CIVIL SERVICE ARBITRATION TRIBUNAL
AWARD

In the matter of the Industrial Dispute between:

1. The Government Medical Consultants' Association
2. The Government Medical and Dental Officers' Association
3. The Medical and Health Officers' Association

and

The Government of Mauritius

In the presence of the Nursing Association

1. The Medical Officers Associations have joined forces in a set of disputes with the Official Side. The Tribunal has already ruled that two items of dispute could not be considered by the Tribunal namely Items 8 and 9 so that on paper there now remain seven items of dispute to be determined.

2. Because of the purport of one of the items of dispute the Nursing Association moved to be allowed to intervene as a party to the proceedings and the Tribunal ruled that this item of dispute be heard in the presence of the Nursing Association. The issues involved in this dispute are very delicate ones indeed and do require a thorough investigation involving administrative as well as technical and professional problems. At the request of the parties a special Committee working under the aegis of the Tribunal has been set up under the chairmanship of Professor Donald Ah Chuen and is presently considering the issues so as to be able to make a report thereon to the Tribunal. The Tribunal takes this opportunity of expressing its gratitude to the Chairman and all the members of the Committee who have readily accepted to enquire into the various problems posed with a view to improving the situation in all Government Hospitals in Mauritius.

3. Item 6 of the terms of reference related to the appointment of two Medical Advisers has now resolved itself and no dispute thereon exists any longer.

4. Being given the interrelation between items 1, 3 and 4 and the fact that administrative, technical and professional problems are involved therein as on item 2 now being considered by a Special Committee, the Tribunal feels that a definite pronouncement on these three items should await the final award which will also cover item 2.

5. As regards item 4 however the Tribunal will pause to note that the problem of appointment of Sessional doctors which, according to the medical profession, was an acute one at the time of the reference of the dispute, has now lost much of its ruggedness because of the decision taken by the Authorities to fill vacancies in the grade. It also appears that gradually such appointments are being regularized by the integration in the regular medical services.

6. Item 5 of the terms of reference of the Medical Associations relates to the justifiability by the Government to appoint medical advisers and directors from outside the present establishment. According to the Official Side this item relates to the exercise by Government of a Constitutional right and is not arbitrable.

7. Item 5 reads as follows:
"Whether Government is justified in appointing or seeking to appoint special advisers and directors
from outside the present establishment, and if so

(i) whether those advisers and directors should perform any clinical duties at all, and
(ii) what should be the scope of their duties"

8. At this stage the Tribunal wishes to state that although the item is worded as above, it is not meant that the Tribunal should deliver a declaratory judgment on a constitutional issue. This dispute was directly linked with a controversy upon the appointment of some advisers which according to the Medical Associations was causing, to say the least, very unsmooth industrial relations inside the Medical Services.

9. The first part of this item speaks for itself inasmuch as by virtue of Section 89(3)(h) of the Constitution, the Government as an employer may appoint on contract persons to any office of a temporary nature.

10. When this is done, however, trouble within a service may brew. if the appointment is such that some employees feel frustrated or because there is an infiltration within a service whereby duties to be performed by permanent Public Officers are now being performed by the temporary 'adviser' on contract.

11. The Constitution in its wisdom cannot be assumed to give a power to anyone which is likely to cause a disruption within a service and the text of the relevant section is so clear that there is no problem of interpretation involved.

12. There is therefore no doubt that the Government may appoint temporary advisers on contract and the only problem which may arise is when any such adviser with or without the consent of the employer encroaches upon functions which do not normally devolve upon him. In which case there may well be an improper division of labour or work allocation.

13. In other words, the question is not related to the appointment of the temporary adviser but to the manner in which the duties are performed. Performance of such duties must be such as not to cause a breach of the conditions of work of other officers.

14. The direct question put in the terms of reference, in relation to medical 'advisers', is whether such persons 'should perform any clinical duties at all'. Such a question cannot be answered by yes or no. inasmuch as there may well be wide differences in the duties to be performed depending on the type of advice which the employer is seeking.

15. It is however very clear that the duties, as stated in the Constitution must be mainly advisory. On the other hand, it is equally clear that such advisory duties may well entail the performance of some clinical duties. In the practical application of such principles there must be some flexibility but a proper balance must be kept so as not to permit undue invasion upon the functions of others. In other words as much as any adviser cannot be expected to sit behind a desk writing out advice to the exclusion of anything else he cannot also be expected only to perform duties which are not of an advisory nature. The volume of clinical duties for example should not be such that the advisory duties are but an insignificant accessory thereto instead of being the main object of the appointment.

16. In the light of submissions by both parties, the Tribunal feels that it was not unreasonable for the medical associations to have come to the conclusion that the appointment of advisers in this particular case was a roundabout way to get a clinical appointment and thus reacted rather strongly.
17. Counsel for the Official Side while arguing on this point had wondered as to what sort of 'award' could be made on the point. An award need not always be the granting or the refusing of any claim. The Tribunal must always in all objectivity attempt to find how best to resolve a problem and may also give guidelines with a view to removing or avoiding sources of friction. The Tribunal accordingly 'hopes that this present part award will help in the future relations between the parties.

18. The Tribunal wishes to thank the parties and their Counsel for their cooperation.