

EMPLOYMENT RELATIONS TRIBUNAL

ERT/RN 60/14

INTERPRETATION OF AWARD

Before:

Rashid Hossen	-	President
Esther Hanoomanjee (Mrs)	-	Member
Rabin Gungoo	-	Member
Renganaden Veeramootoo	-	Member

In the matter of:-

- (1) Union of Artisans of the Sugar Industry**
- (2) Artisans and General Workers Union**
- (3) Organisation of Artisans Unity**

(Applicants)

And

**Omnicanne Milling Operations Ltd
(Ex Savannah Sugar Milling Co. Ltd)**

(Respondent)

This is an application by the Union of Artisans of the Sugar Industry (UASI), Artisans and General Workers Union (AGWU) and Organisation of Artisans Unity (OAU) [Applicants] under **Section 75** of the **Employment Relations Act 2008** as amended for an interpretation of the relevant part at page 20, paragraph 3 of an award of the then Permanent Arbitration Tribunal (PAT) delivered on 3rd May 2006 (**RN 729, RN 730 and RN 732**). Following a report of industrial dispute by the Applicants against the Respondent, after the then 3 x 8 x 6 days shift had lapsed and the

introduction of a new formula, i.e. 4 x 12 shift at Omnicane Milling Operations Ltd (formerly known as Savannah Sugar Milling Co. Ltd), the Permanent Arbitration Tribunal (PAT) awarded inter alia as follows:-

“We also invite Management to grant an incentive to those working on shift system during the crop season, equivalent to 6.5 hours at normal overtime rate.”

The Applicants agreed that the said Award was implemented by the Respondent and its casual workers working on shift from 2006 to 2012 were duly paid by the Respondent 6.5 hours at normal overtime rate as awarded by the Tribunal on 3rd May 2006. It is their contention that since mid-June 2013 Respondent unilaterally and wrongly discontinued the payment of the said incentive to some of its employees i.e. the casual worker who worked on the shift system during 2013 crop. The Applicants raised this issue with the Respondent but to no avail.

The issue to be interpreted is the following:-

“Whether the incentive awarded by the Permanent Arbitration Tribunal to those working on the shift system during the crop season, equivalent to 6.5 hours at normal rate should apply to all the respondent’s employees, including the casual workers and whether it is a condition precedent of the payment of such incentive that the workers should have been in employment with the respondent at the time of the report of dispute or when the said award was handed down.”

In reply to that application the Respondent avers:-

- “1. *During the crop season (approximately 100 days), some 50% of employees engaged at Savannah’s factory were offered to work and were so working until the 2001 harvest on a 2 x 12 hours shift, 6 days per week, that is 45 hours of normal work and 27 hours on overtime that is 72 hours per week.*

2. *In Mauritius, the labour costs account for more than 50% of the total operating costs of the sugar production and this compares unfavourably with most of our competitors. In that context, for its survival, the Sugar sector had no other alternative but to lower drastically its costs of production.*

3. *In 2002, to reduce its costs of production, Management proposed to pass from 2 (2 shifts x 12 hours x 6 days) to 3 shifts (3 shifts x 12 hours x 4 days). The Unions disagreed. A dispute arose and was referred to the Permanent Arbitration Tribunal (PAT).*

4. *However, in a spirit of cooperation, Management accepted that pending the case be determined by the, then PAT, Unions’ counterproposal be implemented, and thus agreed to operate temporarily on 3 shifts (3 shifts x 8 hours x 6 days).*

5. *In order to reduce its costs of production, it was necessary among other measures, that the shifts system be reorganized on 3 shifts of 12 hours per day x 4 days a week (subsequently referred in the Award of the PAT as “4 x 12 x 3 shift system”.*

6. *On 3rd May 2006, the PAT:*

- a. *Decided that the 4 x 12 x 3 shift system be implemented as from crop 2006;*
 - b. *pointed out that it stood to reason that the 3 x 8 x 6 shift lapsed with the introduction of the 4 x 12 x 3 shift;*
 - c. *explained that reducing the number of hours of work will have an impact on the overtime hours therefore reducing the monthly pay packet and the lack of any compensation can lead to deterioration of harmonious industrial relations;*
 - d. *invited Management to grant an incentive equivalent to 6.5 hours at normal overtime rate, to those working on the newly implemented 4 x 12 x 3 shift system during the crop season;*
 - e. *appealed to Management's understanding and good faith to consider a "one off payment" of MUR 20,000 to workers on shift in the context of staff re-organisation at that particular factory.*
7. *It is apposite to note that the 6.5 hours of overtime is a mere incentive granted at the invitation of the PAT to those workers in employment in 2006 to compensate them for the loss of 27 hours of overtime which they were performing prior to the implementation of the "4 x 12 x 3 shift system".*

PAYMENT OF THE 6.5 HOURS AT OVERTIME RATE TO CASUAL WORKERS

8. The issue raised by the Applicants is the following:

“Whether the incentive awarded by the Permanent Arbitration Tribunal to those working on the shift system during the crop season, equivalent to 6.5 hours at normal rate should apply to all the respondent’s employees, including the casual workers and whether it is a condition precedent of the payment of such incentive that the workers should have been in employment with the respondent at the time of the report of dispute or when the said award was handed down.”

9. *In light of the above, we are of the view that the issue raised for interpretation before the Employment Relations Tribunal under Section 75(1) of the Employment Relations Act 2008 is only applicable to those workers affected by the change in shift system and who were already in employment before the PAT award.”*

Interpretation

The interpretation to be given is that the Award is applicable to those workers affected by the change in shift system and who were already in employment when the Award was delivered.

Indeed at page 20 of the Award the Tribunal referred to *“The employees being more concerned with a compensation for hours of overtime, rather than the changing hours of work, and the Employer having the right to organize his business according to the exigencies of the service*

as long as he remains with the parameters of the labour law and remuneration orders, the Tribunal is of the considered view that the 4 days x 12 hours x 3 shift system be introduced”. (Underlining is ours). The Tribunal was referring to the then employees. At page 21 of the Award the Tribunal further stated: *“This Award therefore should not be invoked as a precedent in view of the fact that it stands on its own facts. Indeed, each case must be viewed on its own facts and the present award cannot be a principle of general application. This case is therefore “un cas d’espèce”.*

(Sd)Rashid Hossen
(President)

(Sd)Esther Hanoomanjee (Mrs)
(Member)

(Sd)Rabin Gungoo
(Member)

(Sd)Renganaden Veeramootoo
(Member)

Date: 12 August 2014