JURNAL HUKUM "DE'RECHTSSTAAT"
DIKELOLA OLEH FAKULTAS HUKUM UNIVERSITAS DJUANDA BOGOR P-ISSN 2549-9874 E-ISSN 2442-5303
jurnal.hukum@unida.ac.id

Considerations Of A Mediator In Providing Recommendations For The Settlement Of Industrial Relations Disputes Through Mediation (Study Of Disdagkerkopukm, Karanganyar District)

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Special Issue

(February, 2025)

e-ISSN 2716-5191

ARTICLE INFO

Article history:

Received: 16 Februay 2023

Revised version received: 13 February 2024

Accepted: 25 February 2025

Available online: 27 February 2025

Keywords:

Industrial Relations, Dispute Settlement, Recommendations, Mediation

How to Cite:

Marisa Kurnianingsih, Muhammad Hanif Al Hafizh, 2025, Considerations Of A Mediator In Providing Recommendations For The Settlement Of Industrial Relations Disputes Through Mediation (Study Of Disdagkerkopukm, Karanganyar District), *Jurnal Hukum DE'RECHTSSTAAT.*

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ABSTRAK

Hubungan industrial merupakan bentuk dari hubungan hukum diantara pihak pengusaha dengan pekerja/buruh atau serikat pekerja/serikat buruh. Di dalam hubungan industrial ini ada kemungkinan adanya sebuah perslisihan hak, perselisihan kepentingan, pemutusan hubungan kerja, serta perselisihan serikat pekerja/serikat buruh. Perselisihan ini biasanya terjadi akibat perbedaan pandangan sehingga terjadi sebuah sengketa diantara keduannya. Dalam penyelesaiannya, dinas tenaga kerja memiliki peran untuk menyelesaikan perselisihan hubungan industrial, diantara cara penyelesaian melalui non-ligitasi atau secara bipatrit (arbitrase, konsiliasi, mediasi). Dinas terkait memliki upaya penyelesaian melalui mediasi,ulis yang dikeluarkan oleh mediator yaitu perjanjian berasama (PB) atau apabila tidak terjadi sebuah kesepakatan moderator akan mengeluarkan sebuah anjuran terulis yang dikeluarkan dengan penuh pertimbangan yang fungsinya sebagai terusan untuk dilaksanakan proses penyelesaian lanjutan di Pengadilan Hubungan Industrial.

Available online at https://ojs.unida.ac.id/LAW

ABSTRACT

Industrial relations are a legal relationship between employers and workers/labourers or trade unions/labour unions. In industrial relations, rights disputes, conflict of interest, termination of employment, and trade/labour union disputes exist. This dispute usually occurs due to differences in views resulting in a dispute between the two. In its settlement, the Labor Office has a role in resolving industrial relations disputes, among other ways, through non-litigation or bipartite settlement (arbitration, conciliation, mediation). The related agency has made efforts to resolve this through mediation, which has several stages. The settlement process goal is an agreement between the two parties contained in a written recommendation issued by the mediator, namely a joint agreement (Perjanjian Bersama). If there is no agreement, the moderator will issue a written recommendation with full consideration, whose function is to continue carrying out the advanced settlement process at the Industrial Relations Court.

1. Introduction

Industrial relations disputes are issues within the scope of labour law or, in other terms, labour law. The problem of industrial relations is a problem that will continue to occur. There are many new demands for something that are strengthened by industrial developments like today. Indeed, the legal relationship between the parties of employers, workers/labourers or trade unions/labour unions is unequal. Inequality means that the obligations of the worker/labourer are much greater than that of the employer. For example, The right of the authorities over the results of work, which is the worker's obligation, is covered by the obligations of the other worker/labourer. The worker is required to come to work. The worker is required to wear the uniform and all his attributes. The uniforms occur because the position of workers in working relations with employers is sub-ordinated (a vertical relationship). The relationship is different from legal relations in general in the sense of an agreement/agreement, namely an equal and balanced position. [1]

The agreement between the parties in this industrial relations dispute is regulated as a working relationship. In the sense that in the provisions of Article 1 number 14 of Law No. 13 of 2003 concerning Manpower, it is then stated in article 1601 a BW/KUHPerdata that explains what is meant by a working relationship is the relationship between employers and workers/labourers based on a work agreement. 3 elements determine the occurrence of a working relationship, namely:

a. There is work to be done (arbeid)

b. There is an order/gezag ver houding (working on orders from superiors/employers)

c. There is a wage (loan)

In principle, work agreements are made in writing, but given the diverse conditions of society, it is intended that agreements be implemented verbally (Explanation in Article 51 of Law No.13/2003). Work agreements are made based on the following:

1. Agreement of both parties

2. Ability or ability to carry out legal actions

3. There is an agreed job, and

4. The agreed work is not against public order.

This working relationship then results in a system of relations that is formed between the actors in the process of producing goods and services, which consist of elements of employers, workers/labourers and the government, which is based on Pancasila values and the 1945 Law which is called Industrial Relations or industrial relations.[1]

Disputes in the field of industrial relations that have been known so far can occur regarding rights that have been determined or labour conditions that have not been determined, whether in work agreements, company regulations, collective labour agreements, or laws and regulations. Industrial relations disputes can also be caused, among other things, by differences in understanding or perceptions concerning matters relating to work relations or working conditions, so the emergence of industrial relations disputes is unavoidable. Disputes that occur between workers/labourers or trade unions/labour unions and employers or a combination of employers or between workers/labour unions within a company cannot be resolved directly by deliberation.

Table 1. Industrial Relations Dispute Settlement Data

		Jumlah Kasus				Penyelesaian		
No.	Tahun	PH	PK	PHK	SP/SB	Bipatrit	Anjuran	PB
1.	2020	8	1	65	0	11	34	29
2.	2021	12	3	32	0	6	23	18
3.	2022 *Per-Bulan September	1	0	15	0	2	7	7
Total		21	4	112	0	19	64	54

Data Source : Laporan Penyelesaian Perselisihan Hubungan Industrial DISDAGKERKOPUKM Kab.Karanganyar

Based on the data that the author collected and presented above, we can see that, on average, in three (3) years, Industrial Relations Disputes occur, especially in Karanganyar Regency. Disputes that occur are disputes regulated in Article 1 of Law No. 2 of 2004 concerning Industrial Relations Dispute Settlement:

Rights disputes (rechtgeschillen) are disputes arising from the non-fulfilment of rights due to differences in the implementation or interpretation of statutory provisions, work agreements, company regulations, or collective bargaining agreements.

Disputes of Interest (belangengeschillen) are disputes that arise in work relations because there is no conformity of opinion regarding the making and changes to work conditions stipulated in work agreements, company regulations, or collective bargaining agreements.

Disputes on Termination of Employment Relations arise because there is no conformity of opinion regarding the termination of employment relations carried out by one of the parties.

A trade union/labour union dispute is a dispute between a trade union/labour union and another trade union/labour union within only one company due to the lack of conformity in understanding regarding membership, the exercise of rights and obligations of a trade union.

One example of a form of employment dispute that is very difficult for workers is the dispute over Termination of Employment (PHK). Then we can see from the data that the author has presented in settlement of industrial relations disputes in Karangnyar Regency layoffs are one of the most frequent disputes. It is calculated that the most significant layoffs occurred in the period 2020. There were 65 cases. This problem of layoffs occurs because the time specified in the work agreement has expired. It will be fine if each party is aware or has prepared itself to accept reality during layoffs. Then it becomes different if layoffs are carried out by one party, primarily if carried out by employers, because the impact will be felt by workers who, if we look at it economically, have a weaker position compared to the employers. [1]

In the period 2020-2022, a temporary allegation can be drawn that the position and role of the mediator have yet to be active in settling industrial relations. That period can then be assessed as less successful due to labour disputes arising, termination of employment, strikes or damage to goods and other criminal acts. It can be said that the mediator's assessment was not successful, as seen from the issuance of many recommendations in settlement of industrial relations disputes based on the table rather than the settlement of industrial relations disputes which ended in a "collective agreement" (PB). Collective agreements are a parameter of success for industrial relations mediators because, of course. A mediator is said to be successful if he can resolve disputes by consensus between the disputing parties between employers and labour unions/labour unions with the consequence of agreeing to a collective agreement (PB) between the two parties. It means that an industrial relations mediator can resolve disputes without the need to go to the settlement stage at the Industrial Relations Court. [2]

An industrial relations dispute in its settlement process has several settlement processes. The industrial relations dispute settlement process is regulated in Law No. 2 of 2004 concerning the Settlement of Industrial Relations Disputes. This law regulates several settlement processes, namely through litigation and non-litigation. Non-litigation / out-of-court settlements can be carried out in bipartite (negotiation), mediation, arbitration, and conciliation. Furthermore, settlement of disputes through litigation is a process at the Industrial Relations Court and the Supreme Court. The community can take many ways of resolving the disputes they are facing, starting from the settlement by the parties cooperatively, with the help of other people or by involving a neutral third party..[1]

The settlement process uses an intermediary, which is the competent authority in the field of the local workforce or the Manpower Office, which is then followed up by the mediator to be resolved through mediation. In the mediation process, at the end of the

[1] Broto Suwiryo, Hukum Ketenagakerjaan (Penyelesaian Perselisihan Hubungan Industrial Berdasarkan Asas Keadilan), Surabaya: LaksBang PRESSindo, 2017, hlm. 2.

mediation, the mediator issues a written recommendation or opinion, which is divided into 2 types: Collective Agreement and Written Recommendation.

Industrial relations between employers and workers certainly aim to be harmoniously established, but in practice, problems often arise. This problem or dispute must be resolved through an industrial relations dispute settlement mechanism. One of the settlement processes involves a mediator, in which the mediator will resolve the dispute by mediating the parties. Then if it is deemed that the peace process has not found a clear spot, with some considerations, the mediator can issue a recommendation for both parties to the dispute. This paper intends to find out the process of implementing industrial relations dispute resolution through mediation and to find out the form of mediator considerations in issuing suggestions and obstacles that mediators encounter in completing the industrial relations dispute mediation process.

2. Research Method

The method used in this paper is an empirical juridical approach. An approach that looks at law in a real sense and examines how the law works in society. Research that uses a descriptive type describes the current state of the subject or object of research based on facts or as it is. Collect secondary legal materials, namely all legal publications which are unofficial documents, as well as primary legal materials, namely legal materials that have binding power.[2]

3. Result and Discussion

1. Implementation of Industrial Relations Dispute Settlement Through Mediation at the Department of Trade, Labor, Cooperatives, Small and Medium Enterprises of Karanganyar Regency

Justice in society is not only formal procedural based on normative law but far from ethical morality or human values. Justice also needs to be substantive and based on shared moral and human values that can bring happiness and satisfaction to the public. In general, the concept and program of the welfare state echoed by many countries, such as Indonesia itself, has not succeeded in realizing justice, peace and mutual prosperity in life. In Indonesia, industrial relations disputes are no longer strange, considering that most of the population works for a company where conflicts or disputes between individual workers or conflicts/disputes between individuals or groups of workers and the company can occur. Every rule of law must have binding regulations to realize social justice for all its people, both in peace and when there is a dispute. In this case, the state is present for the industrial relations dispute settlement process. The settlement process begins with the industrial relations mediation process based on Article 1, paragraph 11 of Law No. 2 of 2004 concerning the Settlement of Industrial Relations Disputes. It is referred to as mediation is the settlement of rights disputes, interest disputes, termination disputes,

[2] Khudzaifah Dimyati, Metodologi Penelitian Hukum (Buku Pegangan Kuliah), Surakarta: UMS, 2015, hlm. 7.

work relations, and disputes between trade unions/labour unions in only one company through deliberations mediated by one or more neutral mediators. The mediator is authorized based on regulations, is an employee of a government agency responsible in the workforce field and fulfils the requirements as a mediator determined by the Minister. The mediator must be tasked with carrying out mediation and providing written recommendations to the disputing parties to resolve disputes, which is the mediator's authority.

In the settlement of industrial relations disputes, government agencies in the field of government, in this case, the Office of Labor for Small and Medium Enterprises Cooperatives, Karanganyar Regency, have an essential role as the party carrying out the settlement process through mediation. Because all forms of settlement processes through mediation greatly influence the form or role played by the mediator.

The Karanganyar Regency Small and Medium Enterprises Cooperative Labor Office, there are five (5) mediators, namely:

1. Suparno, S.I.P., M.M
2. Sugimin, S.E

Sri Wibowo, S.H

3. Sumarno, S.H
4. Drs. Bambang Satyana

The mediator has fulfilled the requirements in accordance with those contained in Article 2 paragraph (1) of the Minister of Manpower Regulation Number 17 of 2014 concerning Appointment and Dismissal of Industrial Relations Mediator and Mediation Work Procedures, the requirements include:

1. Faith and piety to God Almighty;
2. Indonesian citizen;
3. Civil servants in agencies responsible for manpower affairs;
4. Healthy body according to a doctor's certificate;
5. Mastering laws and regulations in the field of manpower;
6. Authoritative, honest, fair and well-behaved;
7. Education at least Bachelor Degree (S1);
8. Have a competency certificate; And
9. Having obtained a letter of appointment decision from the Minister.

The Industrial Relations Dispute Settlement Process has a mechanism that must be followed by the disputing parties. Based on Law Number 2 of 2004 the mechanism for settling industrial relations disputes is regulated.

The role of the mediator in the Office of Manpower Cooperatives for Small and Medium Enterprises of Karanganyar Regency is;

a) Conduct mediation between the two parties who are in dispute to resolve disputes over rights, disputes over interests, and disputes between trade unions/labor unions in only one company and assist the parties in dispute to minimize the differences that occur and reach a

settlement that can be accepted or an agreement occurs whose purpose is to complete the agreement contained in the collective agreement.

b) In addition, the moderator also has a role as a party that provides services to the community, not only when carrying out dispute resolution through mediation but also in coaching, counseling, and preventing industrial relations disputes in Karanganyar Regency and creating industrial relations. harmonious.

c) The mediator has the role of a neutral third party, who has the role of a listener, investigator, source of information, a protective and advisory institution, and as a protector in the mediation process which always has the goal of a mutual agreement without having to go through settlement through the courts.

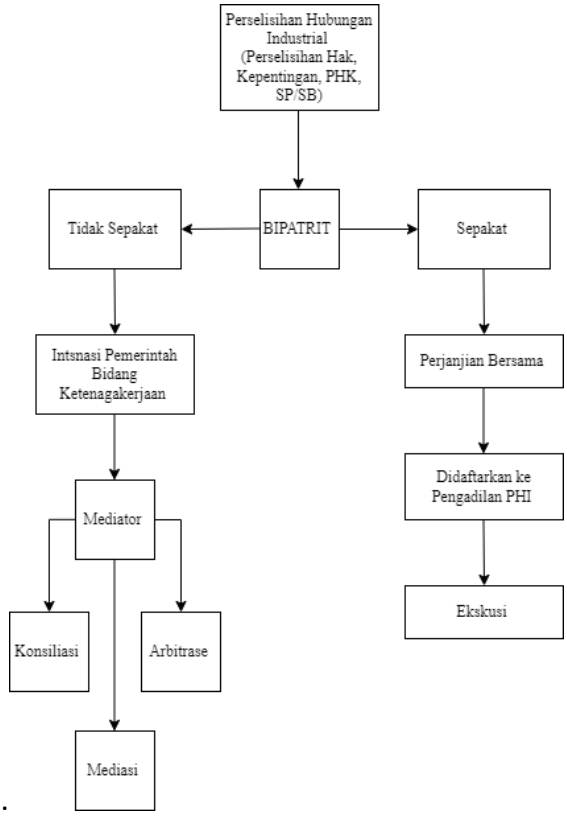

Chart 1. Illustration of Industrial Relations Settlement Process

Data Source : DISDAGKERKOPUKM Kab.Karanganyar

Chart 1 briefly describes the industrial relations dispute settlement mechanism adopted by the disputing parties. Government agencies in the field of employment use this mechanism. In this case, the Office of Manpower Cooperatives for Small and Medium Enterprises of Karanganyar Regency, before the parties were in the industrial relations dispute settlement mediation, was mediated by the appropriate labour office or mediator. The initial process is that there must be a Rights Dispute, Interest Dispute, Termination of Employment Dispute, and Dispute between SB/SP. Industrial Relations Dispute Settlement.

"Industrial relations disputes must be resolved first through bipartite negotiations by deliberation to reach a consensus."

The bipartite settlement is also referred to as Alternative Disputes Resolution (ADR), a negotiated settlement. Negotiation means resolving disputes between parties without involving other parties to find a mutual agreement based on harmonious and creative cooperation. Employers and trade unions/workers' unions who have never previously conducted a bipartite settlement process will be facilitated by the Office of Manpower Cooperatives for Small and Medium Enterprises of Karanganyar Regency. For example, the Disdagkopukm of Karanganyar Regency called for both parties to bring together the two parties to conduct bipartite negotiations, which is more profitable because the two disputing parties only resolve it without the interference of the other party. At the negotiation stage facilitated by the Karanganyar Regency Disdagkopukm, in an effort by the parties to be better prepared for negotiations, initial efforts can be made to solve the problem. Alternatively, in an industrial relations dispute, competent assistance in the field of disputes, referred to as consultation, is a form of personal action between a particular party called a "client" and another party, namely a "consultant". This activity is carried out to prepare parties due to ignorance so that this assistance can maximize out-of-court settlements. However, for the most part, these bipartite negotiations have not yielded promising results, so a further resolution process is needed.

After the bipartite process, a decision was made based on a consensus between the employer and company worker/labourer. If agreed upon, a Collective Agreement is made, registered with the industrial relations court, and then the execution stage is carried out. This execution occurs if one of the parties violates the contents of the collective agreement. The injured party can submit an execution to the industrial relations court at the district court, where the collective agreement is registered to obtain an execution order. If the bipartite settlement process fails or does not find an agreement, the party is asked to submit a further settlement process to the Dinasdagkerkopukm Karanganyar Regency.

A mediator will be appointed to resolve industrial relations disputes based on a mediator appointment letter because the mediator has the task of fostering industrial relations, developing industrial relations and settling industrial disputes outside the court. As well as, the mediator must resolve industrial relations disputes as stipulated in Article 9 of Manpower Regulation Number 17 of 2014, namely as follows:

1) Asking the parties to negotiate before the Mediation process is carried out;

2) Summon the disputing parties;

3) Leading and managing the Mediation session;

4) Helping the parties to make a collective agreement, if an agreement is reached;

Make recommendations in writing, if no agreement is reached;

6) Prepare minutes of industrial relations dispute settlement;

7) Maintain the confidentiality of all information obtained;

8) Make a report on the results of the settlement of the Industrial Relations Dispute to the Director General or Head of Provincial Service or Head of Regency/City Service concerned; And
9) Record the results of the settlement of Industrial Relations Disputes in the Industrial Relations Dispute Registration Book.

Then the Mediator, after receiving the appointment from the parties, makes the first summons or what is called a clarification, namely finding the case between the disputing parties by examining documents such as (1) a Letter of request from one of the parties or from the parties (2) Minutes of negotiations bipartite (3) Power of attorney from the parties, which is done within 7 working days at the latest. If, in the process of submitting records, unable to show evidence of minutes of settlement or evidence of having carried out bipartite negotiations, the Disdagkerkopukm of Karanganyar Regency, this matter is represented by a mediator asking the parties to complete the requested evidence immediately. Complaints filed by the parties are received by the Department of Trade, Karangnyar Regency, and the Department of Trade, Karanganyar Regency, must provide an option to settle industrial relations disputes through conciliation or arbitration. However, in Karangnyar Regency, there is no conciliator or arbitrator, so the parties' process will be mediation. The Mediator will still carry out the procedure, namely informing that in the process, the Disdagkerkopukm Karanganyar Regency offers two forms of the settlement process, namely conciliation and arbitration to the parties, because this is a rule written in Article 4 paragraph (3) of Law Number 2 of 2004 concerning Settlement of Relations Industrial.

After the stages before the implementation of the mediation trial process have been fulfilled, a mediation session is held, containing the following sections.

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1. Preparation before trial:
    a. a. Examine and understand the blame or essence of the dispute in accordance with the files received.

b. b. Examining the reasons and background of the dispute, including regarding the matters that caused the dispute, both internal and external causes.
c. c. Looking for detailed information regarding information on whether the dispute has ever occurred in a similar company and how the results of the settlement were as well as the basis and form of settlement.
d. d. Prepare the necessary files as well as laws and regulations relating to the field of disputes.
e. Preparing the courtroom.

1. Implementation of mediation hearings:
   a. Open trial;
   b. Read out the power of attorney of the parties if the parties authorize;
   c. Provide an opportunity for each party to convey information;
   d. If necessary, the mediator may summon witnesses/expert witnesses;
   e. Ensuring that both parties can resolve disputes by deliberation to reach a consensus;
   If the mediation process does not reach an agreement, the mediator must make a written recommendation no later than ten (10) days after the first mediation session:

Since receiving the recommendation that has been issued, both parties must provide an answer to accept or reject no later than 10 (ten) working days;

3. If the suggestions are accepted by both parties, then a joint agreement will be made and if one of the parties refuses or does not respond, the Mediator is obliged to make a treatise on dispute resolution;

4. The minutes of dispute settlement are attachments attached by the parties or one of the parties as a legal remedy through a lawsuit to the Industrial Relations Court at the Local District Court.

The mediator in making a recommendation requires considerations, these considerations are carried out no later than 10 working days from the first mediation session. Consideration is needed for a mediator to finally issue a recommendation, because the purpose of the mediator in mediating is to carry out the Collective Agreement between the parties, because this is an indicator of success or not. The mediator's consideration is to look back at the facts or chronology of events that have been described by both parties in the form of facts that have been obtained in the process prior to the implementation of the mediation trial, then look at legal considerations related to industrial relations disputes then the mediator conducts further analysis.

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3. Reasons for Not Optimal Settlement of Industrial Relations Disputes

There are several reasons for the not yet optimal settlement of industrial relations disputes at the Office of Labor for Cooperatives, Small and Medium Enterprises of Karanganyar Regency, including:

a) At the beginning of the complaint process to the Manpower Office, the party making the complaint or recording did not understand the process and procedures, and some of them did not understand or know what the main issues were so that the industrial relations dispute settlement process had to take place. Because this often happens, the mediator as the recipient of the complaint must first provide education to related parties so that they can better understand the problems that occur and go through the initial process in the form of bipatrit or deliberation, before then proposing to carry out further processing. This phenomenon has resulted in the establishment of the perception that the process of settling industrial relations disputes at the Manpower Office has a process that makes it difficult for the parties to the dispute.

Chart 2. Illustration Process errors that often occur

Data Source : DISDAGKERKOPUKM Kab.Karanganyar

a) In the mediation process the obstacle is the lack of understanding of the disputing parties regarding the applicable laws so that during the mediation process, as well as the appearance of unilateral statements between the parties, it is usually the party who feels the most disadvantaged, namely the workers/labor representatives. So that there is a rush condition in which the mediator will again remind whether the adverse condition actually occurred or not.

b) There is no conciliator and arbitrator in Karanganyar Regency, so the mediator as a representative of the Karangnyar Regency Disdagkerkopukm when providing information to the disputing parties that the process to be carried out is mediation but the mediator will still be obliged to explain that there are two (2) processes Other dispute settlements are through conciliation and arbitration.

c) The mediation process was considered too long and ineffective, so that many parties stated that the process which initially had to go through mediation mediated by a mediator was only a waste of time. Because many of the disputing parties want to immediately get a decision from the Industrial Relations Court.

d) The mediator does not have the authority to force the two parties in a dispute to resolve the dispute through mediation and then accept a written recommendation in the form of a collective agreement (PB) issued by the mediator. In the example, one of the disputing parties rejects the recommendation but does not proceed to the court stage, the mediator cannot force the written recommendation to be carried out.

Conclusion

Based on the results of the analysis of data and information collected directly, the form of the consideration required by a mediator in giving a suggestion and the reasons for the not-yet-optimal settlement of industrial relations disputes are as follows:

1. The considerations needed by a mediator in making a decision or suggestion in resolving industrial relations disputes are to look again at the facts or chronology of events and look again at legal considerations. It follows what is stated in Law No. 2 of 2004 concerning the Settlement of Relations Disputes Industrial so that the considerations issued by the Mediator are neutral without participating in the intervention between the two parties.

2.The reason for the not yet-optimal settlement of industrial relations disputes, among others, is the lack of understanding or ignorance of the parties regarding the process that must be followed in the settlement process as well as the parties who immediately want the problem to be handled immediately and then decided in the industrial relations court

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