

CIVIL SERVICE ARBITRATION TRIBUNAL

AWARD

RN 773

BEFORE

| | | |
|---------------|---|------------------|
| Rashid Hossen | - | Acting President |
| P. N. Jeantou | - | Assessor |
| S. Hossenbux | - | Assessor |

In the matter of:

Radiographers' Class Officers
and
Ministry of Health & Quality of Life

The Minister of Civil Service Affairs and Administrative Reforms referred the following disputes to the Civil Service Arbitration Tribunal in terms of **Section 82 (1) (f) of the Industrial Relations Act 1973**, as amended.

Radiographers Class Officers are hereinafter referred to as the Applicants and the Ministry of Health and Quality of Life, as the Respondent.

Agreed Terms of Reference between the parties read as follows:-

- 1. Whether Radiographic Assistant(s) should be attached to the emergency service on a 24-hr basis.*
- 2. Whether a reasonable allowance be paid to Radiographers with effect from 1st August 1993 to compensate them for the extra duties they have compulsorily performed.*

3. *Whether Radiographers must not perform a maximum of 6 days duties per week in line with PRB principles with a voluntary regular overtime work and Not Compulsory Overtime work in line with Industrial Law of the country.*
4. *Whether the normal overtime rates, as prescribed in the PRB reports, should be paid to Radiographers following the amended Scheme of service for Radiographers dated 28 June, 2001 instead of the "in-attendance allowance".*
5. *Whether all the staff who is called upon to perform duties in high technology fields should receive a proper (theoretical, practical) and adequate training.*
6. *Whether the modules of the above a training should comprise the following related subjects:-*
 - (i) *Radiological anatomy;*
 - (ii) *Physics and Equipment;*
 - (iii) *Information and Technology; and*
 - (iv) *High Technology Techniques*

The Applicants aver the following in their Statement of Case:-

Introduction

1. Diagnostic Radiography is recognised as the backbone of the Hospital Services.

Prior PRB 1987, the Diagnostic Radiography Department provided a 24 hour service throughout the year, i.e., a normal service from 9.00a.m to 16hr p.m. on weekdays and 9.00a.m to Noon on Saturdays.

2. An emergency service was being provided by Radiographers through a system "on call".

Over the years, with the rapid development that has taken place within the country, the number of patients attending hospital at night has increased considerably.

3. The pattern or work has changed.

On call into "in attendance", a 24hr continuous service had been in operation.

4. During the normal working hours, the X-ray team comprises of the following officers:

Radiologists, Radiographers, Radiographic Assistants.

5. Radiographers over and above the normal working week have been compelled to be in attendance at the various hospitals.

6. Radiologists continue to cover the X-ray service through a system of "On-Call".

The following points are in dispute between the parties and have been referred to the Tribunal for compulsory arbitration.

Issue No. 1

1. Whether Radiographic Assistants should be posted at the Emergency Service after normal working hours on a 24hrs basis.

(i) Their scheme of service is as follows;

1. Assisting in the X-ray room.
2. Preparing female patients and children.
3. Chaperoning of female patients.
4. Sorting of films, writing on films.
5. Dispatching reports.
6. Answering telephone calls.
7. Clerical duties.
8. Reception of patients.
9. Other cognate duties.

(ii) According to the official interpretation of their scheme of service, the Radiographic Assistants were not required to work outside normal working hours, Le., nights, Sundays, Public holidays.

(iii) With the changes taking place viz;

a. The socio economic development /new styles of life.

b. It is a fact that;

1. Nowadays the emergency service operates as a normal service with a much higher load of work,
2. The load of work after normal working hours is indisputably higher than the normal working hours,
3. the number of female patients has also increased considerably after the normal working hours

We have always been claiming that in the interest of the service and the patients, Radiographic Assistants should be posted to cover the 24hrs service for a more rapid and efficient service.

(iv) Following the initial dispute Radiographic Assistants have been requested to work against payment of overtime since January 2003 as follows:

Monday to Friday

4p.m to 10p.m

Saturday

Noon to 10p.m

Sunday & Public Holidays

9.am to 10p.m

- (v) It is noted that the presence of a Radiographic Assistant for the mentioned hours has proved beyond doubt that the service has improved in many respects and has instilled more confidence in the female patients.

We submit that: Radiographic Assistants should henceforth be put on a 24hrs service throughout the year for further improvement of the service.

Issue No.1**2. Whether a reasonable allowance to be paid to Radiographers for having compelled to perform additional duties. with effect *from August 1993.***

(i)

Radiographers are technicians trained and employed to perform technical duties.

The Radiographers operated a special 'On Call' system in the past to provide an emergency service. With the 'On Call' system, it was obvious that we had to keep our register book and perform some minor clerical work on a very limited scale.

With the rapid changes in the Hospital services, our load of work has increased tremendously on one hand and the pattern of work has changed on other hand, where a small team of Radiographers has to be 'in attendance' after normal working hours.

Moreover, it was the policy of the employer to provide a complete and comprehensive emergency service round the clock.

The Ministry has since failed to attach Radiographic assistant to satisfy the requirement of the service. As a consequence, in spite of the difficult working conditions we have been compelled to perform compulsory overtime work (our own technical duties and other non-technical duties together such as clerical, retrieving of films, answering queries and telephone call, writing on films, dispatching of films, etc.)

The failure of the Ministry to assume its responsibilities has caused and is still causing hardship to the Radiographers.

Submission

We submit that we should be paid a reasonable allowance for the extra duties with effect from August 1993.

3. Whether the number of cases to Emergency service be strictly limited to Emergency cases only

- (i) An Emergency Case is regarded as a serious happening or situation requiring prompt action and if not attended to, will lead to serious complication or death.
- (ii) It is clear, according to recommendation 27, Par. 14.9.77 of PRB Report 1993, that Radiographers are expected to cover Emergency Services.
- (iii) The Ministry has unilaterally decided to extend emergency services to ENT Hospital in spite of the shortage of Radiographers. ENT Hospital is within 10mins reach from Victoria Hospital, whereas statistics have shown that the number of cases done there after normal working hours is insignificant.
- (iv) It has been publicly recognized by the Ministry of Health, as per "Le Mauricien" of Friday 20th September 2002, that only 30% of patients attending emergency services are genuine emergency cases.
- (v) The Ministry is not exercising sufficient and reasonable control over the cases that are being referred to the X-ray emergency service.
- (vi) The Ministry has up to now not provided adequate staff (Radiographers, Radiographic Assistants) to man the emergency service.

1 Whether to attach a Senior Radiographer to the crew after normal working hours.

- (i) Following a similar trade dispute in 1996, the Ministry has already concurred that each X-ray unit should be under the supervision of a Senior Radiographer.
- (ii) Casualty X- Ray is a major unit and one of the most important section of the X-ray services. It is always under the supervision of a Senior Radiographer during normal working hours.

(iii) The same principle should therefore be applied after normal working hours.

The Ministry in principle, appears to accept that a Senior Radiographer is necessary to lead the crew.

It is now composed of five members, from 4 p.m. to 10 p.m. and three members after 10 p.m.

Submission:

We submit that:

- a. A Senior Radiographer be attached to lead the crew after normal working hours and
- b. In the absence of a Senior Radiographer, the Senior Most radiographer be paid a reasonable allowance to lead the crew

5. Whether a handing over period be provided between Rosters

In practice there is a significant time interval between changing crews, for communication of key information directly related to the running of the X-ray service and for the completion of X-ray duties pending with the former crew.

It is technically impossible for one crew to leave the X-ray department in the hands of another crew without taking the necessary time to :

- (i) complete the X-ray of a patient,
- (ii) process the pending X-ray films,
- (iii) identify X-ray films and related parts x-rayed,
- (iv) notify the incoming crew of the strength of processing solutions,
- (v) notify the incoming crew of urgent portable X-ray to be done in ward,
- (vi) notify the incoming crew of possible fault in the X-ray machine etc..

and thus to avoid unnecessary confusion.

The ministry accepted this principle for the smooth running of other services:

e.g, in the wards for nursing staff.

Submission:

We submit a proper handing over period be enforced.

Issue No.1

Facts related to the Issue of Overtime Payment

1. Diagnostic and Therapeutic Radiographers have always put in and are still putting in a Standard working week of 33 Y2 hours maximum and an average of 31 hrs per week.

Diagnostic Radiographers, unlike their counterparts, have always operated a special roster outside their normal working week to provide an emergency service over a 24hrs basis.

2. The pattern of work for the emergency service has evolved in chronological order as follows:

Prior PRB 1987

- a. An 'on call' system from home (100%)
- b. 'On call' system coupled with a period of 'in attendance' in the x-ray department, to satisfy the ever increasing load of work.

PRB 1993

- c. With the PRB 1993, the 'on call' system was abolished and replaced exclusively by the 'in attendance' system.

Note: The term 'Attendance' was used to replace the term 'On Call' and means nothing less or nothing more than overtime work, as per PRB's own definition of overtime, as it is work performed outside normal working hours.

- 3.(i) The mode of compensation for extra work has also evolved from payment per patient to payment for work performed on an hourly basis.
 - (ii) The compensations prior PRB 1993 was never imposed but were agreed upon between both parties after negotiation.
4. The PRB 1987 classified Radiographers as roster workers with the objective to eliminate extra payment, Ref. Par. 7.80 and Par. 7.81. and obviously did not deal with the extra payment.
 5. The PRB failed to consider the staff structure and moreover did not spell out clearly the number of hours that roster workers were expected to put in thereby causing a lot of confusion and frustration in the service.
 6. The Ministry of Health wanted to introduce the concept of 40hrs week in the X-ray service and attempted to increase the average standard working week from 31 hrs to 40hrs and to pay overtime only after 40hrs.
 7. The unfair and unreasonable decision of the Ministry gave rise to a series of Industrial Disputes which were referred to the Civil Service Arbitration Tribunal.
 8. The Tribunal may wish to refer to its own awards, RN 272 of 6th April 1992 and RN 527 of 2nd March 1998, both in favour of Diagnostic Radiographers' class. Both awards have been systematically flouted by the PRB, which is a wing of government machinery.
9. Principles Governing Hours of Work And Payment of Overtime
 - (a) Performance of work is associated with separate and distinct elements;
 - (i) Pattern of work
 - (ii) Standard working week (length of working week) which is itself associated with 2 major variable elements namely:

(1) Normal hours per day (stipulated hours) and,

(2) Number of days per week.

(b) It is also an accepted principle that:

(i) Normally work should be performed on a continuous basis, i.e. a worker completes one roster with a stipulated number of hours at a time. And any worker who operates an additional roster over his stipulated number of hours is entitled for overtime payment.

(ii) No worker is expected to work more than six days in a week and normally the 7th day of the week is automatically considered as overtime irrespective of the number of hours the worker has been put in during the working week.

(C) Overtime is recognized as work performed over and above the stipulated daily hours or standard working week and overtime work should normally be remunerated at a higher rate than the normal rate of pay.

10. It is averred that the PRB in all its reports recognize that;

(a) Overtime is work performed outside normal working hours.

(b) Any Civil Servant including "Shift worker" is expected to work a maximum of six days in a week, e.g. Ref. PRB 1993, Par. 10.5.16. "Normally overtime work refers to work performed over and above normal working hours and is not resorted to except where it is absolutely necessary."

(c) PRB has not empowered any Ministry to impose compulsory overtime for an indefinite period and with an unlimited number of hours in a day.

11. It is contended that Radiographers

(a) have been compelled to work long hours,

(b) Operate two rosters in a day,

(c) Work more than seven days at a stretch without any rest period.

12. The Tribunal will recall (under RN 272 award of 6th April 1992) that;

- (a) It decided that it was unfair to adopt the principle of 40hrs week.
- (b) It maintained the existing system of work pending the implementation of a new pattern of work and at any rate not later than the date limit set up by the tribunal, 31st October 1992.

13. The Tribunal will also recall that;

- (a) no new pattern of work could be enforced due to the shortage of qualified staff.
- (b) the Ministry subsequently undertook before the Tribunal to employ and train sufficient staff to enforce a new pattern of work.
- (c) In the meantime the staff has cooperated to keep the emergency service running.

14. PRB 1993: A Blow to the Tribunal Award (RN 272 of 1st April 1992)

A few months after the award mentioned above the PRB recommended;

a. A shift system for all Radiographers despite

- (i) no sufficient staff was trained.
- (ii) No new pattern of work could be enforced to satisfy the recommendation of the Tribunal.
- (iii) The Radiotherapy department did not operate on a 24hrs basis.

b. Payment of an allowance for the overtime work which was not only below the rate of overtime, but also in contradiction with the PRB's own definition of overtime and related mode of payment.

15. Following PRB 1993, another trade dispute declared by the Radiographers' class was referred before the CSA T because the Ministry refused to pay overtime for irregular overtime work performed for certain special sessions such as Cardiac Surgery.

The Tribunal will recall that, in its award 527 of 2nd March 1998, that is only a few weeks before PRB 1998,

- (i) it arrived to the conclusion that no shift system was in force and that it would not be possible

to *do so in the near future* due to a shortage of qualified staff.

(ii) it awarded that overtime should be paid for work performed beyond the normal working week.

16. PRB 1998

Again the PRB report 1998 was another disgrace to the Tribunal Award 527 of 2nd March 1998.

The PRB accepts that with the establishment size of the Radiography staff it was unlikely that the Ministry would be in a position to introduce shift work in the foreseeable future, but nevertheless recommend a condition of work which was purely on an hypothetical basis deceiting both the Tribunal and the employees.

Quoting Recommendation 38, of Par. 16.9.123.

We recommend that Radiographers and Senior Radiographers who work beyond their normal week in order to provide 24hrs coverage of the Radiography service during nights, weekends and Public holidays in a pattern of work consisting of "in attendance" be paid allowances.

Again the recommended quantum of allowances were not only below the overtime rate but below the normal rate of pay.

This obviously tantamount to an exploitation of our labour and "en connaissance de cause" the PRB contradicts the award of the Tribunal and its own definition of overtime payment by adopting a policy of two weighs and two measures.

17. It is averred that the arrangement agreed upon in good faith between both parties following the award of Tribunal RN 272 of 1st April 1992, was meant to be purely on a temporary basis.

In June 2000, the Ministry amended the scheme of service of the Radiographers to make this arrangement to become a permanent feature.

18. It is further averred that Radiographers perform;

a. Compulsory overtime,

b. Regular overtime over and above their normal working hours.

In fact Radiographers have to

(1) Cover regularly the emergency service after normal working hours and are being paid an allowance below their normal pay rate.

(2) Perform on an irregular basis overtime work to cover special sessions for cardiac and renal surgery and are being compensated at overtime rate.

(3) To perform regularly overtime work on Saturdays since January 2001 for angiography sessions and are being paid at overtime rate in accordance with the PRB itself.

Submission

Taking into consideration that:

a. The Ministry has failed to provide for a reasonable pattern of work despite the awards of the tribunal and its own undertaking.

b. The PRB has systematically flouted the different awards the Tribunal to jeopardize our fundamental rights.

The Ministry has unilaterally modified our contract of work by amending our scheme of service

since June 2001 to make Radiographers work overtime on a compulsory and permanent basis.

c. Radiographers are entitled to overtime rate in accordance with all the different PRB reports.

We therefore submit that we should be paid overtime with effect from June 2001 for the extra number of hours we have put during the recent past and that we will continue to put in the future.

(J) Whether staff at emergency service should be regularly reviewed.

Submission:

We submit that:

In line with what has been enumerated above where the load of work

(a) has been continuously increasing in the casualty department and

(b) a new scan service having been opened.

One additional staff should be attached to the crew.

8. Whether the emergency cases performed by radiographers after normal working hours be reported without delay.

1. Radiographers are compelled to perform extra work to provide a service to the population.

2. Radiology service is a joint venture between Radiologists and Radiographers.

3. It is a fact that the Radiology department stands on two feet:

a. Radiologists and

b. Technical staff (Radiographers)

When one foot is not functioning, the other foot suffers and by extension, the patients pay the consequences.

4. What is emergency for Radiographers' class should be regarded as emergency for the Radiologists.

5. Radiographers are answerable to the Patient.

Submission:

We submit that Radiologists' reports be provided for emergency cases without delay.

We aver that:

(a) During Normal Working hours:

(1) Radiographers attached to the X-Ray casualty, perform cases from only the casualty department.

(2) The staff consists of a minimum of one Senior Radiographer, four to five Radiographers, and two to three Radiographic Assistants.

(b) After Normal Working hour:

(1) The staff consists of only Three Radiographers.

(2) The skeletal staff performs all casualty cases, ward cases, special examinations, theatre cases, which may require several hours.

Submission:

We submit that the Ministry should assume its responsibilities (legal, medical and political) to filtrate all the cases attending the casualty department and refer only genuine emergency cases to the X-ray casualty for

- (1) Motivation for Radiographers to perform quality work.
- (2) Economic reasons.
- (3) Patients' interests.

Issue No.2**Opening of Additional Emergency Service Ct Scan****Whether an appropriate training should be provided to radiographers in view of the Appearance of high tech in the service**

1. It is contended that the Ministry has provided only a limited application Training to a few radiographers to man the High Tech equipment.
2. Moreover, other radiographers have received an "on the job" training by Trial and Error without a proper training structure and appropriate curriculum.
3. It is again contented that the Ministry has failed to assume its responsibility to provide adequate and proper training to the radiographers.

Submission:

We submit that radiographers should receive appropriate and adequate training for obvious reasons.

The module should comprise of at least the following related subjects:

1. Radiological anatomy (axial related to CT Scan)
2. Physics and equipment
3. Information technology
4. Ct Scan techniques.

In their Statement of Case, the Respondent avers:-

ISSUE NO. 1

1. Whether Radiographic Assistants should be posted to the Emergency Service after normal working hours on a 24 hour basis.
 - A. Respondent avers that:
 - (a) Services required by Radiographic Assistants have no far been provided during normal working hours i.e. from 9 a.m. to 4 p.m. on weekdays and 9 a.m. to noon on Saturdays. They have been called upon to provide an additional service from 9.00 a.m. to noon on Sundays and Public Holidays in connection with additional sessions provided by Radiologists.
 - (b) Radiographic Assistants, apart from clerical/registration work, are required to chaperone female patients during X-ray as and when required. So far this provision has been done only during normal office hours and chaperoning after office hours has been provided female staff of the hospital when there is no female adult relative accompanying the patient.
 - (c) According to our records for Dr. A.G. Jeetoo Hospital and Victoria Hospital, there is an average of 25 female patients attending X-Ray Emergency Unit from 4 p.m. to 10 p.m. and an average of 10 female patients attending the X-Ray Unit from 10 p.m. to 9 a.m. the next day. Refer to Annex V (E).
 - (d) According to the existing Scheme of Service, Radiographic Assistants are not required to work outside normal working hours. However, in view of the significant increase in number of female patients being x-rayed between 4 p.m. to 10 p.m., it has been agreed that on a pilot basis, a Radiographic Assistant be called upon to work from 4 p.m. to 10 p.m. in each regional hospital where the need is felt against payment of overtime and on a roster basis.

- (e) Chaperoning of female patients from 10 p.m. to 9 a.m. the next day can still be provided by other female hospital staff namely, female Health Care Assistants (General) and female Nursing Officers in view of the few number of cases attending the hospital.
- (f) The PRB Report 2003 recommends that officers in the grade of Radiographic Assistant and Senior Radiographic Assistant be made to work on a roster basis – Annex 1.

The Ministry, therefore, maintains the present arrangements, pending the publication of the PRB Errors, Omissions and Clarifications Report 2003.

- 2. Whether a reasonable allowance to be paid to Radiographers for having been compelled to perform additional duties with effect from August 1993.

A. Respondent denies same and avers that:

The extra clerical duties referred to are directly related to the nature of their work as stipulated in their Scheme of Service.

- 1. To initial request forms, fill the appropriate section thereof and identify exposed films.
- 2. To perform such cognate duties as may be assigned. (Refer to Annex II).
- 3. Whether the number of cases to Emergency service be strictly limited to Emergency cases only.

The X-Ray Unit is responsible for attending to all cases referred to it from Accident and Emergency Unit during normal working hours. After normal working hours, the accident and Emergency X-Ray Unit has to attend to all cases referred from Accident and Emergency or from any section/ward of the Hospital.

Requests for X-Rays are made by doctors as per their clinical judgement in the patients' interest.

- 4. Whether to attach a Senior Radiographer to the crew after normal working hours.

A. Respondent avers that:-

(a) The diagnostic radiography service is provided round the clock. However, due to insufficient number of Radiograph Staff, it has not been possible to implement a shift system for 24-hour coverage. Further, the 1998 and 2003 PRB Reports recommend that Radiographers and Senior Radiographers working during nights, weekends and public holidays over and above their normal working week be paid "In Attendance" Allowances has been revised in the PRB Report 2003 – Annex III.

(b) In the absence of a Senior Radiographer during normal working hours, responsibility allowance is presently paid to the senior most Radiographer who is required to take charge of the Unit, in accordance with the recommendations 2 and 3 of the PRB Report 2003 at paragraphs 15,9,12,15,9,13 and 15.9.15 – Annex IV.

(c) After normal working hours, although the Radiography Unit operates with a reduced personnel, the Ministry is agreeable that the Unit be headed by a Senior Radiographer. However, in the absence of a Senior Radiographer, it has been decided that the seniormost Radiographer would be called upon to take charge of the Unit during each roster after normal working hours.

To ensure a 24-hour coverage of the Radiography Unit, the following rosters have been introduced after normal working hours:-

Weekdays: From 4.00 p.m. to 10.00 p.m.
From 10.00 p.m. to 9.00 a.m. (the next day)

Saturdays: From 9.00 a.m. to 10.00 p.m.
From 10.00 p.m. to 9.00 a.m. (the next day)

Sundays and Public Holidays: From 9.00 a.m. to 4.00 p.m.
From 4.00 p.m. to 10.00 p.m.

From 10.00 p.m. to 9.00 a.m. (the next day)

(d) For the smooth running of the radiography service, Radiographers are called upon to perform in each roster on alternate turns. For administrative measures, it would not be appropriate to pay responsibility allowances to the seniormost Radiographers who would be required to take charge of the Radiography Unit after normal working hours, as they are called to perform an alternative turns and are required to work in a pattern of work consisting of "in attendances".

(e) In view of the foregoing, the Ministry will seek the approval of the Secretary for Public Service Affairs so that the Seniormost Radiographer, who will be called upon to take charge of the Unit during each roster, will be paid "in attendance" allowance **equal** to the allowance that a Senior Radiographer would have drawn during each roster.

5. Whether a handing over period be provided between rosters:

A. Respondent does not agree and further avers that it is true that the handing over system exists at the level of the ward to ensure continuity of nursing care of admitted patients. There is no such need in the Accident and Emergency Radiology Unit as patients are not admitted in the Accident & Emergency Department of the hospital.

6. Facts related to the issue of Overtime Payment.

A. Respondent denies same and avers that

By virtue of the Scheme of Service, Radiographers and Senior Radiographers are required to work beyond their normal working week in order to provide 24-hour coverage of the Radiology Service in a pattern of work consisting of "in attendance".

This recommendation has also been made in the 1998 PRB Report (Recommendation 38 paragraph 16.9.123) and maintained in the PRB Report 2003. However, the quantum of the "In Attendance" allowance has been revised in the PRB Report 2003. – Annex IV.

7. Whether staffing at emergency service should be regularly reviewed.

(a) One additional Radiographer has already been posted in the Emergency Service to reinforce the existing team as follows:

| <u>HOSPITAL</u> | <u>w.e.f.</u> |
|-------------------|----------------|
| SSRN Hospital | 01 July 2002 |
| Victoria Hospital | 01 July 2002 |
| J. Nehru Hospital | 04 August 2003 |

(b) In view of the death of qualified Radiographers on the establishment of this Ministry, the existing staff have been judiciously posted to different hospitals according to needs.

(c) In accordance with the existing Schemes of Service, appointment to the grade of Radiographer is made from Student radiographers who have successfully completed the 3-year training course in Radiology. There are presently 11 vacancies in the grade of Radiographer which cannot be filled due to lack of qualified candidates.

However, it is to be pointed out that 28 Student Radiographers are presently following training in radiology and will complete same in the year 2004/2005. After the completion of the course, they will be posted in different Regional Hospitals according to needs to reinforce the existing team.

(d) In order to cope with the present situation, the Ministry, as a palliative measure, has employed six Bank Radiographers on a sessional basis. The session of 3 consecutive hours' duration and is normally performed between 9.00 a.m. and 4.00 p.m. on any weekdays from Monday to Friday and on Saturdays from 9.00 a.m. to noon. The maximum number of sessions which can be performed daily is 2 and the maximum number of sessions in a month is 24 per Bank Radiographer.

(e) 15 Student Radiographers will soon be enlisted and 5 Senior Radiographers will be appointed by next month.

8. Whether the emergency cases performed by radiographers after normal working hours be reported without delay.

A. Respondent does not agree and avers that:

(a) There is no justification for Radiologists to be present to report on emergency X-Ray films.

(b) X-Rays are requested for emergency cases by doctors on duty who take clinical decisions immediately, on reading the films. Radiologists who are on call may be contacted and called by doctors on duty if the need is felt. The same applies for X-Rays requested by doctors on duty for specialized units.

Radiologists who are on call may attend hospital for specialized investigations when requested by a Specialist for other specialties.

(c) Doctors on duty at any time during the day or night decide to request for Radiological Investigation to be carried out immediately for patients under their care. That is their clinical responsibility.

(d) All supporting units in the Health Services should accordingly provide their services.

ISSUE NO. 2

Opening of Additional Emergency Services (CT Scan). Whether an appropriate training should be provided to radiographers in view of the appearance of high tech in the service.

A. Respondent avers that:

(a) Application training has normally been provided by the supplier and further basic application training to man the X-Ray machines has been provided by experts from abroad – Ref. to Annex V.

(b) As to-date, 40 Radiographers have received basic training in CT Scan and 10 Radiographers in MRI.

(c) The Ministry is considering the possibility of upgrading the training of Radiographers up to a "Diploma" Course instead of the present Certificate in Radio-diagnostic issued by the Ministry of Health and Quality of Life because of the revised curriculum to incorporate the new technologies introduced.

(d) MIH Act has already been amended so that it may be authorized to run the Diploma Course and to issue the Diploma.

The Applicants replied to the Respondent's Statement of Case as follows:-

Industrial Dispute: Radiographers class v/s Ministry of Health

Issue No. 1

1. Whether Radiographic Assistants should be posted to the emergency service after normal working hours on a 24hr basis

The Ministry accepts that:

- a) There is a significant increase in the number of patients, and
- b) does not deny that Radiographic Assistants have to perform a long list of duties in addition to chaperoning of female patients.

We submit that:

- 1) The services of Radiographic Assistants are essential after 10 p.m.
- 2) Radiographic Assistants are Health Workers and, just as any officer joining the hospital services, may be expected to cover a 24hr service.
- 3) It is unreasonable for the PRB to classify Radiographers as Shift workers,
and Radiographic Assistants as Roster workers.

- 4) Problems may arise at any time even with one female patient irrespective of the number of patients after 10 p.m.
- 5) The Ministry has neither denied that the presence of a female chaperon is necessary at all material time nor has it made proper adequate arrangement for a female staff to accompany a female patient. (annex 1).
- 6) A Radiographic Assistant should be posted to the emergency service to perform all the duties attached to the grade for an efficient service.

Evidences: Press coverage on incident involving Radiographers assault (annexes 1a, 1b).

2. **Whether a reasonable allowance be paid to Radiographers for having been compelled to perform additional duties with effect from 1993.**
 - a) The Scheme of Service of Radiographers provides for a long list of purely Technical, Clinical & Legal components.
 - b) The Scheme of Service of Radiographic Assistants provides for Clerical duties and Chaperoning of patients.
 - c) The duties of Radiographic Assistants are totally different from the technical duties of the Radiographer.
 - d) The duties of Radiographic Assistants should not be considered as Cognate duties for the technical grade of Radiographers.
 - e) Radiographers have for a long period suffered tremendously (Psychological, Physical, and hard pressed by the public) due to the unavailability of a Radiographic Assistant.

We submit that:

An allowance of Rs 100 per Roster be paid to Radiographers/Senior Radiographers with effect from August 1993.

3. **Whether the number of cases in the X-Ray Emergency Service be strictly limited to Emergency cases.**
 - a) We maintain that not all the cases are Emergency Cases.
 - b) The policy is to employ a limited number of technicians to deal with strictly emergency cases.
 - c) If the Ministry maintains that all the cases should be done, then it should provide for a larger number of staff in the crew including doctors.

- d) The impact of such "laissez-faire" policy is serious from:
1. The Economic point of view
 2. The Radiation Protection point of view
 3. Job satisfaction of Radiographers
 4. The lack of confidence of patients (waiting time)
- e) We do not contest the rights of doctors to ask for X-ray exams but we insist that:
- (i) A person shall not carry out, direct or supervise the carrying out of a medical exposure except where that exposure is medically justified, and
 - (ii) We, Radiographers have the obligation to query any procedure that we feel is not of direct benefit to the patients before proceeding with the examination.
 - (iii) Radiography is used in the hospital as a means to reinforce protective medicine i.e. X-ray exam are used to protect the interests of doctors and not necessarily to the benefit of the patient.
 - (iv) In the interest of one and all, a system of check should be inserted in the medical system.

Evidences:

1. PRB Report 1993 (annex 2)
 2. Medical Education and Research on the Protection of the Patient in Diagnostic Radiology, India. (pp 2 and 3 of Annex 3).
 3. Report of the Expert Group on Radiography Grades, UK. (page 4 of Annex 3a).
 4. The public stand of the Minister of Health in Le Mauricien 20 sept 02, (Annex 4)
 5. X-ray request cards, routine cases (Annex 5).
4. Whether to attach a Senior Radiographer to the Crew 'after normal working hours'
- a) The word "in attendance" in the X-ray unit has been used by the PRB since 1993 to replace the former pattern of work which consisted purely of a system of "on call".
 - b) "in attendance" means nothing more than be present physically on the site of work to perform all X-ray examinations.
 - c) So a Senior Most Radiographer who assumes the responsibilities of a Senior Radiographer i.e. higher and additional duties above his scheme of service, should be duly compensated.

The above issue has been settled to our satisfaction.

5. **Whether a handing-over period be provided between rosters**

We propose to drop the above issue as the attachment of a Senior Radiographer will improve the situation.

6. **Facts related to the issue of overtime payment**

It is noted that we have claimed overtime and the respondent has now accepted that we work beyond normal working week i.e. overtime work, in a pattern of work consisting of “in attendance”. Moreover, the respondent has not denied that we are entitled to overtime payment, in accordance with the PRB reports.

We further maintain that:

- (i) While salaries are being increased normally on a yearly basis (with extra remuneration), the quantum of the allowance remains unchanged.
- (ii) The present mode of compensation is below the normal rate of pay and constitutes an exploitation of labour and a blow to natural justice.
- (iii) Radiographers are operating two rosters in a day.
- (iv) Radiographers regularly work 7 days in a week and often 11 days at a stretch.
- (v) The system of compulsory overtime is Anti constitutional.
- (vi) Radiographers are eligible for payment of overtime in accordance with all the PRB reports, have enjoyed and are still enjoying overtime payment for regular overtime for cardiac sessions.

Evidences:

1. **CSAT Award ID 100 (element of shift is synonymous to element of inconvenience due to the element of unusual hours). (Annex 6).**
2. **Definition of overtime, PRB reports 1993, 2003. (Annexes 7, 7a).**
3. **Authority for payment of Overtime for cardiac sessions 1999. (Annex 8)**
4. **Paper submitted to the PRB showing the “Notion of in attendance”, the pattern of work agreed after the 1992 CSAT Award RN 272, and the claim for Fair Compensation. (Annex 9).**

5. **Authority for payment of Overtime to Radiographers/Senior Radiographers for extra work during cardiac sessions as from 2001. (Annex 10).**
6. **Normal Roster showing the Radiographers working 7 days or more at a stretch. (Annex 11).**
7. **Comparison table of hourly rate for Radiographers/Senior Radiographers. (Annex 12).**
8. **Findings and Recommendations of the CSIRC. (Annex 13).**

7. **Whether staffing at emergency service should be regularly reviewed.**

This issue is being dropped as the Ministry has increased the staff covering Emergency Service for Sundays Public Holidays and Mondays since the 21st December 2003.

Issue No. 2

- A. Practical training (Application) to man the X-ray machine (Magnetic Resonance Imaging, Computed Tomography, Angiography) is certainly inadequate and does not allow a practitioner to function effectively as a professional.
- B. Any Basic training should comprise of two major components.
 - (i) Theoretical and
 - (ii) Practical.

Practical may be subdivided into 2 parts:

- a. Application (Equipment Oriented)
- b. Techniques (Patients Oriented)

It is incorrect to say that Radiographers have received Basic Training in CT scan and MRI as some of them have benefited form Application Training from trainers abroad while the majority of radiographers who are operating those machines have received application training under the guidance of their fellow workers.

It is noted with concern that now the Ministry is now considering organizing the training of Radiographers at the Mauritius Institute of Health.

As far back as 1994, the Ministry of Health in its Statement of Case, undertook before the Tribunal to organize the training of Radiographers at the Mauritius Institute of Health.

Moreover, in this same Statement of Case, the Ministry undertook to organize Refresher Courses for the Radiographers. This undertaking has also not been respected.

This shows the lack of seriousness and consistency in the Ministry's policy regarding Training of Radiographers.

Evidences:

1. **Award RN 300 (Annex 14).**
2. **Statement of Case of the Ministry of Health, October 1994 (Annex 15).**
3. **Different Reports. (Annexes 16, 16a).**
4. **Computed Tomography Scan Curriculum Guide (Annex 17).**

The Respondent filed an amended Statement of Defence as follows:-

Issue No. 1

- (a) **Whether Radiographic Assistant should be posted to the Emergency Service after normal working hours on a 24-hr basis.**

According to the existing Scheme of Service, Radiographic Assistants are not required to work outside normal working hours. Services required by Radiographic Assistants have so far been provided during normal working hours i.e. from 9.00 a.m. to 4.00 p.m. on weekdays and 9.00 a.m. to noon on Saturdays. **Refer to Annex I.**

However, they have been called upon to provide an additional service from 9.00 a.m. to noon on Sundays and Public Holidays against payment of overtime in connection with additional sessions provided by Radiologists.

- (b) **The services of Radiographic Assistants are essential after 10 p.m.**

According to our records for Dr A.G. Jeetoo Hospital and Victoria Hospital, the busiest hospitals, there is an average of 25 female patients attending X-Ray Emergency Unit from 4 p.m. to 10 p.m. and an average of 10 female patients attending the X-Ray Unit from 10 p.m. to 9.00 a.m. the next day. **Refer to Annex II.**

However, in view of the significant increase in the number of female patients being x-rayed between 4 p.m. to 10 p.m. it has been agreed that on a pilot basis, a Radiographic Assistant be called upon to work from 4 p.m. to 10 p.m. in each regional hospital where the need is felt against payment of overtime. This will be subject to revision as per feedback obtained.

Radiographic Assistants, apart from clerical/registration work, are required to chaperone female patients during X-Ray as and when required, so far this provision has been done up to 10 p.m. However, chaperoning after 10 p.m. is being provided by other female staff of the hospital, namely female Nursing Officers or female Health Care Assistant (General) when there is no female adult relative accompanying the patient.

The forthcoming "Errors, Omissions and Clarifications" PRB Report 2003 will determine whether Radiographic Assistants will be classified as shift or roster workers.

(c) It is unreasonable for the PRB to classify Radiographers as shift workers and Radiographic Assistants as Roster workers.

The PRB Report 2003 has recommended that Radiographers and Senior Radiographers who work beyond their normal working week in order to provide a 24-hour coverage during nights, weekends and public holidays in a pattern of work consisting of "in attendance" be paid allowances as at Annex III.

The PRB Report also recommended that officers in the grade of Radiographic Assistant and Senior Radiographic Assistant be made to work on a roster basis – Annex IV. In view of the representations made to the PRB by the representatives of the Radiographic Assistant Cadre and the President of the GSA, not to include the grades of Radiographic Assistant and Senior Radiographic Assistant in the list of officers on a roster basis, the Ministry has not been able to implement the roster system for the time being, pending the publication of PRB Errors, Omissions & Clarifications Report 2003.

It is to be pointed out that if the Radiographers felt that they have been subject to an injustice, they should make their representations to the PRB.

(d) Problems may arise at any time even with one female patient irrespective of the number of patients after 10 p.m.

Radiographic Assistants, apart from clerical/registration work, are required to chaperone female patients during X-ray as and when required, so far this provision has been done up to 10 p.m. However, chaperoning after 10 p.m. is being provided by other female staff of the hospital, namely female Nursing Officers or female Health Care Assistant (General) when there is no female adult relative accompanying the patient.

(e) The Ministry has neither denied that the presence of a female chaperon is necessary at all material time nor has it made proper adequate arrangement for a female staff to accompany a female patient.

According to the existing Scheme of Service, Radiographic Assistants are not required to work outside normal working hours. Services required by Radiographic Assistants have so far been provided during normal working hours i.e. from 9.00 a.m. to 4.00 p.m. on weekdays and 9.00 a.m. to noon on Saturdays. However, they have been called upon to provide an additional service from 9.00 a.m. to noon on Sundays and Public Holidays

against payment of overtime in connection with additional sessions provided by Radiologists.

In view of the significant increase in the number of female patients being x-rayed between 4 p.m. to 10 p.m. it has been agreed that on a pilot basis, a Radiographic Assistant be called upon to work from 4 p.m. to 10 p.m. in each regional hospital where the need is felt against payment of overtime. However, chaperoning after 10 p.m. is being provided by other female staff of the hospital, namely female Nursing Officers or female Health Care Assistant (General) when there is no female adult relative accompanying the patient.

- (f) **A Radiographic Assistant should be posted to the emergency service to perform all the duties attached to the grade for an efficient service.**

Arrangements have been made for Radiographic Assistants to work up to 10 p.m.

It is to be pointed out that all duties relating to Radiographic Assistants, apart from chaperoning, after 10 p.m. can be carried forward to be done the next day by the same grade.

- Issue No. 2 **Whether a reasonable allowance be paid to Radiographers for having been compelled to perform additional duties with effect from 1993, an allowance of Rs 100 per roster be paid to Radiographers/Senior Radiographers with effect from August 1993.**

Not agreed. The extra clerical duties referred to are directly related to the nature of their work as stipulated in their Scheme of Service.

The existing Scheme of Service for Radiographer, among other duties, stipulates:-

- (i) To initial requests forms, fill the appropriate section thereof and identify exposed films;
- (ii) To ensure the filing of exposed films;
- (iii) To keep a register of examinations done after normal working hours and in special circumstances; and
- (iv) To perform such cognate duties as may be assigned.

Refer to Annex V

In view thereof, the request of the Radiographers of payment of an allowance of Rs 100 with effect from August 1993 cannot be acceded to.

Issue No. 3 Whether the number of cases to the X-Ray Emergency Service be strictly limited to Emergency cases.

Not agreed. The X-Ray Unit is responsible for attending to all cases referred to it from Accident and Emergency Unit during normal working hours. After normal working hours, the Accident and Emergency X-Ray Unit has to attend to all cases referred from Accident and Emergency or from any section.ward of the Hospital.

Requests for X-Rays are made by doctors as per their clinical judgment in the patient's interest.

Presence of Radiologists is not required for interpretation of X-Ray films requested by doctors. The films are seen and interpreted by the doctors themselves; (all doctors are trained to read X-Ray films).

Issue No. 4 Whether to attach a Senior Radiographer to the Crew "after normal working hours".

No further action is required. The above issue has been settled.

Issue No. 5 Whether a handing-over period be provided between rosters.

No further action is required. The above issue has been settled.

Issue No. 6 Facts related to the issue of overtime payment

It is noted that we have claimed overtime and the respondent has now accepted that we work beyond normal working week i.e. overtime work, in a pattern of work consisting of "In attendance". Moreover, the respondent has not denied that we are entitled to overtime payment, in accordance with the PRB reports.

Not agreed

By virtue of the Scheme of Service, Radiographers and Senior Radiographers are required to work beyond their normal week in order to provide 24-hours coverage of the Radiology Service in a pattern of work consisting of "in attendance".

This recommendation has also been made in the 1998 PRB Report (Recommendation 38 paragraph 16.9.123) and maintained in the PRB Report 2003. However, the quantum of the "In Attendance" allowance has been revised in the PRB Report 2003.

The PRB Report 2003 has recommended that Radiographers and Senior Radiographers who work beyond their normal working week in order to

provide a 24-hours coverage during nights, weekends and public holidays in a pattern of work consisting of "in attendance" be paid allowances as at Annex III.

Issue No. 7 Whether staffing at emergency service.

No further action is required. This issue has been dropped out.

Issue No. 8 Opening of Additional Emergency Service (CT Scan)

Radiographers should receive appropriate and adequate training for obvious reasons.

The module should comprise of at least the following related subjects:

- (1) Radiological Anatomy (axial related to CT Scan)
- (2) Physics and Equipment
- (3) Information and Technology
- (4) CT Scan Techniques

Application training has normally been provided by the supplier and further basic application training to man the X-Ray machines has been provided by experts from abroad. See Annex V.

As-to-date, 40 Radiographers have received basic training in CT Scan and 10 Radiographers in MRI.

The Ministry is considering the possibility of upgrading the training of Radiographers up to a "Diploma" Course instead of the present Certificate in Radio-diagnostic issued by the Ministry of Health and Quality of Life because of the revised curriculum to incorporate the new technologies introduced.

MIH Act has already been amended to that it may be authorized to run the Diploma Course and to issue the Diploma.

In reply to Respondent's amended Statement of Case, the Applicants aver:

ISSUE NO. 1

1. Whether Radiographic Assistant should be posted to the Emergency Service after normal working hours on a 24 hrs basis.

The Ministry of Health has finally accepted the principle that Radiographic Assistants should be put on duty on a 24hrs basis. It has made necessary representation to the PRB.

In the content of errors and omissions, the PRB (Recommendation 41) has now recommended that Radiographic Assistants be made to work on shift. (Refer to Annex I).

The following salary scale has been allocated to the grade:-

Rs 6575 x 150 – 7325 x 175 – 8200 x 200 – 9000 x 250 – 10000 x 300 – 10600 x 400 – 13000 (shift worker)

As compared to

Rs 6425 x 150 – 7325 x 175 – 8200 x 200 – 9000 x 250 – 10000 x 300 – 10600 x 400 – 12600 (roster worker)

It is evident that only one increment is given for a change from the roster worker regime to the shift workers regime with the following consequences.

- (a) An increased element of social inconvenience.
- (b) An increase of 7hrs of work per week (Roster worker 33 hrs per week while shift worker 40hrs per week).

However, those Radiographic Assistants in post will be enjoying 3 increments if they opt for the shift system.

This shows clearly the unfair and unreasonable principle adopted by the PRB in the compensation for shift workers with regards to the higher number of hours of work per week.

The PRB has not made any recommendation regarding the necessary staff structure and the date of implementations of the new recommendations.

THE ATTENTION OF THE TRIBUNAL IS DRAWN TO THE FOLLOWING IMPORTANT ELEMENT:

In classifying Radiographers as shift worker, the PRB never provided that those in post be given an additional of 3 increments to change from the roster regime (PRB 1987) to the shift regime (PRB 1993, 1998 and 2003).

It is noted that the existing establishment is as follows:-

- (a) Number of posts on establishment of Radiographic Assistants; 69 with 57 officers in post i.e. 12 vacancies.
- (b) There is no provision yet for additional staff to implement the new shift regime and it is estimated that some 35 new additional posts are needed.

- (c) On the whole there is need to employ some 45-50 additional Radiographic Assistants to enable the implementation of the new regime.

It is submitted that

The Ministry needs to employ some 50 new radiographic assistants and to fix a date by which the new shift regime will be enforced. In the meantime the Ministry should pay overtime to Radiographic Assistants to cover the service on a 24-hr basis.

ISSUE NO. 1

2. **Whether a reasonable allowance be paid to Radiographers for having been compelled to perform additional duties with effect from 1993. An allowance of Rs 100 per roster be paid to Radiographers/Senior Radiographers with effect from August 1993.**

The statement of the Ministry is denied.

- (i) "Clerical work" is a general term and a broad concept covering "office work" which is quite different from the technical duties of a Radiographer. Clerical work does cover a wide range of duties with different level of responsibilities.
- (ii) "Clerical work" in the Radiography has to be evaluated both **quantitatively** and **qualitatively**.
- (iii) It includes in the Radiography context the following:
- Despatching of films and reports to different units, searching for reports and films receptions and identifications of patients, answering telephone calls, writing of names and registered numbers on films, transcribing Radiological reports, registration of patients.
- (iv) The Ministry has accepted that over and above chaperoning of female patients clerical work are the normal responsibilities of the Radiographic Assistants. (Refer to statement of case Issue No. 1 (b) paragraph 3).
- (v) To ensure filing of films does not mean that Radiographers have to file films or reports themselves, but must see that Radiographic Assistants file the films and requests which form part of the latter's duties.
- (vi) To keep a register of examinations was inserted in the scheme of service of Radiographers and was related to the concept of irregular work **while being "ON CALL"**, and was not related to regular work as it is the case after PRB 1993 ("**IN ATTENDANCE**").

- (vii) The coverage of emergency services has undergone drastic changes.

The Radiography Staff provides, in excess of their normal working week, an emergency service at the main hospitals during the nights, weekends and Public Holidays. This emergency service operates in a pattern of work defined as "in attendance/on call".

The system of call has been changed into a system of permanent coverage with ever increasing load of work. Radiographers have been compelled to work along hours to cover the emergency service.

A skeletal number of Radiographers were attached on the roster after normal working hours, without Radiographic Assistants.

As a consequence, serious physical, mental, psychological and physiological problems were exerted on Radiographers. The extra clerical component contributed largely to the negative effects.

- (viii) Radiographic Assistants have now been attached on the roster.

From 4 p.m. to 10 p.m. on weekdays

From 12 p.m. to 10 p.m. on Saturdays

And from 9 a.m. to 10 p.m. on Sundays and Public Holidays.

Obviously this has reduced the negative impact on the Radiographers.

SUBMISSION

It is submitted that Radiographers be compensated as from July 1993 for the extra work they had been put in as a consequence of the transition from the on call system to the in attendance.

It is claimed that Rs 100 be paid to every Radiographers/Senior Radiographers for every session.

3. **Whether the number of cases in the X-Ray emergency services be strictly limited to Emergency cases.**

Statement of the Ministry is denied.

The X-ray Emergency Service during the day covers all the cases referred by the casualty section, cold cases and emergency cases.

The staff structure at the X-Ray casualty during normal working hours is as follows:

Victoria Hospital

| | | |
|-------------------------|---|---|
| Senior Radiographer | - | 1 |
| Radiographers | - | 4 |
| Students | - | 3 |
| Radiographic Assistants | - | 3 |
| Attendants | - | 2 |

In principle, during the normal working hours, only the **casualty cases are done, excluding – portable radiography, CT Scan, ward cases, special examination.**

After normal working hours, this unit has

- (a) To cover all cases of the casualty and over and above cases of wards including portables, CT Scan and special examinations.
- (b) The unit functions with reduced staff.

It is obvious that the reduced staff on the emergency service cannot be expected to do the same number of cases as during normal working hours.

It is a fact that very often Radiographers have to X-ray more patients after normal working hours than during normal working hours.

After a normal working day, the reduced number of staff cannot be expected to deliver efficiently during the extended overtime period.

Moreover, the concept of the PRB is that the Radiographers are performing only Emergency cases needing immediate treatment.

Radiological examination not requiring immediate attention may be referred for the next day during the normal service. This will be in the interest of the patients badly needing rapid treatment.

It is true medical doctors receive some training in Radiology but this is recognized to be insufficient in the context of modern health service.

Specialists in different domains e.g. ENT specialist, Orthopaedic Surgeons, Surgical Specialist, etc. do receive a higher level of training in Radiology related to their own specific fields. But it is undeniable that the Radiologist remains the expert in Radiology covering the different domains in the Health Sector.

During normal working hours practically all X-Ray Examinations performed and films seen by medical officers and specialists have to be reported by the expert, (Radiologist) in the medical interest of the patients.

It is to be pointed that a few years ago, one Radiologist was on call to cover the emergency service of all major hospitals over the island.

Some time ago, the decision was changed to put one Radiologist on call for each main hospital i.e. one Radiologist covers 126 hours per week after normal working hours but attend hospital for a maximum of 3 hrs on Sundays and are barely disturbed during nights throughout the year for special exams (excluding CT Scan).

With the recent introduction of CT Scan in the following hospitals, Victoria Hospital, Sir Seewoosagur Ramgoolam National Hospital, and Jawaharlall Nehru Hospital, an additional Radiologist is covering the CT Scan emergency service and it is estimated that the Radiologists are disturbed for less than 10hrs per week.

It is obvious that they received payment for being on call in accordance with the PRB recommendations.

Even after the first reading of the X-Ray films done during emergency service by the medical officer at the casualty, all patients have to return to the hospital the next day of the X-Ray reports regardless of the social, economical and medical implications.

It is to be noted that patients returning for report contribute a lot to increase the pressure on the casualty and X-Ray emergency department and this definitely contradicts the policy of the Government to provide a quick and efficient service for the welfare of the patients.

It is to be noted that the Ministry has recognized that there is an abuse of the emergency service. Recently, the Minister has insisted that Radiologists should be present in the casualty X-Ray department even during lunch time to report X-Ray films for the casualty in spite of the availability of the medical officers who are supposed to have received training to interpret Radiological films.

It is submitted that:

- (a) The number of patients coming to the X-ray sections of the X-ray after the normal working hours should be filtered to deviate the problems of the x-ray staff and to improve the quality of the service for those who are more deserving.
- (b) The presence of Radiologists after the normal working hours will contribute to further improve the delivery of our hospital services in the best interest of the nation in line with the repeated declared policy of the government.

4. Whether to attach a Senior Radiographer to the crew after normal working hours.

Agreed – Issue settled

5. Whether a handing over period be provided between rosters

Agreed – Issued settled

ISSUE NO. 1

6. Facts related to the issue of overtime payment

The statement of the Ministry is denied and we maintain that.

- (a) Radiographers are compelled to perform overtime work to cover the X-Ray Emergency Service on a 24-hrs basis, in line with the PRB own definition of overtime and the labour laws of Mauritius.
- (b) According to PRB, general rules governing overtime payment, Radiographers are entitled for overtime rates.

Facts related to the Issue of Overtime Payment

- 1. Diagnostic and Therapeutic Radiographers have always put in and are still putting in a Standard working week of 33 ½ hours maximum and an average of 31 hrs per week.

Diagnostic Radiographers, unlike their counterparts, have always operated a special roster outside their normal working week to provide an emergency service over a 24-hr basis, and yet both categories of Radiographers are given the same salary scale.

Overtime obviously requires an officer to be **in attendance** on the site of work to complete his task. (overtime work).

- 2. The pattern of work for the emergency service has evolved in chronological order as follows:-

Prior PRB 1987

- a. An “on call” system form home (100%)
- b. “On call” system coupled with a period “In Attendance” in the X-Ray department, to satisfy the ever increasing load of work.

PRB 1993

With the PRB 1993, the “On Call” system was abolished and replaced exclusively by the “In Attendance” system.

Note: the term "Attendance" was used to replace the term "On Call" and means nothing less or nothing more than overtime work, as per PRB's own definition of overtime, *as it is work performed outside normal working hours.*

3. The PRB 1987 classified Radiographers as roster workers with the objective to eliminate extra payment, Ref. Par. 7.80 and Par. 7.81 and obviously did not deal with the extra payment.
4. The PRB failed to consider the staff structure which remained a hassle and moreover did not spell out clearly the number of hours that roster workers were expected to put in thereby causing a lot of confusion and frustration in the service.
5. The Ministry of Health wanted to introduce the concept of 40hrs week in the X-Ray service and attempted to increase the average standard working week from 31 hrs (average) to 40hrs and to pay overtime only after 40 hrs.
6. The unfair and unreasonable decision of the Ministry gave rise to a series of Industrial Disputes which were referred to the Civil Service Arbitration Tribunal.
7. The Tribunal may wish to refer to its own awards, RN 272 of the 6th April 1992 (Annex 2) and RN 527 of 2nd March 1998 (annex 3), both in favour of Diagnostic Radiographers' class and the Ministry had no alternative but to pay overtime in line with the findings of the Tribunal.)
8. **Both awards have been systematically flouted by the PRB, which is a wing of government machinery.**
9. **Principles Governing Hours of Work and Payment of Overtime**

(a) Performance of work is associated with **separate** and **distinct** elements:

- (i) Pattern of work
- (ii) Standard working week (length of working week) which is itself associated with 2 major variable elements namely:
 - (1) Normal hours per day (stipulated hours) and
 - (2) Number of days per week.

(b) It is also an accepted principle that

- (i) Normally work should be performed on a **continuous** basis, i.e. a worker completes one roster with a stipulated number of hours at a time. And any worker who operates an additional roster over his stipulated number of hours is entitled for overtime payment.
- (ii) No worker is expected to work more than six days in a week and normally the 7th day of the week is **automatically considered as**

overtime irrespective of the number of hours the worker has been put in during the working week.

- (c) **Overtime is recognized as work performed over and above the stipulated daily hours or standard working week and overtime work should normally be remunerated at a higher rate than the normal rate of pay.**
10. It is averred that the PRB in all its reports recognize that:
- (a) Overtime is work performed outside normal working hours.
 - (b) Any Civil Servant including "shift worker" is **expected to work a maximum of six days in a week**, e.g. Ref. PRB 1993, Par. 10.5.16. **"Normally overtime work refers to work performed over and above normal working hours and is not resorted to except where it is absolutely necessary."**
11. The Ministry is not empowered to impose **on a public officer compulsory overtime on unlimited number of hours per day and for indefinite period of time.**
12. It is undeniable that Radiographers
- (a) Have been compelled to work overtime for long hours.
 - (b) Operate two rosters in a day.
 - (c) Work more than seven days at a stretch without any rest period and very often work for more than 13 days at a stretch.
13. The Tribunal will recall (under RN 272 award of 6th April 1992) that:
- (a) It decided that it was unfair to adopt the principle of 40hrs week.
 - (b) It maintained the existing system of work pending the implementation of a new pattern of work and at any rate not later than the date limit set up by the tribunal, 31st October 1992.
14. The Tribunal will also recall that:
- i. no new pattern of work could be enforced due to the shortage of qualified staff.
 - ii. The Ministry subsequently undertook before the Tribunal to employ and train sufficient staff to enforce a new pattern of work.
 - iii. In the meantime the staff has cooperated to keep the emergency service running.
15. **PRB 1993: A Blow to the Tribunal Award (RN 272 of 1st April 1992).**

A few months after the award mentioned above was published, the PRB recommended; (ANNEX 4).

- a. shift system for all Radiographers despite
 - (i) no sufficient staff was trained.
 - (ii) No new pattern of work could be enforced to satisfy the above recommendation of the Tribunal.
 - (iii) The Radiotherapy department did not operate on a 24 hrs basis.
 - b. In lieu of overtime rates, the **"In Attendance"** allowance payable was below the **overtime rates** and the **normal pay**.
16. Following PRB 1993, another trade dispute declared by the Radiographers' class was referred before the CSAT because the Ministry refused to pay overtime for **irregular** overtime work performed for certain special sessions such as Cardiac Surgery.

The Tribunal will recall that, in its award 527 of 2nd March 1998, that is **only a few weeks before PRB 1998**.

- (i) It arrived to the conclusion that no shift system was in force and that it would not be possible *to do so in the near future* due to a shortage of qualified staff.
- (j) **It awarded that overtime should be paid for work performed beyond the normal working week.**

17. **PRB 1998**

Again the PRB report 1998 was another disgrace to the Tribunal Award 527 of 2nd March 1998.

The PRB accepts that with the establishment size of the Radiography staff it was unlikely that the Ministry would be in a position to introduce shift work in the foreseeable future, but nevertheless recommends a condition of work **which was purely on a hypothetical basis**, deceiving both the Tribunal and the employees.

Quoting Recommendations 38, of Par. 16.9.123.

We recommend that Radiographers and Senior Radiographers who work beyond their normal week in order to provide 24hrs coverage of the Radiography service during nights, weekends and Public Holidays in a pattern of work consisting of "in attendance" be paid allowances.

Again the recommended quantum of allowances was not only below the overtime rate but below the normal rate of pay.

This obviously tantamount to an exploitation of our labour and

“en connaissance de cause” the PRB, a wing of the government, contradicts the award of the Tribunal and its own definition of overtime payment by adopting a policy of two weights and two measures in the case of Radiographers.

18. It is averred that the arrangement agreed upon in good faith between both parties following the award of Tribunal RN 272 of 1st April 1992, was meant to be purely on a temporary basis.

In June 2001, the Ministry amended the scheme of service of the Radiographers to enforce the unfair arrangement and make it become a permanent feature.

At this junction the attention of the Tribunal is drawn that since the first PRB Report (1987), 17 years have elapsed, no change in the pattern of work is feasible and yet the PRB persist in recommending a shift element. It takes 3 years to train a Radiographer and it will not be possible to train sufficient Radiographers to introduce a shift system.

19. It is further averred that Radiographers perform:
- a. Compulsory overtime
 - b. Regular overtime over and above their normal working hours.

In fact Radiographers have to

- (1) Cover regularly the emergency service after normal working hours and are being paid an allowance below their normal pay rate.
- (2) Perform on an irregular basis overtime work to cover special sessions for cardiac and renal surgery and are being compensated at overtime rate. (ANNEX 5).
- (3) To perform regularly overtime work on Saturdays since January 2001 for Angiography sessions and are being paid an overtime rate in accordance with the PRB itself. (ANNEX 6).

20. **PRB 2003 (ANNEX 7)**

The PRB 2003 again arrives to the conclusion that due to insufficient number of Radiographer, it has not been possible to implement a shift system and yet maintain the previous arrangement and persist to remunerate Radiographers at a rate for overtime work below the normal pay. (Refer to PRB 2003).

The scale salary of Senior Radiographers and Radiographers are as follows:

Senior Radiographer – Rs 16000 x 500 – 17000 x 600 – 20000 x 800 – 20800
 Radiographer – Rs 10000 x 300 – 10600 x 400 – 15000 x 500 – 17000 x 600 – 17600

Attendance Allowance payable to Radiographers refer to PRB 2003.

An analysis of the allowance payable for overtime work as compared with overtime rate and the normal rate of pay shows clearly that the allowance is still below the normal rate of pay and obviously below overtime rate (Annexure 8).

Example

A Radiographer drawing Rs 13,400 has a daily normal pay of Rs. 541 for 6 hrs work and is receiving Rs 315 for a 6 hrs overtime rate while he would have been eligible for Rs 696.

Submission

Taking into consideration that:

(a) **The Tribunal has already recommended the payment of overtime to Radiographers (AWARD RN 527 (ANNEX 3)) for the extra work performed.**

(b) The Ministry has failed to provide for a reasonable pattern of work despite the awards of the tribunal and its own undertaking.

(c) The PRB has systematically flouted the different awards of the Tribunal to jeopardize our fundamental rights.

(d) The Ministry has unilaterally modified our contract of work by amending our scheme of service since June 2001 to make Radiographers work overtime on a compulsory and permanent basis.

(e) Radiographers are entitled to overtime rate in accordance with all the different PRB reports.

(f) The PRB 2004 (errors and omission) has recommended three additional increments for Radiographic Assistant for changing the roster regime to the shift regime.

We therefore submit that

- (a) we should be paid overtime with effect from June 2001 for the extra number of hours we have put during the recent past and that we will continue to put in the future.
- (b) That whenever a shift system is introduced, Radiographers in post should be paid a minimum of 3 additional increments to

change from the actual regime (average 31 hrs of work per week) to shift regime (40 hrs per week).

ISSUE NO. 1

7. Whether Staffing at Emergency Service

The Ministry has agreed to increase the number of Technical staff in function of the work load. It is therefore accepted not to press further.

ISSUE NO. 2

Training of Radiographers

The local training of Radiographers started in the early 60's and a Certificate is delivered.

Radiography is a fast moving discipline in the health sector. Recently marked changes have taken place particularly with the arrival of the high technologies such as Computed Angiography, CT Scan and Magnetic Resonance Imaging (MRI).

These changes have required higher demands in skill, expertise and **on going training/education** for Radiographers.

Internationally Radiographers education has been upgraded to be in line with those changes, e.g. in U.K., the diploma course, upon which is based the local training, has been withdrawn to give way to a degree level.

The Radiographers responsibility is to undertake a wide range of techniques and Imaging and/or treatment. The Radiographers' job integrates seven areas:-

- (i) Patient Care
- (ii) Clinical responsibility
- (iii) Use of Technology
- (iv) Optimization of Radiation Dose.
- (v) Organization
- (vi) Quality Assurance
- (vii) Education/Training

Mauritius has not kept pace with the dynamic changes in Radiography and is not only affecting the Standard of practice likely to endangering the welfare of patients but affecting the degree of motivation of Radiographers.

Basic Training normally comprises with Theoretical and Practical components, which are divided into two parts:

- (i) Application training i.e. equipment oriented.
- (ii) Practical training i.e. procedures/techniques oriented.

It is evident that application training is just a small part of the whole curriculum of training.

It is incorrect to state that 40 Radiographers have been trained by experts from abroad.

Radiographers who had had an initial and limited application training, i.e. ill trained Radiographers, have been called upon to train their colleagues without a formal curriculum.

The issues of training/education did form part of a previous industrial dispute RN 300. In its statement of case dated 14th October 1994, the Ministry of Health submitted the following (please refer to Annex 9):

- **Basic Training of Radiographers**

The course will henceforth be organized and run by the Mauritius Institute of Health (MIH).

- **Post Basic Training/refresher Courses**

It is proposed to organize refresher courses for Radiography staff in the near future.

During the 10yrs that have elapsed,

(a) The Ministry of Health has failed to respect its undertaking. Neither basic training have been upgraded nor basis training/refresher courses have been organized for the officers in service.

(b) The Radiographers have had to assume higher responsibilities with inadequate training.

It is submitted that:

(a) Refresher Training Courses, to take into consideration the major changes and new requirements of the service must be organized without delay for the actual practitioners.

(b) The curriculum should be devised to keep pace with the international trends.

(c) The officers in service and below 45 yrs of age should be allowed to convert their certificate to a diploma level.

(d) The diploma course that may be organized in the near future should be allowed to articulate with a degree level.

(e) Any training that henceforth will be organized must be flexible to give way for new technologies that may appear in the near future due to the fast moving nature of the Radiography discipline.

The following is the Statement of Case of Respondent to the reply of Applicants to the amended Statement of Defence.

Issue No. 1

Whether Radiographic Assistant should be posted to the Emergency Service after normal working hours on a 24-hr basis.

Agreed: The Errors, Omissions and Clarifications of the 2003 PRB Report has recommended the creation of a new grade of Radiographic Assistant (Shift) so that all future entrants in this grade be made to work on a shift basis. Refer to Annex I.

The report also recommended that the Radiographic Assistants in post may wish to opt to work on shift and those not opting for shift would continue to work according to the conditions laid down in their existing scheme of service.

The Ministry is at present in the process of drafting scheme of service for the new post of Radiographic Assistant (Shift).

The Ministry is, for the time being, maintaining the present arrangements of overtime after normal working hours in this grade, pending the recruitment of the Radiographic Assistant (shift).

Issue No. 2

Whether a reasonable allowance be paid to Radiographers for having been compelled to perform additional duties with effect from 1993.

An allowance of Rs 100 per roster be paid to Radiographers/Senior Radiographers with effect from August 1993.

Not agreed. The extra clerical duties referred to are directly related to the nature of their work as stipulated in their Scheme of Service. Refer to Annex II.

The existing Scheme of Service for Radiographer, among other duties, stipulates:-

- (i) To initial requests forms, fill the appropriate section thereof and identify exposed films;
- (ii) To ensure the filing of exposed films;
- (iii) To keep a register of examination done after normal working hours and in special circumstances; and
- (iv) To perform such cognate duties as may be assigned.

In view thereof, the request of the Radiographers of payment of an allowance of Rs 100 with effect from August 1993 cannot be acceded to.

Issue No. 3

Whether the number of cases to the X-Ray Emergency Service be strictly limited to Emergency cases.

Not agreed. The X-Ray Emergency Unit is responsible for attending to all cases referred to it from the Accident and Emergency Unit over 24-hours and from any section/ward of the hospital outside normal working hours.

Requests for X-Rays are made by doctors as per their clinical judgment in the patient's interest.

Presence of Radiologists is not required for interpretation of X-Ray films requested by doctors. The films are seen and interpreted by the doctors themselves; (all doctors are trained to read X-Ray films).

Issue No. 4

Whether to attach a Senior Radiographer to the Crew' after normal working hours'

No further action is required. The above issue has been settled.

Issue No. 5

Whether a handing-over period be provided between rosters

No further action is required. The above issue has been settled.

Issue No. 6

Facts related to the issue of overtime payment

It is noted that we have claimed overtime and the respondent has now accepted that we work beyond normal working week i.e. overtime work, in a pattern of work consisting of "In attendance". Moreover, the respondent has not denied that we are entitled to overtime payment, in accordance with the PRB reports.

Not agreed. By virtue of the Scheme of Service, Radiographers and Senior Radiographers are required to work beyond their normal working week in order to provide 24-hours coverage of the Radiology Service in a pattern of work consisting of "in attendance".

This recommendation has also been made in the 1998 PRB Report (Recommendation 38 paragraph 16.9.123) and maintained in the PRB Report 2003. However, the quantum of the "In Attendance" allowance has been revised in the PRB Report 2003.

The PRB Report 2003 has recommended that Radiographers and Senior Radiographers who work beyond their normal working week in order to provide a 24-hour coverage during nights, weekends and public holidays in a pattern of work consisting of "in attendance" be paid allowances as at **Annex III**.

3. The diagnostic radiography service is provided round the clock. In view of the insufficient number of qualified Radiographers, it has not been possible to implement a shift system for 24-hour coverage. However, the service round the clock should continue to be provided in this sector. Radiographers and Senior Radiographers working during nights, weekends and public holidays over and above their normal working week are paid "in attendance" allowances in accordance with the 2003 PRB Report. The "in attendance" allowances have been revised by the PRB Report as follows:

| Periods | PRB 1998 | PRB 2003 | Approx % increased Rs | PRB 1998 | PRB 2003 | Approx. % increased Rs |
|--|------------------|------------------|-----------------------|-------------------------|-------------------------|------------------------|
| | Radiographers Rs | Radiographers Rs | | Senior Radiographers Rs | Senior Radiographers Rs | |
| <u>Week days:</u> | | | | | | |
| 16.00 to 22.00 hours | 240 | 315 | 31.5 | 315 | 415 | 31.8 |
| 22.00 to 09.00 hours the following day | 435 | 580 | 33.4 | 575 | 765 | 33.1 |
| <u>Saturdays:</u> | | | | | | |
| 12.00 to 22.00 hours | 395 | 525 | 32.9 | 520 | 695 | 33.7 |
| 22.00 to 09.00 hours the following day | 435 | 580 | 33.4 | 575 | 765 | 33.1 |
| Periods | PRB 1998 | PRB 2003 | Approx % increased Rs | PRB 1998 | PRB 2003 | Approx. % increased Rs |
| | Radiographers Rs | Radiographers Rs | | Senior Radiographers Rs | Senior Radiographers Rs | |
| <u>Sundays</u> | | | | | | |
| 09.00 to 16.00 hours | 245 | 315 | 28.6 | 315 | 415 | 31.8 |
| 16.00 to 22.00 hours | 245 | 315 | 28.6 | 315 | 415 | 31.8 |
| 22.00 to 09.00 hours the following day | 435 | 580 | 33.4 | 575 | 765 | 33.1 |

Note: The "in-attendance" allowances have been increased by an average of 30%.

The normal working hours of the Radiography Staff are as follows:-

Weekdays: From 9.00 a.m. to 4.00 p.m.

Saturdays: From 9.00 a.m. to noon.

3. The scheme of service, being a legal document/contract of employment, is normally subject to amendments to reflect the specific demands of the job taking into consideration the level of responsibility, the qualifications, experience, new development and personal attributes needed to perform the job. In practice, the views and comments of the appropriate Staff Association are sought on the proposed scheme of service and are submitted to the Ministry of Civil Service Affairs and Administrative Reforms for consideration. The proposed scheme of service are then forwarded to the Public Service Commission for consideration and agreement. It is only after the agreement of the Public Service Commission that the scheme of service is prescribed in its official form.

4. The existing scheme of service of Radiographer stipulates that Radiographers and Senior Radiographers will be required to work beyond their normal working week in order to provide 24-hour coverage of the radiography service in a pattern of work consisting of "in attendance" and not "overtime".

Moreover, the PRB has, in its 2003 Report, recommended that:

- (i) Radiographers and Senior Radiographers who work beyond their normal working week in order to provide 24-hour coverage during nights, weekends and public holidays in a pattern of work consisting of "in attendance" be paid **In Attendance Allowances**; and
- (ii) to control overtime, Management should subject to the concurrence of the Ministry of Civil Service Affairs and Administrative Reforms, arrange for work shifts/patterns of work to be changes for work of long or continuous duration that need to be completed after normal working hours.

5. It is to be pointed out that before the implementation of the PRB Report, all public officers are required to sign an "Option Form" confirming their intention as to whether they accept the revised emoluments and terms and conditions of service and recommendations as set out in the PRB Report or not.

6. All the Radiography Staff have signed "Option Forms" accepting the revised emoluments, terms and conditions of service and recommendations as set out in the 1998 and 2003 PRB Reports. They cannot now claim **overtime** instead of **In Attendance Allowance**.

7. There is contradiction in the representation made by the Radiographers as on the one hand, they claimed that the Ministry has imposed compulsory overtime in the Radiography Cadre and on the other hand, they claimed that they are working in pattern of work consisting of in-attendance and not overtime.

8. The "in-attendance" pattern of work that the Radiographers are performing after normal working hours is not compulsory. Officers of the Radiography Cadre who are willing to perform in-attendance after normal working hours are allowed to do so against payment of appropriate allowances. The Ministry has so far not received any representations neither from Radiographers/Senior Radiographers nor from the Staff Association catering for the Radiography Cadre to the effect that they have been compelled to work after normal working hours.

9. Two Radiographers performing angiography sessions on Saturdays for the Cardiac Centre, which falls under the aegis of the Trust Fund for Specialised Medical Care, are being paid allowance by the Trust Fund.

10. The Civil Service Arbitration Tribunal Award (RN 527) dates as far back as 2 March 1998. In accordance with the regulations in force at the material time, Radiographers and Senior Radiographers, being shift workers, were entitled to overtime for any work done in excess of 40 hours in a week. The Tribunal awarded that as the Ministry had not been able to implement a shift system in the Radiography Cadre, Radiographers and Senior Radiographers should be paid overtime for the extra hours that they had put in during the Cardiac Surgery sessions at that material time, after completing only **33 ½ hours in a week**, provided they completed the required number of hours of work during each of the weeks concerned to qualify for overtime pay. Refer to Annex II.

11. The Radiographers were accordingly paid overtime in accordance with the CSAT Award (RN 527). Refer to Annex IV.

12. It is understood that the CSAT Award (RN 527) concerned only those group of Radiographers and Senior Radiographers who had put in extra hours during that specific Cardiac Surgery sessions as stated in the award of the Tribunal. The CSAT Award (RN 527) is not applicable for all other cases.

13. It is to be noted that although it has not been possible to introduce a shift system, the officers of the Radiography Cadre are presently enjoying salaries of "shift worker". Consequently, their request for payment of three additional increments, on implementation of shift system in this cadre, cannot be acceded to as the salaries that they are presently drawing already include the element of shift.

14. The overall review of pay and grading structures and conditions of service in the Public Sector remains with the Pay Research Bureau. The Radiographers should have, therefore, made their representations to the PRB on any issue regarding their conditions of service.

Issue No. 7

Whether staffing at emergency service should be regularly reviewed.

No further action is required. This issue has been dropped out.

Issue No. 8**Opening of Additional Emergency Service (CT Scan)**

Radiographers should receive appropriate and adequate training for obvious reasons.

The module should comprise of at least the following related subjects:

- (1) Radiological Anatomy (axial related to CT Scan)
- (2) Physics and Equipment
- (3) Information Technology
- (4) CT Scan Techniques

Application training has been provided by the supplier and further basic application training to man the X-Ray machines has been provided by experts from abroad. See Annex IV.

As at to-date, 40 Radiographers have received basic training in CT Scan and 10 Radiographers in MRI.

The Ministry is considering the possibility of upgrading the training of Radiographers up to a "Diploma" Course instead of the present Certificate in Radio-diagnostic issued by the Ministry of Health and Quality of Life. The curriculum is presently being reviewed to incorporate the new technologies introduced.

MIH Act has already been amended so that it may be authorized to run the Diploma Course and to issue the Diploma.

On 9th March 2005, the Applicants communicated an updated Statement of Case to the Tribunal, averring:-

We have taken cognizance of the Statement of Case of the Respondent.

In the first instance we wish to inform the Tribunal that among the long list of issues under dispute we consider the two under mentioned items as our priorities:

- (i) Issue No. 1 (6) Claim for Overtime Payment instead of Allowance.
- (ii) Issue No. 2 Adequate training be provided to Radiographers.

And we are maintaining our position on all the issues under dispute.

Issue No. 1**1. Whether Radiographic Assistant should be posted to the Emergency Service after normal working hours on a 24hrs basis.**

We maintain that the Radiographic Assistant be posted on a 24hrs service as agreed by the Ministry within a reasonable delay to be fixed by the Tribunal.

2. Whether a reasonable allowance be paid to Radiographers for having been compelled to perform additional duties with effect from 1st August 1993.

We maintain that we should be compensated for the extra work we have been compelled to perform since August 1993.

3. Whether the number of cases in the X-ray emergency services be strictly limited to Emergency cases.

We maintain that we are working with a skeletal staff after normal working hours to cover emergency cases and consequently it is unfair and unreasonable to compel Radiographers to perform all cases (including non emergency cases – “cold cases”) as it is the normal practice during the day.

Non-emergency cases (which do not require immediate treatment) can be postponed for normal working hours.

Issue No. 1 – 4 & 5 – Problem Settled.

4. Facts related to the issue of overtime payment

We maintain the following:

PRB reports, as well as Industrial Laws, define overtime as “Work performed outside normal working hours”.

All the PRB reports do provide for special rates for overtime work and we Radiographers having opted for the PRB report undeniably also entitled to these special rates.

The Radiographers’ Class is being compelled to perform Overtime Work and yet is receiving a payment below their normal rate of pay (salary per day) which is unfair, unreasonable and unacceptable.

Radiographers have to:

- I. Perform 2 rosters in a day (work long hours) and,
- II. Put in more than 7 days at a stretch without a rest period.

This is against PRB own philosophy and principles, and flouts our fundamental rights and our constitution.

With the regular increase in the cost of living, salaries are regularly increased and consequently overtime rate are accordingly revised. Whereas the *allowance payable for overtime work performed* remains stagnant (not to say receding) which is in fact a relative decrease.

We therefore submit that we should be paid overtime rate (in lieu of "In Attendance") in line with PRB recommendations, industrial law and the law of natural justice governing overtime payment, which we are enjoying only under special circumstances such as cardiac sessions.

Issue No. 2

Whether appropriate training be provided to Radiographers in view of the appearance of High Tech in the service.

- The Ministry failed to assume its responsibilities to provide adequate training to Radiographers to empower them to act as professional particularly with the arrival of High Technologies such as CT Scan, MRI, Angiography etc.
- All the above-mentioned Technologies are advanced fields and definitely require advanced training (as it is the case internationally) in the interest of the patients.
- The application training provided to Radiographers cannot be considered as a complete program and is in fact very inadequate.

A proper program should comprise both:

- (a) Theory, covering different fields (Axial Anatomy, Physics Radiological techniques, clinical aspects etc.) and,
- (b) Practical, which should be comprising of application (equipment oriented) and practical techniques (patients oriented).

- Radiographers with insufficient and limited training are called upon to act as trainers to train Radiographers with lesser know how.

Radiographers are not in a position to assume the effective duties of trainers which is a specialized field in itself.

- We submit that a proper curriculum covering all advanced Technologies be developed and implemented without undue delay for the benefit of all Senior Radiographers and Radiographers in the interest of the patients and the service.
- Training in MRI should be of a minimum of one year (at least 300 hours) comprising of both theory and practical. Similarly a period of at least six months (150 hours) is required to learn all the aspects of CT Scan.

Mr Y. Dauhoo, Principal Radiographer at the Ministry of Health testified on behalf of the applicants. He has been a Radiographer since 1970 with more than 34 years of continuous service, excluding 3 years as a Student Radiographer. There is an introduction to the statement of case where he explained the difference between the normal services which has provided an emergency service. According to the witness the X-Ray department, since it was set up, operates as a normal service from 9 to 4 pm during week days, and 9 to 1 pm on Saturdays. After 4 p.m. they have always operated an emergency service through different patterns of work. As regards the dispute whether Radiographic Assistants should be posted at the emergency service after normal working hours on a 24 hour basis, he confirmed that this matter has been partly resolved in the sense that Radiographic Assistants are presently posted up to 22.00 hours. He is asking the Tribunal to award that they should provide the service from 22.00 hours up to 9 a.m. The Ministry has already offered three increments to the Radiographic Assistants and has already accepted to be treated as shift workers since the P.R.B. report of 2003 so that to all intended purposes these matters have been partly settled. They are only left with the implementation of the second part of the scheme to cover the period from 22.00 hours to 9.00 hours on a 24 hour basis including Sundays and Public Holidays. The witness made it clear that he is deponing on behalf of the Radiographers class not the Radiographic Assistants, not the Assistants who are there to provide clerical duties and also to act as a *chaperon* for female patients and their scheme of service has been reproduced in the applicants' statement of cases as well as their duties.

As regards the issue whether a reasonable allowance is to be paid to Radiographers for having been compelled to perform additional duties with effect from August 1993 and which duties have been listed in the statement of case, they are actually asking the Tribunal to award an allowance of Rs100 compensation to each Radiographer for having compelled to perform extra duties. These are in fact clerical duties such as reception. On the issue of limiting emergency cases only to emergency service, the witness explained that after normal working hours, there is a skeleton staff to cater for serious cases for these emergency cases which have to be treated after 16.00 hours and the skeleton staff hours from 16.00 hours to 9 in the morning. Over the past few years all cases attending the casualty department are referred for X-Ray including call cases, that is somebody who is suffering from pain for a month but who can wait until the next morning to be

X-Ray. In the interest of these patients, the emergency cases, the witness is asking that the call cases be X-Ray the next morning.

The witness confirmed that the dispute regarding attachment of a Senior Radiographer to the crew after normal working hours has been settled and disposed of. He is not pressing for any Award on that issue. The same goes with the dispute regarding the handing over period between rosters. This matter having been settled, the applicants are not pressing for any Award.

The main bone of contention according to the witness is the issue of overtime payment. The matter was taken before the Civil Service Industrial Relations Commission which made certain recommendations. However these have not been implemented. The Commission recommended that discussions be held between both parties to solve the problem. The Commission was fully conscious that there was a serious problem regarding the issue of overtime payment. According to the witness, since the establishment of the X-Ray department, the service was operating from 9 to 4 with a few cases on a call system. There was therefore extra payment. In 1987 the PRB wanted to eliminate the extra payment and recommended a change in the pattern of work without looking into the staff structure. These gave way to a series of trade dispute. In 1992 the Tribunal awarded in favour of the Radiographers and recommended that by October 1992 there should be a change in the pattern of work. The Ministry was not in a position to change because there was no qualified staff on the one hand and on the other hand there was more patients calling at the hospital. The Radiographers were expected to provide a better service to stay on the site of work. So, a system was devised where Radiographers in respect of being on call remain on the site of work, which is referred to as the "in attendance". Under this "in attendance" scheme, the rate is below the normal pay. The witness produced a document in support of that contention. An example he cited is that of an officer who earns Rs16,000, who earns Rs646.15 for a normal day work. Yet when he is compelled to perform overtime for 6 hours at the additional 6 hours, he gets only Rs415.00. According to the witness the principle of remuneration for overtime work must be higher than the normal pay and not below as in the present case and the same principle should apply for those who work at night.

As regards the issue of training Mr Dauhoo stated that the Ministry should respect its undertaking to give proper training to the staff so that they can deliver and meet new requirements of the department and of the X-Ray services which should include training in respect of High Tech equipment. The training should be both practical and theoretical. This should include MRI (Magnetic Resonance Image) and the CT Scan (Computerise Tomography).

Counsel for the Applicants submitted with regard to dispute number (2) that the point which is made by the employer is that this is directly related to the nature of their work and reference have been made to some of their duties as per the scheme of service. Radiographers are to ensure the filming of exposed field and despatch radiographic reports and X-Ray films, so that the responsibility of the Radiographer is to ensure the filing which has got to be done by the Radiographic Assistant and it stands to reason that this is clearly not part and parcel of the duties of the Radiographers or Senior Radiographers. In so far as the overtime rates are concerned, Counsel respectfully submitted that we must on the matter in its proper context and this is where the various recommendations of the PRB since 1993 became very relevant. We are looking at what was purely temporarily arrangement in 1993 because of shortage of staff. We are now in 2006 and we are ... for any term of staff shortage so that it is impossible to have a round the clock service and this is why this purely temporarily arrangement has continued over the years. It is submitted that it is time that all this be renewed, that the proper staff should be regarded and trained so that we do away completely with a scheme "in attendance".

In a brief submission, Counsel for the respondent highlighted that the main contention is the overtime and "in attendance" allowance. She even rested her submission in relation to the statement of case. The Tribunal attention was drawn to the signing of the Option Form. Counsel added that it is difficult for the Ministry at this stage to review all the conditions when no representations were made regarding the "in attendance" allowance.

In reply Mr Domingue submitted that the dispute was referred in May 2003 that is before the law came into operation. He agreed that if the report of the dispute had come after the option, then it would have been a different matter.

We have said earlier the reason behind reproducing all the statements of case and accompanying documents. It is for ease of reference in the absence of evidence adduced by the Ministry. In fact, no evidence at all has been adduced in support of the Respondent's case.

Dispute No 1

"Whether Radiographic Assistant(s) should be attached to the emergency service on a 24-hr basis"

We are pleased to note that this dispute has been partly settled, except on the issue of delay to be fixed by the Tribunal. We understand that arrangements for posting of Radiographic Assistants at the emergency service after normal working hours on a 24-hour basis have been agreed in principle. It is understood that implementation of such policy entails financial costs and requires necessary practical arrangements in the recruiting of staff. We believe the posting of a full staffing strength of Radiographic Assistant to ensure 24-hours service could only be effected gradually. Consequently, we do not venture on imposing a specific date on the Ministry to complete its implementation. Since this has been agreed upon in principle, we recommend that the Ministry should fill the appropriate vacancies so as to ensure that the emergency service should be implemented within the shortest possible delay, subject to availability of funds and other resources. However, we invite the Ministry to act diligently, not forgetting that the finality of it all is a better service to the public.

Dispute No 2

"Whether a reasonable allowance be paid to Radiographers with effect from 1st August 1993 to compensate them for the extra duties they have compulsorily performed."

Dispute No 3

Whether Radiographers must not perform a maximum of 6 days duties per week in line with PRB principles with a voluntary regular overtime work and Not Compulsory Overtime work in line with Industrial Law of the country."

Dispute No 4

"Whether the normal overtime rates, as prescribed in the PRB reports, should be paid to Radiographers following the amended Scheme of service for Radiographers dated 28 June, 2001 instead of the "in-attendance allowance".

Taking into account that these are substantially repetitive disputes i.e (No 2, No 3 and No 4), they may conveniently be taken, dealt with together in a global approach.

We need first to deal with the issue of Option Form. There is evidence on record that the Applicants have signed the Option Form and have chosen to be governed by the PRB Report 2003 and the issue remains whether they have relinquished their right for their disputes to be entertained by the Permanent Arbitration Tribunal. We find it convenient to refer to a ruling we delivered in **André Cheung Chuen Yeung and Municipal Council of Port Louis (RN 743)** of 5th May 2004.

"It is not disputed that the reference in the present matter was made before the coming into effect of the new Industrial Relations Act Amendment Act 2003. The Tribunal therefore had already been seized of a dispute compulsorily referred to by the Minister. The Law that was introduced to amend the meaning of "industrial dispute" does not have any retrospective effect and there is no qualifier as to the time it was to come into effect except the following: "Passed by the National Assembly on the thirteenth day of June two thousand and three", and assented by the President of the Republic on 13.06.2003 .

It is our considered view that although the Legislator intended that disputes in relation to the PRB Report should be channelled to the PRB in view of the methodology used and the impact of relativity of remuneration and allowances across all sectors of the service for the making of

appropriate recommendations, the Legislator could not have intended that this ought to have retrospective effect or they would have expressed such intention clearly and explicitly.

It would be wrong and unfair in our mind to view that the Tribunal is only seized of the dispute when it starts hearing evidence when in fact the Tribunal has already been seized of it when it was referred to it. There may have been a redefinition to the meaning of "industrial dispute" but that cannot deprive the applicant's claim from being entertained by the Tribunal despite having signed the Option Form, which in the light of what we have already said, became necessarily a void exercise in the present case.

We therefore consider that these present disputes being referred before the passing of that law, the Tribunal has jurisdiction to entertain them.

With regard to the issue of allowances for extra duties, overtime and "in attendance allowance", we find that the PRB classified the Radiographers as Shift Workers. Shift Workers are compensated for 40 hours/per week which is taken into account in determining their salary. For practical reasons, the Ministry may not have implemented the shift system. We believe this is why the PRB provided for certain arrangements pending its implementation in the future. We consider that no special allowance can be given as special allowance has been taken into all these factors in the package. We find that similar arrangements have been made in those reports for other professionals and technicians in the same Ministry.

With respect to Dispute no 3, we find that the Health Services are provided on a 24-hour basis. Ideally, the services should have run on a shift basis. However, it is not disputed that non ability to implement a system, an arrangement has been made to work according to a schedule as long as people are being called upon to work within the limits of the law. We recommend that the Ministry should make arrangements to recruit additional Radiographers to meet pressing demands if need be, so that people are not called upon to work unduly excessive hours but within the schedule that has been recommended. This should not be interpreted as meaning employees should not be called upon for up to the hours that have been scheduled. We do not want to upset the whole set up (without any play on words). Indeed, we are not Salary Commissioners.

Nevertheless, we impress on the official side that this is supposed to be transitional i.e temporary until additional shifts are recruited. The next PRB can look into this.

Dispute No 5

"Whether all the staff who is called upon to perform duties in high technology fields should receive a proper (theoretical, practical) and adequate training."

Dispute No 6

"Whether the modules of the above a training should comprise the following related subjects:-

- (v) Radiological anatomy;*
- (vi) Physics and Equipment;*
- (vii) Information and Technology; and*
- (viii) High Technology Techniques"*

Disputes Nos 5 and 6 are being dealt together as they concern the common issue of training.

We understand from the Union that the Ministry agreed in principle for the training of staff. This is being done in collaboration with the Mauritius Institute of Health. We welcome such initiatives but we understand that they may be subject to availability of funds.

In a document addressed to us by Counsel representing the Respondent and dated 21st November 2006, we are informed that the Ministry has agreed to attend to those 2 disputes. In this connexion, appropriate training programme in collaboration with the Mauritius Institute of Health will be mounted for the staff of the Radiography Cadre in High Technology fields. We are made to understand that presently the Mauritius Institute of Health is initiating action for the enlistment of a qualified tutor in the fields.

As regards the question of diploma to be awarded and the age criteria below 45, these are new issues which were not raised before the Tribunal. We invite the Union to make representations to the PRB in the context of its new review exercise scheduled for the year 2008.

We award accordingly.

Rashid Hossen
Acting President

P. N. Jeantou
Assessor

S. Hossenbux
Assessor

Date: 06 December, 2006