EMPLOYMENT RELATIONS TRIBUNAL

ERT/RN 50/2018

AWARD

Before: -

Shameer Janhangeer	**-**	**Vice-President**
Vijay Kumar Mohit	**-**	**Member**
Karen K. Veerapen (Mrs)	**-**	**Member**
Kevin C. Lukeeram	**-**	**Member**

In the matter of: -

The Union of Employees of the C.E.B. and Other Energy Sectors

Disputant

and

Central Electricity Board

Respondent

The present matter has been referred voluntarily to the Tribunal by the Union of Employees of the C.E.B. and Other Energy Sectors and the Central Electricity Board ("CEB") pursuant to *section 63* of the *Employment Relations Act*. The Terms of Reference of the dispute reads as follows:

> *Whether for 2014 the quantum of the Bonus should be three quarter month as proposed by the CEB or one month as claimed by the Union as per content of the Collective Agreement signed between parties on 2nd July 2014.*

Both parties were assisted by Counsel. Mr D. Ramano appeared for the Disputant Union, whereas Mr R. Chetty S.C. appeared for the Respondent instructed by Mr S. Sookia, Attorney-at-Law. Both parties have submitted their respective Statement of Case in the matter.

THE DISPUTANT'S STATEMENT OF CASE

The Disputant Union has notably averred that the issue of the Productivity Bonus was considered in an *Award* dated 15 August 2013 by Mr S. B. Domah (excerpt enclosed as Annex 1) which stated that the CEB should continue to pay the bonus and that parties should agree on the conditions to be attached to the Productivity Bonus during collective bargaining for a new Collective Agreement. A Collective Agreement was signed between the Union and the CEB in July 2014. The agreement notably provided for the setting up of a Monitoring Committee chaired by the Head of the Human Resource Department.

It is averred that the terms of reference of the committee *inter alia* includes to spearhead, monitor and ensure effective implementation of the Performance Management and Corporate Bonus Scheme; to report to the Board any element to be reviewed if necessary, after the testing on a pilot basis of the Corporate Bonus and the Individual Performance Bonus; and to vet the amount of Performance Bonus payable every year prior to the submission to the Board. The duty of the Monitoring and Implementation Committee ("MIC"), in the performance of its functions, is to seek approval of the Chief Executive for fundamental process changes and implement such modifications whenever required to ensure that the system is simple to administer and to deliver on its objectives.

As per the existing agreements, each year, three-quarter month's wages should be paid to each employee on the basis of the Corporate Criteria; and a working paper based on the performance of the CEB as measured by the achievements under the five criteria of the Corporate Bonus should be prepared by technicians appointed by the Chief Executive. This report determines the additional quantum to be paid which is an additional amount of three-quarter month; the maximum amount payable is 1.5 month's salary. The report is to be submitted to management. The next step is for the MIC to vet the amount of the Performance Bonus payable for the year – which was not done. Fourthly, the MIC vetted report should be submitted to the Board for ratification – which was not done. Hence, the Union contends that the original one-month's bonus should continue to be paid pending the application of the aforementioned procedures.

In 2013, a full month's bonus was paid. In 2014, the Corporate Criteria should have applied as a pilot scheme and not as a final one as per the Collective Agreement – this was not done. The Union nevertheless analysed the document as per letter from the CEB dated

31 August 2015 (Annex 2 to the Statement of Case) and requested that a Technical Report be prepared for reviewing the second and fifth criteria (Productivity and Plant Reliability respectively) and that the fourth criteria (Project Realisation) be reassessed to take into account only projects under the total control of the CEB, not by contractors, and not beyond realistic realisation. Management, instead of complying with the provisions of the Collective Agreement, referred the Technical Report directly to the Board of the CEB and only three-quarter of the month was paid. The Corporate Criteria should have been amended, agreed upon and applied for the year 2015. The Technical Report (Annex 3 of the Statement of Case) recommended the payment of a full month of the Productivity Bonus. The Union therefore claims that for 2014, a full month's bonus should be paid. It has also been averred that once the Corporate Criteria are finalised, the parties have to agree on the individual criteria. This should have been tested in 2015 and applied in 2016 but nothing has been done.

THE RESPONDENT'S STATEMENT OF DEFENCE

The CEB has notably referred to the contents of *paragraph 106* of the *Award* dated 15 August 2013 (the "*Domah Award*") in relation to the Productivity Bonus, its quantum and the duration of the one-month bonus. *Paragraphs 110* and *111* thereof also state that the *Award* is limited to 2009 and 2013 on the matter and cannot go beyond and that Productivity Bonus is a continuous management tool and may change year by year. Reference has also been made to the Collective Agreement signed on 2 July 2014 which was valid from 1 July 2013 to 30 June 2017, notably at page 146 on the criteria of the Productivity Bonus for the year 2014 and at page 148 in relation to calendar year 2015.

The Respondent admits that each year three-quarter month's wages should be paid to each employee on the basis of the Corporate Criteria; admits that a working paper should be prepared by technicians but that the computation of the Corporate Criteria leads to a total amount equivalent to three-quarter month and not an additional amount of three-quarter month as averred by the Disputant; and admits that the MIC shall vet the amount of Performance Bonus payable for the year and avers that figures were communicated to the MIC on 31 August 2015. The Respondent denies that the original one-month's bonus should continue to be paid pending the application of the procedures.

The Respondent avers that following the computation based on the recommended Corporate Criteria, it obtained a score of 77.8% whereby an interim payment for half-month's salary was effected; following a revision of the Productivity Bonus paid to the workers, the score was computed at 61.5% following which an additional one-quarter of the salary was effected so that the payment is equivalent to the score and quantum as laid in the Collective Agreement. The bonus for 2013 was paid and for the year 2014, the Collective Agreement provides that '*for the calendar year 2014, the Productivity Bonus shall be based on the performance of the organisation as measured by achievement under a set of corporate criteria*' and as such there was no pilot scheme. The Respondent avers that it was not bound to follow the opinion of the Disputant inasmuch as it was communicated with a different opinion reached by an independent consultant – copy of the report is enclosed with the Statement of Defence. The Respondent avers that it has always complied with the provisions of the Collective Agreement.

The Respondent denies that the Corporate Criteria should have been amended and agreed for 2015 and avers that it was the computation which needed to be amended not the Corporate Criteria itself. The computation was duly amended and communicated to the Disputant on 31 August 2015. The *Domah Award*, which awarded one-month Productivity Bonus, lapsed since June 2013 and therefore the criteria based upon the *Award* was no longer applicable. The Board did not approve the recommendation of the Technical Report and instead retained the services of an independent consultant to give his report on the issue. The payment of the bonus in years 2015, first six months of 2016, and 2016/17 was effected on an assessment and score obtained under the Corporate Criteria.

The Respondent has also averred that as the performance management scheme was not effectively implemented, the CEB decided to pay Productivity Bonus based on the Corporate Criteria and based on the performance appraisal obtained from the Head of Department in line with the Collective Agreement of 2014. From July 2009 to June 2013, eligible employees were paid their Productivity Bonus as per the *Domah Award* and as from July 2013, eligible employees were paid the aforesaid bonus as per the Collective Agreement 2013 – 2017.

THE EVIDENCE OF WITNESSES

Mr Jack Bizlall, Negotiator, was called to depose on behalf of the Disputant. He stated that before the *Domah Award*, the question of one-month bonus was raised and maintained in the Collective Agreement in force up to 2013. The *Domah Award* said that the Collective Agreement should be maintained until it is amended as the CEB has been reducing the agreed one-month bonus to half. The CEB had to refund for two years in which they paid only half a month. The *Domah Award* also states that the CEB has got the right to change the formula with the assent of the Union and whatever will be applied will be have to be discussed and agreed with the Union. In negotiations, the CEB proposed one and half month based on fixed criteria, of which he underlined that two (elements of the criteria) were not reachable.

Mr Bizlall went on to state that the Collective Agreement signed in 2014 after the *Domah Award* mentions that if the formula is to be changed, it has to be tested as a pilot and if it proves to be favourable, it becomes an agreement. Page 145 of the Collective Agreement (produced as Document A) states how to test the system of payment. It also provides for the setting up of a MIC which has to report to the Board. The report should go to the Board through the MIC. No testing has been done and without the test, there was no possibility to check whether the six criteria applicable could be converted into one-and-a-half-month bonus. The scheme for the individual performance criteria of the bonus has not been worked out. Regarding the corporate element, a report went to the Board without proceeding through the MIC and recommended one-month bonus.

Mr Bizlall also stated that the Board appointed a lawyer to verify the Technical Report. The lawyer drew up a report stating that one-month bonus was not due. The Auditor who verified the report and approved the one-month bonus was suspended. The MIC, which submits the report to the Board for approval, was set up and was not chaired by the Human Resource Manager but by the Head of the Production Department. Although the employer stated that it is abiding by the Collective Agreement, it has at no time applied page 145 of same. The Collective Agreement is being renegotiated, the CEB has agreed that the formula for the bonus is not applicable and it has been agreed to appoint a consultant to come with a new formula to be applied as from next year. Things would have been solved if the CEB had applied page 145 of the Collective Agreement. There is a case before the Supreme Court involving the Auditor and they do not want to raise the second part of the problem as this would adversely affect the CEB's case before the Supreme Court. In good faith, he is proposing to consider this matter under the *Domah Award* and to leave the second part in abeyance.

Mr Bizlall was questioned by Counsel for the Respondent. He agreed that the case for the Union is that the corporate element consists of four steps, that some of these steps have not been followed and there has been procedural irregularity. As there is a vacuum as steps have not been followed, the Pre-existing Agreement in the *Domah Award* must be applied. An extract of the *Domah Award* was produced (Document B). The *Domah Award* stops in 2013 and parties agreed on a new formula wherein there are conditions to be respected. As the conditions have not been respected, the new formula cannot be applied and the fall-back is the pre-2013 agreement. They had to protest asking that the minimum quantum be respected when the CEB only paid half a month and then three-quarter month was paid. When they accepted three-quarter month, they told the CEB to proceed with the committee so as to finalise the other three-quarter month as the bonus was one and a half month.

Mr Gangana Ramsamy, Ag. Human Resource Executive, deposed on behalf of the Respondent. He stood by the Statement of Case submitted by the CEB. He stated that as the *Domah Award* limits the payment of the bonus to 2013, the CEB has gone according to the Collective Agreement signed in 2014. The MIC was set up and was chaired by the T & D (Transmission and Distribution) Manager. The person who chaired was not according to the agreement. He does not know if the committee vetted the amount of the Performance Bonus.

Pursuant to cross-examination by Counsel for the Disputant, Mr Ramsamy notably stated that the Collective Agreement signed in 2014 was backdated and took effect on 1 July 2013. Mr Ramsamy was referred to *paragraph 106* of the *Domah Award* and page 145, sub-paragraph (c) of the Collective Agreement. He agreed that the MIC shall vet the report and then send to the Board. It is a mandatory step of procedure and has not been done. He however referred to pages 146 and 148 of the Collective Agreement. The CEB has gone according to what was agreed. Referring to a letter dated 31 August 2015 (Annex 2 to the Disputant's Statement of Case), he agreed that figures were communicated to the MIC on 31 August 2015 and that the bonus had already been approved by the Board on 20 August 2015. He does not agree that there is a procedural flaw as the MIC was concerned for the year 2015 and not for 2014 as per the Collective Agreement.

Mr Ramsamy further stated that there was no pilot testing in connection to the bonus in 2014 but that performance management and corporate bonus would be applicable in 2015. The lawyer's report (at Annex D of the Respondent's Statement of Case) refers to a report by the technicians of the CEB audited by the CEB's Internal Auditor. The lawyer, Mr

Colunday, is the legal counsel of the CEB but was an independent consultant for purpose of this assignment. The Technical Report recommended one-month bonus and proposed same to the Board. The Chief Internal Auditor also went according to one-month bonus.

In re-examination, Mr Ramsamy explained that the was a revision of points allocated to items in the first report following Mr Colunday's report. Points were not properly allocated and this is where one-month became three-quarter month.

THE SUBMISSIONS OF COUNSEL

Learned Counsel for the Disputant notably submitted that as a new Collective Agreement has not been agreed or the previous Collective Agreement has not been properly implemented, the previous conditions should apply. The Collective Agreement has set procedural steps and as there is a procedural flaw, the previous conditions remain. The Union protested to half-a-month bonus and that is why there is a dispute.

Learned Senior Counsel for the Respondent, on the other hand, submitted on the expiry of the *Domah Award* in July 2013 referring to the second paragraph of *paragraph 106* of the *Award*. The Collective Agreement, as per the contents of page 146 thereof, then applies for the years 2014 and 2015 and there cannot be an automatic fall-back position.

THE MERITS OF THE DISPUTE

In the present voluntary arbitration, the Terms of Reference of the dispute is asking the Tribunal to enquire into whether the quantum of the bonus for the year 2014 should be three-quarter month or one-month as per the content of the Collective Agreement signed on 2 July 2014. It should also be noted that three-quarter month bonus has been paid by the CEB but the Disputant Union is claiming one-month bonus for 2014.

From the evidence adduced by the parties, the payment of the Productivity Bonus at the CEB was subject to a Pre-existing Agreement ("PEA"). The *Domah Award*, which

arbitrated on issues relating to terms and conditions of employment between the Disputant Union and the CEB, enounces on the PEA as follows:

> *106. The principle of Pre-existing Agreement (PEA) applies. The PEA has never been formally terminated between the parties who, admittedly, have been at pains to look for a joint solution which is due for consideration in another independent Report. As such the Productivity Bonus equivalent to one month salary as opposed to ½ a month still holds good as a default system.*
>
> *The CEB argument is retained, however, on the duration. A Productivity Bonus cannot be decided without reference to productivity and the one month cannot be permanent. The present award of one month as such lapses in July 2013.*
>
> *The above is also subject to what I state under Dispute (g). The issue of Productivity Bonus should also form part of the Performance Management System and be on the table of discussion for the next Collective Agreement which covers the period July 2013 – June 2016.*

It is worthwhile to note that the *Domah Award* lapsed in July 2013. Indeed, this stance has also been reflected at *paragraph 110* of the *Award*:

> *110. Productivity bonus, profitability bonus and performance bonus, performance management system are all different concepts and different criteria are applicable to each concept. It is unrealistic to expect that the complexity of issues involved may be resolved summarily or in one untested exercise. Any system set up needs in the Mauritian context to be properly conceived and properly applied. It has also to be periodically reviewed. <u>My award is limited to 2009 and 2013 on the matter and cannot go beyond</u>.*
> *(The underlining is ours.)*

A Collective Agreement was thereafter signed between the parties on 2 July 2014 and applied for the period 1 July 2013 to 30 June 2017. The issue of the Productivity Bonus is to be found at Appendix 17 of same. The Collective Agreement has notably provided for the setting up of a MIC to spearhead, monitor and ensure effective implementation of the Performance Management and Corporate Bonus Scheme. As per the Collective Agreement, notably at page 145 under the sub-heading '*Institutional Arrangements*', the MIC is to be chaired by the Head of the Human Resource Department and *inter alia* comprises all heads

of departments or their representatives. The MIC shall also vet the amount of performance bonus payable each year prior to submission to the Board.

The Collective Agreement has, at page 146, notably expounded on the topic of the Productivity Bonus as follows:

1. PRODUCTIVITY BONUS

The Board shall operate a Productivity Bonus Scheme (PBS) based on modern trends for differential rewards to low and high-performers. The amount of bonus payable would be linked with a basket of criteria that fairly reflects Board's business success.

Pending the effective and successful implementation of the Performance Management System to evaluate employees' performance, one month bonus shall be applicable for calendar year 2013.

For calendar year 2014, the productivity bonus shall be based on the performance of the organization as measured by achievement under a set of corporate criteria as follows:

…

The Collective Agreement goes on to list the elements of the corporate criteria, i.e. Line Losses; Productivity; General Breakdown excluding cyclone and other natural calamities; Project Realisation; and Plant Reliability, as well as the table of the quantum of bonus payable in accordance with the score achieved based on the criteria. E.g. a score of 70 to less than 85 points would amount to one-month bonus and for a score of less than 70 points, the quantum would be three-quarter month.

The Disputant is contending that the MIC did not vet the amount of Performance Bonus payable for 2014 and that the MIC vetted report should have been submitted to the Board for ratification.

As per the evidence adduced in the present matter, the representative of the CEB has admitted that the procedure of the MIC vetting the report and forwarding same to the Board is a mandatory step and that this has not been done. The said representative also agreed, referring to a letter dated 31 August 2015 from the CEB, that the bonus had been approved by the Board on 20 August 2015 and that figures were communicated to the MIC

on 31 August 2015. However, Mr Ramsamy has contended that the MIC was concerned with the year 2015 and not for 2014 as per his understanding of the Collective Agreement.

It has not been disputed that a Technical Report (appended as Annex 3 to the Disputant's Statement of Case) was prepared by the Officer-in-Charge (HR) Mr S. Sahye and reviewed and submitted by the Officer-in-Charge of the CEB Mr S.K. Thannoo on 26 March 2015. Same was submitted to the Board as per its heading '*For Consideration and approval of the Board*'. The Technical Report assessed the criteria which resulted in a score of 77.8 points and recommended the payment of one-month's salary for the consideration and approval of the Board. An Internal Audit Report dated 6 March 2015 was also prepared on the 2014 Productivity Bonus and justified the request for a Productivity Bonus equivalent to a month's salary.

However, the Board did not follow the recommendation of the Technical Report and appointed an Independent Consultant to assess the correctness of the figures submitted to the Board of Directors of the CEB by the Human Resources Department and the Internal Audit Department in their recommendations for a bonus equivalent to one-month's salary for 2014. The report of the Independent Consultant dated 24 July 2015 (Annex D to the Respondent's Statement of Case) led to the Board eventually paying three-quarter month bonus for the year 2014 after protests from the Union.

The contention of the CEB's representative is that the Technical Report should not have been submitted to the MIC for the year 2014 and referred the following paragraph at page 146 of the Collective Agreement in support:

> *For the calendar year 2014, the productivity bonus shall be based on the performance of the organization as measured by achievement under a set of corporate criteria as follows…*

In the same vein, Mr Ramsamy also referred to the following from page 148 of the Collective Agreement:

> *For calendar year 2015, subject to approval of the Monitoring and Implementation Committee of the effective implementation of the Corporate Bonus and Performance Management Schemes, the productivity bonus shall be based on either:*

a) *50% Corporate Criteria and 50% Individual Criteria; or*

b) *100% Corporate Criteria.*

It should not be ignored that the Collective Agreement, at page 145, has provided for the MIC to vet the amount of Performance Bonus prior to submission to the Board as follows:

c) *the Monitoring and Implementation Committee shall also vet the amount of performance bonus payable <u>every year</u> prior to submission to the Board.*

(The underlining is ours.)

Although, it is clearly stated in the Collective Agreement that the Productivity Bonus shall be based on the performance of the organisation measured by achievement under a set of corporate criteria as listed for 2014, it is not expressly stated that the MIC would have no part in the operation of the Productivity Bonus Scheme for the year 2014. Neither does sub-paragraph (c) – at page 145 of the Collective Agreement – curtail the MIC's duty to vet to any given period or calendar year. In fact, the aforesaid sub-paragraph clearly refers to the words '*every year*' when setting out the duty of the MIC to vet the amount of performance bonus payable prior to submission to the Board.

Moreover, as it is expressly mentioned that the MIC shall for the year 2015 approve the effective implementation of the Corporate Bonus and Performance Management Schemes, it cannot be said that the MIC would not be habilitated to monitor and ensure the effective implementation of the Corporate Bonus Scheme for the year 2014 nor has this been stated.

In view of the MIC's mandate under the Collective Agreement, the Tribunal cannot therefore concur that the MIC would not have any role to play in the monitoring and implementation of the Productivity Bonus for the year 2014 and notes that its role would include the vetting of the Technical Report recommending the amount of Performance Bonus to be paid prior to its submission to the Board. The Tribunal has, in the same vein, noted that the Chair of the MIC is the Transmission and Distribution Manager as per Mr Ramsamy and not the Head of the Human Resource Department as provided for in the Collective Agreement.

Moreover, it has not been disputed that as per the evidence of the Respondent's representative that figures were submitted to the MIC on 31 August 2015. However, this was after the approval of the payment of the outstanding balance of the Productivity Bonus by the Board on 20 August 2015 as appears from the letter dated 31 August 2015 from the CEB.

The Disputant having contended that procedures have not been followed in relation to the payment of the Productivity Bonus for the year 2014, now asserts that the fall-back position would be the payment of one-month bonus in accordance with the *Domah Award* or in accordance with the PEA. In essence, it has been submitted on behalf of the Disputant that the conditions existing prior to the Collective Agreement signed on 2 July 2014 should prevail.

As previously noted from *paragraph 106* of the *Domah Award*, the issue of the Productivity Bonus at the CEB was subject to a PEA which set the bonus at one-month salary. The *Domah Award* granted one-month bonus whilst stating that the award of same will lapse in July 2013. At *paragraph 110* of the *Domah Award*, it is expressly mentioned that the award is limited to 2009 and 2013 and cannot go beyond.

Despite the periodical validity of the *Domah Award*, it cannot be said that payment of the Productivity Bonus would cease upon the expiration of the *Award*. In fact, the issue as per the Terms of Reference is one of quantum and not whether the Productivity Bonus ceases upon the expiry of the *Domah Award*. Indeed, the *Award* itself has recognised the bonus as a variable continuous obligation as may be noted from *paragraph 111* of same:

> *111. Productivity Bonus is a continuous obligation of every one concerned in the CEB, employee and employer. <u>It is also a continuous management tool and may change year by year</u>.*
> *(The underlining is ours.)*

The *Domah Award* has, in fact, paved the way for the continuation of the Productivity Bonus in stating that it should be on the table of discussions for the next Collective Agreement while at the same time recognising that it cannot be decided without reference to productivity. In this context, it would be appropriate to note the following from *paragraph 103* of the *Award*:

103. The issue in this dispute is whether that the CEB should be restored to its original payment of productivity bonus equivalent to one month salary pending the formulation of better criteria for the application of same.

Indeed, the parties were not idle and did sign a Collective Agreement on 2 July 2014 setting out procedures in relation to the Productivity Bonus. It has not been disputed that the Collective Agreement applied for the period 1 July 2013 to 30 June 2017.

However, as has been previously noted, certain procedures of the Collective Agreement in relation to the Productivity Bonus have not been followed for the year 2014. Would this necessarily mean that the CEB would have to pay one-month Productivity Bonus for the year 2014 as was the case previously under the PEA and the *Domah Award*?

The Tribunal cannot find, in the absence of any supporting authority from the Disputant, how the CEB should pay one-month bonus for the year 2014 inasmuch as the *Domah Award* has clearly lapsed in July 2013 and the Collective Agreement now applies, for the period 1 July 2013 to 30 June 2017, in relation to the issue of the Productivity Bonus. The Tribunal cannot also find that the PEA, which the *Domah Award* used as a principle for maintaining the one-month bonus (at *paragraph 106* of same), would find its application in relation to the quantum of the Productivity Bonus as the Collective Agreement has clearly taken over since July 2013. Moreover, the *Domah Award* itself has recognised that the Productivity Bonus may change year by year (at *paragraph 111*) and that it cannot be decided without reference to productivity (at *paragraph 106*).

It should also be noted that the Collective Agreement has made no provision for the payment of the Productivity Bonus based on the PEA or on the *Domah Award* should it be the case that the procedures relating to its payment have not been respected or followed.

The Tribunal has also taken note of the Disputant's contention that payment of Productivity Bonus should have operated as a pilot scheme. In this vein, the Collective Agreement has, at sub-paragraph (b)(v) of page 145, provided that the MIC is '*to report to the Board any element to be reviewed if necessary after the testing on a pilot basis of the Corporate Bonus and the Individual Performance Bonus*'.

Given that for the year 2013, the Collective Agreement provides for one-month bonus pending the effective and successful implementation of the Performance Management System, the pilot testing could have operated for the year 2014 whereby the Productivity Bonus was based on performance of the CEB measured under a set of corporate criteria (i.e. Corporate Bonus (*vide* page 148 of the Collective Agreement)). Bearing in mind the steps which have not been followed prior to the Board's approval of the Performance Bonus for 2014, the Respondent ought to have been alert to the responsibilities of the MIC as listed at sub-paragraph (b), at page 145, of the Collective Agreement.

The Tribunal, however, cannot find that a vacuum has been created by the non-respect of procedures relating to the Productivity Bonus for the year 2014 inasmuch as the relevant provisions of the Collective Agreement clearly do find their application for the year under reference. The CEB being a body incorporated by statute, the obvious remedy would have been for the Disputant to apply for leave for a judicial review of the CEB's decision to pay three-quarter month bonus at the time of the decision on grounds of procedural irregularity.

Moreover, the Tribunal cannot substitute itself for the Respondent and pronounce that a month's Productivity Bonus is payable for the year 2014 as in so doing, the Tribunal would be making an arbitrary assessment of the quantum of the Productivity Bonus payable for 2014 without having had the parties' follow the required procedures provided for in the Collective Agreement.

An agreement is meant to be respected and the Collective Agreement signed on 2 July 2014 is no exception to this rule. It is trite law that a Collective Agreement is legally binding on the parties to the agreement and on the workers to which the agreement applies. Besides, it is apposite to note that the *Employment Relations Act* explicitly provides that an employer shall comply with the provisions of a Collective Agreement.

The Tribunal would, in a spirit of good and harmonious employment relations, therefore strongly urge the CEB to reopen the exercise in relation to the payment of the Productivity Bonus for the year 2014 and properly follow the agreed procedures set in Appendix 17 of the Collective Agreement signed on 2 July 2014, notably under the sub-heading of '*Institutional Arrangements*' at page 145 of same, to enable it to come to a proper assessment of the quantum of the Productivity Bonus for the year 2014. The chairing

of the MIC would also have to be reviewed as it is clearly stipulated in the Collective Agreement that same should be chaired by the Head of the Human Resources Department.

The Tribunal thus cannot either award that for the year 2014, the quantum of the Productivity Bonus should be three-quarter month as proposed by the CEB or that it should be one-month as claimed by the Disputant Union as per the content of the Collective Agreement signed on 2 July 2014.

The dispute is therefore set aside.

SD Shameer Janhangeer
(Vice-President)

SD Vijay Kumar Mohit
(Member)

SD Karen K. Veerapen (Mrs)
(Member)

SD Kevin C. Lukeeram
(Member)

Date: 11th March 2019