OPM.746/55 No.355

MEMO ON EMPLOYMENT SERVICE ACT

Section 13 of the Employment Service Act which was repealed smacks of totalitarianism and is contrary to the concept of democratic Government. It impinges on the liberty of the individual, both employers and employees. It runs counter to Article 10 of the International Labour Convention No.88 - Employment Service Convention, 1948, to which Malta has signified its adherence in full.

Section 13 affected employers in that they could not employ the workers they wanted, perhaps workers whom they knew and could trust. Workers who were out of work could not take a job offered to them because technically they had to be submitted for employment by the Employment Office. Workers in employment could not take over a better paid job with the larger firms because, being in employment, they could not register with the Employment Service, and so they had to stay put or leave their employment voluntarily, but then they had no guarantee they would get the job they were after.

Article 10 of the forementioned Convention reads as follows:-

"The employment service and other public authorities where appropriate shall, in co-operation with employers' and workers' organisations and other interested bodies, take all possible measures to encourage full use of employment service facilities by employers and workers on a voluntary basis."

To impose the restriction without consulting interested employers' and workers' organisations would again be against the general principle of the said Convention and would lay Government open to more criticism that it is acting on its own without consulting interested parties.

The Federation of Malta Industries was dead against Section 13 of the Employment Service Act and they spared no effort to show their disapproval. The following are some of their objections:

(a) EFFICIENCY. The employers allege that the processes prescribed in the Act do not conduce to the expeditious filling of vacant posts. Delays have a frustrating effect and there is the added disadvantage that, where key production workers are involved, such delays could lead to default on contractual commitments and result in involvement in penalty clause troubles. The Act also seriously interferes with the use of managerial discretion in the selection of personnel for posts requiring of the holder such personal qualities as discretion, loyalty and an ability to bear responsibility and trust. No matter what circumspection the Employment Service uses in trying to meet the specifications of the employer the Service cannot, obviously, vouch for the character of its nominees.

(b) DETERRENT TO EXPANSION. The Federation of Malta Industries argues that the feeling among employers regarding these restrictions is so strong that some of the smaller firms at present outside the scope of the Act are certainly being deterred from expanding their scale of operations and taking more men through fear of exposing themselves to the inconveniences being met with at the present time by larger firms. At a time when all efforts are being directed towards industrial and economic expansion it is odd, they say, that Government should permit an obstacle of this sort to remain in being.

(c) DISCRIMINATION BETWEEN SMALL AND LARGE FIRMS. The 'fifty plus' rule places the large employer at a disadvantage vis-a-vis firms not subject to the rule in that they can entice from him without ceremony any of his best men, and can in any case select from the best material the market has to offer, whereas the large employer is restricted to the labour material offered by the Labour Department. He can only poach on the smaller units with difficulty since a worker willing to transfer would have to render himself formally unemployed (forfeiting unemployment benefit in the process) in order to secure nomination via the Employment Service to the larger firm.

(d) UNNECESSARY CONTROL. There is no real need for continuation of the present controls affecting recruitment to the larger firms. In so far as the overall level of employment is concerned it is immaterial how jobs are filled - through direct action by the employers or via the channels imposed by statute. Moreover in 1955 the main purpose behind it quite probably was not the desire to protect the jobless element against the practices of 'iniquitous' private employers but rather the need to do away with certain 'abuses' which were allegedly being practised by persons with political influence in the field of Government employment.

(e) HAMPERS FREE MOVEMENT OF WORKERS. The Act severely restricts the freedom of workers to change from one job to another offering better prospects (vide (c) above) and as things stand an advantage is enjoyed by those workers who have the means to afford temporary unemployment pending placement in the 'fifty plus' firm of their choice.

(f) GERMAN REPORT. German supports the Federation of Malta Industries thesis that the 'fifty plus' rule should be abandoned and concludes, at paragraph 16 of his report, that "The effect of the regulations (restricting the freedom of fifty plus firms) has been sometimes to delay the filling of urgent vacancies and it leads sometimes to the submission of a large number of workers before a suitable person is accepted by the firm. The disadvantages for industry are considerable, and extra work is caused for the Department. It is considered that the difficulties considerably outweigh the advantages".

In April 1957 the National Employment Board had recommended the repeal of Section 13 but had not pressed. Following an active campaign in the Press against the Section, the National Employment Board was invited by the Economic Committee to reconsider the matter in 1958 and this time the National Employment Board opted for the retention of the Section, for though all members agreed that the principle of the rule was unsound and they were all for doing away with Section 13 as soon as this could safely be done, a new situation had arisen as a result of the Dockyard transfer to Baileys.

In his memo to the Advisory Council in connection with this particular section of the Employment Service Act, the Official Secretary had recommended thus:-

(a) The principle of repeal has been fully conceded by the Board, and the only point of doubt is in the matter of timing. Even on this point the Board was not unanimous, and the fact that Labour representatives were quite prepared to see the change brought about now should indicate that Labour is not particularly worried about the Baileys prospect.

(b) The rule does not really serve the best interests of employees. The restrictive effect it has on freedom of movement within the field of employment is a serious defect since it prevents employees from maximising their employment potential. This point assumes particular importance with the Bailey transfer prospect, and far from presenting an objection this transfer strengthens the case for abolition as it is to be expected that many employees who wish to 'get on' will try to go over to the Yard.

(c) The Services are at present co-operating quite of their own accord and there is no reason to doubt that this co-operation will continue to be extended if the law is amended. The transfer of the Dockyard to Baileys should make no material difference. Just as the Admiralty was voluntarily associated with the Scheme Baileys could, no doubt, be prevailed upon to give an undertaking to use the Employment Service in the same way.

(d) The rule does not materially affect the overall level of employment since the number of jobs going will not decrease if employment in the private sector ceases to be 'regulated'. In fact there are good grounds for believing that employment openings will be more numerous without the rule than with it.

(e) The 'Expansion Deterrent' objection is not lightly dismissed. While it could be difficult to pinpoint particular firms in this regard it is fairly common knowledge that small firms do not relish the prospect of 'qualifying' for Employment Service attention, and this could well have been a factor in some cases.*

* D.T.I. is incidentally, confident that the Industrial interest would be best served by the repeal of Section 13.

(f) If it is to be a principle of employment that job openings should go to those who the Labour Department think most deserving, according to its criteria of priority, then logically there should be no distinction between the large and the small firms - all private employment should come within the scope of the Act.

(g) When the matter was discussed in Economic Committee the feeling had been that employment procedures should be placed on as free a basis as possible, and that the Government's aim should be to take the element of compulsion out of the scheme and to encourage voluntary use of the Employment Service. Ideally the Committee felt, the Service should try to attract the 'custom' of private employers and unemployed persons by demonstrating that it is equipped to serve their best interests.

(h) The German recommendation is quite clearly a condemnation of the existing set-up.

The above leave no doubt that Section 13 was unpopular and unwanted and when it was repealed there was general relief.

The rule had applied to establishments with 50 employers and over but then there were not as many large employers as there are today, with the new industries that have been set up.

Even so the Department then experienced much difficulty in meeting requests and lots of workers were sent out daily to employers and when the latter rejected all the workers sent a fresh lot was submitted.

Much time was lost and the workers had to incur transport expenses which they could ill afford. This the Department came between two fires, the employers complaining that they were experiencing too much delay to recruit their labour, and the workers complaining that they were being sent very often on a wild goose chase.

With the larger number of firms employing 50 workers, let alone 30 as now proposed, such complaints will naturally increase. Anything which could hamper production at this stage of industrial expansion should be eliminated. The revival of Section 13 of the Employment Regulation Act will affect industry adversely.

If in spite of the above Government is still of opinion that Section 13 should be reintroduced then the Employment Service will have to be reinforced considerably by the posting thereto of additional staff. The National Employment Board will have to resume its meetings, two or three times a week and the relative provision in the Estimates will have to be increased proportionately. To revive the Section before providing adequate staff and funds would be courting disaster in the industrial field.

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