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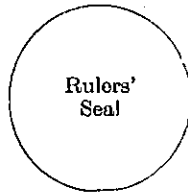
FEDERATION OF MALAYA.

No. 21 of 1951.

THE EMPLOYEES PROVIDENT FUND ORDINANCE, 1951.

Their Highnesses the Rulers of the
Malay States assent hereto

I assent



Witnesses to the affixing of the Rulers' Seal:

TENGGU ALAM SHAH *Sultan of Selangor.*
(IN MALAY)

HENRY GURNEY,
High Commissioner.

26th May, 1951.

RAJA YUSSUF *Sultan of Perak.*

24th May, 1951.

See Reprint

An Ordinance to make provision for a provident fund for persons employed in certain occupations.

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IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows :

Short title and comment.

1. This Ordinance may be cited as the Employees Provident Fund Ordinance, 1951, and shall come into force on such date as the High Commissioner may, by notification in the *Gazette*, appoint and the High Commissioner may appoint different dates for different provisions of this Ordinance.

Interpretation.

2. In this Ordinance, unless the context otherwise requires—

“approved fund” means a provident fund or other scheme for the benefit of employees established by an employer or by a group of employers and declared by the Board under section 16 of this Ordinance to be an approved fund and includes any scheme in respect of persons in a pensionable employment with the Government of the Federation or of any State or Settlement, and if any doubt arises as to whether any person is in such employment or not the decision of the High Commissioner in Council shall be final;

“the Board” means the Employees Provident Fund Board established under section 3 of this Ordinance;

“employee” means any person—

- (a) who has attained the age of sixteen years;
- (b) who has entered into a contract of service or apprenticeship, whether written or oral and whether expressed or implied, to work for an employer in a scheduled employment;
- (c) who has worked for the same employer in such scheduled occupation for a continuous period of not less than three months; and

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(d) whose wages do not exceed four hundred dollars a month:

Provided that where, after an employee becomes liable to pay contributions as provided in section 7 of this Ordinance, the wages of such employee are increased and exceed four hundred dollars a month, such employee shall not, by reason only of such increase, cease to be an employee, but his wages shall, for all purposes of this Ordinance, be deemed to be four hundred dollars a month;

“employer” means the person with whom an employee has entered into a contract of service or apprenticeship and includes—

- (a) a manager, agent or person responsible for the payment of salary or wages to an “employee”;
- (b) any body of persons whether or not statutory or incorporated; and
- (c) the Government of the Federation or of any State or Settlement, any Municipality, Harbour Board, or the Central Electricity Board, and, where an employee is employed with such Government or body or with any officer on behalf of such Government or body, the officer under whom such employee is working shall be deemed to be an “employer”;

Provided that no such officer shall be personally liable under this Ordinance for anything done or omitted to be done by him, as an officer of such Government or body, in good faith;

“normal period of work” means the number of hours stated or implied in an employee’s contract of service or apprenticeship to be the normal number of hours of work per week, or for any day in the week, to be performed by him;

“Postmaster-General” means the Postmaster-General, Malaya;

“scheduled employment” means an employment specified in the First Schedule to this Ordinance;

“wages” means the remuneration in money due to an employee under his contract of service or apprenticeship, whether agreed to be paid monthly, weekly, daily or otherwise—

- (a) in respect of the normal periods of work to be performed by the employee; or
- (b) where payment is calculated in relation to a set task or tasks, in respect of the number of tasks completed by the employee; or
- (c) where payment is calculated in relation to the volume of work done, in respect of the work completed by the employee;

together with any allowance payable by the employer to the employee in respect, either explicitly or impliedly, of high cost of living.

Establish-
ment of
Employees
Provident
Fund Board.

3. (1) For the purposes of this Ordinance there shall be a Board consisting of—

- (a) six persons holding office of emolument under the Government of the Federation, one of whom shall be the Postmaster-General;
- (b) six persons representing employers not being persons holding office of emolument under the Government of the Federation or of a State or Settlement or employed with any Municipality, Harbour Board or the Central Electricity Board; and
- (c) six persons representing employees,

to be appointed by the High Commissioner in Council and the persons so appointed shall elect one of their number to be Chairman of the Board.

(2) The Postmaster-General shall perform such duties as are imposed on him by this Ordinance and as may be assigned to him by the Board.

(3) Members of the Board shall not be entitled to any remuneration but may be paid such travelling and subsistence allowances as may be fixed by the Board with the approval of the High Commissioner in Council.

(4) The Board shall be a body corporate and shall, by the name of “The Employees Provident Fund Board,” have continuous succession and shall have and use a common seal.

(5) The Board shall have such powers and shall perform such duties as are given or imposed by this Ordinance or as may be prescribed by the High

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Commissioner in Council, and may by instrument in writing under the common seal delegate to any person all or any of such powers and duties.

(6) The Board shall have powers to make rules for the conduct of its proceedings.

4. (1) For the purposes of this Ordinance there shall be a fund to be called the Employees Provident Fund, hereinafter referred to as the Fund, into which shall be paid all contributions required to be made under this Ordinance and out of which shall be met all payments required to be paid under this Ordinance.

Establishment of Provident Fund.

(2) The Board shall be the Trustee of the Fund and all monies belonging to the Fund shall be deposited in trust in a bank or banks approved by the Board or shall be invested by the Board in accordance with the provisions of the Trustee Ordinance, 1949.

No. 66 of 1949.

(3) Interest shall be payable on contributions to the Fund at such rate per annum, not being less than two and one half per centum, as the Board may declare after and in respect of each year ending on the thirty-first day of December :

Provided that—

- (a) no such interest shall be payable in respect of the year during which section 7 of this Ordinance comes into force;
- (b) the Board shall not declare a rate of interest exceeding two and one half per centum per annum until the assets of the Fund, valued at the market rate, exceed its liabilities by ten per centum; and
- (c) if on the last day of any such year the excess of the assets of the Fund, valued at the market rate, over its liabilities is insufficient to defray the payment of such interest at the rate of two and one half per centum, such deficiency shall be met out of the general revenues of the Federation.

(4) Where any deficiency in the assets of the Fund has been met, in accordance with paragraph (c) of the proviso to sub-section (3) of this section, the amount of such deficiency shall be repaid by the Board to the general revenues of the Federation from the assets of the Fund at the end of the year following the year in respect of which such deficiency was met and shall then be a first charge upon the assets of the Fund.

Expenses.

5. (1) All expenses incurred in connection with the administration of the Fund shall be defrayed out of the monies of the Fund.

(2) All expenses incurred in connection with the appointment of inspectors as provided by section 19 of this Ordinance and, generally, in carrying this Ordinance into effect shall be payable out of the general revenues of the Federation.

(3) If any question arises as to whether any expenses are incurred in connection with the administration of the Fund or in carrying this Ordinance into effect, such question shall be decided by the High Commissioner in Council, whose decision shall be final.

Statement of accounts.

6. (1) The accounts of the Fund shall be audited at least once annually by the Director of Audit who shall submit a report thereon to the Board.

(2) As soon as practicable after the first day of January of each year, the Postmaster-General shall submit to the Board, an account of the revenue and expenditure of the Fund, of contributions received and of withdrawals made and of interest credited to contributors, during the preceding year ending on the thirty-first day of December, together with a statement of the assets and liabilities of the Fund and such account and statement together with the Director of Audit's report thereon, shall be laid before the Legislative Council and published in the *Gazette*.

Rate of contributions.

7. (1) Subject to the provisions of section 16 of this Ordinance, every employee and every employer of a person who is an employee within the meaning of this Ordinance shall be liable to pay monthly contributions at the rate respectively set out in the Second Schedule to this Ordinance:

Provided that the Board may, at its discretion and on such terms and conditions as it may impose, authorise an employer, or a class or classes of employers, to pay such contributions at intervals of three months.

(2) Without prejudice to the provisions of subsection (1) of this section, an employer and an employee may, at any time, by mutual agreement, elect each to pay equal monthly contributions at a rate which exceeds the rate respectively set out in the Second Schedule to this Ordinance by one dollar or a multiple of one dollar.

(3) Notice of such election shall be given to the Board in such manner and form as may be prescribed by the Board and where any such notice has been given the provisions of this Ordinance shall, in respect of the employer and employee who have elected as aforesaid, apply as if the rate of contribution which such employer and employee have elected to pay, were the rate respectively set out in the Second Schedule to this Ordinance.

8. Except where otherwise provided in this Ordinance, the employer shall, in the first instance, be liable to pay both the contributions payable by himself and also, on behalf of and to the exclusion of the employee, the contribution payable by that employee; and for the purposes of this Ordinance contributions paid by an employer on behalf of an employee shall be deemed to be contributions by the employee.

Payment of contributions.

9. (1) Notwithstanding any contract to the contrary, the employer shall not be entitled to deduct from the wages or remuneration of, or otherwise to recover from, the employee the employer's contribution.

Employer's contribution irrecoverable from employee.

(2) If an employer deducts or attempts to deduct from the wages or other remuneration of any employee the whole or any part of the employer's contribution, he shall, on conviction, be liable to a fine not exceeding one hundred dollars in respect of each such employee.

10. (1) Subject to the provisions of this section, the employer shall be entitled to recover from the employee, in accordance with the provisions of this section, the amount of any contribution payable on behalf of the employee.

Recovery by employer of employee's contribution.

(2) The amount of any contribution payable by the employer on behalf of the employee shall, notwithstanding the provisions of any written law or any contract to the contrary, be so recoverable by means of deductions from the wages of the employee due from the employer to the employee and not otherwise.

(3) No deduction of any contribution shall be made as provided by sub-section (2) of this section—

(a) except at the time wages are paid to the employee; and

(b) other than of the contribution in respect of the wages which are then being paid:

Provided that, subject to such conditions as may be prescribed by the Board, where an employer has, by mistake, omitted to deduct any contribution or part

of any contribution payable by him on behalf of the employee, then, such contribution or part thereof may be deducted from the wages payable by such employer to the employee not later than six months from the date of the payment of the wages in respect of which the contribution or part thereof was omitted to be deducted.

(4) Any employer who contravenes the provisions of sub-section (2) or (3) of this section shall on conviction be liable to a fine not exceeding five hundred dollars.

Penalty
for failure
to pay con-
tributions.

11. If any employer fails to pay any contribution which he is liable under this Ordinance to pay he shall be liable on conviction to a fine not exceeding one hundred dollars.

Contribu-
tions to be
paid into
the Fund.

12. (1) All sums recovered or collected on account of contributions under this Ordinance shall be paid into, or carried to, the Fund in such manner as the Board shall direct.

(2) The Postmaster-General shall credit each employee with the amount of contributions paid in his respect by the employer on his own behalf and on behalf of such employee and, at the end of each quarter, with the interest on such amount in such manner as the Board shall direct.

Authority
for with-
drawals
from fund.

13. (1) No sum of money standing to the credit of an employee may be withdrawn from the Fund except with the authority of the Board and, subject to any regulations and rules made under sections 20 and 21 of this Ordinance, such authority shall not be given unless the Board is satisfied that—

- (a) the employee has died; or
- (b) the employee has attained the age of fifty-five years; or
- (c) on medical evidence, the employee is no longer capable of being, and is not likely to be again, an employee; or
- (d) the employee is about to leave Malaya with no intention of returning thereto; or
- (e) a person has ceased to be an employee for a period of at least two years and it is not likely that he will again be an employee :

Provided that where the number of monthly contributions paid under this Ordinance in respect of an employee is less than sixty, the authority of the

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Board for the withdrawal of money in the circumstances mentioned in paragraphs (d) and (e) of this sub-section shall be limited to a sum not exceeding the amount of the contributions of such employee and the interest thereon:

Provided further that, in the case of an employee who immediately before being about to leave Malaya or before ceasing to be an employee, as the case may be, had been employed by the same employer for a period of at least five years, the Board may, during the five years immediately following the coming into force of this section, at its discretion authorise the withdrawal of the amount of contributions of such employer and the interest thereon in addition to the amount of contributions of such employee and the interest thereon.

(2) When a person withdraws any amount standing to his credit in the Fund, he shall not thereafter be treated as an employee, notwithstanding that, but for the provisions of this sub-section, he would be an employee, for the purposes of this Ordinance.

14. When authority is granted under section 13 of this Ordinance for the withdrawal of any amount from the Fund, the whole amount, together with any interest that may have accrued thereon, shall be withdrawn in a lump sum but the withdrawal may be made at any time.

Withdrawals to be made in lump sum.

15. Notwithstanding anything to the contrary contained in any other written law—

Contributions and deposits not to be assigned or attached.

(a) no sum deducted from the wages of an employee under section 9 of this Ordinance;

(b) no amount payable by the employer as his contribution; and

(c) no amount standing to the credit of an employee in the Fund,

shall be assignable or transferable or liable to be attached, sequestered or levied upon for, or in respect of, any debt or claim whatsoever.

Provided that, where an employee has been convicted of an offence under the Penal Code and his employer proves to the satisfaction of a competent Court by which the employee was convicted that he has suffered a definite financial loss as a direct and immediate result of such offence, the Court may order that a payment to such employer be made out of the Fund of a

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sum not exceeding the amount of such loss or the amount of employer's contributions already paid or payable to the Fund by such employer on such employee's behalf and the interest thereon, whichever is the lesser, and such sum shall thereupon be paid to such employer from the employer's contributions so paid, or so payable, or from both, and from the interest thereon.

Approved
Funds.

16. (1) Any employer or group of employers who, before the date on which this section comes into force, has established a provident fund or other scheme for the benefit of all or of a group of his or their employees shall, within one month of such date furnish the Board with such particulars of such provident fund or other scheme as the Board may prescribe or in any particular case require and, if after examining such particulars the Board is satisfied that such provident fund or other scheme provides for an employee benefits not less advantageous to him than the benefits which are provided for an employee by the Fund, the Board may declare such provident fund or other scheme to be an approved fund; and, if the Board so declare, no contributions shall become payable to the Fund by the employees for whose benefit such approved fund has been established or by the employer or employers of such employees in respect of such employees.

(2) Any employer or group of employers who, after the date on which this section comes into force, proposes to establish a provident fund or other scheme for the benefit of all or a group of his or their employees shall furnish the Board with such particulars of that proposed provident fund or other scheme as the Board may require and, if after examining such particulars the Board is satisfied that such provident fund or other scheme will provide for an employee benefits more advantageous to him than the benefits which are provided for an employee by the Fund, the Board may declare such provident fund or other scheme to be an approved fund; and, if the Board so declare, contributions to the Fund shall, from a date to be fixed by the Board, cease to be payable both by the employees for whose benefit such approved fund is established and by the employer or employers of such employees in respect of such employees.

(3) Where, either by reason of the transfer of an employee to an employment in respect of which an approved fund exists or in the circumstances described

in sub-section (2) of this section, contributions in respect of an employee cease to be payable to the Fund, the amount standing to the credit of such employee shall remain in the Fund to such employee's credit.

(4) Where an approved fund is wound up, or where an employee transfers from an employment in respect of which an approved fund exists to some other employment, the amount standing to each employee's credit, or to such employee's credit, in such approved fund that represents contributions to such approved fund since the date on which section 7 of this Ordinance comes into force and any interest thereon shall, notwithstanding anything to the contrary contained in any other written law, be transferred by the employer to the Fund, and the Postmaster-General shall credit each such employee, or such employee, with such amount, in such manner as the Board shall direct.

(5) An employer who has established an approved fund shall—

(a) furnish the Board with such accounts in respect of such approved fund duly certified by an accountant who has been approved under section 134 of the Companies Ordinance of the Straits Settlements as applicable throughout the Federation by virtue of the Companies Ordinance, 1946, as the Board may require;

(b) inform the Board of any proposed amendment to the rules of such approved fund and shall not effect any such amendment except with the written sanction of the Board;

(c) furnish the Postmaster-General with such particulars of those employees for whom such approved fund has been established as may be prescribed by the Board.

(6) The Board may, if not satisfied with the management of any approved fund, revoke any declaration made under sub-section (1) or sub-section (2) of this section, and upon such revocation, the amount of the contributions paid since the date on which section 7 of this Ordinance comes into force both by the employer and by his employees shall, notwithstanding anything to the contrary contained in any other written law, be transferred to the Fund in such manner, and the Postmaster-General shall credit each such employee with such part of such amount, as the Board may direct.

(7) An employer shall be subject to the same penalties in respect of any deductions or contributions under the rules of an approved fund as are provided by this Ordinance in respect of deductions and contributions relating to the Fund.

(8) Any employer who fails to comply with any requirement or direction of the Board under this section, or who effects an amendment to the rules of an approved fund without the sanction mentioned in paragraph (b) of sub-section (5) of this section, shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding three thousand dollars.

(9) Where in the circumstances mentioned in sub-sections (4) and (6) of this section, any amount of contributions paid since the date on which section 7 of this Ordinance comes into force is transferred to the Fund, the employer and the employee concerned may, by mutual agreement, elect to transfer to the Fund also such amount standing to the credit of the employee in an approved fund as represents the contributions paid to such fund before the date on which section 7 of this Ordinance comes into force. Notice of such election shall be given to the Board in such manner as may be prescribed by the Board, and if the Board approves such transfer, the Postmaster-General shall credit the employee with the amount so transferred to the Fund.

Civil proceedings to recover contributions.

17. (1) All contributions payable under this Ordinance may, without prejudice to any other remedy, be recoverable by the Board summarily as a civil debt.

(2) Proceedings for the summary recovery as civil debts of any contribution may, notwithstanding anything in any written law to the contrary, be brought at any time, within three years from the date when the contribution becomes due.

(3) Proceedings for the summary recovery as civil debts of contributions may be instituted by any officer authorised in that behalf by special or general directions of the Chairman of the Board and any such officer may conduct such proceedings.

Conduct of prosecutions and offences by bodies corporate.

18. (1) Prosecutions in respect of any offence against the provisions of this Ordinance or of any regulations or rules made thereunder may be conducted by any officer authorised in writing in that behalf by the Chairman of the Board.

(2) Where an offence under this Ordinance which has been committed by a body corporate is proved to have been committed with the consent or connivance of any director, manager, secretary or other officer of the body corporate, he as well as the body corporate shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

19. (1) The High Commissioner may appoint such number of Inspectors as he may consider necessary for the purposes of this Ordinance.

Appointment
and powers
of Inspectors.

(2) The Commissioner for Labour and any Deputy Commissioner for Labour, Assistant Commissioner for Labour or Labour Officer may exercise any or all of the powers of an Inspector.

(3) Subject to any regulations made under section 20 of this Ordinance, an Inspector may at any reasonable time and within the local limits for which he is appointed—

- (i) enter any premises or place where persons are believed to be engaged as employees;
- (ii) make such examination and inquiry as may be necessary for ascertaining whether the provisions of this Ordinance or of any regulations made under section 20, or of any rules made under section 21 of this Ordinance are being or have been complied with in any such premises or place;
- (iii) examine either alone or in the presence of any other person with respect to any matters under this Ordinance on which he may reasonably require information, every person whom he finds in any such premises or place, or whom he has reasonable cause to believe to be or to have been an employee, and require every such person to be examined;
- (iv) exercise such other powers as may be necessary for carrying this Ordinance into effect.

(4) Every Inspector appointed under sub-section (1) of this section shall be deemed to be a public servant within the meaning of the Penal Code.

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45, F. of M.
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(5) Any person who obstructs any Inspector or any of the officers mentioned in sub-section (2) of this section in the performance of his duties under this Ordinance shall be liable to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred dollars or to both such imprisonment and fine.

Power of
High Com-
missioner in
Council to
make regula-
tions.

20. The High Commissioner in Council may, after seeking the advice of the Board, make regulations—

- (a) to provide for the manner of payment and collection of contributions and any matters incidental thereto;
- (b) to provide for the nomination by an employee of the persons to whom any amount standing to his credit in the Fund at the time of his death is to be paid at his death, for the manner in which such nomination may be revoked and for the circumstances in which it is to be treated as having ceased to be operative and for the payment of such amount to the nominee so nominated;
- (c) to provide that, subject to the regulations, probate or other proof of title of the personal representatives of a deceased employee may be dispensed with in the case of any amount standing to the credit of such employee in the Fund and that such amount may be paid or distributed to or among the persons appearing in the manner provided by the regulations to be beneficially entitled to the personal estate of the deceased employee, whether under any nomination as aforesaid or by law, or as next of kin or otherwise, or to or among any one or more of such persons exclusive of the others;
- (d) to provide that any amount not exceeding one thousand dollars standing to the credit of a deceased employee in the Fund may be paid out by the Board without production of any evidence that any estate duty due on the estate of the deceased employee has been paid;

- (e) to prescribe anything which under this Ordinance may be prescribed by the High Commissioner in Council; and
- (f) for carrying out the provisions of this Ordinance.

21. The Board may, in addition to the other duties imposed and powers conferred upon it under this Ordinance, make rules:

Power of the Board to make rules.

- (a) to provide for—
- (i) the return of contributions under this Ordinance, or any part of such contributions, paid in error;
 - (ii) the payment of contributions under this Ordinance, or of any part of such contributions, omitted to be paid in error;
- (b) to provide for the keeping of books, accounts or records by employers;
- (c) to provide for the disposal of amounts which are unclaimed, unpaid or otherwise remain in the Fund;
- (d) to provide for the appointment of medical boards for the purpose of paragraph (c) of sub-section (1) of section 13 of this Ordinance and for such other purposes as may be prescribed;
- (e) to prescribe the procedure for the withdrawal of amounts from the Fund;
- (f) to prescribe the evidence to be produced and the person, officer or authority to whom such evidence is to be produced for the purposes of section 13 of this Ordinance;
- (g) to prescribe the procedure to be followed when contributions are deposited by the employer in the Fund;
- (h) to provide, in cases where an employee is employed concurrently by two or more employers, the extent of the obligation of such employers as to payment of contributions under this Ordinance;

- (i) to prescribe the returns to be made by employers, and the forms and registers to be used, in the carrying out of the provisions of this Ordinance; and
- (j) to prescribe anything which under this Ordinance may be prescribed by the Board.

Power of
High Com-
missioner in
Council to
amend the
First
Schedule.

22. (1) The High Commissioner in Council may, after seeking the advice of the Board, amend, by order, the First Schedule to this Ordinance.

(2) Any order made under this section shall be laid on the table of the Legislative Council, and shall not come into force until such date as may be specified in a resolution of the Legislative Council approving such order.

FIRST SCHEDULE.

(Section 2.)

1. Employment on any estate over twenty-five acres in extent.
2. Employment on any mine where ten or more employees are employed.
3. Employment in any premises—
 - (a) where ten or more employees are employed; and
 - (b) in which any manual labour is exercised by way of trade or for purposes of gain in or incidental to any of the following purposes, namely—
 - (i) the making of any article or of part of any article; or
 - (ii) the altering, repairing, ornamenting, finishing or cleaning of any article; or
 - (iii) the adapting for sale of any article.
4. Employment by any person engaged in the business of transporting of passengers or goods by road and by whom ten or more employees are employed.
5. Employment by any person engaged in the business of loading, unloading or storing of goods and by whom ten or more employees are employed.
6. Employment in any shop, restaurant or theatre, as these words are defined in the Weekly Holidays Ordinance, 1950, where five or more employees are employed.
7. Employment in any office in which five or more employees are employed.
8. Employment in any school as a registered teacher.

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9. Employment with the Government of the Federation or of any State or Settlement, or with any Municipality or Harbour Board or with the Central Electricity Board.

SECOND SCHEDULE.

(Section 7.)

Amount of wages for the month.		Rate of contribution for the month.	
		By the employee.	By the employer.
When the wages do not exceed \$10	...	Nil	Nil
When the wages exceed \$ 10 but not \$ 30	...	\$ 1.50	\$ 1.50
" " 30	40	2.00	2.00
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