
STATUTORY INSTRUMENTS

1981 No. 6

TERMS AND CONDITIONS OF EMPLOYMENT

The Guarantee Payments (Exemption) (No. 21) Order 1981

Made - - - - *6th January 1981*

Coming into Operation *23rd February 1981*

Whereas the Plant Hire Working Rule Agreement made between the parties described in Schedule 1 to this Order on 31st October 1978 and amended on 1st May 1980 and on 30th June 1980 is a collective agreement (“the collective agreement”):

And whereas the collective agreement makes provision whereby employees to whom that agreement relates have a right to guaranteed remuneration:

And whereas all the parties to the collective agreement made application to the Secretary of State under section 18(1) of the Employment Protection (Consolidation) Act 1978 (“the Act”):

And whereas the collective agreement complies with section 18(4) of the Act:

And whereas the Secretary of State, having regard to the provisions of the collective agreement (which so far as are material are set out in Schedule 2 to this Order), is satisfied that section 12 of the Act should not apply to those employees:

Now, therefore, the Secretary of State, in exercise of the powers conferred on him as the appropriate Minister under section 18(1) of the Act and of all other powers enabling him in that behalf, hereby makes the following Order:—

Citation and commencement

1. This Order may be cited as the Guarantee Payments (Exemption) (No. 21) Order 1981 and shall come into operation on 23rd February 1981.

Exemption

2. Section 12 of the Act shall not apply to an employee to whom the collective agreement relates.

Signed by order of the Secretary of State.

6th January 1981

P.B.B. Mayhew
Joint Parliamentary Under Secretary of State
Department of Employment

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SCHEDULE 1

PARTIES TO THE PLANT HIRE WORKING RULE AGREEMENT

Representing employers

1. the Contractors' Plant Association.

Representing employees

1. the Transport and General Workers' Union (Construction and Crafts Section);
2. the General and Municipal Workers' Union;
3. the Union of Construction and Allied Trades and Technicians.

SCHEDULE 2

MATERIAL PROVISIONS OF THE PLANT HIRE WORKING RULE AGREEMENT

14. Shift Work

“Shift Men”

14.1. Men whose normal duties are such as to require them to hold themselves available for work during mealtimes and in consequence have no regular mealtime, shall be deemed “shift men” and shall be responsible for taking over from and handing over to their counterpart at commencement and completion of duty. They shall be paid the number of hours they are on duty on the job at ordinary rate plus one-fifth of ordinary rate per hour shift differential. If in the normal cycle of operations for the particular job they are required to be on duty between 10 p.m. Saturday and 10 p.m. Sunday, they shall during these hours be paid at the rate of time and a half plus one-fifth of ordinary rate per hour shift differential, provided that the shift differential of one-fifth of ordinary rate per hour shall be deemed to be a conditions payment and shall not be enhanced when calculating overtime payments. If work in such hours is not within the normal cycle of operations for the particular job, no shift differential shall be paid, but the rate of payment shall be double the ordinary rate.

This does not apply to men working under Rules 12, 13 or 14.2.

Eight-hour Rotary Shifts

14.2. On all work which is being carried out by three eight-hour shifts in the 24 hours, men shall meet and be paid for eight hours per shift at ordinary rates plus in the case of men completing the shift, a shift differential of one-eighth of ordinary rate per hour. The normal aggregate number of shifts in the week shall be 15, which shall generally be worked between 10 p.m. on Sunday and 2 p.m. on the following Saturday.

Provided that, if the shift commencing on Sunday night is worked, it shall be the first shift in the week.

Provided further that, if the aggregate number of shifts in the week exceeds 15:

- (a) the 16th and 17th shifts shall be paid at the rate of time and a half plus the shift differential of one-eighth of ordinary rate per hour provided that the shift differential of one-eighth

of ordinary rate per hour shall be deemed to be a conditions payment and shall not be enhanced when calculating overtime payments, and

- (b) the 18th and subsequent shifts in the week shall be paid at double the ordinary rate but no shift differential shall be paid.

14.3. Rule 14.2 will also apply in cases where two eight-hour shifts are worked in the 24 hours except that the normal aggregate number of shifts in the week shall be 10.

Provided that, if the aggregate number of shifts in the week exceeds 10:

- (a) the 11th and 12th shifts shall be paid at the rate of time and a half plus the shift differential of one-eighth of ordinary rate per hour, provided that the shift differential of one-eighth of ordinary rate per hour shall be deemed to be a conditions payment and shall not be enhanced when calculating overtime payments, and
- (b) the 13th and subsequent shifts in the week shall be paid at double the ordinary rate but no shift differential shall be paid.

This does not apply to men working under Rules 12, 13 or 14.1.

14.4. For the purpose of Rule 4—Guaranteed Bonus, the first eight working hours of the first five normal day shifts, or the first five normal night shifts, as appropriate, in any payweek shall constitute normal working hours.

15. Guaranteed Minimum

Availability

15.1. An operative in the employment of an employer shall be deemed to have kept himself available for work during the whole of the normal working hours of any day if he complies with the following conditions:

- (a) that, unless otherwise instructed by the employer, he has presented himself for work on the site or at the depot at the starting time prescribed by the employer and complies with the employer's instructions in regard to the period (during normal working hours) for which he shall remain on the site or at the depot;
- (b) that he is willing and able to perform satisfactorily on the site, at the depot or elsewhere the work for which he was engaged or suitable alternative work; and
- (c) that, in all circumstances, particularly weather conditions, he complies satisfactorily with the instructions of the employer as to when, during normal working hours, work is to be carried out, interrupted, or resumed.

If a man, during the normal working hours of any day, fails to keep himself available for work as aforesaid, he shall be deemed not to have kept himself available for any portion of such day except such hours as he has actually worked.

Guaranteed Minimum

- (a) (a) In respect of any pay week during any part of which a man has performed actual work on the job and, being in the employer's employment, has kept himself available for work (as aforesaid), the man shall be entitled to receive payment of not less than the equivalent of 40 hours at ordinary rates (hereinafter referred to as the "guaranteed minimum").

Provided always that should a man not be available for work (as aforesaid) during the normal working hours of any day in such payweek, or should his employment be terminated during such payweek, he shall be entitled only to such proportion of the

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guaranteed minimum as the time he was available for work (as aforesaid) and in the employer's employment bears to 40 hours.

- (b) If, following immediately upon a payweek in which the man has performed actual work on the job, there occurs a payweek in which the man being in the employer's employment keeps himself available for work (as aforesaid) but does not perform actual work on the job, the man shall be entitled in respect of that week to payment of the guaranteed minimum.

Provided always that should a man not be available for work (as aforesaid) during the normal working hours of any day of such last-named payweek, or should his employment be terminated during such payweek, he shall be entitled only to such proportion of the guaranteed minimum as the time he was available for work (as aforesaid) and in the employer's employment bears to 40 hours.

- (c) If, during the next succeeding payweek or weeks, the man does not work on the job, he shall not be entitled to any payment whether he keeps himself available for work or not, it being his duty to register for unemployment benefit.
- (d) If, in any payweek collective industrial action of any kind, in contravention of this Agreement, is taken by operatives employed on the site or at the depot under this Agreement, the employer shall at all times use his best endeavours to provide continuity of work for those operatives who are not involved in such action and who remain available for work. In the event that, by reason of such action, the employer cannot provide such continuity of work, the guaranteed minimum shall be deemed to be suspended until such time as normal working is restored.
- (e) If, in any payweek a site or depot shall be closed for any day or days pursuant to Rules 9, 11(b), or the Holidays with Pay Agreement, or for any day or days of holiday pursuant to any general or local custom or to any custom in the employer's business, then as regards any man not required to work on such day or days, he shall be entitled in respect of that payweek only to such proportion of the guaranteed minimum as the time he was available for work (as aforesaid) on the remaining days of such payweek and in the employer's employment bears to 40 hours.

Provided that the employer shall be entitled to substitute any day (whether in the said week or the week immediately preceding or following) for any other day (save a Bank or other Public Holiday) hitherto observed as a holiday pursuant to such last mentioned custom.

- (f) For the purpose of calculating the guaranteed minimum:
 - (1) Any increase or decreases of pay or plus rates or any new plus rates shall if they come into operation on any day other than the first day of a payweek be deemed to come into operation only on the first day of the payweek immediately following.
 - (2) No part of the following earnings shall be taken into account:
 - (i) Sunday earnings.
 - (ii) Earnings in respect of work done outside the normal working hours.
 - (iii) Bonus earnings.
 - (iv) Plus rates payable in respect of conditions under which work is done.
 - (v) The total amount of any increases or decreases of pay or plus rates or any new plus rates which come into operation on any day other than the first day of a payweek.
- (g) No payment of guaranteed minimum in respect of time not worked shall be made under this rule in the following cases:
 - (i) Tide work.
 - (ii) Work paid by the shift.

- (iii) Sunday work.
- (iv) Time outside the normal working hours.

Guaranteed Bonus

15.3. Payment of Guaranteed Bonus, in addition to the appropriate guaranteed minimum, is in accordance with Rule 4.

Disputes

15.4. Disputes arising under this Rule (15) or concerning minimum payment due under Rule 14—Shift Work or Rule 19—Tide Work may, at the option of the Claimant, be referred to ACAS and/or an Industrial Tribunal in the event of no decision by the Conciliation Board referred to in Rule 36(3)(d).

19. Tide Work

19.1. Where work under tidal conditions is carried out during part only of the normal working hours, and men are employed on other work for the remainder of the normal working hours, ordinary rates, and guaranteed bonus in accordance with the provisions of Rule 4 (with the addition of any plus rate payable in respect of the conditions under which work is done, e.g. boot money), shall be paid during the normal working hours and thereafter payment shall be in accordance with Rule 11.

19.2. Where work under tidal conditions necessitates the men turning out for each tide and they are not employed on other work, they shall be paid a minimum for each tide of 6 hours' pay at ordinary rates, provided they do not work more than eight hours in the two tides. Work over 8 hours shall be paid for proportionately. Work done on Saturday after 4 p.m. and all Sunday shall be paid at the rate of double time. Men shall be guaranteed 8 hours at ordinary rates for time worked between 4 p.m. and midnight on Saturday and 16 hours at ordinary rates for two tides worked on Sunday.

For the purpose of Rule 4—Guaranteed Bonus, the first eight working hours of each of the first five days worked in the normal cycle of operations in a payweek shall constitute normal working hours.

Statement of Particulars Under Contracts of Employment Act

32. The Plant Hire Working Rule Agreement, including Rule 36 and Appendix shall be incorporated into the operative's Contract of Employment by reference in the Statement of Particulars under the Employment Protection (Consolidation) Act 1978.

36. Procedure for the Avoidance of Disputes

36.1. These provisions are applicable to general plant hire operatives, drivers and mechanics who are employed by the member-firms of the Contractors' Plant Association covered by this Agreement. The parties to this Agreement accept that the object of this procedure shall be to provide suitable measures for the settlement of disputes at all levels and to maintain normal working during the process. Therefore, until all the provisions of this procedure have been exhausted there shall be no stoppage of work, either of a partial or general character, including a go-slow, a work-to-rule, a strike, a lock-out, or any other kind of restriction in output or departure from normal working.

36.2. Negotiations under this procedure may be instituted by either the employer or the employees concerned.

36.3. Any questions arising at site or depot level, including those involving the application or interpretation or other matters affecting this Agreement, shall be raised in accordance with the following provisions:

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- (a) An employee desiring to raise a question in which he is directly concerned shall, in the first instance, do so with his immediate supervisor or foreman in his employing firm.
- (b) Should settlement not be reached under clause (a) above, the matter shall be discussed with the recognised representative(s) of the firm's employees and with the representative(s) of the firm's management, in the presence of both the employee and the supervisor or foreman concerned.
- (c) Failing settlement under clause (b) above, the matter shall be reported to the local official of the Union, and may be referred to a meeting with the employer at a place and occasion suitable to both sides.
- (d) If the matter still remains unresolved and the intention is to pursue it further it shall be referred for immediate consideration to the National Secretary of the Transport and General Workers' Union (Construction & Crafts Section) and the Secretary of the Contractors' Plant Association who, after such consultation as they may deem necessary, shall decide whether the dispute or question can be dealt with by administrative action or requires reference to the Conciliation Board and shall act accordingly.

36.4. The Conciliation Board referred to in Rule 36.3 above shall be constituted as follows:

- (a) The Chairman of the CPA Council, or his nominee and not more than two other duly authorised representatives of the Association;
- (b) The National Secretary of the TGWU (Construction & Crafts Section), or his nominee and not more than two other appropriate full-time officials representing the Unions signatory to the Agreement.

36.5. In the event of failure to agree under 36.4 above the signatory parties may by joint consent invite a mutually acceptable independent party to act as arbitrator.

36.6. Failing settlement through the Conciliation Board under the provision of Rules 36.4 and 36.5 above the procedure shall be regarded as exhausted on the question concerned.

EXPLANATORY NOTE

This Order, which comes into operation on 23rd February 1981, excludes from the operation of section 12 of the Employment Protection (Consolidation) Act 1978 employees to whom the Plant Hire Working Rule Agreement, made between the parties described in Schedule 1 to this Order on 31st October 1978 and amended on 1st May 1980 and on 30th June 1980, relates.

Copies of the Agreement are available for inspection between 10 a.m. and noon and between 2 p.m. and 5 p.m. on any weekday (except Saturdays) at the offices of the Department of Employment, Caxton House, Tothill Street, London SW1H 9NA.