A. INTRODUCTION

R.N 218

In the matter of:

The Mauritius Marine Authority Employees' Union

and

The Mauritius Marine Authority

A.1 The Tribunal composed of:

Mr Harris Balgobin - President

Mr Ravin Bunwaree - Member

Mr Max Serret - Member

proceeded to enquire into the abovementioned industrial dispute of referred to it in terms of Section 82(1)(f) of the Industrial Relations Act, 1973, by the Minister in charge of Industrial Relations. The points in dispute are:-

“(1) Whether the salary scales of the categories of employees affected by the implementation of the double shift in the Port should be adjusted to compensate for regular overtime lost and the amendment brought to the existing contract of employment regarding hours of work or otherwise;

(2) Whether the employees posted on the second shift should be paid a meal allowance, or otherwise;

(3) Whether the employees posted on overtime on Saturdays should be guaranteed a minimum of five hours overtime, or otherwise.

A.2 Mr M Gujadhur, QC, instructed by Mr P Balmano, Attorney-at-Law, assisted the Mauritius Marine Authority Employees Union, hereinafter referred to as the Union, whereas Mr K Matadeen, then
Principal Crown Counsel, appeared for the Mauritius Marine Authority, hereinafter referred to as the Authority,

A.3 Written Statements of Case were presented to the Tribunal by both parties to the dispute and were duly filed. Oral and documentary evidence was also adduced.

A.4 Mr R Bunwaree having left the Tribunal, the matter was concluded with the President and one Member only.

A.5 The Tribunal has now decided to deliver a Part-Award in relation to Item (1), viz:

“(1) Whether the salary scales of the categories of employees affected by the implementation of the double shift in the Port should be adjusted to compensate for regular overtime brought to the existing contract of employment regarding hours of work, or otherwise”.

B. CONSIDERATIONS

“(1) Whether the salary scales of the categories of employees affected by the implementation of the double shift in the Port should be adjusted to compensate for regular overtime lost and the amendment brought to the existing contract of employment regarding hours of work, or otherwise”.

B.1 The Tribunal considers that the issue commonly known as the double shift dispute is yet another source of tension in the Port and should be dealt with by way of a Part Award.

B.2 The Tribunal considers that it is important that it should deal extensively with the arguments of both parties as expressed in their statements of Case.

B.3 The Union has in its Statement of Case averred in relation to Item (1) the following:-
Historical Background

(i) The Mauritius Marine Authority was set up in 1976 to manage the Port. It took over the former responsibilities of the Marine Services. All the employees of the Marine Services and those recruited by the Authority were, as from 1976, governed by a collective contract of employment which provides for their hours of work (Refer Section 2.II.I.).

(ii) The MMAEU was set up in 1987 and was recognized in the same year. A procedural agreement was signed between the MMA and the MMAEU on the 27th March, 1985. This agreement covers inter alia the procedures for alteration of conditions of services (Refer Articles 2 and 12).

(iii) On or about the 24th February, 1988 the Union was informed through the press that the MMA was introducing a double shift system in the Port as from the 1st of March, 1988. The MMAEU and other Unions concerned by the double shift set up the “Front Syndical Portuaire” and contacted the authorities concerned for prior consultation. Negotiations were held between parties. The last meeting was held on the 12th March, 1988. The double shift was introduced as from the 14th March, 1988 on the basis of terms and conditions laid down in the minutes of proceedings of that meeting. Parties took note, however, of the fact that there existed a deadlock on the introduction of the double shift system without compensation.

The hours of work with the double-shift system are as follows:-

Weekdays (other than Saturdays):

1st shift: 07.00 to 15.00 hrs
2nd shift: 14.30 to 23.00 hrs

Saturdays – single shift: 07.00 to 18.00 hrs
Public Holidays (including Sundays)
07.00 to 11.00 hrs

Grounds in support of claim

Item 1

1. The Union was informed that the implementation programme of the double shift system in the Port would be as follows:-
PHASE I: Quay 4 – to be implemented on 14.3.88 (already implemented)

PHASE II: Quay 3 – to be implemented after a period of two months as from the 14th March, 1988 (not yet implemented).

PHASE III: Other Quays – within the next 3 years though not to the extent of 100%.

2. The Unions grouped in the “Front Syndical Portuaire” took the following stand regarding:

A. GENERAL CONDITIONS

   (1) That an agreement be reached globally as if the shift system were to be introduced on all quays immediately.
   (2) That the workers concerned be compensated for the extension of working hours from 3 p.m to 11 p.m.
   (3) That compensation be worked out on the basis of the fact that the Port has been operating on a regular 3-hour overtime per day, i.e 18 hours of overtime per week.
   (4) That a formula for a phased adjustment in wages, salaries and piece-rates be worked out and that such a formula be included in a global agreement.

B. PRELIMINARY CHANGES

   (1) That the present MGMP (“Minimum Guaranteed Monthly Pay”) for port labour be adopted as the monthly basic wages.
   (2) That the piece-rate for port labour be extended to plant operators and that the formula for calculating cargo handled be modified as follows:-

   Ship Cargo
   No of Labour gangs

   (3) That the salary structure of “Staff employees” be adjusted to take into account paras A. (2) and (3) above.

C. GLOBAL ADJUSTMENTS
(1) That work be organized to maintain overtime to the degree required by the organization in terms of volume of cargo handled in the Port

(2) That a productivity target bonus be introduced to compensate non-piece-rate workers for their participation in production and Port productivity.

(3) That a phased increase of salaries/wages/piece-rates be granted to compensate for:

(a) Loss of regular overtime; and

(b) extension of working hours from p.m. to 11 p.m

3. Proposals of the Trade Union (MMAEU)

3.1 Taking into account the fact that MMA employees are performing shift work on a roster basis, the trade union contends that every employee should be compensated by way of a Shift Allowance for every week during which he is on duty representing 15 per cent of their monthly salaries. The categories concerned are:

Traffic Officer  1 week out of every  8 weeks
Cargo Supervisor  1 week out of every 26 weeks
Plant Supervisor  1 week out of every  7 weeks
Traffic Clerk  1 week out of every 36 weeks
Office Attendant  1 week out of every 17 weeks
Lavatory Attendant  1 week out of every  7 weeks
Workshop Supervisor  1 week out of every  3 weeks
Senior Plant Mechanic  1 week out of every  5 weeks
Plant Mechanic  1 week out of every 17 weeks
Tradesmen  1 week out of every 10 weeks
Asst. Tradesmen  1 week out of every 21 weeks

3.2 In addition to the above, the Union requests that the salaries of the Traffic Department and the MMA Workshop be adjusted by an average increase of 12 per cent to compensate for revenue lost as overtime with the introduction of a second shift.

3.3 It has always been a condition of service of employees of the MMA that they are compelled to do overtime work. In May 1979 the Director-General wrote to employees that they could not refuse to do overtime, that overtime was obligatory as “overtime is a common feature of work in port”.

B.2 The Authority has in its Statement of Case averred in relation to item (1) the following:
1. Whether the salary scales of the categories of employees affected by the implementation of the double shift in the Port should be adjusted to compensate for regular overtime lost and the amendment brought to the existing contract of employment regarding hours of work, or otherwise.

The switch-over from break-bulk to containerisation had resulted in an underutilization of the port infrastructures and facilities. With the view to optimizing the utilization of the Port facilities, every endeavour was made to attract trade other than the national imports of the country. The response was very encouraging and a number of shipping lines had indicated their willingness to transship cargo through Port Louis Harbour.

However, with the former cargo operations parameters the Port had very little over-capacity and until the various constraints were appropriately tackled the full potential of the Port would not have been realized.

One constraint that was easily identified was the effective number of working hours in the Port. Statistics had revealed that the effective working time was only 7.7 hours per day. This was an extremely low figure when compared with that of ports in the neighbouring countries. Low effective working hours resulted in longer turn-round of vessels and low berth through-put.

With the view to maximise the number of effective working hours in the Port it was decided to introduce a double-shift system for cargo handling operations. The double-shift system has undoubtedly increased the number of effective working hours and this has enabled vessels to improve on their turn-round time which in turn has increased the present over-capacity of the Port.

Based on the traffic trends during the previous months a double shift for cargo operations was, after discussions with the various unions, introduced on the 14th March, 1988 at the Container Terminal only.

It is worthwhile pointing out that, except at the Container Terminal, overtime work, whenever necessary has continued to be carried out on all other quays. Thus every employee who is involved in the double shift is posted at the Container Terminal on a roster basis. On the average an employee works once every seven weeks. Furthermore, the second shift is applicable only during weekdays and Saturdays.

Thus on Sundays and Public Holidays overtime work is being
performed. On the average an employee involved in the double shift works approximately the same number of hours of overtime since the introduction of the shift (on the contrary the number of hours worked now is more in some cases, this being due to the increase of cargo operations), The hours of the shift at the Container Terminal are as follows:-

Weekdays - 1st shift - 07.00 - 15.00 hrs
  2nd shift - 15.00 - 23.00 hrs
Saturdays - 1st shift - 07.00 - 13.00 hrs
  2nd shift - 13.00 - 18.00 hrs
Sundays & Public Holidays - Overtime payment is applicable

It should be pointed out that whenever there is no cargo operations employees on the second shift are allowed to go home at 19.00 hrs.

In 1988, while reviewing the 1987 Pay Research Bureau Reports on the Para-Statal Bodies, the Salaries Commissioner must have taken into consideration the double shift in the Port (the double shift was in force since 14th March, 1988). The Salaries Commissioner has made the following comments on shift work (para. 4.10 of the Report).

"The recommended salaries of officers working on shift, roster, or on variable hours take into account the element of shift, roster, etc., including night work and work performed on Sundays and other public holidays".

B.6 There is no doubt that the introduction of a double shift in the Port constituted a major change as far as the employees are concerned.

B.7 Negotiations between the parties were based on the assumption that the introduction of the double shift system should entail adequate compensation for the workers.

B.8 The compensation sought for is based on the loss of regular overtime and the extension of working hours.

B.9 This dispute has a peculiarity that the claim is based on the fact that the employees in question work on a roster basis and the Union claims that every such employee should be compensated by way of a shift allowance for every week during which he is on duty and representing 15% of his salary.

B.10 These categories of workers are those mentioned earlier and appear in the Statement of Case of the Union.

B.11 The Union has further claimed that the salaries of the Traffic
Department and the workshop shall be adjusted by an average increase of 12% to compensate for revenue loss as overtime with the introduction of the second shift.

B.12 The Tribunal holds that the Authority should by way of compensation adjust the salaries of the employees concerned.

(a) that the salaries of the employees of the Traffic Department and the Workshop shall be compensated by an increase of 8% as compensation for overtime loss.

(b) that each employee performing shift work on a roster basis shall be paid a shift allowance for every week during which he is on duty representing 7.5% of his monthly salary.

B.14 The Tribunal consequently awards that the Authority shall adjust the salaries of the employees concerned in the Traffic Department and in the Workshop by an increase of 8%.

B.15 The Tribunal further awards that the Authority shall give a shift allowance representing 7.5% of their monthly salary for their weekly night shift for the month which the applicants perform their weekly night shift.

C CONCLUSIONS

The Tribunal would like to thank the Parties and their Counsel.

(H. Balgobin)
President

(M. Serret)
Member

3rd September, 1991