CIVIL SERVICE ARBITRATION TRIBUNAL

JUDGMENT

Before:

Rashid HOSSEN	**-**	**Ag President**
Said HOSSENBUX	**-**	**Assessor**
Philippe Noel JEANTOU	**-**	**Assessor**

In the matter of:-

RN 141

Registry of Association Inspectorate Staff Union

And

Ministry of Civil Service and Administrative Reforms

The Registry of Association Inspectorate Staff Union is appealing against a decision of the Honourable Prime Minister and Minister of Civil Service and Administrative Reforms to reject an industrial dispute reported to him.

Mr A Gayan, SC appears for the Appellant.
Mr R Ahmine, Principal State Counsel, appears for the Ministry.

We have had to surmise the nature of the reported dispute from the various documents exchanged between the parties, including the Statement of Case. The written notice sent by the Ministry of Civil Service only states the rejection of the dispute on the ground that it is not an industrial dispute within the meaning ascribed to it in the Industrial Relations Act as amended by Act No. 13 of 2003. We do not have the benefit of any particulars from that document as to why it is not an

industrial dispute. We find at the end of the day that the bone of contention is that the Minister rejected the reported dispute as it is in relation to an allowance and the Appellant having signed the option form to be governed by the PRB report 2003, it is debarred from entering this action inasmuch as such allowance issue does not fall within the meaning of an industrial dispute as per the Industrial Relations Act 1973, as amended.

In its Statement of Case, the Union avers:-

1. The Registry of Association Inspectorate Staff Union (hereinafter referred to as the Union) on 08 November 2006 reported an industrial dispute to the Ministry of Civil Service & Administrative Reforms.

2. By letter dated 30 November 2006 the Union received a letter from the Supervising Officer of the Ministry of Civil Service and Administrative Reforms informing it that the Honourable Prime Minister and Minister of Civil Service, has "recommended that in accordance with Section 80 (1) (a) of the Industrial Relations Act, the industrial dispute be rejected on the ground that it is not an industrial dispute within the meaning ascribed to it in the Industrial Relations Act as amended by Act No. 31 of 2003."

3. After receipt of the said letter the Union appealed against the decision of the Minister of Civil Service and Administrative Reforms to reject the industrial dispute reported to him.

4. The grounds of appeal on which the Union is relying for present purposes are the following:-

   (a) (i) The Minister of Civil Service has not "rejected" the Industrial dispute but he has only "recommended" that it be rejected.

   (ii) By "recommending" instead of "rejecting", the Minister is barred from claiming that he has acted in conformity with section 80(1) (a) of the Industrial Relations Act.

(b) The Minister of Civil Service was wrong to "recommend" rejection of the industrial dispute on the ground that he did inasmuch as the industrial dispute was not in respect of an allowance but of a ceiling for travelling.

(c) The Minister of Civil Service was wrong to have acted as he did since the reduction by almost 50% of the travelling ceiling for the Inspectors whom the Union represents effectively means that there is a reduction of 50% of the monitoring of the mechanisms in which public funds provided to religious bodies, sports clubs and PTAs are being used or misapplied.

(d) The Minister of Civil Service was wrong in not having appreciated that the reporting of the industrial dispute was on account of a major departure from the normal functions of the union by the implementation of the new ceiling for travelling.

(e) The Minister of Civil Service was wrong to have disregarded the fact that the Union's members who are engaged in the auditing and inspection of books and accounts of associations would, by the introduction of the new measures, be prevented from exercising their normal duties and such a situation entails an impact on their contract of employment.

The union considers that there is in law no rejection of the report of the industrial dispute and invites the Tribunal to rule accordingly.

In response to the above Statement of Case, the Respondent avers:-

1. Save and except that the industrial dispute was reported to the Minister of Civil Service and Administrative Reforms, the Ministry of Civil

Service & Administrative Reforms referred to as "The Ministry" admits paragraph 1 of the Registry of Association Inspectorate Staff Union Statement of Case referred to as "the Registry".

2. The Ministry admits paragraph 2 of the Registry's Statement of Case.

3. The Ministry takes note of paragraph 3 of the Registry's Statement of Case.

4. (a) (i) In accordance with Section 80 (1)(a) of the Industrial Relations Act, the Minister of Civil Service may reject a report of a dispute if it appears to him that the report "relates in whole or in part to a dispute which is not an industrial dispute".

(ii) It is clear that by recommending the rejection of the dispute the Minister had in fact rejected it.

(b) The Ministry denies paragraph 4 (b) of the Registry's Statement of Case and avers that it is noted that :-

(i) the Union had agreed that the Minister had rejected the dispute which related to mileage allowance for the grades of Senior Inspector of Associations and Inspector of Associations.

(ii) Several Ministries/Departments, in order to exercise strict control on monthly claims for mileage allowance, fix a ceiling on the allowance. Therefore, the ceiling for travelling is directly related to the payment of mileage allowance.

(c) The Ministry denies paragraph 4 (c) of the Registry's Statement of Case and avers the following:

1. Due to budgetary constraints, Ministries/Departments had been requested to manage public resources more judiciously and to undertake close monitoring of expenditure. Consequently, as expenditure incurred during the past years in respect of travelling and transport had been excessive, the Ministry of Labour, Industrial Relations and Employment had decided to monitor closely the monthly claims for mileage allowance.

2. The Minister of Civil Service and Administrative Reforms was not wrong in rejecting the dispute. Comments at paragraph 4a(i) and (ii) refer. Moreover, the Minister has rejected the dispute as it does not fall within the definition of "industrial dispute" of the Industrial Relations Act (Amendment) 2003 dated 16 June 2003.

In view of the above comments, the Ministry considers that the case should be set aside.

It is the submission of Counsel for the Appellant that the Minister only recommended a rejection when in fact he has the power to decide and should have done so in accordance with the law. Recommendations can either be acted on, rejected, approved or discarded whereas a decision which is conferred on a particular body must be acted on by that body. It is not disputed that in this particular case there was a dispute which was reported. The Minister had the power to reject it if it appeared to him that it is related in whole or in part to a dispute which is not an industrial dispute. But he cannot recommend his rejection since the power to reject is his. He cannot recommend to the Permanent Secretary because the latter has no power to reject and there has been no delegation of any power. Counsel therefore submitted that recommending a rejection is not in accordance with the law.

On the issue of allowance, it is Counsel's contention that we are not dealing with remuneration but rather with the conditions of service with respect to the

Inspectorate of the Registry. According to him this appeal is properly made since there has been no rejection of an industrial dispute.

In a brief addressed to the Tribunal, Counsel for the Respondent on the other hand submitted that Section 80 of the Industrial Relations Act does not mention the word "recommend" but only speaks in term of "rejection". He invites the Tribunal to look at the substance when the reply was forwarded to the union and its very purpose. The Tribunal should not restrict itself to a form of a letter merely because the word "recommendation" was used and what was meant was that the Minister recommended clearly that the industrial dispute is to be rejected in accordance with Section 80 of the Industrial Relations Act.

Counsel for the Respondent addressed us also on the issue of allowance. The law has been amended according to Act no. 13 of 2003 with regard to the meaning of "industrial dispute". "Industrial Dispute" has now been restricted to mean *"a contract of employment or a procedure agreement except, notwithstanding any other enactment, those provisions of the contract or agreement which concern remuneration or allowance of any kind should apply to the employee as a result of the exercise by him of an option to be governed by the corresponding recommendations made in a report of the Pay Research Bureau."* According to Counsel there should not be a distinction between remuneration and ceiling since both are connected to each other and whenever the Ministry makes certain recommendations with regard to the remuneration, it automatically affects the ceiling rate. Once the appellant has signed the option form, he cannot invoke the allowance issue as an industrial dispute.

The Tribunal reproduces here the relevant part of the letter addressed by the Ministry of Civil Service and Administrative Reforms to the union:-

> "*The Honourable Prime Minister and Minister of Civil Service, has recommended that in accordance with section 80(1)(a) of the Industrial Relations Act, the industrial dispute be rejected on the ground that it is not an industrial dispute within the meaning ascribed to it in the Industrial Relations Act as amended by Act No. 13 of 2003."*

Section 80 of the Industrial Relations Act of 1973 as amended provides:-

*"**Rejection of report by Minister***

(1) The Minister may reject a report under section 79, if it appears to him that the report –

(a) relates in whole or in part to a dispute which is not an industrial dispute;

(b) is made by or on behalf of a party who is not, or is not entitled to be, a party to an industrial dispute in relation to any of the issues or matters raised in the report; or

(c) does not contain sufficient particulars of the issues or matters giving rise to the industrial dispute.

(2) Where the Minister rejects a report under subsection (1), he shall give written notice of the rejection to all the parties specified in the report."

Ideally, there would have been no need for the word "recommended" to be part of the written notice and to that extent we believe that Counsel for the Appellant is right in submitting that the Minister's only right and duty by virtue of Section 80 is that of taking a decision. However, looking at it in the whole context, we cannot evade the inevitable conclusion that what the Minister intended was simply to reject a dispute. We consider the use of the word "recommended" in the notice to be unnecessary and a mere *surplusage*. In general *"surplusagium non nocet*," according to the maxim "*utile per inutile non vitiatur*". In other words, if a man in his declaration makes mention of a thing which need not be stated, but the matter set forth is grammatically right and perfectly sensible, "no advantage can be taken on demurrer." (See Law Library

-Lexicon on legal definition of Surplusage).

"Surplusage does not vitiate that which in other respects is good and valid. Indeed, the useful is not vitiated by the useless. Where an instrument contains, in addition to proper matter, that which need not have been stated, such unnecessary matter will not vitiate the other. Where the useful can be separated from the useless, in accordance with nature, law or the interest of parties, it will not be impaired by it, but where the two are not separate without impugning some rule of nature or of law, or contravening the intention of the parties, there the useful matter is vitiated by the useless." ***(See Best on Evidence*** **p303 para.263; see also R v. R (1992) A.C. 599, House of Lords).**

We therefore hold the view that the word "recommended" cannot be given a narrow and literal meaning and since the intention of the Minister is clearly expressed by the very fact of invoking **Section 50 of the Industrial Relations Act 1973**, as amended, we consider the word to be a mere *surplusage*. The appeal on this ground therefore fails.

With regard to the issue of allowance, we refer here to the very words used by the appellant in the Statement of Case:-

> *"The Minister of Civil Service was wrong in not having appreciated that the reporting of the industrial dispute was on account of a major departure from the normal functions of the union by the implementation of the new ceiling for travelling."*

Section 3 of the Industrial Relations Act 1973, as amended, provides:-

"*3.* ***Section 2 of principal Act amended***

Section 2 of the principal Act is amended –

(a) in the definition of "industrial dispute" by deleting paragraph (a) and replacing it by the following paragraph-

(a) a contract of employment or a procedure agreement except, notwithstanding any other enactment, those provisions of the contract or agreement which -

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

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

(b) by inserting in its appropriate alphabetical place the following definition –

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

We see that the concern of the Union is not the allowance itself but the reduction of some 50% of the travelling ceiling for the Inspectors. The dispute as it appears to be is not in relation or does not concern the allowance but its reduction. Can that be said to fall out of the meaning of "industrial dispute"?

It is common knowledge that the purpose of introducing the amendment to Section 2 of the Industrial Relations Act was to put an end to the unbearable practice of employees opting for a particular condition of work and opt out immediately after. What Parliament clearly intended is that one cannot overtly disagree over what one has agreed. In other words, if an employee agrees and therefore opts for a particular allowance, he cannot just after disagree over that particular allowance. However, any change brought with regard to that allowance which he initially opted for, cannot in our view deprive him of the freedom to declare a dispute. We do not believe that that was the intention of the Legislator. We ask ourselves whether reducing the allowance rate forms part of the "provisions of the contract or agreement which concern remuneration or allowance of any kind?" We do not find anything in support of that.

We reproduce here the relevant part of the PRB report 2003:-

"Recommendation 34

15.2.97 We recommend that:

(i) the mileage rates for official travelling for officers not eligible for travel grant should be revised to Rs6.55 per km for the first 800 km and Rs2.95 per km for over 800 km; and

(ii) Officers not eligible for travel grant should continue to be refunded, for days on which they are required to carry out field duties, the running costs for distance which is not considered as official mileage (residence to office) at the rate of Rs2.95 per km and mileage for official travelling on distance between office and site of work or for the official traveling by the most economical route at approved rates.

Official Mileage on a Financial Year Basis

15.2.98 Normally refund of travelling for ***official mileage*** *(for field duties) is made at the rate of Rs6.35 for the first 800 km and at the rate of Rs2.65 for official mileage in excess of 800 km on a month to month basis.*

15.2.99 However, the quantum of official mileage varies according to the fluctuations in volume of field duties and therefore occasionally officers perform official travelling on total distances of less than 800 km over a month, On the other hand, the same officer sometimes covers total distance of over 800 km over a month. Provisions exist to the effect that mileage for official travelling be recomputed on a financial year basis for fairness. The refund of mileage computed on a month to month basis has to be revised in accordance with the provision of the Personnel Management Manual to the effect that in

any financial year an aggregate of 9600 km should be computed at the higher rate and the balance at the lower rate."

We refer here to Walker's "English Legal System" 4th Edit. @ page 92:-

"....The basic approach to statutory interpretation, as already stated, is to ascertain the intention of the legislature. The literal rule of interpretation is that this intention must be found in the ordinary and natural literal meaning of the words used. If these words, literally interpreted, are capable of alternative meanings the literal rule clearly cannot be applied. Hence the approach breaks down in the face of an ambiguity. However, if the words are capable of only one literal meaning the literal rule is that this meaning must be applied even if it appears unlikely or absurd. The rule may be expressed as an irrebuttable presumption that Parliament intends the ordinary and natural meaning of the words it employs. The rule will, in most cases, produce a reasonable interpretation of the statute. However, in extreme cases, where the statute has been carelessly drafted, the rule may produce a manifest absurdity. Thus in ***Inland Revenue Commissioners v. Hinchy*** *the House of Lords was called upon to construe section 25(3) of the Income Tax Act 1952 which provided that any person delivering an incorrect tax return should forfeit "... treble the tax which he ought to be charged under this Act". Although Parliament presumably intended a penalty of treble the unpaid tax the House of Lords held that the literal meaning of the words of the subsection was that the respondent was liable to pay treble the whole amount of tax payable by him for the year,* ***Fisher v. Bell****, quoted earlier, is a further example of the application of the literal rule producing a result which appeared contrary to the intention of the legislature.*

Although there are numerous cases in which the literal rule has been applied strictly there appears to be a modern judicial tendency to apply the golden rule or the mischief rule in cases where the literal rule would produce a perverse decision. This tendency is exemplified, characteristically, in the following words of LORD DENNING, M.R..

".....the literal meaning of the words is never allowed to prevail where it would produce manifest absurdity or consequences which can never have been intended by the legislature."

.....The golden rule is that words in a statute must be interpreted according to their natural, ordinary and grammatical meaning, so far as possible, but only to the extent that such an interpretation does not produce a manifestly absurd result. Perhaps the best known statement of the rule is to be found in the judgment of PARKE, B. in Becke v Smith.

> *"It is a very useful rule in the construction of a statute to adhere to the ordinary meaning of the words used, and to the grammatical construction, unless that is at variance with the intention of the legislature to be collected from the statute itself, or leads to any manifest absurdity or repugnance, in which case the language may be varied or modified so as to avoid such inconvenience, but no further."*

Where the statute permits of two or more literal interpretations the court must adopt that interpretation which produces the least absurd or repugnant result. This application of the golden rule is not, of course inconsistent with the literal rule since the latter cannot be applied in a case of ambiguity. This is the narrow aspect of the golden rule and has been adopted in several well-known cases. Thus, for example, section 57 of the Offences against the Person Act 1861 provides that "Whosoever, being married, shall ***marry*** *any other person during the life of the former husband or wife" shall be guilty of bigamy. The word* ***marry*** *permits of alternative meanings. It may be construed to mean* ***contracts a valid marriage or goes through a ceremony of marriage****. Since the former meaning would produce an absurd result, the latter must be applied.*

……However, just as the golden rule has been applied in preference to the literal rule, so also has the mischief rule been so applied in a few cases. In these cases there exists a clear exception to the general rule that the intention of Parliament is to be ascertained solely from the words of the statute. In order to ascertain the mischief which the statute was passed to correct the judge may legitimately have regard to the preamble of the statute, to headings and to extrinsic sources such as reports of Royal Commissions or Law Reform Committees which may indicate the state of the law before the passing of the Act.

Supplying omissions *– An interesting problem of construction arises when the court is faced with a factual situation for which the statute has not provided. Such a situation is termed a* ***casus omissus****. It can only be remedied by attributing to Parliament an intention which Parliament never had. This amounts to a legislative act on the part of the judiciary and is a function which the more conservative judges are slow to adopt. Thus DENNING, L. J (as he then was) explained, in the Court of Appeal, the judicial function in respect of omissions as follows:-*

> *"we sit here to find out the intention of Parliament and of Ministers and carry it out, and we do this better by filling in the gaps and making sense of the enactment than by opening it up to destructive analysis.""*

In the present matter, we stated earlier that we do not find anything in support of the contention that reducing the allowance rate is part of the "*provisions of the contract or agreement which concern remuneration or allowance of any kind"*. A reduction of the ceiling is more within the province of conditions of work

than that of an allowance itself. To that extent, we rule that (if at all proved) a reduction of the allowance consists of a departure from the provisions of the agreement and therefore falls outside the exception of the definition of "industrial dispute".

We accordingly allow the appeal and revoke the decision of the Honourable Prime Minister and Minister of Civil Service and Administrative Reforms.

Rashid HOSSEN
(Ag President)

Said HOSSENBUX
(Assessor)

Philippe Noel JEANTOU
(Assessor)

Date : 27th February, 2008