CIVIL SERVICE ARBITRATION TRIBUNAL

JUDGMENT

RN 138

BEFORE

Rashid Hossen	-	Acting President
S. Hossenbux	-	Member
P. N. Jeantou	-	Member

In the matter of :-

Y. Ramkhelawon (APPELLANT)

And

Minister of Civil Service Affairs & Administrative Reforms (RESPONDENT)

This is an appeal against the decision of the Minister of Civil Service Affairs and Administrative reforms rejecting the declaration of an industrial dispute made to Union by virtue of Section 80(1) (a) of the Industrial Relations Act 1973, as amended. The Minister has rejected the dispute on the ground that it is not a dispute within the meaning ascribed to it in the Industrial Relations Act as amended of Act (N0 13) of 2003.

The appellant is a Chief Personnel Officer posted to the Ministry of Foreign Affairs, International Trade and Regional Cooperation.

The grounds of Appeal are as hereunder:

(a) It is contended that the Minister has been ill advised to consider that the Industrial Dispute was based on the recommendation of the Pay Research Bureau. The dispute reported to the Minister has nothing to do with the recommendation of the Pay Research Bureau as there is no specific recommendation in the Report of the Bureau concerning the issue under dispute.

(b) The dispute relates to additional increments granted to the appellant in 2000 for higher qualifications in accordance with the Ministry of Civil Service Affairs Circular Note No 5 of 1995. Please see annex 2.

(c) The appellant was granted two increments in August 2000 for higher qualifications. When the recommendations of the PRB were being implemented in July 2003 the Ministry of Civil Service Affairs excluded the two increments granted to the appellant from his salary, with the result that as from 1 July 2003 his salary does not include the two increments. As from 1 July 2003 the appellant is drawing the salary he would normally have drawn but without the two increments granted to him previously.

(d) The appellant made representations to the Ministry of Civil Service Affairs on 20 August about this state of things.

(e) On 28 October 2003 the Ministry of Civil Service Affairs submitted the representation to the Standing Committee set up to determine the award of Incremental Credit for additional qualification.

(f) On 14 May 2004 (almost nine months later) the Ministry of Foreign Affairs, International Trade and Regional Cooperation informed the appellant at the request of the Ministry of Civil Service Affairs and Administrative Reforms that as he had opted to be governed by the recommendation of the PRB Report 2003, he was precluded from declaring a dispute on the issue at hand and he was not entitled to the 2 incremental credits.

(g) It is contended that the decision of the Ministry of Civil Service Affairs is ill conceived in as much as the appellant had not requested for the grant of two incremental credits. He had already been granted such incremental credits in 2000. What he requested was that those increments which were not reflected in his salary as from 1 July 2003 be restored to him.

(h) In the absence of any specific recommendations in the PRB Report 2003 that an officer, who has previously benefited from incremental credits and was still in the same grade on implementation of the PRB Report, should be deprived of such benefit, the decision could not be said to be based on the PRB Report.

(i) However, if the appellant had obtained the same qualification on 1 July 2003, he would de facto have become eligible for two increments which would have made his salary higher that what it is presently.

(j) The arbitrary and misguided rejection of the Industrial Dispute leaves the appellant without any remedy for the deprivation of a benefit which had been lawfully and legitimately granted to him. This is causing him both moral and pecuniary prejudice.

The Appellant accordingly prays from this Tribunal that the arbitrary rejection of the dispute be quashed and the Minister of Civil Service Affairs be enjoined to deal with the issue in such a way that justice is done.

The Respondent's case is as follows:

Appellant was granted two incremental credits for higher qualifications with effect from 14 July 2000. His salary was therefore increased by two increments from Rs 20,270 to Rs 21,470 as from that date:

On 1 July 2001, he reached the top salary of his post i.e. Rs 22,070.

He has been drawing the top salary of his post from 1 July 2001 to 30 June 2003. On 1 July 2003, in accordance with the Master Conversion Table of the Pay Research Bureau Report 2003, the top salary of Rs 22,070 was converted to Rs 29,000.

Respondent avers that Appellant was awarded a degree of Bachelor of Laws on 14 July 2000 by the University of Wolverhampton and he was granted two increments for higher qualifications with effect from that date in accordance with Ministry of Civil Service Affairs and Administrative Reforms Circular Note No 5 of 1995.

The Respondent avers that as Appellant had already been granted two increments for higher qualifications with effect from 14 July 2000, he cannot again claim same on 1 July, 2003.

As Appellant had already benefited from the grant of the two increments with effect from 14 July 2000 and the question of restoration of the increments does not arise.

Respondent avers that there has been no stoppage of increment in as much as he was drawing the top salary in the salary scale of his post as from 1 July 2001 i.e. Rs 22,070. His salary was converted in accordance with the Master Conversion Table of the PRB Report 2003 with effect from 1 July 2003. Respondent further avers that as according to paragraph 1 (v) of the Recommendations of the Standing Committee on Incremental Credit for Additional Qualifications "no incremental credit for additional qualifications would be granted to officers drawing a flat salary or who have already reached the last point in their salary scale"

Respondent avers that the dispute is related to remuneration as a result of the option exercised by him to be governed by the salaries and conditions of service of the PRB Report 2003 and therefore does not constitute an industrial dispute.

Respondent avers that Appellant was not entitled again to two increments on conversion of his salary to that recommended by the Pay Research Bureau Report 2003.

Respondent avers that the Minister of Civil Service Affairs and Administrative Reforms is the Minister to whom responsibility for the subject of industrial relations in the Public Service is assigned in accordance with Section 99(iii) of the Industrial Relations Act. Any industrial dispute in the Public Service is reported to the Minister of Civil Service Affairs and Administrative Reforms and the Minister may reject a report of industrial dispute made under section 79. Appellant had himself reported the dispute to the Minister of Civil Service Affairs and Administrative Reforms who has rejected it on the ground that it relates to a dispute which is not an industrial dispute within the meaning ascribed to it in the Industrial Relations Act as amended by Act No 13 of 2003.

Counsel appearing for the appellant surprised us in forcefully submitting that this Tribunal has no power to adjudicate on issues of law. He submitted that this not being a Court of Law and the strict laws of evidence do not apply. His answer to that is that this Tribunal is set up under the executive power and its Bench is that of two Assessors and one person with legal background.

Counsel also submitted that a dispute does exist in the present matter and using his own words *"a dispute on a dispute is a dispute."* A dispute exists when some kind of a different stand taken on either side arises. He submitted that in the present case the applicant declared a dispute regarding his incremental credit, not emolument or remuneration. Incremental credit was awarded to him as far back as August 2000. When the PRB report 2003 came out he signed an option form. Counsel's reasoning is that the substance of this dispute is the incremental credit that was awarded to him before he signed the option form in 2003 and it therefore escapes Act No. 13 of 2003. It was further added that this law cannot be of a retrospective effect with regard to a right that was acquired by him because he has passed his LLB in August 2000 and which right has been withdrawn by the new PRB.

In the final part of his submission, Counsel stressed that if the Industrial Relations Act applies to the Civil Service, the Labour Act does not. Therefore the definition of remuneration in the Labour Act has no power in the present matter. The PRB report is divided into various volumes but nowhere it is said that incremental credit falls under remuneration.

Counsel appearing for the respondent submitted that the Tribunal has jurisdiction to decide on points of law. On the issue of incremental credit it is submitted that incremental credit given for additional qualifications and that it is not a right and should therefore be treated as an allowance.

On the issue of jurisdiction, we can do no better than to refer Counsel for the Appellant to **Wade** on **Administrative Law (6th Edition**) at pages 897 to 900 where the learned author makes the following points:

(a) the system of tribunals is an essential part of the machinery of government as it offers speedier, cheaper and more accessible justice in specialized fields which the process of the Courts of law is elaborate, slow and costly:

(b) there is a close relationship between the supplementary network of adjudicating bodies, like tribunals and Courts of law, since in the majority of cases Parliament has provided a right of appeal from the tribunals to the Courts on questions of law;

(c) the terms "administrative tribunals" is a misnomer since (i) they are independent and are insulated from administrative interference in their decision-making, (ii) their power to determine legal questions is entrusted by stature, (iii) their decisions are, in essence judicial. Rather than administrative in that they ascertain the facts and apply legal rules to them impartially, without regard to executive policy;

(d) the tribunals are administrative only in so far as they are part of an administrative set-up for which a Minister is answerable to Parliament and there exist administrative reasons for preferring them to Courts of law.

In **Mauritius Breweries Ltd v Commissioner of Income Tax and six other cases (SCJ 402 of 1996)**, the Supreme Court held, inter alia, that Tribunals "do not cease to be administrative tribunals in spite of the fact that they act and are bound to act judicially and follow substantially the procedure of a Court of law."

The Constitution does not make specific mention of administrative tribunals but their existence is acknowledged, in our opinion, in section 10 (8) to (10) therof. When our Constitution speaks of "*any court or other authority* required or empowered by law to determine the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial". (the emphasis is ours), it has in mind administrative tribunals, like the Tribunal and the MCCB Tribunal and countless others.

We may usefully refer to **Akonaay and Amor v Attorney-General (1994) LRC 399**,

"We agree that the Constitution allows the establishment of quasi-judicial bodies, such as the Land Tribunal. What we do not agree is that the Constitution allows the Courts to be ousted of jurisdiction by conferring exclusive jurisdiction on such quasi-judicial bodies. It is the basis structure of a democratic constitution that state power is divided and distributed between three state pillars. These are the Executive, vested with executive power, the Legislature vested with legislative power and the Judicature vested with judicial powers. This is clearly so stated under article 4 of the Constitution. This basic structure is essential to any democratic constitution and cannot be changed or abridged while retaining the democratic nature of the constitution: It follows therefore that wherever the constitution establishes or permits the establishment of any other institution or body with executive or legislative or judicial power, such institution or body is meant to function not in lieu of or in derogation of these three central pillars of the state, but only in aid of, and subordinate to those pillars."

We hold therefore that the Permanent Arbitration Tribunal, set up by Statutes

- to give final decisions;
- to hear criteria or oath;
- where two or more contending parties appear before it between whom it has to decide;
- to give decisions which affect the rights of parties;
- being a body to which a matter is referred; and
- where judicial reviews lie against its decisions.

- it has jurisdiction to adjudicate issues on law.

On the issue of dispute, the Applicant contends that irrespective of the fact that the Option Form in favour of the PRB Report 2003 had seen signed, the dispute is in relation to incremental credits already granted and which the Report withdrew from him and is therefore a dispute as described in the Industrial Relations Act 1973, as amended.

We refer here to what was said in a recent ruling delivered on 04.08.2004, **Re: Miss C. M. Tatiah and DBM RN 758**:

"Section 2 of the Industrial Relations Act 1973 as amended defines an industrial dispute to be "a dispute between an employee or a trade union of employees and an employer or a trade union of employers which relates wholly or mainly to

(a) contract of employment or a procedure agreement; except, not withstanding any other enactment, those provisions of the contract or agreement which –

(i) concern remuneration or allowance of any kind; and

(ii) Apply to the employee as a result of the exercise by him of an option to be governed by the corresponding recommendations made in a report of the Pay Research Bureau.

"Pay Research Bureau" means the bureau referred to in the yearly recurrent budget under the Vote of Expenditure pertaining to the Prime Minister's Office."

(b) the engagement or non-engagement, or termination or suspension of employment, of an employee; or

(c) the allocation of work between employees or groups of employees."

It is to be reminded that our Industrial Relations Act 1973 as amended has been substantially borrowed from England where both the **Trade Union Act of 1871** and the **Trade Disputes Act of 1906** have been repeated by the Industrial Relations Act 1971. We find that the term 'industrial dispute' is an adaptation of the phrase 'trade dispute' used in the Trade Disputes Act of 1906. However, 'industrial dispute' and 'trade dispute' although defined in broad similar terms do not have precisely the same meanings.

Section 167 of the Act of 1971 defines 'industrial dispute' as meaning:
'a dispute between one or more employers or organizations of employers and one or more workers or organizations of workers, where the dispute relates wholly or mainly to any one or more of the following, that is to say –

(a) terms and conditions of employment, or the physical conditions in which any workers are required to work;
(b) engagement or non-engagement, or termination or suspension of employment, of one or more workers;
(c) allocation of work as between workers or groups of workers;
(d) a procedure agreement, or any matter to which in accordance with section 166 of this Act a procedure agreement can relate.'

Compare this with the definition of 'trade dispute' in s. 5 of the **Trade Dispute Act, 1906** –

'any dispute between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment, or the terms of the employment, or with the conditions of labour, of any person, and the expression "workmen" means all persons employed in trade or industry. Whether or not in the employment of the employer with whom a trade dispute arises….'

From these definitions it will be seen:

(i) To constitute an 'industrial dispute' the disputants must be on the one side a worker(s) or an organization or workers and on the other side an employer(s) or an organization of employers. A dispute between an employer and an organization of employers or between a worker and organization of workers or between a worker and a worker is not an 'industrial dispute'. Under the Act of 1906 a dispute between workmen and work – men might have been a 'trade dispute' but this is not the case under the Act of 1971.

(ii) Under the Act of 1906 the expression 'workmen' meant 'all persons employed in trade or industry, whether or not in the employment of the employer with whom the trade dispute arises'. Significant changes have been made in the Act of 1971. The definition of 'worker' in s. 167 (p. 31) covers not only an employee but also some who can be regarded as independent contractors; it also includes those 'workers' who are unemployed.

(iii) It is noted that the phrase 'whether or not in the employment of the employer with whom a trade dispute arises' in the Act of 1906 has been excluded from the definition in the Act of 1971 and this may have important consequence for sympathetic strike action. The definition of 'industrial dispute' states that the dispute must relate *wholly or mainly* to one or more of four matters. In considering these four matters it should be noted that in the first, i.e terms and conditions of employment, the phrase 'any workers' is used, whereas this term is omitted in the paragraphs covering engagement of workers, allocation of work and procedure agreements. It could be argued that the term 'industrial dispute' would cover sympathetic action over the terms and conditions of employment but not sympathetic action over the employment of a worker. The elucidation of the position of sympathetic action is important not least because with

the growth of multi-national companies international sympathetic strikes are bound to increase.

Although there are, therefore, distinctions which can be drawn between the 'trade dispute' of the Act of 1906 and the 'industrial dispute' of the Act of 1971, the cases that sought to interpret the meaning of 'trade dispute' will doubtless be used in the interpretation of 'industrial dispute'. From these cases the following conclusions may be drawn:

An industrial dispute must be something more than a mere personal quarrel or a grumbling or an agitation. To come within the statutory definition there must not only be a dispute but an industrial dispute.

Conway v. Wade, [1906] A.C. 506*.* The defendant, without any authority from his union, induced the plaintiff's employers to dismiss the plaintiff by threatening that men would be called out on strike. The object of the defendant in doing this was to try to compel the plaintiff to pay an eight-year-old fine. The jury found that there was no evidence of a trade dispute (under the Act of 1906) existing or contemplated by the men. The House of Lords held that there was sufficient evidence to justify these findings.

Again, in ***Torquay Hotel Co. Ltd v Cousins*** (p.37) the Court of Appeal concluded that where trade union officials were furthering 'their own fury' there was no trade dispute.

It must not be assumed from these cases that a dispute cannot be an 'industrial dispute' if carried on with ill-will and spite. What the cases do mean is that there cannot be an industrial dispute if the dispute is a mere personal feud and nothing more.

Beetham v. Trinidad Cement Ltd., [1960] **A.C. 132**. Under a statute of Trinidad and Tobago, the Governor of the colony was authorized, where a trade dispute existed, to inquire into the causes of the dispute. A trade dispute was defined in similar terms to that of the British Act of 1906. A union asked the company if it could represent two men who had been dismissed by the company. The company refused. The Privy Council held that a trade dispute existed whenever a 'difference'

existed, and a difference could exist long before the parties became locked in combat – it was sufficient that they should be 'sparring for an opening'. The Governor was, therefore, authorized to inquire into the causes of the trade dispute.

Bents Brewery Co. Ltd v. Hogan, **[1945] 2 All E.R. 570**. A trade union official sent out a questionnaire to members of the union, who were employed as managers of public houses, asking for information on the managers' expenses, takings, and wage bills. The particulars were required in order to have data ready for future wage negotiations. There was at the time no demand being made for better wages by the employees. *Held*, there was no trade dispute. 'A dispute cannot exist unless there is a difference of opinion between two parties as to some matter' – per Lynsky. J. , at p. 579.

We find again a definition of 'Industrial Dispute' at para. 724 of the **European Employment and Industrial Relations Glossary**: **United Kingdom by Michael Terry and Linda Dickens (1991)**.

> " A trade dispute was and is defined by **TULRA 1974** as a dispute between workers and employers which is "connected with" one or more of the following: **terms and conditions** of employment, engagement or non-engagement of workers, allocation of work, **discipline**, membership or non-membership of a union, union facilities, and management-union procedures. The statutory **immunities** depend on a trade dispute being contemplated or furthered by the action, the so-called " **golden formula**", and constitute the **right to strike** in Britain. This definition of trade dispute was narrowed by the **Employment Act 1982**. This Act restricted the definition of a trade dispute to being a dispute between workers and their own employers and it must now "wholly relate" to the above list. These changes effectively excluded from the immunities disputes between workers and workers; action in support of other workers; and **industrial action** which might be "connected with" one of the areas listed but which does not "relate wholly or mainly to it". For example, a **strike** arising from a decision to privatize part of the **public**

sector may be connected with fears of job loss but be held not to relate mainly to that but rather to be concerned to affect government policy, and thus fall outside the definition of trade dispute."

That the dispute must be in relation to employment is a sine qua non condition. In **Cronin and Grime's Labour Law (1970)** at Page 303, we read: " A modern illustration of the chasm that separates the common law from industrial relations practice in the case of ***J. T. Stratford & Sons, Ltd v. Lindley***. This was an action for damages for losses caused to the plaintiffs by industrial action organized by the defendant, a trade union official. The dispute arose when the plaintiffs, recognized another trade union. Before the House of Lords, one of the points at issue was whether the dispute could properly be regarded as a "trade dispute" within the meaning of the definition in the **Trade Disputes Act 1906**:

" any dispute between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment, or the terms of the employment or with the conditions of labour of any person…"

It had been accepted in the case of *Beetham v. Trinidad Cement, Ltd* that a recognition dispute may be a trade dispute. This was not, indeed, denied by any member of the House in *Stratford's* case. Nevertheless they unanimously held that there was no trade dispute. **Viscount RADCLIFFE'S** reasons were these:

" As to the first point, I do not think that the respondents were acting in furtherance of a trade dispute. Of course, a Union can be a party to such a dispute. It can even bring about one and be the promoter of such a dispute, it can act on behalf of the employees or other workmen in starting or pursuing such a dispute; but, because it can, it does not follow

that it always does. Has it got a dispute before it here? The only controversy that appears is between one union and another."

In common law terms, this is unimpeachable. The dispute must be about employment. Employment is a question that can arise only between an employer and an individual workman."

We further note at Page 371,

" When a trade dispute exists or is apprehended, the Minister may, with the consent of both parties to the dispute, refer it to the court for settlement. "Trade dispute" is defined as in the Trade Disputes Act 1906, with one important variation. It includes "any dispute or *difference*". This would undoubtedly cover cases that would fall outside the Trade Disputes Acts, although, since the decision of the Privy Council in *Beetham v. Trinidat Cement, Ltd.,* that latter definition has been in this respect widened. Secondly, the court must give its advice to the Minister, if called upon, on " any matter relating to or arising out of a trade dispute, or trade disputes in general, or trade disputes of any class, or any other matter …The Minister, however, may not refer any matter to the court for settlement or advice until any existing voluntary conciliation system has failed."

The recent Supreme Court decision **(SCJ 169 of 2004)** on the definition of 'Industrial Dispute' sheds some more light regarding current and past employees.

'*Industrial dispute*' at the time that this case was decided by the respondent was defined in section 2 of the Act as follows:-

"industrial dispute" means a dispute between an employee or a trade union of employees and an employer or a trade union of employers which relates wholly or mainly to –

(a) *a contract of employment* or a procedure agreement;

(b) *the employment or non-engagement, or termination or* suspension of employment, of an employee; or

(c) *the allocation of work between employees or groups of employees"* (the underlining is ours).

It is quite clear from such a definition, that, as rightly submitted by learned Counsel for the applicant, that the industrial dispute for the purposes of the Act can only refer to a dispute between a current employer and his present employees, not former ones who had been in retirement for a long time, as is the case with the co-respondents."

From all the above authorities cited, we find the definition of 'industrial dispute' to be wide and not watertight".

An increment is an increase related to the basic salary and may be given for higher qualifications. It is therefore concerned with "remuneration or allowance of any kind" and the very fact of signing the option form in favour of the PRB report 2003 deprives the appellant the right to declare the industrial dispute. "Remuneration" is defined in the **Labour Act** as:

"remuneration"

"(a) means all emoluments earned by a worker under an agreement;

(b) includes –

(i) any sum paid by an employer to a worker to cover expenses incurred in relation to the special nature of his work; and

(ii) any money to be paid to a job contractor, for work by the person employing the job contractor;

(c) does not include money due as a share of profits"

The definition of emoluments is to be found in the **Income Tax Act**:

"emoluments"

(a) means any advantage in money or in money's worth referred to in section 10(1)(a); and

(b) includes –

(i) remuneration to the holder of any office and fees payable to the director of a company;

(ii) an allowance under the National Assembly Allowances Act or a pension under the National Assembly (Retiring Allowances) Act;

(iii) remuneration payable to a Mayor, Chairman of a District Council or Chairman of a Village Council under the Local Government Act; and

(iv) an allowance payable to an apprentice"

For the reasons stated above, the Tribunal fails to see as to why it cannot invoke those definitions.

We find the decision of the Minister to be the correct one and dismiss this appeal.

R. Hossen
Ag President

S. Hossenbux
Member

P.N. Jeantou
Member

Date: 31st May, 2006