

EMPLOYMENT RELATIONS TRIBUNAL

ERT/RN 183/2015

AWARD

Before:

Shameer Janhangeer	Vice-President
Ramprakash Ramkissen	Member
Rajesvari Narasingam Ramdoo (Mrs)	Member
Renganaden Veeramootoo	Member

In the matter of: -

Chemical Manufacturing and Connected Trades Employees Union

Disputant

and

Dry Cleaning Services Ltd

Respondent

The present matter has been jointly referred to the Tribunal for voluntary arbitration by the Chemical Manufacturing and Connected Trades Employees Union (the "CMCTEU") and Dry Cleaning Services Ltd ("DCSL") on three issues in dispute.

The terms of reference of the disputes read as follows:

(a) WAGES

Proposed Wage Structure:

<i>Mechanic/Foreman</i>	<i>10,200 x 260 (10)</i>	<i>12,800</i>
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<i>Driver (lorry/van)</i>	<i>9,700 x 250 (10)</i>	<i>12,200</i>
<i>Vehicle Assistant/Factory Attendant/ Office Attendant</i>	<i>9,100 x 220 (10)</i>	<i>11,300</i>
<i>Security Guard/Factory Operator/ Skilled Worker</i>	<i>9,200 x 235 (10)</i>	<i>11,550</i>
<i>Cleaner</i>	<i>8,900 x 200 (10)</i>	<i>10,900</i>

Whether all employees should have their wages readjusted in accordance to the proposed scale in the respective category on a point to point basis in relation to their years of service or otherwise.

Whether all employees over 11 years of service should benefit from:

- *10% increase on their basic wages on 1 January 2016, or otherwise;*
- *8% increase on their basic wages on 1 January 2017 after their wages have been readjusted in accordance to their respective wage scale.*

(b) DISTURBANCE ALLOWANCE

Whether a disturbance allowance of Rs 75 daily should be paid to all employees who are called to start work before 7 am.

(c) VACATION LEAVE

Whether the issue of extension of provision of vacation leave to employees whose terms and conditions are governed by the Factory Employees (Remuneration Order) Regulations already provided to the employees governed by the 3 other Remuneration Order Regulations (Distributive Trades, Office Attendants and Road Haulage industry) applicable to the Employer or otherwise.

The Union was assisted by its representative Mr Reez Chuttoo. The Respondent was assisted by Mrs Varuna Bunwaree Goburdhun, who appeared together with Mrs Carolyn

Desvaux de Marigny, instructed by Mr Jaykar Gujadhur, SA. Both parties have submitted their respective Statement of Case in the present matter.

THE DISPUTANT'S STATEMENT OF CASE

The Disputant Union has averred that they have entered into collective bargaining with Management. However, their efforts have remained in vain. On the issue of the proposed new wage structure, several arguments have been put forward by the Union. The Union aims to ensure that a *Skilled Worker/Operator* should not earn less than a *Semi-Skilled Worker* such as an *Office Attendant*. In a spirit of compromise, the Union noting the considerable differential between the two categories proposed a starting wage of Rs 8,900 for the former category. This was rejected by Management. The Union avers that the purpose of collective bargaining is to correct all anomalies and to ensure that there is a proper distribution of wealth.

As regards *Skilled Workers/Operator*, it has also been averred that their wages are the lowest in the country in the manufacturing sector; they are mostly 80% female with over 20-35 years of service with a basic wage of not more than Rs 9,145; many are on the door step of retirement with their NPF contributions not generating a decent pension; except for the distribution department, many have had their overtime reduced due to modernisation of the process and foreign workers, who are more accessible at any time, are more privileged to do overtime. It is averred that the *Skilled Workers/Operators* constitute the biggest portion of the total workforce in the factory.

It has also been averred that Management has maintained that their wage structure should be limited to 11 years of service and no provision for workers with long years of service. The Management proposal did not have a fixed incremental system; the increments would differ from year to year. This proposal implies that workers over 11 years of service and above their top point in their structure would have no wage increase except for compensation under the *Additional Remuneration Act*.

On the second point in dispute concerning the issue of disturbance allowance, the Union contends that Management is not agreeable insisting that no worker will be compelled to work before 7 am.

On the issue of vacation leave, the Union has averred that only workers covered by the *Electrical and Mechanical Workshop, Road Haulage and Office Attendant Remuneration Orders* benefit from 2 months of vacation leave to be spent abroad or locally after 10 consecutive years of service. Factory Workers are excluded and Management has maintained that they would follow the *Factory Employees (Remuneration Order) Regulations* and grant overseas leave after 15 years of service. In view of the stand of Management, a vast majority of the Factory Workers will never be able to afford an air ticket to benefit from overseas leave.

THE RESPONDENT'S AMENDED STATEMENT OF CASE

DCSL has notably averred that the Disputant reported a labour dispute in the matter before the *Commission for Conciliation and Mediation* (the "CCM") on 13 February 2014. There were several points in dispute of which some were dropped or resolved to the satisfaction of the parties. The three items not resolved have been put before the Tribunal by way of voluntary arbitration.

On the issue of wages, the Respondent has put forward the following reasons in contending that the demands of the Union are unreasonable and unfair:

- (a) The Respondent has always applied the maxim equal pay for equal work;
- (b) There is no discrimination on the part of the Respondent as regards the remuneration of its categories of workers;
- (c) As per law, the different employees at DCSL are categorized in the following *Remuneration Orders*: *Factory Workers RO* (219 employees including 80 expatriate workers); *Road Haulage RO* (74 employees); *Office Attendant RO* (4 employees). There are other categories of employees, namely: garage/mechanic boiler (16 employees), cleaners (6 employees) and watchmen (7 employees);
- (d) The salary structure which is in place at DCSL is compliant with the *Remuneration Orders* as prescribed by the legislation and amendment by the yearly salary compensation prescribed by Government (as per Annex A, Table 1 enclosed with the Statement of Case);

- (e) Notwithstanding the *Remuneration Orders*, the existing salary structure at DCSL provides for a higher rate of salary (as per Annex A, Table 2 enclosed with the Statement of Case);
- (f) The Respondent complies with the *Additional Remuneration* regulation prescribed by Government and even pays an amount over and above the prescribed salary increase (as per table enclosed as Annex B with the Statement of Case);
- (g) There is no basis in the claim of the Disputant for a new wage structure;
- (h) The proposed increase is not sustainable and would have a direct adverse impact on prices claimed from clients, end of year bonus, overtime, refund of leaves, attendance bonus and Easter bonus; and
- (i) In respect of employees having more than 10 years, a monthly allowance '*prime de fidélité*' takes into account the years of service of an employee and the prime is thus commensurate to the years of service.

The Employer has also averred that foreign workers make 24.9% of its workforce. It has been reiterated that take home pay is constituted of a number of additional discretionary or fixed allowances; increasing take home pay by a significant amount.

On the dispute relating to vacation leave, it has been averred that the Employer has been applying vacation leave as per each of the four *Remuneration Orders* – i.e. the *Distributive Trades; Factory Employees; Road Haulage; and Office Attendant Remuneration Order* – and has always complied with the obligations of same. No employee has ever complained to the Respondent as to the applicability of the *Remuneration Orders*.

THE DISPUTANT'S REPLY

The Union in its Reply has notably stated that the Employer has always refused to sign a collective agreement with a proper wage structure.

The Union has precised its claim based on the introduction of a salary structure that:

- (i) will recognise years of service over and above the prescribed structure of remuneration orders;
- (ii) will enable proper distribution of wealth;
- (iii) will increase the basic wages of employees where the company was profitable and will positively impact on retirement benefits for both retirement gratuity and retirement pension; and
- (iv) will keep wages in price with market value.

It has also been averred that collective bargaining is mandatory and where the company has the capacity to pay, wages should be increased in a structured manner. There has never been any wage structure agreed between the Union and DCSL.

On the issue of the '*prime de fidélité*' which is paid as a monthly allowance to all the employees, the Union has averred that this is unilaterally decided by the employer and has no bearing on the basic wages of the employees concerned.

It has also been averred in the Reply that the strategy of the Respondent is leaning towards foreign employment. This will impact on local workers who will not be attracted to work at the Respondent due to the low wage package offered. Foreign workers would respond positively as they benefit from free food and free lodging over and above their cash benefits.

The Union with regard to the dispute as to wages would wish that the wages of the employees they represent be increased within a wage structure that will foster inclusive growth.

As regards the second issue in dispute, the Union has further averred that they will not insist on the payment of a disturbance allowance of Rs 75 for all employees starting work before 7 am as the Respondent before the CCM has confirmed that all employees called to work before 7 am will be paid extra hours.

On the issue of the dispute on vacation leave, the Union has reiterated that employees working in the factory are not benefitting from same. The Union has cited a recommendation of the *National Remuneration Board* (the “*NRB*”) in 2008 whereby the same among other benefits should apply indiscriminately to all sectors of the economy. A copy of the aforesaid recommendation is annexed to the Reply.

THE EVIDENCE OF WITNESSES

Mr Reez Chuttoo, trade unionist, deponed on behalf of the Disputant. He elaborated on the three points in dispute. Regarding the salary revision, the dispute dates from 2003, discussions were held in 2003 and 2004 and in 2005, they were before the *Industrial Relations Commission* (“*IRC*”). In discussion with Management, they made to understand that they cannot come up with a salary structure and were limited to an increase across the board. The Employer has recognised before the Commission that the workers have had a decrease in salary of about 25% basing himself on the findings of the *IRC* as overtime has diminished. They have been reforms, change and new machinery and the workers have had a decrease in wages. On the other hand, the employer is saying that big groups have closed down, they are in difficulties and cannot pay. Finally, a 2.5% increase was agreed in 2007 when an agreement was signed. In 2009 and 2010, demands were made anew and each time management stated that they cannot entertain the request and decided to give an increase. This has continued up to today.

Mr Chuttoo went on to state that despite Management stating that there is no money, the demand for more foreign workers has continued. There is an anomaly as foreign workers are more remunerated than local workers for the same work. The Management is discouraging local workers but asking for more foreign workers. The basic salary is the same, however a foreign worker benefits from free lodging, accommodation and free food which a Mauritian worker does not receive. He calculated these other benefits at Rs 3000 for the food. This is why it is necessary to relook at the Mauritian worker’s salary and put them in a salary structure.

The other issue, Mr Chuttoo stated, is that since 2005 many employees from DCSL have retired. They are in despair as they have had to re-enter the labour market or go into extreme poverty as their basic salary was so low that it did not generate a decent pension from the *National Pension Fund* to enable them to live decently. They are being punished, having worked for their whole life and to have entered into extreme poverty.

Each time they ask for an increase in salary, the employer states that they pay according to the *Factory Employees Remuneration Order* which dates since 2001 despite it being influenced by the consumer price index and the cost of living allowance which Government pays. However, it does not come to the full compensation depending on the inflation rate being based on the 2001 figure. Mr Chuttoo is comparing same to the *Office Attendant Remuneration Order* which has been amended in 2014. In the private sector hierarchy, the lowest grade the *Office Attendant's* or the *Messenger's* prescribed salary is around Rs 9,400 and earns Rs 400 for making tea and Rs 300 for cleaning, making the *Messenger* earn around Rs 10,000. On the other hand, an *Operator* working on a machine with 15 or 45 years of service earns Rs 9,165. At DCSL, the scale dates to 10 years and there is no increase after. There are workers at DCSL since 40 years still on Rs 9,165. There has been a complete abstraction to compensate workers with several years of service and when they retire, their contribution to the pension fund stops at 10 years.

Mr Chuttoo has also stated that the wage structure as per the *Remuneration Order* ("RO") is for 8 years. There is a quantum in the RO and a structure which guarantees a fixed incremental system. At DCSL, this has functioned according to the whims of Management. They have never entered into a fixed incremental system and have resisted a salary structure. The CMCTEU is a federal Union which is affiliated with the CTSP ('*Confédération des Travailleurs de Secteur Privées*'), a confederation. He is referring to other sister Unions covered by the *Factory Employees RO* for the market value in these sectors.

Mr Chuttoo has also stated that DCSL has known its moments (of profit), some big groups have closed and they have temporarily lost the hospital contract. Each time DCSL has stated that they are in a difficult position, the workers have understood. Each time their demand for 20% has been rejected to reach 2.5%. Each time they have put in abeyance their demand for a wage structure. The workers have noticed that DCSL has performed better by the number of new machines installed which have reduced overtime and lowered production cost. Overtime does not practically exist during week days. There has been increased wealth; the distribution has not been properly made and this is why it has taken so long for them to come before the Tribunal to justify their demands for a salary increase.

Mr Chuttoo has not insisted with the second point in dispute as the employees will be paid overtime. On the third dispute concerning vacation leave, Mr Chuttoo referred to the *NRB*

in 2008 when revising the *Block Making, Construction, Stone Crushing and Related Industries Remuneration Order* coming out with six points named 'issues with marked social bearing' which included vacation leave, mortality leave, leave in case of marriage of a child and wedding leave. The *NRB* has stated that there are six points which 'it ought to apply indiscriminately to all sectors of the economy except where some sectors warrant a different treatment'.

As from 2008, in all *ROs* which have been amended all have benefitted from vacation leave after 10 years. This has been adopted in collective agreements. At *DCSL*, 3 groups of employees benefit from vacation leave. They are the *Office Attendants, Road Haulage and Electrical and Mechanical Workshop* workers. There are a small handful of majority female workers who work in the factory who *DCSL* insist in the *RO* that they must benefit Overseas Leave after 15 years. Workers who cannot make ends meet, it is not easy for them to have a ticket and leave. This is why at *DCSL* there has been practically no one who has benefitted from same. *DCSL* is still resisting for this small group of workers who after 10 years benefit from 2 months of Vacation Leave. Considering the *NRB* recommendation, vacation leave has a marked social bearing and should apply indiscriminately to all sectors of the economy. Mr Chuttoo produced a copy of the *NRB* recommendation (Document A). He also produced a copy of the *IRC* report dated 28 March 2008 together with a covering letter dated 17 April 2008 (Document B).

Mr Chuttoo was also questioned by Counsel for the Respondent. He stated that he is relying on the report of the *IRC* showing that the package of employees was decreased by 25% following a reduction in overtime. The employer stated that they were in financial difficulties and they reduced their demands from 20% to 2.5% for a year solely. He agreed that as per the *IRC* report, the dispute was resolved to the satisfaction of both parties. He agreed that overtime has been systematically reduced at *DCSL*. On being shown a document (later produced as Document D) showing that payment for overtime has increased at the company 49% from 2013 to 2016, Mr Chuttoo recognised that the figures have increased but not for everybody, overtime is available on Saturdays and Sundays, not normally during the week. He also recognised that the basic pay figure has increased taking into account salary compensation and the increase the *CTSP* fought for.

On being asked whether *DCSL* pays over and above the compensation, Mr Chuttoo stated that it limits the erosion on salary; overall the worker is experiencing an erosion on the real value of his salary. On being referred to an updated copy of Annex A to the Respondent's Amended Statement of Case (later produced as Document E), he agreed with the calculation

that the company pays 19% over the prescribed *RO*. He agreed to the figures shown therein and with the calculations. Their demand is 33% more than the *RO*. He agreed that he is asking 12% more than what the company is paying. He agreed that for other grades, the company was paying more than the *RO*. The reason why they were asking for 33% above the *RO* is because the figure dates to 2001 and they have to bring purchasing power to 2016. They look at the market value (*Factory*) *Operators* are earning for similar jobs covered by the *Factory (Employees) RO*. He also referred to the (*Catering and*) *Tourism Industries RO*, where a launderer earns more. He also considers the *Household Budget Survey ("HBS")* conducted every 5 years where a family with one bread earner actually needs Rs 16,000 – 17,000. Thirdly, there is a hierarchy in the private sector with the Messenger who is at the bottom of the ladder earning Rs 9,900. The fourth element is that the *RO* dates from 2001 and the figure has to be brought to 2015. He also stated that the applicable *ROs* are being distorted and that the anomalies need to be corrected to establish justice. He has taken into account the capacity to pay of the company in his figure and even asked before the Tribunal but did not receive the information.

On being shown pay slips that workers can earn up to Rs 30,000 with a basic salary of Rs 8,000, Mr Chuttoo stated that he does not agree to same as they are asking for a basic salary increase, food security for 45 hours per week and not asking for workers to work to death for a year. In being referred to the various allowances which amount to 14 months of salary at DCSL, Mr Chuttoo reiterated that the Union is asking for an increase in the basic pay taking into account retirement at 60 or 65 years; food security is linked to basic pay.

Mr Chuttoo also stated that DCSL is in a quasi-monopoly situation. Other competitors are not at the level of the Respondent. He is aware that hotels do their own laundering and they have taken a part of the market from DCSL. He is not aware of clients who have left DCSL. He is aware of hotels who have joined DCSL. He does not agree, in referring to the BDO report, that the figures advanced by the Union are not justified. He is not aware of the number of foreign workers employed at DCSL. There is a quota of foreign workers a company can employ and this differs.

Mr Chuttoo, on the issue of Vacation Leave, insisted that the recommendation of the *NRB* should apply to all sectors basing on the recommendation itself and did not agree that it applied solely to the *Block Making, Construction, Stone Crushing and Related Industries RO*. Mr Chuttoo is not aware of the proposal of DCSL on the issue to the effect that if someone has not taken his overseas leave, he would be paid same upon retirement so as not to lose same.

Mr Zaid Sairally, Driver, was called on behalf of the CMCTEU. He works at DCSL as a driver since aged 23. He does not think his remuneration is enough for him to live. He does not do overtime every day, only 3 times a week and the weekend; one week on and one off. He cannot refuse to do overtime and earns more with overtime. He works more with overtime and this affects him. He works 45 hours per week according to the law. It is not good for his health; he has to work a lot. It also affects his social life.

Upon questions from Counsel for the Respondent, Mr Sairally notably stated that overtime comes automatically with his work. As a Driver, he also earns a phone allowance, an unloading allowance, tea and meal allowance, attendance bonus and a mobile allowance which are above his overtime. He also receives the end of year bonus as well as Easter bonus, which is 14 months' salary for the year.

Mr Louis Saul Roussety was also called on behalf of the Disputant. He works as a machine operator in the factory at DCSL since 12 years. He earns a basic pay of Rs 9,165 per month and a gross pay of Rs 10,179. He also receives overtime in the sums of Rs 660 and Rs 881, a bonus on overtime of Rs 40 as well as the *prime de fidélité*, attendance bonus and tea allowance in the sum of Rs 345 altogether. Mr Roussety produced his pay slip for the period 21.07.2016 to 20.08.2016 (Document C). He also stated that there is no overtime; he works one Saturday and one Sunday on and one Saturday and one Sunday off. He is married with two children and as the head of the family, his income is not sufficient. He has to contract debt which he reimburses when he earns his bonus in December. He needs an increase in salary and feels that the workers in the factory also need same. He has been waiting for an increase in salary since 10 years.

Mr Roussety was also questioned by Counsel for the Respondent. He stated that last year his basic pay was about Rs 8000 and agreed that the company increased his salary over the Government compensation rate. At the moment, there is no possibility of working overtime. He is willing to work overtime. It is not possible for a *Factory Operator* with a basic pay of Rs 10,000 to earn Rs 32,154. He agreed that he can increase his salary through overtime and has not refused to do same.

In light of the *NRB* recommendation produced by the Disputant (Document A), the Tribunal called Mrs Fowdar-Seesurrun, Vice-Chairperson of the *NRB*, as a witness to adduce evidence in relation thereto. She notably stated that the recommendations being referred to is an opinion expressed by the *NRB* pertaining to the block making and construction sector. The procedure at the *NRB* is to make recommendations to the Minister who is free to accept, to reject, accept part of it or to refer it back to the Board for further consideration. The witness also stated that the recommendation on vacation leave appears to be more favourable than what there is in the block making and construction sector. The recommendation is an opinion expressed by the Board at that time and (the Board) has since been reconstituted. She also stated that the *Factory Employees (Remuneration Order) Regulations* has not been reviewed since 2001. The *Regulation* has been amended to include the additional remuneration as per the *Additional Remuneration Acts*.

Mrs Ferozia Nuseeb, Human Resource Manager, was called to depose on behalf of DCSL. She was referred to two documents coming from DCSL which showed the *RO* (rate) for the years 2015 and 2016 and the amount paid by the company in terms of salaries. She produced these two documents, i.e. one showing overtime payable (Document D) and the other showing the salary prescribed by the *RO*, the salary implemented by the company, the Union proposal and the comparison (Document E). DCSL does not agree to the proposals of the Union on the increase of the basic salary. The salary paid by the company is more than the *RO*. Taking the example of the *Factory Workers RO*, they pay over and above what is prescribed for each year. When there is an increase, the company adds more to it, e.g. when there was an increase of Rs 600, the company paid each employee Rs 780. This depends on how the company performs and the percentage that may be increased. This is decided by the Board of Directors. Last year, the increase was Rs 250 and they added 50% on top and above.

Mrs Nuseeb also stated that the basic salary and the salary earned at the end of the month are different. Most of what the workers earn over their basic salary is discretionary, e.g. for *Factory Workers*, the tea and meal of Rs 15 per day; the attendance bonus; the meal allowance; loyalty bonus (*'prime de fidélité'*) of Rs 13 per unit. For *Drivers* in the *Road Haulage* category, they receive a telephone allowance of Rs 150 per month and Rs 450 on top and above as they have to give a helping hand to load and unload. *Helpers* earn Rs 150 to collect cash when delivering door to door. They also pay an Easter bonus which represents a months' salary. A worker is entitled to 14 months' salary in a year. Overtime is performed daily at DCSL in view of the nature of the work, for every Rs 1 basic salary increase she has to add Rs 1 in overtime and there is a bonus paid on overtime. *Cleaners* earn an allowance of Rs 500 per week. She then produced a document showing the *'Discretionary allowance payable to employees'*

(Document F); a table showing the '*prime de fidélité*' (Document G); and a '*Table de bonus de presence*' (Document H). She also produced a table of pay slips for the grades of Factory Operator – in charge of packing and quality, Factory Operator – in charge of washing, Helper, and Driver (Document J) which shows the attendance, tea and meal, responsibility, mobile and overtime allowances. The table shows that a Factory Operator with a basic (salary) of Rs 10,570 earned Rs 34,000 in 2015 and Rs 40,497 in 2016.

Mrs Nuseeb went on to state that there is a substantial amount which comprises overtime. DCSL works seven days a week and they depend a lot on their hotel clients to whom they have to honour their commitment. Overtime plays a part in the collection time and the delivery and consequently there is overtime for the employees. Overtime is not applicable to all the grades and they have to persuade employees to stay and work overtime. If a person is willing to do overtime, he will not be refused same. The witness (Mr Roussety) who deponed is a Factory Operator who hangs the garments and irons them. According to Document J, a Factory Operator earns Rs 8,790 in December 2015 and Rs 9,165 in March 2016 and with overtime, it amounts to Rs 34,649.12. Referring to the pay slip of Mr Roussety produced as Document C, she stated that his overtime is less as they have not given him overtime and he has not performed overtime. She confirmed that the trend of overtime is increasing.

Mrs Nuseeb also produced a table of the salary compensation paid at DCSL since 2012 (Document K) which shows the Government Prescribed Rate and the Company Rate. The increase is a forecast how much more may be paid based on profitability and clients. Last time there were demands for a salary increase of 5%, they went before the CCM and finally they gave an increase of 2.5%. When there is an increase, it impacts directly on overtime. DCSL employs 70 women who are unskilled and were promoted to Attendants in 2007. Their salary was reviewed in October 2013 and made them become Operators. They receive the same salary as male employees for the same work.

Mrs Nuseeb could not say that they have a stable clientele. They work with hotels, with airlines, hospitals and they suffer a lot from the competition. Hotels also do in-house laundry as well as split laundry with certain garments which they receive in part. She produced a list of hotels who have left DCSL (Document L). She does not agree that DCSL is in a situation of quasi monopoly in the laundry sector and produced a list of other dry cleaning companies (Document M) in competition with DCSL. Split laundry is a loss to the company and affects their profitability.

Mrs Nuseeb stated that she does not agree to the increase proposed by the Union as it is excessive and that they use the *RO* as a guideline and pay on top and above. The company will not be able to sustain an increase like this. The figure proposed by DCSL is a reasonable one. There are 82 employees who according to her list have left just before 60 or after and have been paid severance allowance. They even look after their retirees offering them dental and optical care on a case by case basis. In cases of bedridden retirees, the company gives a permanent assistance up to the death of the person and a death grant thereafter as prescribed by law. What is being done for retired employees is in the culture of DCSL.

On the issue of vacation leave, Mrs Nuseeb stated they deal with 4 *ROs*, Office Attendant having 4 workers, Road Haulage having 70 workers, Distributive (Trades), and Factory Workers. The Factory Workers *RO* provides for overseas leave after 15 years. If the *RO* is amended, the company will comply. In cases where the worker cannot travel, management guarantees a month's salary. This was proposed by DCSL since they were at the *CCM*. [page 53]

Mrs Nuseeb also produced a *communiqué* titled '*End of Year Extra Hours*' (Document N) prepared for December 2015 and January 2016. For December 2016 and January 2017, they have prepared one with even more days. A worker who does all these supplementary hours can receive two months of his basic salary or even more. The company gives an additional incentive to work as people are needed for work during this period. [page 55]

On the issue of foreign workers, Mrs Nuseeb stated that it is not only DCSL that recruits them and because of overtime on a daily basis, they are a backup for DCSL. Mauritian workers are not a reliable source for overtime work. They have 60 foreign workers and above 250 Mauritian workers. DCSL has a quota of 105 foreign workers. DCSL also operates a 24-hour, 48-hour and same-day service. The basic salary of the foreign worker and the Mauritian worker is the same. According to the law, foreign workers benefit from accommodation and food. The foreign worker costs more to the company as there is the ticket, accommodation, etc.

In view of the recent amendment made to the *Factory Employees (Remuneration Order) Regulations*, Mrs Nuseeb produced a document showing the amendments made to *ROs* effective 1 December 2016 (Document O) and an updated document comparing the amended *RO* wage rate with the company pay rate and the union wage proposal (Document P) for the

grade of Factory Operator. Referring to the latter document, she confirmed that the company pays on top and above the *RO*.

Mrs Nuseeb was questioned by the representative of the Disputant. She notably stated that the highest rate of pay for an Operator stops at 8 years. She is aware that a worker's contribution for his pension is on his basic salary. She agreed that for a worker earning Rs 9,165, over 40 years, there would be about Rs 7000 less to the National Pension Fund threshold. She also stated that the regulation is not only for DCSL but for the whole of Mauritius. The pay packet of an employee at the end of the month is more than Rs 16,000. On being shown payslips of DCSL's employees showing that they earn Rs 9,856, Rs 10,267, Rs 8,665, etc. monthly, Mrs Nuseeb stated that there are deductions such as check-off, NPF and loans. The bundle of pay slips were produced (Document Q). It was put to the witness that the company is paying about Rs 300 more than the prescribed rate of the *RO*, Mrs Nuseeb stated that the Government finds it is a correct salary and the company tops up giving discretionary allowances. She could not say what percentage of the salaries goes to the workers and what percentage to administrative cadre, the managers. She could not say how many of retired employees of DCSL were in the job market. She agreed that most Factory Workers were women doing manual jobs. The company follows the *ROs* and has given increases at the discretion of management and when the Union made demands before the *CCM*.

Mrs Nuseeb was re-examined in relation to the pay slips produced (Document Q) by her Counsel. She stated that the memo of overtime in the pay slip is not included in the gross pay figure as every week they pay the overtime and give the employees a payslip. The employees get 5 payslips in a month, 4 weekly and 1 monthly. The memo is not added and is a reminder for how much the employee got for the 4 weeks' overtime. When the memo is added, the pay is more. On a pay of Rs 15,771, there is the deduction of NPF, NSF and check-off which makes Rs 400 of deductions. On the issue of retired employees, Mrs Nuseeb added that there is a Coordinator at DCSL who is employed full time to look after retired employees. Mrs Nuseeb also stated that as per the nature of the work at DCSL, a worker has to do overtime as the work demands it.

Mr Georges Chung Ming Kan, Certified Accountant, was also called on behalf of the Respondent. He has been deputed by BDO to present a report to the Tribunal, which was mandated by DCSL. The report is entitled '*Financial Forecast for Dry Cleaning Services*'. They were mandated to calculate the financial forecast if there is an increase of 32% how this will affect profitability and if there is an increase of 5%, how this will affect DCSL's financial

situation. He produced the report (Document R). Referring to the 'Sensitivity Analysis' section of the report, the witness stated that they are concerned with scenario 2 and scenario 4 as the hospital contract has been renewed. In scenario 2, if there is an increase of 32% to Factory Workers, the labour costs will increase consequently and the company will find itself with losses in 2017 – Rs 3 million, 2018 – Rs 9.6 million, 2019 – Rs 10.1 million and 2020 – Rs 9.2 million. In scenario 4, they have the hospital contract and there is an increase of 5% for the Factory Workers; the company will make profits of Rs 22.6 million, Rs 24 million, Rs 25 million and Rs 27 million from 2017 to 2020. With these profits, the company will make a return on capital of about 13%. The norm for a risky business is between 15% and 20%. The 32% increase will lead to losses of Rs 10 million per year and a reduction in the capital of the company and the company will have to finance its losses by increasing capital, taking loans or overdrafts.

Mr Chung Ming Kan was also questioned by the representative of the Disputant. He notably stated that the figure of 15% to 20% for percentage return on share capital is the norm. There is no survey of the cost of labour in his report. His mandate was to calculate the impact of the increase of 32% on the profitability of the company. He has not been mandated to look into the fairness or not of the labourers. His report has not been mandated to look into the social cost of the enterprise. In the report, Rs 126 million represents the labour cost of Factory Workers only. The salaries of Managers are included in the admin expenses. He does not have the figures of the number of Factory employees nor for the number of Managers.

THE DISPUTE AS TO WAGES

The terms of reference is asking the Tribunal to ascertain whether employees in the categories of *Mechanic/Foreman, Driver, Vehicle Assistant/Factory Attendant/Office Attendant, Security Guard/Factory Operator/Skilled Worker, and Cleaner* should have their wages readjusted in accordance with the proposed wage scale on a point to point basis according to their years of service. The terms of reference is also asking whether employees over 11 years of service should benefit from a 10% increase on their basic wage as from 1 January 2016 and an 8% increase as from 1 January 2017 on their basic wage.

The Union has put forward several arguments in support of its contention for the proposed wage structure to be implemented at DCSL. Mr Chuttoo, the Union representative, has emphasised that there has been a decrease in salary as overtime has diminished at the company. According to him, overtime is available during the weekends but not normally during

the week. In support, Mr Chuttoo called Mr Louis Saul Roussety, a *Factory Operator* as witness who stated that there is no possibility of working overtime and he is willing to do same. Mr Roussety has 12 years' experience at DCSL and earns a basic wage of Rs 9,165 per month. On the other hand, however, the other witness called by the Union Mr Zaid Sairally, a *Driver*, does overtime three times a week and during the weekends, one weekend on and one off. For Mr Sairally, overtime comes automatically with his work and this affects his social life as he has to work a lot.

Mr Chuttoo has also stated that there has been an increase in demand for foreign workers. According to him, the company is looking more towards foreign workers and is discouraging local workers. Although, a foreign worker earns the same basic wage as a Mauritian worker, he benefits from free accommodation and food. These benefits are also a reason why the Mauritian worker's salary must be reviewed and put in a salary structure according to the Union.

The Union is also concerned about workers who would be retiring and those who have retired. They argue that the basic salary of the worker is so low that it will not be able to generate a decent pension giving the worker no alternative than to re-enter the labour market or face extreme poverty.

The Union has also highlighted the disparity between the *Office Attendant* or *Messenger* to a *Factory Operator*, who is a skilled worker. The former earns around Rs 10,000 while the latter with 15 or 45 years of service earns a basic of Rs 9,165. There is no increase in the salary scale after 10 years of service at DCSL.

The Union is asking for a 33% increase over the *RO* and 12% more than what the company is paying. One of the reasons for this is because the *Factory Employees (RO) Regulations* dates back to 2001 and needs to be brought to 2016.

The Employer, on the other hand, is resisting any wage increase from the Union and has put forward its reasons in support of its stand. The foremost reason put forward by the Employer is that the take home pay is substantially more than the basic pay of the worker due to a number of discretionary allowances which the company grants to its workers. Indeed, from a document (Document F) that was produced by Mrs Nuseeb, the representative of DCSL, it has not been disputed that the company pays a *prime de fidelité* (loyalty bonus) to employees having completed 5 years of continuous service; a responsibility allowance to *Drivers* and

Helpers; a *Driver's* mobile allowance; tea and meal allowance; *Driver's* bonus; bonus on overtime; allowance for *Cleaners* and *Boiler Attendant*; attendance bonus; and Easter bonus representing a month's salary paid every Easter to all employees.

Mrs Nuseeb has also explained that the salary paid by the company is more than the *RO*. In the *Factory Employees RO*, they pay over and above what is prescribed for each year. The company even adds more to an increase when there is one as decided by its Board of Directors as has been evidenced by Document K produced. Indeed, this document shows that the company paid Rs 780 as salary compensation which is more than the Government prescribed rate of Rs 600 in 2016, which equates to 30% more.

On the issue of overtime, the nature of the work requires overtime by the employee at DCSL. According to the company, as per a document submitted (Document D), the trend of overtime has been on the increase showing a 49% increase in overtime payment from 30 June 2013 to 30 June 2016. The company runs 7 days a week as they have to honour their commitments to their clients in the hotel industry. Although overtime is not applicable to all grades, employees have to be persuaded to work overtime at the company.

On the issue of foreign workers, the representative of the company has recognised that they are a back-up in view of daily overtime work at the company. The more so as Mauritian workers are not reliable for overtime work. It was also stated that the company employs 60 foreign workers out of its quota of 105 foreign workers. On the other hand, it employs above 250 Mauritian workers. It has not been disputed that the foreign worker according to law benefits from accommodation and food and also costs more to the company.

As for retired employees, DCSL stated that it is in their culture to look after them offering them care on a case by case basis. The company even employs a Coordinator full time to look after retired employees.

The company has even commissioned a financial report prepared by Chartered Accountants BDO to gauge the impact that a 32% wage increase for its workforce would have on the financial health of the company. This report was produced by Mr Chung Ming Kan as Document R and demonstrated that according to forecasts, the company will find itself in losses if there is an increase of 32% to the wages of Factory Workers. The losses could be to the tune of Rs 10 million per year. It must be noted that this finding has gone almost unchallenged in the cross-examination of Mr Chung Ming Kan.

In the present matter, it is incumbent on the Tribunal to ascertain whether the Disputant has justified its demands for a wage increase as is being proposed in the terms of reference of the dispute.

The argument that overtime has diminished at the company does not hold any weight in light of the evidence ushered by Mrs Nuseeb and the table produced as Document D, which has shown the trend of overtime to be on the increase at DCSL. It would be pertinent to note that the table shows payment for overtime to be at Rs 22,867,345 on 30 June 2013 and at Rs 34,131,730 on 30 June 2016, which represents an increase of 49% over the period.

Mrs Nuseeb has from time to time emphasised that overtime is in the nature of the work at DCSL and workers have to be persuaded to work same. She even produced a bundle of pay slips (Document J) showing how a worker's salary can greatly increase with overtime work performed. It must be noted that the *IRC* report (Document B) which Mr Chuttoo is basing himself to state that overtime has diminished dates back to April 2008.

The witnesses called on behalf of the Union demonstrate the state of affairs as regard overtime at the company. The *Driver* Mr Sairally stated that he has to work overtime and works a lot; whereas the *Factory Operator* Mr Roussety stated that he cannot receive overtime even though he is willing to work same. Although there is more overtime for some grades compared to others, the Tribunal cannot subscribe itself to the overall view that overtime has diminished at DCSL.

Regarding the Union's argument that there has been an increase in foreign workers at the company, it must be borne in mind that DCSL has a quota of 105 foreign workers of which it employs only 60 foreign workers. This is about slightly over half of its allocated quota. It must also be noted that at the same time, above 250 Mauritian workers are also being employed by the Respondent company.

Although it has not been disputed that the foreign worker receives additional benefits, the Tribunal cannot find that it is the trend at DCSL is for more and more foreign workers to be hired to the detriment of Mauritian workers.

The Union has strongly advanced that the basic salary earned by the worker is not enough to generate a decent retirement pension. DCSL, on the other hand, has contended that it pays more than what is prescribed in the *RO* and provides special care to its pensioners on a case by case basis.

It must be noted that the present dispute is not about pensions, but about the implementation of a proposed wage structure at DCSL. Although, it may be that the basic wage of the worker may be on the lower end, it must not be discarded that DCSL is paying discretionary allowances which makes the take home pay of the worker more than what it should be.

It has not been disputed by the Union that DCSL pays more than what has been prescribed in the *RO*. Indeed, one of the reasons why the Union advanced that it was looking for a 33% increase is because the *Factory Employees RO Regulations* dates back to 2001. However, this cannot be a valid reason to state that it is the Employer who should pay more when it is the function of the National Remuneration Board (the “NRB”) to review the *RO* upon instructions from the Minister for Labour and Employment Relations and not for the Employer to take the initiative for same.

It would be useful to note what has been stated by *Dr D. Fok Kan* in *Introduction au Droit du Travail Mauricien 1/Les Relations Individuelles de Travail, 2ème édition, p.94* on the nature the *RO*:

Les conditions de travail prévues par le législateur ne constituent toutefois qu'un minimum. Les différents RO disposent même que la rémunération payée à un employé de même que les conditions de travail peuvent être plus favorables que celles prévues par le décret. Inversement ni la rémunération ni les conditions de travail ne peuvent être moins favorable que celles prévues par le décret. Les législations du travail sont en effet d'ordre public et les parties ne peuvent y déroger si ces dérogations ont pour effet de désavantager l'employé.

Likewise, in the case of *Central Water Authority v Narainsamy* [1989 SCJ 45], the Supreme Court stated the following in relation to the *RO*:

Since a remuneration order only regulates minimum conditions of employment, employers are bound to provide no less than those conditions although they may provide more advantageous conditions. This latter faculty is more often than not specifically, if perhaps needlessly, spelt out in numerous remuneration orders.

It cannot also be overlooked that the employer has an inherent power to organise its business. In the case of *Hong Kong Restaurant Group Ltd v Manick* [1997 SCJ 105], the Supreme Court made the following observation:

It must be borne in mind that the employer has the inherent power of administration and he can organise his business according to the exigencies of the service but within the labour law and its remuneration orders.

From a perusal of Document P produced by the Respondent, the wages paid by the company have been compared to the wages prescribed in the *RO* for the grade of *Factory Operator* and it has been shown that the company pays between 4.6% and 5.1% more than what has been prescribed in the *RO*. The prescribed rate of the *RO* has also been compared to the wages demanded by the Union and it has been shown that the Union's demands are between 10.4% to 27% more than what has been prescribed in the *RO*.

It must also be noted that the *RO* is not concerned with one particular worker but with the whole of the workers that are covered by it employed by DCSL. Thus, in taking into account the capacity to pay of the Employer, it cannot be reasonably stated that DCSL should pay more than what it is presently paying to its labour force.

As has been seen from the BDO Report produced by Mr Chung Ming Kan (Document R), the company would be incurring losses if it were to accord to the demand of the Union for a 32% wage increase. As per *section 97* of the *Employment Relations Act*, the Tribunal should have not only regard to the capacity to pay of the enterprise but also *inter alia* to the need to increase the rate of economic growth and to protect employment and to provide greater employment opportunities as well as the principles and best practices of good employment relations.

It may very well be that an increase in wages to the tune of 32% would lead to less employment opportunities at DCSL and may even lead to workers being laid off due to adverse financial results at the company.

The Tribunal cannot therefore find that DCSL is not paying a decent basic wage to its employees, the more so it has not been disputed that the company is paying over and above what has been prescribed in the *RO*.

The Tribunal, having considered the arguments of the Union and the stand of the Employer as well as its supporting documentary evidence, cannot award that the workers at DCSL should be put on the proposed wage structure and those with over 11 years of service be granted a 10% increase on basic pay on 1 January 2016 and an 8% increase as from 1 January 2017.

The dispute as to wages is therefore set aside.

THE DISPUTE AS TO DISTURBANCE ALLOWANCE

Under second point in dispute of the terms of reference, the Tribunal is being asked whether a disturbance allowance of Rs 75 should be paid to all employees who are called to start work before 7 am.

It must be noted that the Disputant in its Reply to the Respondent's Statement of Case has stated that they will not insist with the payment of a disturbance allowance of Rs 75 for all employees starting work before 7 am as the Respondent has confirmed before the *CCM* that all employees called to work before 7 am shall be paid extra hours.

Furthermore, it must be noted that whilst adducing evidence, the representative of the Disputant Mr Chuttoo stated that he shall not be insisting with the second point in dispute as the employees will be paid overtime.

The dispute as to disturbance allowance is therefore set aside.

THE DISPUTE AS TO VACATION LEAVE

Regarding the third dispute of the terms of reference, the Tribunal has to decide whether the provision of vacation leave should be extended to employees who are governed by the *Factory Employees (Remuneration Order) Regulations*. The provision of vacation leave is already provided to employees governed by the *Distributive Trades, Office Attendants and Road Haulage Remuneration Order Regulations* as is applicable to the Employer.

On this dispute, the representative of the Union has notably relied on a recommendation of the NRB (produced as Document A) made when revising the *Block Making, Construction, Stone Crushing and Related Industries Remuneration Order* in 2008. The NRB in the recommendation qualified the item as having a marked social bearing and stated that it ought to apply indiscriminately to all sectors of activity. According to the recommendation, the Board stated:

The Board, concerned as ever with, on the one, hand the existence of a provision in the R.O. which can hardly find application on account of the costs involved in funding an overseas holiday and, on the other hand, the necessity for an employee to have a break after a certain length of loyal service, opts once more for consistency with its previous recommendations.

Mr Chuttoo for the Union elaborated on the argument that the Factory Employees benefit from Overseas leave after 15 years. He stated that it is not possible for them to afford an air ticket and leave, the more so as they cannot make ends meet. In essence, he is asking for the Factory Employees to benefit from vacation leave as is the case of other employees working under the *Office Attendant, Road Haulage and Electrical and Mechanical Workshop Remuneration Orders*.

The Employer, in relation to this demand, stated that if the *Factory Employees (RO) Regulations* is amended to provide for vacation leave instead of overseas leave, the company shall comply. DCSL has even proposed that where the worker cannot travel, they would guarantee a month's salary for the worker so that the worker will not lose this benefit.

It should be noted that the *Factory Employees (Remuneration Order) Regulations 2001* provides in its *Second Schedule* the following in relation to overseas leave:

12. Overseas leave

- (1) *Every employer shall grant to every employee reckoning continuous employment with him for a period of at least 15 years, one overseas leave of at least 2 months to be wholly spent abroad.*
- (2) *At least one month of the leave specified in subparagraph (1) shall be with pay, such pay being effected in advance and at least 7 days before the employee goes abroad.*
- (3) *For the purposes of annual leave, sick leave and end of year bonus, such overseas leave shall be deemed to constitute attendance at work.*

The provision on overseas leave emanates from the Remuneration Regulation, which is within the ambit of the *NRB* to formulate. It is not within the mandate of the Tribunal to review a term and condition of employment promulgated by the Minister of Labour and Employment Relations upon a recommendation of the *NRB*. The *NRB* having found that the item of overseas leave is of marked social bearing should undertake to review the other Remuneration Regulations where this provision of overseas leave still exists and replace it with e.g. vacation leave as has been the case in the *Block Making, Construction, Stone Crushing and Related Industries Remuneration Order*. The Union cannot ask to Tribunal to intervene where it is incumbent on another institution to effect the necessary changes that it demands.

It must be noted that the Tribunal is not saying that the demand of the Union under this dispute is unreasonable. However, it is not for the Tribunal to step into the shoes of the *NRB* to declare that overseas leave is not appropriate, that it should be replaced by vacation leave which can be spent locally or abroad or both and make recommendations for same. It must also be noted that the provision of overseas leave under the *Factory Employees (Remuneration Order) Regulations 2001* applies not only to the workers it covers at DCSL but to all workers employed in factories around the island.

The Tribunal would therefore strongly urge the *NRB* to take appropriate steps to review the necessary Remuneration Regulations, i.e. the *Factory Employees (Remuneration Order) Regulations*, where the provision of overseas leave for employees who have 15 years and over of loyal service with the employer exists and be replaced by something more appropriate and realistic, such as vacation leave to be spent locally or abroad, so as to afford the employee a reasonable break from his service.

Another option for the Union would be to hold meaningful negotiations with the Employer and reach a collective agreement on the issue of vacation leave for the company's Factory Workers. Pursuant to *section 95 (1) and (1A) of the Employment Relations Act*, employers and workers may only abate from a Remuneration Regulation by way of a collective agreement which covers matters specified in the relevant Remuneration Regulations.

In the circumstances, the Tribunal cannot award that the provision of vacation leave be extended to those employees falling under the *Factory Employees (Remuneration Order) Regulations 2001* at DCSL.

The dispute as to vacation leave is therefore set aside.

SD Shameer Janhangeer
(Vice-President)

SD Ramprakash Ramkissen
(Member)

SD Rajesvari Narasingam Ramdoo (Mrs)
(Member)

SD Renganaden Veeramootoo
(Member)

Date: 20th March 2017