

ASSESSMENT OF THE LEGAL REGULATION FOR THE SETTLEMENT OF COLLECTIVE LABOR DISPUTES BEFORE LABOR COURT IN THE JORDANIAN LABOR LAW

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ABSTRACT

The present research examines the negative legal impacts resulting from legal regulation of the settlement of collective labor disputes before the labor court according to the Jordanian labor law. The research concludes a set of legal impacts that violate labor rights such as the possibility of disrupting the rule of the legal strike in the Jordanian labor law and the absence of procedural and substantive control over of the work of the labor court. The rule of the legal strike can be disrupted once the dispute is referred to the Conciliation Board or the conciliation delegate according to the procedures set forth in the law, which means that no illicit strike can be achieved. On the other hand, the decisions of the labor court are final, and they are not controlled by any higher court, and the court itself could break its decisions.

Keywords: Collective Labor Dispute, Labor Court, Labor Court Proceedings, Disrupting Licit Strike.

INTRODUCTION

Article (124) of the Jordanian Labor Law Stipulates

If the Conciliation Board is unable to finalize the collective labor dispute, the Minister should refer it to a labor Court to be constituted from three regular judges delegated by the Judicial Council for this purpose upon the Ministers request and presided by the most senior of them in grade. It may convene in the presence of two of its members. If their opinions differ, the third judge shall be invited to participate in the review of the lawsuit and pass decision thereon.

The labor dispute referred to the labor Court shall be given an urgent status whereby it should commence with its review within a period not exceeding seven days from the date of referral provided that the Court passes its decision on the dispute and notifies the Minister thereof within thirty days of that date. This decision shall be final and may not be appealed before any judicial or administrative party.

The labor Court shall review the labor dispute submitted to it and pass its decision thereon according to the proceedings it deems suitable for the realization of justice between the two parties provided that consideration is given to any special proceedings stipulated in this law. Each party may appoint an Attorney-at-law or more before the Court.

And Article (126) of Same Law States That:

“The Labor Court may interpret any decision passed by it, and that is upon the request of the Minister or one of the parties to the dispute for the elimination of any ambiguity therein, in a manner which would not place the decision off the limits of the results reached. Also, it may, at any time, correct by itself

or upon the request of the Minister or one of the litigants, the faults of writing or calculation error made by accidental omission in the judgments and decisions”.

With regard to the text of article (124) of the Jordanian Labor Law, I believe that the labor court is formed when the Minister of Labor addresses the Judicial Council for this purpose and these judges are to be delegated to that end.

And according to article (99) of the Jordanian Constitution, courts are divided into three types: regular courts, religious courts and special courts. Special courts exercise their jurisdiction pursuant the provisions of the law that creates them (Khatib, 2014; Shushary, 2010; Al-Akhras, 2012; Al-Kilani, 2012) according to the provisions of article (110) of the Jordanian Constitution.

Some define legitimacy as: *“the legal cover for judicial facts and actions.”* (Malkawi, 2016). Others define it as: everything that violates a provision, prohibition of an order or anything that violates public order and morals. And because the relationship between legality and the way a labor court is formed, a legal question arises about the legality of this court. Is it a special court where it is unlikely to be a regular or religious court? Knowing that its competence is related to resolving collective labor disputes. In accordance with article (2) of the Jordanian Labor Law, collective labor dispute is defined as: *“Every dispute that arises between a group of Employees or labor Union on one hand and the Employer or Society on the other hand about the application or interpretation of a collective work contract or pertains to the circumstances and conditions of work.”*

Elements of the Collective Labor Dispute as Shown from the Above Definition are

1. The parties of the dispute represented by labor Union and employers.
2. The subject of the dispute or *cause for litigation* and does it relate to a collective labor contract in terms of application or interpretation.
3. Work circumstances and conditions.

Labor unions are an active component in protecting labor rights and in concluding collective labor contracts. They may also constitute a lobbying means on employers or the government through a licit strike.

Jordanian labor law regulated the rule of the licit strike of labor unions; it also addressed the legal provisions of resolving collective labor dispute through the Conciliation Commissioner, the Conciliation Board and the Labor Court.

Discussing the role of the Conciliation Delegate and the Conciliation Board (Ramadan, 2014; Malkawi, 2014) will be excluded from this research as this stage of the dispute is considered a compromise between its parties with the intention of amicably resolving it. However, the present research is devoted by starting from the question about the legal evaluation of the settlement of the collective labor dispute before the labor court in the Jordanian labor law and its legal impacts.

To answer this question, the research is divided into two sections. Section one will discuss the negative legislative aspects of settlement of collective labor disputes in the Jordanian labor law. The discussion will be as follows:

1. The possibility of disrupting the rule of licit strike.
2. The lack of procedural control over the work of the labor court.
3. The lack of control over the work of the labor court in terms of cause for litigation.

And section two will seek legal guarantees to settle the collective labor disputes in the Jordanian law. This section includes:

1. Judge’s self- censorship in the labor court.
2. Principle of better right.

Significance of the Study

Legal provisions in the Jordanian labor law address the issue of the labor court through amicable means and non-amicable means; there is the case of referring to the conciliation board and conciliation delegate, and then comes the role of the labor court. However, there is not any form of control over its work, where this can be considered a violation of the principle of two-tier litigation and breaching the procedural and objective control of the work of this court. It is it that determines the procedural and substantive control over its work due to the fact that the court itself determines the procedures and interprets its own decisions.

LITERATURE REVIEW

Al-Akhras (2012) deals generally with issues related to judicial jurisdiction without directly or indirectly addressing labor courts or labor jurisdiction as stated in this research.

In his study (Malkawi, 2014), addresses a number of specialized studies in the field of labor law, but the study did not examine in one way or another the issue of the labor court unlike what will be discussed in this work.

RESEARCH METHODOLOGY

This research is based on the descriptive analytical approach as it deals with the legal texts related to the subject in accordance with the provisions of the Jordanian civil code. The same applies to most laws that have been adopted the French civil code, such as- in the Arab world- the Egyptian, Lebanese, Syrian, and Iraqi laws. This also can be said in the Latin direction in European countries.

Research Questions

1. Is it possible to disrupt the rule of strike according to the Jordanian labor law?
2. How is procedural justice achieved in the work of the collective labor court?
3. Is there a violation of the principle of two-tier litigation in the work of the collective labor court?
4. 4 What is the standard in interpreting the decisions of the collective labor court?
5. Is there a violation for the better right principle contained in the Jordanian labor law?
6. Why does the legal system lack specialized labor courts?

Statement of the Problem

The question arose about article (126) of the Jordanian labor law, which gives absolute jurisdiction to the labor court in case of collective labor dispute. The court determines by itself the procedures to be followed before it, and its decision shall not be subject to appeal in any way, whether via administrative or judicial means. In addition, this court interprets its own decisions.

The Negative Legislative Aspects of Settling Collective Labor Disputes in the Jordanian Labor Law

The legal provisions in the Jordanian labor law are set to regulate the case of a collective labor dispute through presenting various means in facing this dispute. On one hand, the court allows the workers to strike, and on the other hand workers can resort to the Conciliation Delegate, the Conciliation Board and the Labor Court.

Assessment of the legislative texts that regulate these legal issues shows major legal problems in these texts which may constitute actual breach of the legal guarantees of the labor rights.

The Possibility of Disrupting the Rule of the Licit Strike

According to the provisions of articles (99) and (110) of the Jordanian Constitution, the labor court is a special court as mentioned earlier (Shushary, 2001; Al-Abboudi, 2010). However, this court has its own specificity in terms of its convening, its formation, its status of permanence and its venue. This court is held in the Ministry of Labor and its mission is ended by the end of the consideration of the labor dispute it discusses, and the remuneration of the members of this court shall be paid through a decision of the Council of Ministers (Case, 2017).

I will not discuss the principle of separation of powers (Al-Khawaldeh, 2018; Quraymat, 2016) or the financial independence of the judiciary; however, what is more important is what is stated in the legal provisions that organize and regulate the licit strike in the Jordanian labor law.

Article (135) of the Jordanian labor law stipulates two conditions in determining the licit strike. First, the employee may not go on strike without giving a not less than fourteen-day notice to the employer before the date fixed for the strike. Such period shall be doubled if the work relates to one of the public interest services (Malkawi, 2014). Second, is stated in article (134) where it comes as an imperative rule, in other words, it belongs to public order and it is not permissible to agree to violate it. The condition is that the dispute has not been yet referred to the Conciliation Delegate, Conciliation Board or Labor Court.

Any violation of one of these two conditions entails that a strike becomes illicit and results in a fine of at least 50 JD on the first day and 5 JD for each day on each worker as long as the strike continues.

It is worth mentioning that Jordan's minimum wage is 220 JD (Case, 2017) which means the penalty of the illicit strike is very severe compared to the minimum wage.

It should be also noted that the two conditions of licit strike- time duration and the dispute has not been referred to the Conciliation Delegate, Conciliation Board or Labor Court- are inaccurate control of the licit strike.

I believe that the fourteen-day seems to be a time limit given to the Minister of Labor to refer the collective labor dispute to the Conciliation Delegate, Conciliation Board or Labor Court so that the strike automatically becomes illicit once such a referral is made. This means that the rules of the licit strike in Jordan's labor law can be disrupted once the collective labor dispute is referred to one of the entities to which I have referred, including the Labor Court.

In the light of the high financial fine which is not commensurate with the minimum wage, the rules of licit and illicit strike are disrupted, as the legal impediment of referring the dispute to one of the previous entities is considered an impediment to strike's licit, while the high fine is considered a realistic impediment for the possibility to start an illicit strike.

The legal impacts resulted from the work of the Labor Court pursuant to the rule of Jordan labor law may go beyond that to another legal problem that will be discussed in the present study.

The Lack of Procedural Control over the Work of the Labor Court

Article (124/c) of labor law states that:

“The labor Court shall review the labor dispute submitted to it and pass its decision thereon according to the proceedings it deems suitable for the realization of justice between the two parties...”

Regarding the powers of this court, article (125) of Jordanian labor law stipulates: “The labor Court and Conciliation Board, upon reviewing a labor dispute, shall have the following powers:

1. Hear a statement of any person or utilize his expertise in the dispute under oath.
2. Request any party to the dispute to present his documents and statements which the Court or the Board deems necessary for the review or finalization of the dispute.

Pursuant to this provision, it is clear that the issue is alternative for the court whether in hearing witnesses, referring to expert's guidance or requesting of any documents.

The only guarantee that I believe to realize procedural justice in the text of article (124) of the Jordanian labor law is to leave determining the proceedings before the labor court according to what it “*deems suitable for the realization of justice*”; that is self-censorship, which I do not doubt. But I think that it is necessary to have guarantees established by law.

On the one hand, the court's decisions are peremptory and not subject to challenge before any judicial or administrative authority. On the other hand, the labor court and pursuant to article (126) of the labor is the only entity that may interpret its decisions and correct by itself the faults of writing or error in its judgments and decisions which is permissible as stated in the introduction of article (126): “*The Labor Court may...*”.

As for the restriction mentioned in article (126): “*...in a manner which would not place the decision off the limits of the results reached...*”, who will determine whether or not that the decision has placed off the limits as long as its decisions are not subject to challenge before any judicial or administrative authority.

The principle of two-tier litigation is one of the most important principles in litigation (Hindi, 2009), and article (176) of the Jordanian civil procedure law stipulates: “*The sentences of the primitive courts and conciliation s' courts will be appealed to the Court of Appeal, taking into account the provisions of any other law.*”

This article referred to the provisions of the conciliations and the primitive courts and as a general rule, it emphasized the principle of two-tier litigation. Although, Jordanian constitution did not include this principle, there is nothing prevent or prohibit it (Jordanian Court of Cassation, 2012). And I believe that the principle is that things are allowed and not the opposite.

It should be noted that article (14/5) of the International Covenant on Civil and Political Rights established the principle of two-tier litigation, and Jordan ratified this covenant (Jordan has ratified the International Covenant on June 30).

I believe it would have been better if Jordanian labor law includes the guarantee of two-tier litigation of the issues of collective labor disputes.

The Lack of Control over the Work of the Labor Court in Terms of Cause for Litigation

Regarding the text of article (126) aforementioned, I believe that this text includes a set of legal notes:

First, the absence of control over the decisions of the labor court. In other words, there is no higher court to monitor the work of the labor court in terms of cause for litigation.

Second, the text itself confirms the need of such a control, but it has assigned it to the same court.

Third, the text left this issue in an alternative manner to the court itself, so it may accept the request of the Minister or one of the dispute parties and may reject it.

Forth, the text distinguishes between two issues in the interpretation of the decision issued by the court. (1) is related to physical aspects such as names and numbers, and there is no problem to be corrected by the court itself. (2) is to eliminate the ambiguity contained in the resolution, provided that the decision would not place off the limits of the results reached. And a question arises here, what if this interpretation place off these results? And the answer is clear that the decision neither judicially nor administratively can be challenged.

Fifth, is related to what stated in this part of the article “*Also, it may, at any time, correct by itself ... the faults of writing or calculation error made by accidental omission...*”. Accordingly, who determines the accidental omission? What does accidental omission mean? Do the terms faults of writing or calculation error mean legal issues or judicial facts?

Sixth, the court “*...has the right at any time, correct by itself...*” does this constitute a violation of the principle of the legal argument of the matter decided upon (Al-Faouri, 2011; Al-Ahmad, 2015)?

I note that the criterion in interpreting and determining the implications of these powers is referred to the court itself which will determine if there are faults of writing or calculation error, and it can intervene on its own to tackle these faults, which considered them as faults and errors.

Is it possible to find in the Jordanian legal system what might address these negative aspects of these legal texts related to collective labor disputes? Section two will answer this question.

Legal Guarantees to Settle the Collective Labor Disputes in the Jordanian Legal System

In section one; I discussed some of the legal problems contained in the legal drafting of Jordanian labor legislation regarding settlement of the collective labor dispute before the labor court. However, in the context of this research, I will verify and examine the Jordanian legal system to see if it includes legal solutions to these problems.

Judge’s self- censorship in the labor court

Article (124/c) of the Jordanian labor law which has already been referred to, and I have indicated that the court shall review the labor dispute submitted to it pursuant to the proceedings it deems suitable. I also have referred to article (126) of the Jordanian labor law, in which the labor court has broad powers in interpreting the ambiguity in its decisions and correcting faults by itself.

Regarding the wide powers the labor court have, I believe that these powers in terms of proceedings and cause for litigation are subject to self-censorship, as stated in article (124/c) “*... according to the proceedings it deems suitable for the realization of justice...*”

And Article (3) of the Jordanian judicial independence law of 2014 stipulates that:

1. The Justice and judges are independent, and no power shall be over them and over their rulings other than the law.
2. It is prohibited for any person or power to prejudice the independence of the justice and to interfere in its affairs.

Based on the above texts, it is shown that the first guarantee is represented by the self-censorship of judge of the labor court (Al-Lasasima, 2015). This self-censorship is reflected on both the proceedings and the cause for litigation.

As for the proceedings, the court depends on provisions of civil procedure law to review actions submitted to it.

Regarding the cause for litigation aspect, the court's decisions remain peremptory and not subject to challenge, and it is not subject to oversight of any higher court pursuant to the provisions of the Jordanian labor law that are related to collective labor disputes. But the question remains, what is the extent of the absence of control over the decisions of the labor court.

Better Right Principle

Article (4/a) of the labor law states that: *“The provisions of this law shall not affect any of the rights granted to the Employees by any other law, work contract, agreement of decision if any of them gives the Employees better rights than those established to him pursuant to the provisions of this law”*.

Drawing of this provision applies to all provisions of the labor law including all what related to collective labor disputes.

Based on what might be called the better right or the principle of legality (Malkawi, 2003) in labor law, I believe that there is cause for litigation control over the decisions of the labor court, and if the decision of the labor court presents a better right, it will be invoked and implemented.

But if its decision violates a right granted to a worker, the basic principle is that this violates the principle of legality in the labor law.

The question in this case, which is the competent court to decide that the labor court's decision violated the principle of the better right contained in article (4) of the Jordanian labor law?

Article (137/a) of the Jordanian labor law confirms *“The conciliation Court shall have cognizance to hear the lawsuits arising out of individual work disputes...”* and article (2) of the same law defines the collective labor dispute as *“Every dispute that arises between a group of Employees or labor Union on one hand and the Employer ... about the application or interpretation of a collective work contract or pertains to the circumstances and conditions of work”*.

Therefore, the core of the collective labor dispute is the collective labor contract where article (2) of the Jordanian labor law defines it as *“A written agreement according to which the terms and conditions of work between the Employer ... and the group of Employees or their Association...”*

Based on the above, collective labor contract regulates work conditions and circumstances. Thus, its role is regulatory, and the original principle is that it does not add new obligations or diminish any of the rights granted to worker. If the collective labor contract includes such term or condition, this considers a violation of better right principle.

Let us suppose that a labor court issued judgment on a collective labor dispute involving a collective labor contract, and the judgment violated the better right granted to the worker, so what is the legal solution for this problem?

I believe that every damaged worker who is affected by the violation of the better right does not lose his/her right to refer to the conciliation court as an individual labor dispute where this court is qualitative competence court in labor rights disputes despite of a judicial judgment issued by the labor court. (The labor law emphasizes the minimum rights and the upper limit of obligations, thus any violation by increasing the maximum obligations or reducing the minimum rights is considered null and does not produce an effect, and that is pursuant to the principle of better right).

Therefore, I can assume that a labor court decision would achieve a better right for some workers while at the same time affecting a better right for other workers. In this case, I believe that the decision will benefit the workers to whom that decision has really achieved them a better right, while other workers will not lose the right to invoke Article 4 of the Jordanian labor law which established the principle of the better right in an individual labor dispute, resulting in the non-application of the decision of the labor court.

The foregoing implies that there is objective and indirect control over the decisions of the labor court, only if its decisions are related to a better right.

CONCLUSION

Humanity has evolved many legal concepts aimed at realizing justice, whether it is procedural justice, contractual justice or social justice, etc. Depending upon the discussion, the researcher came up with the following findings.

Regarding assessment of legislative regulation to settle collective labor disputes in Jordanian labor law, I have found serious legal issues.

It is possible to disrupt the rule of the licit strike once a collective labor dispute is referred to the conciliation representative, the conciliation board or the labor court, in addition to the high fine in the event of an illicit strike.

Many legal texts lack the procedural control over the work of the labor court and break the principle of two-tier litigation. There is also a lack of cause for litigation control over the labor court's decisions because it has competence to interpret and remove ambiguity, mistakes and errors from its decisions. Moreover, the court has and at any time to correct its decisions by itself which constitutes a violation of the principle of the legal argument of the matter decided upon.

The only guarantee I can maintain within the framework of this research on the collective labor court is the self-control over the work of the labor court. This is procedural and substantive control in dealing labor dispute before it.

Based on the above, I recommend the following:

1. Reviewing these legislative texts.
2. The principle of better right mentioned in article (4) of the Jordanian labor law must be adhered.
3. I also recommend that the standard of self-censorship of judicial work must be adhered.

Finally, Jordan has ratified the International Covenant on Civil and Political Rights and the International Labor Standards that contradict the legal judgment upon the provisions of the Jordanian labor law in terms of settling collective labor disputes.

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