty's armed forces,

left his employment to comply with the order or to enter the service, he shall be deemed to have been accepted for service in His Majesty's forces at the time he left the employment whether that time is before or after the time this Act comes into force; and his service in His Majesty's forces shall be deemed to have been terminated when he ascertained that he was not being accepted for service therein whether that time is before or after the time this Act comes into force.

Continuity of service during incapacity.

(3) Where, after termination of his service in His Majesty's forces, a person receives hospital treatment or is physically or mentally incapable of performing work to which he would have been entitled upon reinstatement, the period of the treatment or incapacity shall, upon reinstatement thereafter, be deemed to have been a period of service in His Majesty's forces for the purposes of this section.

Delayed reinstatement.

Effect on termination of service.

(4) Where the Minister or a Selective Service Officer has, within the reinstatement period, directed or requested a person entitled to reinstatement to accept other employment and the person so directed or requested accepts the employment, his service in His Majesty's forces shall be deemed not to have been terminated for the purposes of this Act until the termination of the work which he has been so directed or requested to accept.

Business operated in several establishments.

(5) Where an employer's employees are employed in various establishments and it is not reasonably practicable to reinstate an applicant in the establishment in which he was employed at the time he was accepted for service in

His Majesty's forces, the employer shall reinstate the applicant in one of his other establishments in Canada if

- (a) it is reasonably practicable so to reinstate him; and
- (b) it is or has been the policy or practice of the employer to transfer employees in the applicant's classification from one establishment to another.

6. (1) An applicant may apply to the employer verbally or in writing for reinstatement.

Application for reinstatement.

(2) The Minister may prescribe forms to be used in applying for reinstatement but an application is not invalid or defective because it is not in prescribed form.

Prescribed forms.

(3) The fact that an employer has offered to reinstate a former employee within the reinstatement period but before the employee has applied for reinstatement does not affect the employee's right to apply for reinstatement at a later time within the said period.

Reinstatement rights not affected by offer before application.

(4) For the purposes of this Act, if an applicant inquires about reinstatement but does not expressly apply for reinstatement he shall be deemed not to have applied for reinstatement.

Inquiries.

7. (1) A person who has been offered reinstatement may accept the offer without prejudice to a claim that it does not comply with the requirements of this Act.

Acceptance of offer without prejudice.

(2) Where an applicant, having been offered reinstatement by the employer and having presented himself for employment, is of opinion that the employment offered does not comply with the requirements of this Act, he may apply for assistance to a Reinstatement Officer in person or in writing.

Employment offered not in compliance with requirements.

8. (1) If an employer claims that an applicant is physically or mentally incapable of performing work available in the employer's service, a Reinstatement Officer may arrange for a medical examination of the applicant.

Applicant incapable of performing work.

(2) Where, upon discharge from His Majesty's forces, a person is physically or mentally incapable of performing work available in the service of the employer by whom he was employed when accepted for service in His Majesty's forces, he may notify the employer during the reinstatement period that he intends to apply for reinstatement when he is capable of performing the work.

Extension of time for reinstatement.

9. (1) Where there is a practice or policy of paying graduated scales of wages and where increases are given to employees principally on the basis of length of service, it shall be deemed, for the purposes of this Act, that increases are given on the basis of length of service only

Rate of remuneration on reinstatement.

and in any such case the employer shall, upon reinstatement of an applicant in his previous classification, remunerate him at the rate at which he would, on that basis, have been remunerated if his service in His Majesty's forces had been service with the employer.

Idem.

(2) Where there is a practice or policy of giving increases in wages to employees by reason of acquired skills, experience or training, the employer shall, as soon as an applicant has, after he has been reinstated, manifested the skills, experience or training, give to the applicant the increases which he might have been given if the relevant skills, experience or training acquired in His Majesty's forces had been acquired in the employment.

Promotion entitlement.

(3) The employer shall grant to a reinstated employee upon reinstatement or as soon thereafter as is reasonably practicable every promotion to which he would have become entitled by reason of length of service or seniority if the time spent by the reinstated employee in His Majesty's forces had been spent in the service of the employer.

Permanent status and seniority.

(4) Where, under the terms of employment, whether under a collective agreement or otherwise, employees obtain a permanent status in the employment or are entered on the seniority lists after having been in the employer's services for a fixed period, service in His Majesty's forces shall be deemed to have been service with the employer for the purposes of determining

- (a) their status or position in so far as it affects their rights to reinstatement; and
- (b) their status or position after reinstatement.

Vacations with pay.

10. (1) Subject to the other provisions of this section, for the purpose of determining a reinstated employee's right to vacation with pay for the calendar year in which he is reinstated and for subsequent years, the period of service in His Majesty's forces shall be deemed to be time spent in the service of the employer.

Conditional for first year

(2) Subject to subsection three of this section, a reinstated employee is not entitled to vacation with pay for the calendar year in which he is reinstated unless he is in the employment ninety days in the calendar year after reinstatement.

Employer may grant vacation at any time.

(3) Notwithstanding anything in this Act the employer may, in accordance with his existing practice or policy or in accordance with a collective labour agreement or otherwise, grant vacation with pay commencing at any time after reinstatement.

11. (1) Where an employer has reinstated a former employee in accordance with section five of this Act, he shall not, without reasonable cause, terminate the employment of that employee and, in any proceedings for violation of this section in any case where the employment was terminated within six months of the reinstatement the onus shall be on the employer to prove that he had reasonable cause for terminating the employment.

Discharge of reinstated employee without reasonable cause.

Onus of proof.

(2) Failure of a person who has applied for assistance under subsection two of section seven of this Act to perform the duties of the employment during a period when he is being assisted by a Reinstatement Officer shall, for the purposes of subsection one of this section, not be reasonable cause for terminating the employment.

Failure to perform duties.

12. When reviving a contract of apprenticeship in any designated trade upon the discharge from service in His Majesty's forces of a former apprentice or when entering into a new contract between the former master and such apprentice, due regard shall be given to and allowance made for any instruction relevant to such trade received by the said apprentice while serving in His Majesty's forces, and the relationship of master and apprentice shall be deemed to be the relationship of employer and employee for the purposes of this Act.

Relationship of employer and employee upon revival of apprenticeship.

13. Where any employer has entered into a mutual agreement with his employees undertaking to restore to employment employees who enlist for service in His Majesty's forces such agreement shall continue in force to the extent that it is not less advantageous to an employee than the provisions of this Act, and subject to such interpretation as may be mutually agreed to by the contracting parties.

Contract or arrangement between employer and employee.

PROCEEDINGS AGAINST EMPLOYERS.

14. In any proceedings against an employer for the violation of section five of this Act,

Defences available to employers.

(a) it shall be a defence for the employer to prove that the person formerly employed by him did not within the reinstatement period apply to the employer for reinstatement, except that where such person upon discharge from His Majesty's forces was physically or mentally incapable of performing work available in the service of such employer, it shall not be a defence to prove the facts aforesaid if the said person has notified his employer as provided in section eight of this Act and has within the reinstatement period or within six months thereafter made one or more applications for reinstatement;

(b) it shall be a defence for the employer to prove that, subject to the provisions of paragraph (a) of this section, the person formerly employed by him applied for reinstatement before he offered reinstatement to him and that having been offered reinstatement by the employer he failed without reasonable excuse to present himself for employment at the time and place notified to him by the employer; the fact that an applicant has applied to a Reinstatement Officer for assistance under section seven of this Act shall be deemed to be a reasonable excuse for failing to present himself for employment during the period when he is being assisted by the Reinstatement Officer;

(c) it shall be a defence for the employer to prove that, by reason of a change of circumstances, other than the engagement of some other person to replace him, it was not reasonably practicable to reinstate the person formerly employed or that his reinstatement in an occupation and under conditions not less favourable to him than those which would have been applicable to him had he not been accepted for service with the armed forces was impracticable, and that the employer has offered to reinstate him in the most favourable occupation and under the most favourable conditions reasonably practicable;

(d) it shall be a defence for the employer to prove that the person formerly employed was physically or mentally incapable of performing work available in the employer's service, except that where such person has notified the employer pursuant to section eight of this Act and has within the reinstatement period or within six months thereafter made one or more applications for reinstatement, it shall not be a defence to prove the facts aforesaid unless the employer also proves that the applicant was so incapable at the time of the last application for reinstatement made within the said reinstatement period or period of six months thereafter;

(e) it shall be a defence for the employer to prove

- (i) that the applicant was formerly employed directly or indirectly to take the place of an employee who had been previously accepted for service in His Majesty's forces,
- (ii) that the applicant would not have been employed if such other employee had not left the employment, and
- (iii) that such other employee had been reinstated in his employment.

ADMINISTRATION.

15. The Minister may designate any person as a Reinstatement Officer to assist in the administration and enforcement of this Act and may issue to a Reinstatement Officer a certificate of his designation as such.

Reinstatement Officers.

16. (1) A Reinstatement Officer may, for the purpose of enforcing and administering this Act,

Powers of Reinstatement Officers.

(a) enter at all reasonable times any premises or place, other than a private dwelling house not being a workshop, where he has reasonable grounds for supposing that an applicant was employed before being accepted for service in His Majesty's forces;

(b) make such examination and inquiry as may be necessary for ascertaining whether the provisions of this Act are being complied with in any such premises or place; and

(c) examine orally, either alone or in the presence of any other person, as he thinks fit, with respect to any matter arising under this Act, any person whom he finds in the premises or place, and require a person so examined to sign a declaration as to the truth of the statements made by him with respect thereto.

(2) Every person shall forthwith furnish to a Reinstatement Officer such information as the Reinstatement Officer may reasonably require in connection with the enforcement or administration of this Act and shall produce for inspection every register, book, card, wage sheet, record of wages, or other document that he reasonably requires in that connection.

Information to be furnished. Production of documents.

(3) The production of a document purporting to be a certificate of designation as a Reinstatement Officer signed by or on behalf of the Minister is evidence of the designation and a Reinstatement Officer applying for admission to any premises or place under this section shall, if required, produce his certificate of designation.

Production of certificate of designation.

17. (1) Subject to subsection two of this section, information, written or verbal, obtained under this Act shall not be disclosed to any person except the Minister, or his officers in the course of their employment.

Secrecy of information.

(2) The Minister or a Reinstatement Officer may—

(a) disclose to an applicant or any person acting on his behalf, such information as may be necessary for the enforcement of his rights under this Act;

Permissible disclosures to applicant department of Government or court.

(b) disclose information obtained under this Act to a department of the Government or to a court in connection with the administration or enforcement of this Act.

OFFENCES.

Offence. **18.** Any employer who contravenes or fails to comply with the provisions of section five or section eleven of this Act, shall be guilty of an offence and liable on summary conviction to a fine not exceeding five hundred dollars, and, in addition, the court shall order him to pay to the person whom he has failed to reinstate, or whose employment he has terminated, a sum not exceeding an amount equal to twelve weeks' remuneration at the rate at which he was being remunerated by that employer when he was accepted for service in His Majesty's forces.

Offence. **19.** (1) Any person who,
 (a) refuses to supply information as required by this Act;
 (b) obstructs, hinders or delays a Reinstatement Officer in making an inspection of registers, books, cards, wage sheets, records of wages and other documents under this Act; or
 (c) fails or refuses to produce a register, book, card, wage sheet, record of wages or other document, as required by this Act

Penalties. is guilty of an offence and liable, on summary conviction, in the case of a corporation to a fine of not less than one hundred dollars and not more than one thousand dollars and in the case of any other person to a fine of not less than twenty-five dollars and not more than five hundred dollars.

Penalty where no other penalty expressly provided. (2) Every person who contravenes any of the provisions of this Act is guilty of an offence and, where no penalty is expressly provided, liable on summary conviction, in the case of a corporation to a fine of not less than one hundred dollars and not more than one thousand dollars and in the case of any other person to a fine not exceeding two hundred dollars.

Prosecution on behalf of employee. **20.** The Minister shall, where he considers the circumstances warrant a prosecution under section eighteen of this Act, institute and conduct proceedings on behalf of a former employee without cost to such employee.

Limitation of actions. **21.** In any prosecution for a contravention of any of the provisions of this Act, the complaint shall be made, or the information laid, within one year from the time when the matter of the complaint or information arose.

REGULATIONS.

Orders and regulations. **22.** The Governor in Council may make all such orders and regulations as may be deemed necessary or desirable to carry out the purposes and intentions of this Act, which

orders and regulations shall have the force of law and shall forthwith be published in the *Canada Gazette* and be tabled in Parliament forthwith if Parliament is in session, and if Parliament is not in session, within two weeks of the opening of the session next following the making of such order or regulation, and he may prescribe the penalties that may be imposed for the violation of such orders and regulations.

REPEAL.

23. The *Reinstatement in Civil Employment Act, 1942*, Repeal. chapter thirty-one of the statutes of 1942, is repealed.

OTTAWA: Printed by EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
 Law Printer to the King's Most Excellent Majesty.