PERMANENT ARBITRATION TRIBUNAL

AWARD

RN 119

A. INTRODUCTION

A.1 In the matter of: The Docks & Wharves Staff Employees Association on behalf of the members of the Staff of the Docks and Wharves, and the United Docks.

The Tribunal, composed of:

  G. Desmarais - Vice-President
  Dr. H. Fakim - Member
  S. Collendavelloo - Member

proceeded to enquire into the following industrial dispute referred to it jointly by the Docks & Wharves Staff Employees Association and The United Docks on the 11th of February, 1980 in accordance with the provisions of Section (1) of the Industrial Relations Act, 1973, viz:

1. Whether or not a general increase of salary of 20% should be granted to the members of the staff;
2. Whether or not overtime duty after 15 hours should be considered as a night work and remunerated as such;
3. Whether or not the "tiffin allowance" should be raised from Rs 6.40 to Rs 10.

A.2 The parties were represented by Mr. Gerard Bruneau, President of the Docks & Wharves Employees Association assisted by Mr. G. Duval, Q.C., on behalf of The Docks and Wharves Staff Employees Association and by Mr. C. Bathfield, Manager of the Société United Docks, assisted by Mr. J. Raymond Hein, Q.C., on behalf of The United Docks.

A.3 Written statements of case were presented to the Tribunal by all parties to the dispute, and were duly filed.

A.4 A preliminary sitting was held on the 25th of March, 1980 at Port Louis and in the course of other sittings held also at Port Louis, oral and documentary evidence was adduced.

A.5 The Tribunal as constituted above was about to deliver its award when it was affected by the untimely demise of the Vice-President who had been presiding over the present proceedings.

A.6 The case was called anew before the Tribunal constituted as follows:

  L. J. J. Vallet - President
  Dr. H. Fakim - Member
  S. Collendavelloo - Member
and following an agreement as to the procedure to be followed suggested by the parties and consented to by the Tribunal, the latter has followed up the proceedings with a view to the present determination.

B. CONSIDERATIONS

(i) "Whether or not a general increase of salary of 20% should be granted to the members of the staff".

B (i) 1. The Tribunal has closely examined this term of reference and has come to the following conclusions.

B (i) 2. According to the evidence adduced by the Docks & Wharves Staff Employees Association (DAWSEA) the dockers and other categories of workers in the harbour have benefited as from July 1st 1979 of an increase of 16.63 % and the Drivers and Helpers of an increase of 8 % on their basic salaries followed later by the increases provided by The Special Wage Increase Act (No. 23 of 1979).

B (i) 3. In point of fact the increases of 16.63 % for the Dockers and other categories of workers, and 8 % for the Drivers and Helpers constituted an alignment on the basic salaries drawn by the Stevedors in the Port.

B (i) 4. The Association's contention is that, apart from the amounts provided in The Special Wage Increase Act (No. 23 of 1979), they were not granted any increase despite added responsibilities and an ever increasing work load.

B (i) 5. As far as “added responsibilities and increased work load” are concerned the Tribunal is satisfied that since 1979 the clerical work in the Docks has increased; this increase has however been met to some extent by the employment of additional employees. In the absence of data processing equipment, clerical work has to be done manually, thus increasing the work load of every employee.

B (i) 6. The point to be considered now by the Tribunal is whether the members of the Staff (DA WSEA) should be granted a general increase of salary of 20% as from the 1st July, 1979.

The Staff in July 1979 was composed of:

Main Office - 10
Sugar Department - 139
Lighterage Department - 45
Deep Water Quays - 137

B (i) 7. As from July 1st 1980, with the coming into operation of the Bulk Sugar Terminal, the Staff should be as follows:

Main Office - 2
Sugar Department - 9
Lighterage Department - 18
Deep Water Quays - 137
B (i) 8. In 1978 the dockers obtained an increase of 7.61% on their basic salary. The Staff also obtained an increase of their basic salary but not in the same proportion, in as much as in their case, the increase was on a sliding scale.

B (i) 9. According to the evidence adduced by members of the Association, the dockers’ piece rate for handling one ton of sugar in 1976 was Rs 34.50, whereas in 1980 it went up to Rs 58.00 i.e. an increase of 68%. It is stressed further, that the ‘productivity bonus’ for handling 4,025 bags of sugar, which in 1977 amounted to Rs 62.40, was raised in 1979 to Rs 645.05 for the same number of bags i.e. an increase of 933.8%. Members of the Staff received nothing then, the stand of the employers being that the work of the Staff, not being on a piece rate basis, could not attract any productivity bonus.

B (i) 10. There can be no doubt that, being given the circumstances prevailing in the harbour at the time, demands from manual workers were more promptly satisfied than those of the Staff. The Tribunal is of the opinion however that, although the work of the Staff cannot be compared to the actual handling of sugar bags, there is sufficient evidence to the effect that there has been up to a certain point an increase of responsibilities as well as of work load.

B (i) 11. In the light of the above the Tribunal considers that members of the Staff should be granted an increase of salary and further that they should receive a certain lump sum payment for service prior to the effective date of the salary increase.

B (i) 12. The Tribunal has had to go into very intricate figures and has decided that such a lump sum be divided into two sets, namely a certain amount for service prior to July 1st 1980 and another amount for service prior to December 1st 1980, upon which latter date the basic salary increase will take effect.

B (i) 13. Such lump sums are deemed to take into account and include everything and are therefore not to be used as the basis for the payment of any retrospective "extras" or allowances.

B (i) 14. The Tribunal has therefore prepared two tables setting out the levels of salary opposite which the various lump sums payable are indicated. The award of the Tribunal is therefore that the employers pay to the staff the relevant amounts appearing in Col. B of Table I and Col. D of Table II in accordance with the conditions specified in the notes. The effective date of Col. E of Table II is December 1st 1980.

B (i) 15. TABLE I concerns lump sums for past service up to June 30th 1980.

TABLE II (i) concerns lump sums for past service for period starting July 1st 1980 and ending November 30th 1980 (Col. C & D).

(ii) Col. E shows the increase in the monthly basic salary corresponding to the basic salary level in Col. ‘C’ and effective as from December 1st 1980.
### TABLE I

<table>
<thead>
<tr>
<th>Monthly Basic Salary as at July 1st, 1979 (See Note: (iv), (v))</th>
<th>Lump sum payable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to 800</td>
<td>800</td>
</tr>
<tr>
<td>Above 800 to 1,150</td>
<td>980</td>
</tr>
<tr>
<td>&quot; 1,150 to 1,425</td>
<td>1,225</td>
</tr>
<tr>
<td>&quot; 1,425 to 1,850</td>
<td>1,585</td>
</tr>
<tr>
<td>&quot; 1,850 to 2,350</td>
<td>1,830</td>
</tr>
<tr>
<td>&quot; 2,350 to 2,825</td>
<td>2,200</td>
</tr>
<tr>
<td>&quot; 2,825 to 3,400</td>
<td>2,450</td>
</tr>
<tr>
<td>&quot; 3,400 to 3,950</td>
<td>2,870</td>
</tr>
<tr>
<td>&quot; 3,950 to 4,500</td>
<td>3,230</td>
</tr>
<tr>
<td>&quot; 4,500 to 6,000</td>
<td>3,770</td>
</tr>
</tbody>
</table>

**NOTE:**

(i) For any employee to be entitled to the amount appearing in Column B he must have been in employment on the 1st July 1979 and have remained in employment up to June 30th 1980.

(ii) For any employee whose employment started after July 1st 1979 and before June 30th 1980, the lump sum payable shall be on a pro-rata basis.

(iii) Similarly, any employee whose employment was terminated after July 1st 1979 but before 30th June 1980 will be entitled to his lump sum on a pro-rata basis.

(iv) Salary levels in Col. A include the appropriate increase provided in Schedule III to Act No. 23 of 1979 effective as from July 1st 1979 but not the appropriate increase effective as from November 1st 1979.

(v) For any employee employed after October 1979, his monthly basic salary shall be calculated by deducting from the salary at which he was employed, the appropriate increase provided in the third Schedule to Act No. 23 of 1979 effective as from November 1st 1979. To the figure thus obtained, must be added the appropriate increase provided in the same schedule and effective as from July 1st 1979.
TABLE II

<table>
<thead>
<tr>
<th>COL. C</th>
<th>COL. D</th>
<th>COL. E</th>
</tr>
</thead>
<tbody>
<tr>
<td>Monthly basic salary as at 1.7.80 (includes additional remuneration) (Act 14 of 1980)</td>
<td>Past service Lump sum (1.7.80 – 30.11.80)</td>
<td>Monthly basic salary increase effective as from 1.12.80</td>
</tr>
<tr>
<td>Up to 900</td>
<td>400</td>
<td>75</td>
</tr>
<tr>
<td>Above</td>
<td></td>
<td></td>
</tr>
<tr>
<td>900 to 1,250</td>
<td>475</td>
<td>90</td>
</tr>
<tr>
<td>“</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1,250 to 1,600</td>
<td>600</td>
<td>115</td>
</tr>
<tr>
<td>“</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1,600 to 2,000</td>
<td>730</td>
<td>140</td>
</tr>
<tr>
<td>“</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2,000 to 2,500</td>
<td>835</td>
<td>160</td>
</tr>
<tr>
<td>“</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2,500 to 3,000</td>
<td>1,020</td>
<td>195</td>
</tr>
<tr>
<td>“</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3,000 to 3,600</td>
<td>1,125</td>
<td>215</td>
</tr>
<tr>
<td>“</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3,600 to 4,200</td>
<td>1,310</td>
<td>250</td>
</tr>
<tr>
<td>“</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4,200 to 4,800</td>
<td>1,490</td>
<td>285</td>
</tr>
<tr>
<td>“</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4,800 to 6,000</td>
<td>1,720</td>
<td>330</td>
</tr>
<tr>
<td>“</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6,000</td>
<td>2,065</td>
<td>400</td>
</tr>
</tbody>
</table>

NOTE:

(i) For any employee to be entitled to the amount in Col. D, he must have been in employment on the 1st July 1980 and have remained in employment up to November 30th 1980.

(ii) For any employee whose employment started after July 1st 1980 and before November 30th 1980 the lump sum payable shall be on a pro-rata basis.

(iii) Similarly, any employee whose employment was terminated after July 1st 1980 and before November 30th 1980, will be entitled to a lump sum on a pro-rata basis.

(iv) For purposes of Col. C, the basic salary of any employee after July 1st 1980 shall be the basic salary at which he was employed.

(ii) “Whether or not overtime duty after 15 hours should be considered as a night work and remunerated as such”.

B (ii) 16

In order to understand fully the position of the staff in relation to overtime work or night work, one has to go back in time and analyse what took place when there was an agreement between the employers and the Staff Association regarding what used to be called 'gratifications'.
At that time, as was the case for other sections in the harbour, overtime was paid double rate. The staff requested that the 'gratifications' be consolidated with the basic wage. These end-of-year 'gratifications' were generally of four months' wages at the time, and, in two stages, the final agreement was to the effect that all the 'gratifications' would be included in the basic wage provided the overtime rate was reduced so as not to increase the employer's wage expenditure unduly. According to calculations by both parties the rate for overtime would have been 1.3 times the normal hourly rate but because of the provisions of the law in respect of overtime, which provide that the normal overtime rate is time and a half, the employers agreed that, inspite of the increase in the basic wage of approximately 33 %, the new overtime rate will be on the basis of 1.5 instead of 1.3 times the normal hourly rate.

B (ii) 18

The terms of reference only relate to the question whether overtime work after 3 p.m. should be considered as 'night work'. In as much as a normal day's work finishes now at 3 p.m., the purport of the terms of reference is to the effect that 'overtime work' should disappear and be replaced by 'night work'.

B (ii) 19

In the harbour, 'night work' means that whatever the actual number of hours worked during that period, the employees will be paid a full day's work at the specified rate for overtime.

B (ii) 20

At the outset the Tribunal wishes to state that 'prima facie' overtime work after 3 p.m. cannot be considered as 'night work' not only in Mauritius but anywhere in the world. In Mauritius all normal office work goes on to at least 4 p.m. and, in other parts of the world, it sometimes extends to 5 p.m. and to even beyond 5 p.m. in some cases.

B (ii) 21

According to the statement of case of the Association, the latter considers the reference as being a particular contention that there should be uniformity of treatment in the Deep Water Quays Department, the Lighterage Department and the Sugar Store Department.

B (ii) 22

The only point which the Tribunal has to decide is whether, in the present case, there should be uniformity between departments of the same employer.

B (ii) 23

It is averred that Deep Water Quays and Lighterage Departments benefit from special advantages. The evidence is such however, that because a normal day's work now ends at 3 p.m. (since the implementation of a 40-hour week system in the harbour), it is always up to the ship concerned to decide whether workers employed by the United Docks should work overtime or not. It appears that the arrangements are that the Ship's authorities, in order to be assured of the labour of such workers, are prepared to pay a special rate of overtime and accordingly pay more than what is provided in the normal conditions of service.

B (ii) 24

In the Sugar Department, the matter is very different inasmuch as it is the employers who decide whether overtime should be worked, and therefore the rate is according to the overtime rate provided for in the conditions of service. Further, it is to be borne in mind that whereas on the one hand, it is up to the Ship's authorities, after taking into account the whole economics of the transaction to decide whether overtime at the special rate should be
worked or not, and, if they find it to their advantage to pay more for extra labour in order to leave the harbour early, to exercise such an option; on the other hand however, in the Sugar Department, the decision remains with the direct employers whose relations with their staff are governed by their normal conditions of service, and the evidence is also clear that sugar work always stops before 6.00 p.m. i.e. before the time provided in the conditions of employment as being 'night work'.

B (ii) 25

The Tribunal therefore finds that it would be unreasonable to align normal overtime work with special arrangements made at the instance of a third party. The Tribunal's wish here is not to criticize any special arrangements made by any party in relation to a certain piece of work, but wishes only to remind all parties of the fundamentals of the law of employment and labour. Any employee is entitled to a just remuneration for his labour. Such remuneration may be on a monthly basis, on a daily basis or on an hourly basis. Whatever be the system, the hourly rate of any employee may be calculated and he is entitled to be paid for the number of hours he has worked or is deemed to have worked at the normal rate and for such number of hours which he has worked at any specified special rate.

B (ii) 26

The Tribunal finds it a dangerous precedent that it should be requested to make an award the purport of which would be that any employer be bound to pay an employee for work which has not been performed.

B (ii) 27

Being given however the special circumstances prevailing in the harbour and the offer made by the Employer with a view to a settlement, the Tribunal awards as follows:

(a) For work which is performed between 3 p.m. and 6 p.m. during week days by the Staff, overtime shall be reckoned at the rate of time and a half for a guaranteed period of three hours even if the work finishes before;

(b) when work goes beyond six p.m., the overtime shall be reckoned on the basis of 'night work' at time and a half;

(c) the same principle shall apply to work performed on Saturdays after 1 p.m.

(d) the effective date of this award is July 1st 1979.

(iii) "Whether the Tiffin Allowance should be raised from Rs 6.40 to Rs 10".

B (iii) 28

It is to be noted here that the figure Rs 6.40 is not the correct one.

B (iii) 29

The "Tiffin Allowance" is, as indicated by the word, an "Allowance" towards the cost of a light meal or snack (tiffin) and is not a remuneration.

B (iii) 30
From June 1976 to June 1979 the Tiffin Allowance has been increased from Rs 2.55 to Rs 6.25 \(i.e.\) an increase of 145\%. The Tribunal feels that the sum of Rs 10.00, as an allowance towards the cost of a "Tiffin", is exaggerated. The Tiffin Allowance is granted to all workers who work after 3 p.m. but it must be stressed that the Employers are here paying not for the cost of a meal but merely an allowance towards the cost of a "Tiffin\(\) i.e. some sort of snacks with some soft drinks.

B (\textit{iii}) 31

The Tribunal has had last year to deal with a similar claim in relation to 'tiffin allowance' for another sector of the harbour. The Tribunal, after taking into account the increase in the cost of living, towards that as from July 1st 1980 the "tiffin allowance" shall be Rs 8.35 which is deemed to include any statutory increase.

C CONCLUSION

C.1

Because of very unfortunate and sad circumstances, the present determination was inevitably delayed. The Tribunal thanks the parties and their Counsel for their cooperation and hopes that industrial relations will continue to run as smoothly as possible.

L. J. J. VALLET  
\textit{President}

H. FAKIM  
\textit{Member}

S. COLLENDAVELLOO  
\textit{Member}

25th March, 1981

CORRIGENDUM

RN 119  
\textbf{PERMANENT ARBITRATION TRIBUNAL}

In the award published on the 25\textsuperscript{th} March, 1981, under General Notice No. 331 of 1981 in the matter of the industrial dispute between the Docks & Wharves staff Employees Association and the United Docks, please read in the third line on paragraph B (\textit{iii}) 31 the words "awards that as from July 1\textsuperscript{st} 1980" instead of the words "towards that as from July 1\textsuperscript{st} 1980" as printed by error.

Prime Minister's Office