A. INTRODUCTION

A.1 In the matter of the industrial dispute between:

The Mauritius Sugar Industry Research Institute Manual Workers Union

and

The Mauritius Sugar Industry Research Institute

The Tribunal composed of:

Mr. H. Balgobin - Vice President
Mr. M. Conhyedoss - Member

proceeded to enquire into the following industrial dispute referred to it by the Minister in charge of Industrial Relations on 25th January, 1983 in accordance with the provisions of Section 82(1)(f) of the Industrial Relations Act, 1973, viz:

1. Whether the manual workers of the Institute should be paid in the following respective salary scale, or otherwise:

   (i) Cleaners, labourers gardeners:
       Rs 925 x 30 - 1015 x 40 - 1215 x 50 - 1265*

   (ii) Labourers (including women labourers):
        Rs 1025 x 40 - 1185 x 50 - 1435*

   (iii) Nurserymen, 'Night Watchmen:
        Rs 1075 x 40 - 1195 x 50 - 1495*

   (iv) Drivers (vehicles):
        Rs 1275 x 50 - 1675 x 60 - 1915*

   (v) Gangmen:
        Rs 1350 x 50 - 1700 x 60 - 1820*

   (vi) Tradesmen:
        Rs 1550 x 50 - 1700 x 60 - 2060 x 75 - 2210*

   (vii) laboratory Attendants/Field Attendants:
        Rs 1600 x 50 - 1700 x 60 - 2060 x 75 - 2135*

   (viii) Drivers (Tractors)/Head Office Attendant:
        Rs 1725 x 60 - 1965*

   (ix) Senior Gangmen
        Rs 2200 x 75 - 2500*
2. Whether the manual workers of the Institute should be covered by the Medical Scheme obtainable for the "Staff" employees, or otherwise.

3. Whether the manual workers of the Institute should be refunded their traveling expenses on the "return bus fare" basis, or otherwise.

4. Whether the manual workers of the Institute should be paid an end of year bonus equivalent to one month's wages, or otherwise.

5. Whether the manual workers having more than 20 years service with the Institute should be entitled to two passages Mauritius - London - Mauritius prior to retirement or otherwise.

6. Whether the casual workers should be absorbed on the permanent establishment of the Institute, or otherwise.

The salary scale does not include the wage increase in 1982

A.2 parties were represented by Messrs. Claude N. Moatookistnen and D. Soondar, respectively President and Secretary of the Union, assisted by M. Dulloo, of Counsel, on behalf of the Mauritius Sugar Industry Research Institute Manual Workers Union, and Mr. J.R. Williams_ Assistant Director of the Institute, assisted by Mr. R. d'Unienville, of Counsel, on behalf of the Mauritius Sugar Industry Research Institute.

A.3 The parties had no objection to the case being heard in the absence of Mr. R. Bunwaree, the second Member of the Tribunal.

A.4 Mr. G.A. Robert, Attorney for the Mauritius Sugar Industry Research Institute took the following point in limine:

“The MSIRI and its employees having freely and in good faith entered into an agreement relating to all the conditions of service in respect of MSIRI employees, which agreement was stipulated to have a duration of three years from the 1st July 1981 to the 30th June, 1984, the Tribunal has no jurisdiction to set aside, amend or otherwise deal with such a contract which shall remain the law of the parties until its expiration”.

A.5 A preliminary sitting was held on the 10th February, 1983 at Port Louis and in the course of another sitting held also at. Port Louis, oral and documentary evidence was adduced.

B. CONSIDERATIONS

Mr. R, d'Unienville, on behalf of the Mauritius Sugar Research Institute, has taken objection to the matter being heard on merits because, according to him, both parties to the dispute are bound by the terms of a collective agreement which is due to expire on 30th June, 1984.

Mr. d'Unienville has produced various documents in support of his case. He has stated that the majority of the present employees were members of the Plantation Workers Union which the Institute recognised them as the sole bargaining agent.

It appears from Article 3 of the procedural agreement that, in fact, the Institute recognised the Plantation Workers Union as being the sole bargaining agent in connection with rates of pay, wages, hours of work and other conditions of employment.

Mr. d'Unienville submitted that the agreement was of a standard nature and based on the Code of Practice under the Industrial Relations Act. He has drawn the attention of the Tribunal that it is
essential to note the distinction between Article 11 A and Article 11 B of the procedural agreement (Document C).

Article 11

**DURATION**

A. **Duration of Procedural Agreement**

The procedural agreement shall come into force and effect on the 1st July, 1981 and shall remain in force for a period of one year and will continue to be in force unless and until either party gives three months' notice of amendment or termination in writing of the agreement.

Mr. d'Unienville, however, submitted that it was Article 118 that was relevant to the present case.

Article 11

B. **Duration of Annexures covering agreement on terms and conditions of employment**

(i) Annexures covering terms and conditions of employment will come into force on the 1st July, 1981 and will remain in force for a minimum of three years.

(ii) After the expiration of the period of three years as mentioned in sub paragraph (i) above, any amendment to the annexures may be made by following the procedure laid down in Article 8 (0), Stage I.

(iii) The annexures on terms and conditions of employment will continue to remain in force unless and until proposals for amendments are made under sub paragraph (ii) above.

Mr R d'Unienville further submitted that it was sufficient to examine the relevant sections of the Industrial Relations Act to reach the inevitable conclusions that the present agreement is binding on the parties until June 1984, and, is what is known in our Common Law a "Convention collective de travail". It is essential for the purpose of the present case to quote, in extenso, Section 52 of the Industrial Relations Act.

Practical guidance for promotion of good industrial relations.

52. - (1) The Code of Practice set out in the Third Schedule shall -

(a) provide practical guidance for the promotion of good industrial relations?

(b) provide practical guidance for the grant of negotiating rights; and

(c) assist employers and trade unions of employees to make effective collective agreements.

(2) A failure on the part of any person to observe any provision of the Code of Practice shall not of itself render that person liable to proceedings of any kind.

(3) In any proceedings under this Act any provision of the Code of Practice which appears to the Tribunal, the Commission or the Court to be relevant to any question arising in the proceedings shall be taken into account for the purpose of determining that question.
According to Mr. d'Unienville, the Code of Practice had the force of law provided it was relevant to the issues to be determined. He has quoted extensively from the Industrial Relations Act and the Tribunal feels that it would be appropriate to quote Section 81 of Third Schedule to the Industrial Relations Act which stipulates the following:

81. Substantive provisions settle terms and conditions of employment. They should indicate the period for which they are to apply, and cover -

(a) wages and salaries, where appropriate, overtime rates, bonuses, piecework and other systems relating earnings to performance;
(b) hours of work, and, where appropriate, provisions for overtime, and shift working;
(c) holiday entitlement and pay.

Mr. M. Dulloo, for the Union, contended that the Minister having referred the dispute to the Tribunal, the latter had no alternative but to make an award on the dispute. He submitted that, notwithstanding the provisions of the Civil Code, it was opened to the Tribunal to investigate the matter in dispute and deliver an award. In any case, he submitted it was not the present Union which signed the procedural agreement.

The Tribunal is satisfied that the bulk of the employees concerned in the present dispute were members of the Plantation Workers' Union at the time the collective agreement was signed. The Tribunal holds that, in view of the clear provisions relating to terms and conditions employment, both parties are bound by the agreement until the 30th June, 1984, and that, therefore, the Tribunal has no jurisdiction to hear the dispute.

The objection of Mr. d'Unienville is upheld and the dispute is set aside.

The Tribunal thanks the parties and counsel for their assistance throughout the proceedings and hopes that good industrial relations will continue to exist between employers and employees.

H. Balgobin
Vice-President

M. Conhyedoss
Member

1st February, 1984