

EMPLOYMENT RELATIONS TRIBUNAL

ERT/RN/39/13

INTERPRETATION OF AWARD

Before:

Rashid Hossen	President
Esther Hanoomanjee	Member
Denis Labat	Member
Triboohun Raj Gunnoo	Member

In the matter of:-

Plaisance Catering Ltd

And

Union of Employees of the Catering Industry

This is an application for the interpretation of an award delivered on 19th December 2007 (RN 608 of 2007) with regard to one disputed item, namely the implementation of overtime rate.

Out of the 7 items before the Tribunal, 3 of which were withdrawn, item no. 5 was in relation to:

“ 5. SPECIAL OVERTIME RATE/DISTURBANCE ALLOWANCE

Whether in addition to the rates stipulated in the Catering Industry Remuneration Order

- (i) Overtime performed in excess of the scheduled hours (roster) on any day from Monday to Saturday (which is not a public holiday) should be paid :
 - At plus 0.5 rate for any overtime performed after 0.00 hours.
- (ii) Overtime performed on a Public Holiday (including a Sunday) or on a rest day should be paid
 - At plus 1.0 rate for first 8 hours and plus 1.5 rate thereafter or for overtime work performed after 0.00 hours.
- (iii) Work performed during a cyclone class III or class IV should be paid
 - At plus 2.0 rate with guaranteed 4 hours overtime.
- (iv) Whether on resumption of duty after the passage of a cyclone which necessitated the temporary closure of the premises, work performed on that day and during scheduled hours should be paid at plus 0.5 rate.
- (v) In addition to above, the following disturbance allowances should be paid:
 - I. Rs 400 when scheduled to work on the 25 and 31 December, the 1 and 2 January and the 1 May.

- II. Rs 400 when the worker has finished his work and has already returned home and is called back to work for reason of emergency.
- III. Rs 700 when called to work on “*an additional Sunday*”.

With respect to this dispute, the Tribunal awarded as follows:

- 1. Rate of overtime payment recommended by CTIRO is maintained.
- 2. Overtime is to be calculated on a daily basis. Whenever an employee has completed his 8 hours or lesser hours as per his roster and is required to continue duty, the number of additional hours should be paid as overtime. This is to compensate for any disturbance allowance.
- 3. Payment of overtime for Public Holidays, Sundays (additional) cyclone warning Class III and IV and those employees called to replace in case of absenteeism be maintained.
- 4. Special allowance for Prime Season i.e for period 21st December to 10th January to be as proposed by the Company:

i.e Scales 1-4	Rs 450
Scales 5-6	Rs 750
Scales 7	Rs 1000

However this allowance would be in addition to any overtime payment due as per above recommendations.

- 5. Granting of 4 hours overtime at double rate to those who resume work after the removal of cyclone warning Class III or IV and whose services are not required and are returned home as proposed by the Company.

The Plaisance Catering Ltd is hereafter referred as the Applicant and the Union of Employees of the Catering Industry as the Union.

The Applicant contends that the interpretation to be given to item 5 of the 2007 Award is that it is restricted to work performed after midnight when the employee has completed his roster and as to overtime performed before midnight, the Company's stand is that such overtime worked in excess of scheduled hours (roster) shall be paid for work performed in excess of 48 hours weekly.

It is the Union's interpretation that overtime is to be calculated on a daily basis over 8 hours work and as per the worker's roster in cases where the hours of work are lesser than 8 hours and that this overtime specificity is a derogation from the Remuneration Order prescribing 48 hours work and should be considered as compensation in lieu of disturbance allowance claimed.

In its Award of 2007, the Tribunal took into account the following amongst others:-

1. The President and Members visited the Plaisance Catering Centre at Plaisance on the 11th of August 2006, accompanied by the legal advisors, the General Manager of the Company and the Union's representative. It was a visit to all the stages of production including the kitchens and stores and this while the employees were at work. The full organizational set-up was introduced and studied.
2. The nature of work at the Plaisance Catering cannot be totally compared to any other sector.
3. As per document produced and not challenged, the average working week is around 36 hours and overtime is paid as per the Catering and Tourism Industries Remuneration Order only after 48 hours.
4. There is a factor of disturbance during cyclonic period and delayed departures and in any unusual circumstances, certain employees will have to put 12 hours additional work to qualify for overtime.

After considering the versions of the two parties including their Counsel submissions, the Tribunal declares the interpretation given by the Union to be the correct one.

Rate of overtime payment recommended by CTIRO is maintained.

Overtime is to be calculated on a daily basis. Whenever an employee has completed his 8 hours or lesser hours as per his roster and is required to continue duty, the number of additional hours should be paid as overtime.

(Sd) Rashid Hossen
President

(Sd) Esther Hanoomanjee
Member

(Sd) Denis Labat
Member

(Sd) Triboohun Raj Gunnoo
Member

This 1st August 2013