

DANISH LAW CONCERNING THE JURISDICTION OF DISPUTE RESOLUTION IN CASES OF EMPLOYMENT-RELATED NATURE.

Dispute settlement bodies

In the field of Danish labour law there are a number of dispute settlement bodies in addition to the ordinary courts.

Some of these are purely *administrative* like committees and tribunals under ministries, directorates or agencies.

Others are *judicial* meaning that they have a similar construction to the courts and act according to the rules of procedures including due process guarantees ensuring that the casting vote is given by independent judges.

Widely the tribunals are replaced by such other judicial bodies. The reason is an intention to ensure that experts in labour law matters assist in making the decision. In addition to this there is a need for quick and cheap ways of decision without a possibility of appeal in order to make an immediate commitment in practical working life on the basis of the solutions instructed by the bodies.

Ordinary courts

The ordinary courts (the County Courts, the High Courts, the Supreme Court and the Maritime and Commercial Court of Copenhagen) settle disputes in labour matters wherever there is no explicit legal basis for the decision to be made by special settlement bodies.

The ordinary courts deal with disputes concerning the interpretation and use of the legislation and the individual contract of employment.

In disputes concerning use of the law, some laws e.g. the Collective Dismissals Act provides that the courts must be composed of judges.

Private Arbitration

Cases which are to be decided by the ordinary courts will by agreement between the parties be settled by private arbitration. The Arbitration Act demands that the arbitration agreement is clear and that the Arbitration Tribunal is composed in an adequate way that is by equal representation from the parties and a neutral chairperson.

Likewise the form of procedure must fulfil the criteria for the proper administration of justice.

Industrial bodies for dispute settlement – bargaining unit

Within the collective employment law where the field is regulated by collective agreement, special industrial bodies for dispute settlements are used in last resort.

- The Labour Court
- The Industrial Arbitration Tribunal
- The Collective Agreement Tribunal
- The Dismissals Tribunal
- Other arbitration tribunals set up according to the specific collective agreements

Labour Court

The Labour Court acts according to the special Labour Court Act. The types of disputes listed in § 9 of this act are:

1. Violation and interpretation of basic agreements or equivalent agreements adopted by the Danish Employers' Confederation (DA) and the Danish Confederation of Trade Unions (LO)
2. Breaches of ordinary collective agreements about pay and working conditions
3. The lawfulness of noticed collective industrial actions or given notices if protest has been made within 5 days
4. The question as to whether a collective agreement exists at all
5. The lawfulness of using industrial action in support of claims of agreements in fields in which collective agreements have not been made
6. Disputes about the official conciliators' competence

The social partners can decide that cases concerning breaches of the agreement shall not be settled by the Labour Court but by industrial arbitration. However, it has to be very clear that such a decision exists before the Labour Court refuses the case.

The Labour Court is composed of 12 ordinary judges and 31 substitutes, respectively elected by employers and employees. In addition to that a president and 5 vice-presidents (substitutes included), usually professional judges from the higher courts and a registrar.

This assembly acts so that one participant from the presidency (in special cases 3) and 3 judges from respectively the employers' and employees' sides are present in each case.

Industrial Arbitration Tribunals

The industrial Arbitration Tribunals decide disputes concerning the interpretation and use of collective agreements. That means questions about the existence of a binding custom agreement and its content. The industrial arbitration tribunals also deal with disputes about how to employ the stipulations of the agreement in practice for instance concerning the procedure in dismissals, working hours and payment of wages.

However, the Labour Courts decides if a collective agreement is present at all unless the parties agree to treat it by arbitration.

In general the industrial arbitration tribunal is set up ad hoc in each single case however standing arbitration tribunals within the single trade have been set up. The parties jointly elect a chairperson who in case of failing agreement on the matter is appointed by the Labour Court. Often the chairperson is a lawyer but depending on nature of the cases also technicians for instance architects or engineers are used. Besides the industrial arbitration tribunal consists of an equal number of representatives nominated by each of the parties to the dispute.

The chairperson must fulfil the legal capacity applying to judges. There are no equal demands on the representatives but they are not allowed to be personally involved in the case.

Other industrial bodies for dispute settlement

Furthermore according to the agreement a line of various bodies for dispute settlement is setup in the form of arbitration and with specific fields in scope.

One of the most important is the Dismissals Tribunal which is set up as stipulated in the Basic Agreement between the DA and the LO. The purpose of this tribunal is to decide cases about unfair dismissals according to the Basic Agreement. The tribunal is a standing arbitration tribunal and its decisions are final.

Also to be mentioned are the *Collective Agreement Tribunal* whose function is to issue a final decision on disputes over the interpretation of a mediation proposal which is put forward by the official conciliator, the Shift working arbitration tribunal which settles disputes about the General

Agreement on Shift working and the Cooperation Board which settles disagreements over the Co-operation Agreement's interpretation and application between the LO and DA.

Special bodies

Disputes Board

The Disputes Board seats in Copenhagen and is set up in accordance with the Vocational Training Act. This Board rules on disputes between vocational trainees and the employer with whom they have concluded a special training contract which have not been settled by the occupational training committee.

The board is composed of a chairman who has to be a professional judge and 4 representatives of the trade union and employers' organisations. In each case the board is joined by two special experts elected by the organisations within the field from which the case has arisen. The decisions of the board – and settlements from the board – are to be carried out according to the rules of the Court Procedure Act, if they are not within 8 weeks brought before the ordinary courts.

Administrative decisions

At first the public authority involved makes the decision concerning use of the rules. That's why the employment services are of importance.

Disputes arising from the scope of the Annual Holidays Act are settled by the Labour Inspectorate whose decision can be passed on to the Ministry of Labour.

In certain cases special administrative dispute settlement bodies are set up as for instance the social tribunals set up in every county to which complaints against local authorities about the employees right to sickness benefit from the employer can be filed and whose decisions can be brought to the National Social Appeals Board.

Administrative decisions can be brought before the ordinary courts to the extent that the case deals with interpretation of the law.

Crossing jurisdiction of the bodies

To some extent the jurisdictions of the bodies overlap. Often the decision of a case implies an evaluation of the sources of law which are subject to different ways of decisions for example both legislation and use of agreement.

The rules of jurisdiction in the Labour Court Act explicitly stipulate how to solve conflicts of jurisdiction. The determination about which body should make the decision normally depends on common legal considerations concerning among others the expertise of the bodies and the opportunity for executing certain sanctions.

In general, cases concerning collective agreement are dealt with by the industrial bodies whereas the employee's claims which are based on legislation or individual contract of employment are dealt with by the ordinary courts.

However the collective agreement also enters into a basis for the specific contract of employment. If the job is covered by collective agreement a problem of delimitation often occurs between the courts and the industrial bodies just as it can be the case that the collective agreement refers to the rules of law.

The basis is that claims based on law in absence of an agreement between the parties of the contract of employment which meet the demands from the ordinary arbitration to agreement about private arbitration always can be tried at the ordinary courts.

This applies even if the concerned rule of law is mentioned in the collective agreement.

The reference of the collective agreement mentioning that disputes are treated by arbitration is therefore not an adequate arbitration agreement.

Often it is difficult to determine whether it concerns a pure dispute of interpretation which is covered by industrial arbitration or it concerns a breach of agreement which is handled by the labour court.

§10 of the labour court act states concerning this issue that if a case in its entirety is covered by industrial arbitration, the labour court shall reject it unless the parties agree to seek the decision of the court. If the case only partly is covered by industrial arbitration the labour court has the possibility to decide it in its entirety no matter if one of the parties should resist.

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