

PERMANENT ARBITRATION TRIBUNAL

AWARD

RN 740

BEFORE

Rashid Hossen - Vice-President

S. C Chan Wan Thuen- Member

B. Ramburn - Member

In the matter of :-

Union of Employees of CEB &
Central Electricity Board

The following disputes were referred to the Tribunal by the Minister for Labour and Industrial Relations by way of compulsory arbitration for settlement under Section 82(1)(f) of the Industrial Relations Act 1973 as amended:-

- (1) "Whether the CEB should pay all the arrears due concerning the implementation of the July 1999 - June 2002 Collective Agreement;
- (2) Whether the CEB employees, having stagnated in June 1999 on the top point of their respective old salary scale, should be converted to their new salary scale on basis of one increment for every year of service completed after having reached the top wages in their old salary scale; and

- (3) Whether the post of Senior Office Attendant as advertised on 18 June 2001, should be filled by persons who have applied thereto and whether the transfer of the Despatch Rider to the post of Senior Office Attendant should be cancelled.”

The applicant was represented by Mr M. Gujadhur, of Counsel, and the Respondent was assisted by Mr E. Ribot, of Counsel.

In its Statement of Case, the applicant avers with respect to the first dispute that a new salary structure was introduced with hypothetical effect from the 1st July 1999 and was applied with effect from the 1st January 2001. This new salary structure is an integral part of the Collective Agreement covering period 1.7.1999 - 30.6. 2002.

For period 1.7.1999 - 31.12.2000, the CEB has decided to pay only 55% of total arrears due, i.e, on basic salary, overtime and end-of-year bonus.

Each employee has received his back pay on basis of the following formula:

Normal Back-Pay x 41

75

It is further averred that the claim of the Union does not fall “within the exclusive jurisdiction of the Court”. However any aggrieved employee may refer the matter to the Industrial Court.

The first contention of the Union is that the total amount due is Rs 83.3 M and not Rs 75 M. 55% of Rs 83.3 M make Rs 45.8 M and NOT Rs 41 M.

The second contention of the Union is that in case the financial situation of the CEB does not allow for an immediate payment of the totality of the

arrears due, an agreement can easily be reached for such payment to be scheduled over an agreed period of time.

The Union hereby requests that the Tribunal awards a schedule of payments of balance of arrears due, I,e, Rs 42.3 M.

As regards the second dispute, the applicant avers that the new salary scales have been applied with a conversion table that did not take into account the fate of employees who had reached their top salary scale as at 1st July 1999 or before.

All conversion systems applied in the past at the CEB up to July 1999 have provided for payment of increments to those employees who have marked time.

The CEB has proposed to adjust fully the salary of those employees who have retired from the CEB.

The Union is claiming that all the employees who have marked time be paid 1 increment for each year they have stagnated at the top of their previous respective salary scale.

A similar case at the Mauritius Ports Authority was referred to Private Arbitration and a payment of one increment was awarded.

The averment regarding the third dispute is that in 2001 1 post of Senior Office Attendant was advertised and the following employees, inter alia, submitted their applications:

- a. G. Govinden

- b. V. Jhurkut
- c. V. Jootun
- d. C. Moonsamy
- e. M. Moorghen
- f. V. Purusram
- g. B. Ramdane
- h. S. Seegoolam
- i. R. Suradu
- j. V. Gobin

One Mr Gobin applied for his transfer from his substantive post of Dispatch Rider to that of Senior Office Attendant.

The Employer unilaterally disregarded all the applications and approved the request of transfer of Mr Gobin.

The posts of Dispatch Rider and Senior Office Attendants carry the same salaries but are two different posts.

The Union contends that the post of Dispatch Rider is a post combining the duties of Office Attendant and Driver and therefore cannot be equated to the post of Senior Office Attendant and consequently the rules of transfer is not applicable in this particular case.

The Union also contends that the Mr Gobin was neither the senior most candidate, was not qualified for the post and did not possess any experience to perform the duties of Senior Office Attendant. The Union is consequently claiming that the transfer of Mr Gobin be cancelled.

In its Statement of Case the respondent avers with respect to the first dispute that there is no Collective Agreement for period July 1999 to June 2002.

Following a dispute between the CEB Staff Association and the CEB on matters relating to the review of salary structure and conditions of service, the Permanent Arbitration Tribunal recommended, inter alia, the grant of 21% across the board salary increase (in its Award RN 333 in April 1997) and "a Salary Committee to fully review classification of posts and new salary structure".

All 3 Unions, the CEB Staff Association, representing the Staff grades and the UECEB and CEBWU both representing the Manual grades, started negotiations based on the Management Services Department Report and as a result of which the two Manual Workers' Unions signified their acceptance to the Board's offer. No agreement was reached with members of the CEB Staff Association who maintained their dispute at the level of the Permanent Arbitration Tribunal.

The Salary Commission was appointed in December 1998 and its term of reference encompassed all grades in Central Electricity board.

The Salary Commission known as the Bundhoo Commission after the name of Mr D. Bundhoo, Chairman of the Salary Commission made recommendations in relation to the salary structure for the period from July 1999 to June 2002.

The recommendations were submitted to the Central Electricity Board and the respective unions for the purposes of negotiations.

In December 2000, the Board signed a Memorandum of Understanding with the Unions which included, inter alia.

Payment of the revised salaries as from January 2001.

Payment of arrears on a pro-rata basis for the amount of Rs 41 million.

Renewal of the forthcoming Salary Structure in July 2005 instead of July 2002.

The Respondent further avers that it was an agreed clause of the Memorandum of Understanding that the Central Electricity Board would effect the payment of a sum of Rs 41 M instead of Rs 75 Million.

Though in a precarious financial situation, the Board signed the Memorandum of Understanding in good faith, with a view to maintain a sound industrial climate. The Board was convinced that the package offered, in such a particular context by taking into consideration the CEB's capacity to pay, was the best that could be achieved.

It is averred that the financial situation of the CEB has evolved as follows:

December 2000	Overdraft of Rs 1.5 billion
December 2002	Overdraft of about Rs 500 million

The Board had to effect two successive tariff increases and converted part of the overdraft into a long-term loan facility.

According to Respondent's forecast, which is based on a set of assumption, the overdraft will turn around Rs 1.8 Billion by end of 2006.

There is very little that CEB can do to reduce the increases in expenditure as they are related to increases in commodity price abroad and increase in the value of foreign currencies. The only remedial measure available to CEB is to have a cost based tariff i.e all increases in costs are reflected in electricity tariffs.

In the Memorandum of Understanding signed in December 2000, CEB clearly pointed out that an amount equivalent to Rs 41 million out of Rs 75/81 million would be paid as arrears in FULL AND FINAL SETTLEMENT.

There is no undertaking on the part of the Board that there would be further payment of any balance.

One of the reasons being that Salary is part of an element of cost which is taken into consideration when preparing tariff increase and any further payment would not be recoverable from consumers. Such cost cannot be shifted to the consumer with retrospective effect.

The projected cash flow of the Board does not show such a favourable balance as to justify the demand of the union.

The Respondent avers that the claim under dispute No 2 cannot be acceded to as the conversion of salaries is made according to the Master Conversion Table provided by the Salary Commission Report.

If such grant of one increment is accepted this in fact would amount to a disguised increase in salary and correspond to a higher percentage increase than the one recommended by the Commission.

In answer to this dispute, the Respondent avers that the post of Senior Office Attendant (Head Messenger) was advertised in March 2001 with closing date 6 April 2001. Ten applications were received including one request for transfer to the vacant post from Mr. V. Gobin, Despatch Rider.

Mr V. Gobin joined the Board on 17.11.1972 as Cleaner and was promoted to the post of Office Attendant (Messenger) on 1.2.1985. He started to perform duties of Despatch Rider on 19 November 1992 and was subsequently appointed Despatch Rider on 10 January 1994.

The post of Despatch Rider was basically similar to that of an Office Attendant plus driving Board's vehicles to perform his duties.

The request of transfer of Mr. V. Gobin, as Senior Office Attendant, is in compliance with section 6.2.2 of the Internal Regulations No.1 which stipulates "where an employee wishes to move from his post to a vacant one. In this case, the employee shall have to wait until the post is advertised to submit his application. The decision to accept or to reject his transfer rests with the Head of Department, provided that if there is more than one request for transfer, the normal selection procedure shall be followed."

Dispute No 1 “Whether the CEB should pay all the arrears due concerning the implementation of the July 1999 - June 2002 Collective Agreement”

According to applicant’s representative, Mr Bizlall whose profession is that of Accounts Clerk, this dispute is related to a July 1999 Collective Agreement and it concerns the back-pay to the application of a new salary structure applied in January 2001. The parties discussed the issue of payment of arrears and an agreement was reached on 27th December 2000 by the two parties. A document has been produced to that effect and according to the witness, it was a decision of the CEB to pay only part of the arrears, which represent around 55% of the amount due, and at paragraph 7 of the document, the Union expressed no objection regarding that decision provided that it was effected without prejudice to the Union’s right to declare any dispute on the remainder balance. He stressed that the Union did not agree to receive the 55% as a final and full settlement.

Witness further stressed that there is no such agreement and basically when there is an amount due, one party cannot unilaterally decide that, what it pays will be tantamount to a full and final settlement. The 45% balance remains due and the Union has not foregone its right to ask for it.

The witness conceded that at the time the agreement was signed, the financial situation of the CEB was very bad, with bank overdraft to the tune of 1.5 billion. But he added there has been an increase in the salaries of Grade Staff and he cites as example the year 1998 - Rs 112 M + Rs 13 M for the year 2001, so that for those years, the increase has been from Rs 125 M to 159 M. Whereas for the manual grades, i.e the Union he represents, in 1998, it was Rs 151 M and though salaries have increased by Rs 8 M 1999, the total amount has remained the same, Rs 151 M simply because there has been a reduction of overtime. According to the witness, each time the CEB grants an increase, it decides to reduce overtime so that at the end of the day whatever increases

there may have been the pay packet remains the same as it swaps from overtime to basic salary.

The witness referred us to a document issued by the CEB which shows according to him the turnover of the CEB has increased to Rs 4.5 billion, “une augmentation du taux de croissance du turnover beaucoup plus haute que le taux de croissance des salaires des travailleurs manuels” which as at 2002 represented 3.5% of the turnover, so that wages compared to turnover is decreasing over the years.

Mr Bizlall concluded that even if the CEB has its financial difficulties in the years 1999 to 2001, the fact of paying such arrears would have only a marginal effect on its budget, and with the two tariff increases, the first one to the tune of 20% and the second one to the tune of 12%, the CEB’s overdraft has been reduced to Rs 45 M.

In contrast to the testimony of the Union’s main witness Mr Charitar, the Chief Internal Auditor at the CEB, categorically denied that the Respondent is in a financial position to effect payment of the balance of Rs 34 M. According to him, the bank overdraft of the CEB at the end of December 2001 stood at around Rs 1.4 billion. The possibility of the cost element going up in within a very short period cannot be ruled out. The CEB has unresolved liabilities that includes a Pension Fund Deficit Pension obligations, arrears to Government, Excise Duty and cash flow projection. The Board faces the risk of external factors like the increase in the price of fuel.

The witness further stated that as at September 2003, the overdraft had been reduced from Rs 1.4 billion to Rs 45 M. The CEB converted some of the overdrafts into a long term loan after having been pressed by the Bank. In other words, the Board had to effect a debt restructuring. No doubt the consumers have had to foot the bill and the overdraft of Rs 1 billion was reduced in 3 years time by increasing rate by 32%.

He admitted that the CEB's financial situation has now improved drastically. But effecting any payment is a question of priority, as the Rs 41 M in issue cannot be taken in isolation. The CEB has other debt priorities and 'this Rs 41 M did not seem to be among the CEB's priorities as the Pension Fund Deficit reaches Rs 55 M. The CEB has withheld paying Government their interest and refund of loan since 1999 and now as to date it has reached Rs 400 M, i.e they are curtailing capital expenditure on a priority basis and quoting the witness: "it's not only 41 million, we have a host of payment to make, a host of investment, a host of maintenance to do". The witness also explained the circumstances the initial payment of Rs 41 M was effected. He agreed that the increased rate of 32% passed on to the consumers brings an additional income of nearly Rs 1 billion every year. Had that money been used without any cost increases, it would have taken the CEB only one year to clear its overdraft. The debt of the CEB represents approximately 50% of its assets which is around Rs 9 billion, and the percentage of wages with regards to the turnover when one takes into account the income of all CEB employees would be around 15%. According to the witness, they have done their projection and if things are not taken care of in time, the overdraft might increase by 2006. Also, employees of CEB do receive their increments every year over and above the compensation of 2 to 3% as cost of living allowance.

Mr T. Gunnoo, the Human Resource Manager posted at the CEB denied that the recommendation of the Bundhoo Report was binding on the parties nor did he agree that it would apply with effect from 1st of July 1999. He however stated that there were afterwards negotiations to see which parts of the report should be applicable and thus resulted in the memorandum of agreement which was signed by both parties. Following such negotiations, it was decided that the amount of Rs 41 M would be paid and the Union reserved its right to go to the Permanent Arbitration Tribunal.

The Memorandum of Understanding which carries a title "Agreement" is a document that speaks for itself and it is apposite to reproduce it in toto:-

"Between

Union of Employees of the CEB, represented by its President, Mr G. Peeharry

Party on the One Hand

Central Electricity Board, represented by its Chairman, Professor A.S. Kasenally

Party on the Other Hand

Pending signature of a new collective agreement, it is hereby covenanted as follows:

Wage

1. The implementation by the Party on the Other Hand, of the New Wage Structure as recommended at paras. 4.27, 4.38, 4.39, 4.40, 4.41 and 4.48 by the Salary Commission with effect from 1st January 2001.

2. The conversion of wages from the existing structure to the New Wage Structure shall be made as per the Salary Commission's Master Wage Conversion Table on a hypothetical basis with effect from 1st July 1999.

Pension

3. The Party on the Other Hand has agreed
 - (i) to review the monthly pension and pension benefits for employees having retired with effect from 1st July 1999 on the basis of wages recommended by the Salary Commission;
 - (ii) to adjust the death and disablement benefits of employees with effect from 1st July 1999.

With regard to adjustment of monthly pension on the basis of new wages for employees having retired prior to July 1999 the Party on the Other Hand has agreed to refer the matter to the CEB Board for a decision.

Conditions of Service

4. The implementation by the Party on the Other Hand of the Other Conditions of Service as recommended by the Salary Commission with effect from 1st January 2001 except for the recommended alternative Productivity Bonus. Parties have agreed to open discussion specifically on such matters as replacement and actingship allowances and **any other matter** related to conditions of service.

Arrears

5. Party on the Other Hand has decided that payment of arrears in full and final settlement for period 1st July 1999 to 31st December 2000 will be made on a pro-rata basis for an amount of Rs 41 M instead of the total amount of Rs 75 M, i.e each employee shall draw a pro-rata of the total arrears in respect of adjustment of Normal Time, Overtime and End-of-year bonus as follows:

$$\frac{\text{Normal Back-pay} \times 41}{75}$$

75

Duration of Agreement

6. The Parties have agreed that conditions of service shall not be reviewed in July 2002 and that only wages may be adjusted in the light of changes occurring in comparable costs in the public service, para-statal bodies and in other comparable sectors. A proper revision of wages and conditions of service shall be effected in July 2005.

Union's Reservations

7. The Party on the One Hand no no objection to the Party on the Other Hand implementing its decisions, provided this is effected without prejudice to the Union's right to declare any dispute mainly regarding payment of total arrears and better conversion method for employees having stagnated at the top of the existing wages scale.

The contents of the letter dated 27 December 2000 will be brought to the attention of the Board for a decision.

Negotiations on New Collective Agreement

8. Parties agree to start negotiation on the new Collective Agreement as from 15th January 2001 and have undertaken to carry out such negotiation according to a time table to be agreed between them.

Made in good faith and in two originals this 27 December 2000 at Curepipe.

(sd) G. Peeharry
President

Union of Employees of the CEB

(sd) Professor A.S. Kasenally “
Chairman

Central Electricity Board

(The Tribunal highlighted paragraphs 5, 6, and 7).

There seem to us to be no dispute that there are arrears due but the CEB decided to pay only Rs 41M. The document referred to above at paragraph 5 shows that the CEB agreed to settle an amount of Rs 41 M “instead of the total amount of Rs 75 M.” The CEB conceded therefore there was an amount due in excess of the Rs 41 M, although they are now attempting to assert otherwise.

True it is that the CEB included words like “in full and final settlement” in the said document, the fact remains that it is they, the CEB which decided so. The Union did not object to that course of action since they included a proviso in that Memorandum of Understanding, I,e their right to declare dispute regarding payment of total arrears among other things.

One cannot read the document as being a finality of “understanding” or “agreement” and we find no difficulty in interpreting that although according

to the CEB, it was in full and final settlement, it was indeed only according to them. It therefore amounts to a unilateral decision that cannot be binding on the other party who has expressly put in a proviso to it . We do not find evidence upon which we can rely in support of the Respondent not owing the balance.

We are not here to disturb the continuing process of debt reduction by the CEB, but the agreement signed by both parties would have had a different outlook had there not seen the insertion of a proviso. As much as the party on the other hand claims that the payment was in full and final settlement of arrears, the party on the one hand sticks to the condition of the agreement to declare a dispute with respect to total amount of arrears. This agreement, concluded in no uncertain and ambiguous terms leaves room for the Tribunal to intervene towards settlement of the dispute.

We consider therefore that the Respondent owes the balance and despite their financial situation not yet looking rosy, the payment of the arrears would not have a heavy impact on their budget as it is going to be spread over a 2 instalments period, all to be settled within a period of two years.

The report cannot be said to be binding when one looks at the circumstances the Commission was set up the submission of the report to parties concerned and the subsequent negotiation on the recommendations:

“

Introduction and Methodology

Setting Up of the Salary Commission

- 1.1 At its meeting of 1st December, 1998, the Board of Directors of the Central Electricity Board (CEB) approved the setting up of a Salary Commission to review the Salary and Conditions of Service of the employees of the CEB.
- 1.2 The Salary Commission was constituted as follows:
Mr Dan Bundhoo, Director at Rogers Co. Ltd, Chairman
Mr Jocelyn Fin, formerly Assistant Director at the Pay Research Bureau, Member and Mr. G. Mohammad Atchia, formerly Head, Establishment Cadre, Prime Minister's Office, Member.
- 1.3 Mr Harry Krishna Samboo, Manager at State Informatics Limited was designated to serve as Secretary (technical) to the Salary Commission.
- 1.4 Later, upon the withdrawal of Mr Atchia in January 1999 as Member of the Commission, Mr Cassam Bolaky, formerly Chief Labour Officer and recently Consultant at the International Labour Office, was appointed as Member.

Terms of Reference

- 1.5 The original Terms of Reference of the assignment as conveyed to the Commission in December 1998 are as follows:
The Salary Commission shall make recommendations to the Board on the following:
 - *A review of the Salary Structure, classification/grading of Posts and other conditions of service pertaining to the whole organization for the period July 1999 to June 2002.*

- *A review of the productivity bonus scheme based on losses of electricity.*

The Commission shall also pay regard to the following:

- (a) *the need to take into account the economical and financial status of the organization;*
- (b) *pay relativities in line with market realities, whilst considering the specificities of the Board;*
- (c) *the need to establish and maintain reasonable differentials in rewards between different categories of skills and levels of responsibilities;*
- (d) *the need to develop a rational pay structure by results and to relate as far as possible remuneration to increased productivity;*
- (e) *the need to update the job descriptions and job specifications in line with latest technological developments and new exigencies in the power sector;;*
- (f) *the need to re-assess the conditions of service so as to attract and retain competent and efficient resource persons required to maintain a high standard of service; and*
- (g) *the need to review the internal regulations.*

1.6 However, following an agreement signed between CEB Management and the Staff Association that put an end to the dispute on the terms of reference, the Commission was informed on the 15th September 1999 that the first part of the original terms of reference has been amended to read as follows:

" A review of the salary structure, classification/grading of posts and other conditions of service pertaining to the whole organization for period July 1999to June 2002."

1.7 Consensus had also been reached between the parties to the effect that the Commission should propose a lump sum in respect of period 1996-1999 instead of a new structure and that the conditions of service pertaining to the same period should not be reviewed."

We find that this dispute is related to the July 1999 Agreement and it concerns the backpay to the application of a new salary structure applied in January 2001.

The last paragraph cited above from the Bundhoo's Report confirms an amendment to the initial terms of reference whereby it would be "a review of the salary structure, clarification/grading of posts and other conditions of service pertaining to the whole organization for period July 1999 to June 2002" .

The content of the Bundhoo Report itself is evidence that it is not a binding document. Clause 6.2 on page 32 of the Report reads as follows: "the Board may find this report to be a useful base which could be subjected to modification, amendment, additions". The Report has, in fact, served as a basis for negotiations.

The Report had been submitted to the CEB and the Unions for the purpose of negotiations. Negotiations took place, but no agreement was reached regarding the payment of "arrears". On the one hand the Respondent decided, in the light of the CEB's financial situation, to pay an amount of Rs 41 Million "in full and final settlement for period 1st July 1999 to 31st December 2000". On the other hand, the Applicant accepted the sum of Rs 41 Million with the proviso that "this is effected without prejudice to the Union's right to declare any dispute mainly regarding payment of total arrears and better conversion method for employees having stagnated at the top of the existing wages scale. " These facts are recorded in paragraphs 5 and 7 of the Memorandum of Understanding signed by the President of the UECEB and the Chairman of the CEB on the 27th December, 2000. One cannot escape the fact that whatever has been paid (Rs 41 M) to the Union flows from the Bundhoo Report.

The applicant insists on the payment of the total sum of the arrears either in one single payment or scheduled over an agreed period. There is therefore no agreement between the two parties. The Memorandum of Understanding reflects the stand or position of both parties.

To summarize the above issues, the evidence adduced show there has been a report which is not binding. However, since the Respondent recognized by virtue of a Memorandum of Understanding of a balance remaining, the crucial question that has to be answered is how much can the CEB pay?

In his statement of case, the Respondent has submitted that the maximum the CEB could pay was Rs 41 Million as a full and final settlement. However, it would be useful to examine the financial situation of the CEB and the submissions of both parties.

CEB's bank overdraft at the end of December 2001 stood at around Rs 1.4 billion. In view of the financial situation of the CEB the Government had to intervene on two occasions by way of an increase in tariff. In September 2000, it was an increase of 20% and 12% in January 2002.

CEB started a debt restructuring exercise and converted its bank overdraft into long-term loans, payable over a ten-year period. The conversion resulted in a reduction of the overdraft which stood at Rs 45 Million in 2003 bringing in an additional income of about Rs 1 Billion a year. After three years, only one billion of overdraft has been wiped out. The remaining two billion of income was sunk in the CEB for the payment of increase in costs and additional expenses.

By the end of 2003 the bank overdraft stood at Rs 521 million, revised to Rs 250 million as government loans were not being servicing. The Union agreed that the CEB has from 1999 stopped servicing government loans. Nevertheless, there is still an arrears of Rs 482 M as at December 2002.

CEB is exposed to external factors which are beyond its control - increases in the price of fuel, wars leading to price hike, and rate of exchange of the rupee. Witness Bizlall himself conceded to those factors.

The CEB Pension Fund has a service deficit of Rs 466.4 million, which implies an increase of contribution if it is to be eliminated. This is not denied by the representative of the Union. Indeed, the CEB Consultant recommended that this deficit should be eliminated over some period of 10 years and it requires a contribution of some Rs 55 M annually.

If financial stewardship and control are not carefully exercised, the situation might go back to square one. The Respondent indeed estimates that the overdraft will turn around Rs 1.8 billion by the end of 2006. This would inevitably necessitate a further increase of tariff to the tune of 34% for the next two years.

There is no doubt that the two tariff increases have led to an improvement of the financial situation, but in the opinion of the Tribunal the CEB must act with prudence as it is not completely out of dangers.

The agreement put forward by the Applicant to the effect that salaries represent only 4.3% of the CEB's turnover in order to support the claim for the payment of the balance of arrears is not conclusive about the ability to pay.

Ability to pay is defined in the **European Employment & Industrial Relations Glossary** by Michael Terry and Linda Dickens of 1991 as "a criterion used by unions in formulating pay claims and by employers in making pay offers, reflecting perceptions of the financial capacity of the employer. In the **public sector** the criterion of ability to pay, based on company

profitability, is replacing comparability as the basis of pay settlement.”

An enterprise can have a huge turnover, and yet the bottom lines at the end of the financial year can be negative. What would have been more relevant is to establish the profitability or surplus of an enterprise to show its capacity to pay. We are of the view that any surplus should be re-invested in improving the service, purchasing new equipment, provided that there are regular reviews of salary structures and conditions of service and that they are comparable with those working in similar institutions.

The financial situation has improved but improvement has not been achieved through improved productivity or restructuring or reorganization of the CEB but through two tariff increases of 32%, which have brought in an annual income of one billion rupees. At the end of the day it is the consumers who have to foot the bill.

The Tribunal takes into account, in addition to the foregoing remarks, the wisdom embodied in the guiding principles set out in section 47 of the Industrial Relations Act 1973, as amended which is reproduced here:-

“Principles to be applied

Where any matter is before the Tribunal, the Commission or the Board, the Tribunal, the Commission or the Board shall, in the exercise of their functions under this Act, have regard, *inter alia*, to -

- (a) the interests of the persons immediately concerned

- and the community as a whole;
- (b) the principles and practices of good industrial relations; and
 - (c) the need for -
 - (i) Mauritius to maintain a favourable balance of trade
 - (ii) to ensure the continued ability of the Government to finance development programmes and recurrent expenditure in the public sector;
 - (iii) to increase the rate of economic growth and to provide greater employment opportunities;
 - (iv) to preserve and promote the competitive position of local products in overseas market;
 - (v) to develop schemes for payment by results, and so far as possible to relate increased remuneration to increased labour productivity;
 - (vi) to prevent gains in the wages of employees from being adversely affected by price increases;
 - (vii) to establish and maintain reasonable differentials in rewards between different categories of skills and levels of responsibility; and
 - (viii) the need to maintain a fair relation between the incomes of different sectors in the community."

The Tribunal would not wish to upset the debt restructuring exercise undertaken by the CEB nor provoke through unsustainable additional payment an endless wage and tariff spiral. However, after careful consideration of the financial situation of the CEB and for the sake of good and harmonious industrial relations, the Tribunal is of the considered view that both parties to the dispute can and should make an

effort towards a solution. The Tribunal cannot allow the dispute to deteriorate to the extent that an essential service should affect the country - socially and economically - as a whole. The Tribunal is of the opinion that it would not be unreasonable for the CEB to pay 50% of the balance resulting from implementation of the Bundhoo Report, whereby both parties would be in a win-win situation.

The Tribunal accordingly awards that 50% of the balance be paid in two equal instalments, spread over a period of two years effective as from the date of this Award. Those two payments are to be regarded as ex-gratia and should not have any implications on previous payments effected by the CEB such as pensions and passage benefits. The first instalment should be paid by latest 30 June 2005 and the second one by 30 June 2006. The payments are to be computed on the basis of the denominator of the initial payment that has been effected with respect to the Rs 41 Million.

Dispute No 2 “ Whether the CEB employees, having stagnated in June 1999 on the top point of their respective old salary scale, should be converted to their new salary scale”

945 employees are concerned with this dispute that could cost the CEB an amount of Rs 7 M approximately. The Union did not challenge this amount. A document (Doc E) emanating from the then Human Resource Manager of the CEB confirmed same. It reads:

“

27 August 2001

The President
Union of Employees of CEB
Arcades Rond-Point

Rose Hill

Dear Sir,

Implementation of the Salary Commission's Report

I

I refer to the request made regarding the grant of a better conversion point for those employees who had stagnated at their top of their scale prior to the implementation of the Salary Commission and wish to inform you that an exercise had been carried out resulting in the following:

(i)	No. of Manual Workers on top wages	:	593
	No of Staff employees on top salaries	:	<u>352</u>
	TOTAL		<u>945</u>

((ii) A majority of manual employees were on top of their wages scale since 1995 .

(iii) The additional total expenditure in basic salaries/wages had been estimated to be around Rs 7 million annually on the basis of one increment only.

Yours faithfully

(sd) N. Lowtoo

HUMAN Resource Manager"

The Bundhoo Commission effected a salary conversion according to a master convention table, lengthening the scale yardstick after taking into

consideration relativities and length of service. This results in employees who know there are further points to reach in their career to be more motivated.

The Union's argument in support of allowing increment to those who stagnated after having reached their top when the conversion was effected does not carry much weight in the light of what we have awarded in Dispute No 1 and taking into account the financial state of the CEB. The representative for the Union mentioned a similar case at the Mauritius Ports Authority where a payment of one increment was awarded through Private Arbitration. Nothing more was forthcoming to justify the implementation of the one increment. The Union in the present matter accepts the new scale but not the new conversion and invites the Tribunal to adopt the principle enunciated in the PRB Report.

“

Conversion

PRB 1998

- “
- (i) Conversion to the new salary scales should be effected after the grant of the annual increment due to officers on the 1 July 1998.
 - (ii) An officer whose salary point converts to a point in the Master conversion table which is less than the initial salary recommended for his grade should draw the initial salary of his grade.
 - (iii) An officer, except a part-time employee, whose salary point converts to a point in the master conversion table which represents an increase of less than four hundred rupees should be given a pensionable allowance representing the difference between Rs 400 and the

increase on conversion. This allowance should lapse with the grant of any increment after 1 July 1998.

The PRB 2003 proposed the following at para of Volume

- (iv) An officer reckoning at least 30 years' pensionable service in one and the same grade and having reached the top salary of his scale should on conversion be granted an increment over and above the conversion provided in the master conversion table. However no officer should draw a salary higher than the maximum salary recommended for his grade.

The PRB 2003 proposed the following at para of Volume

- (v) "Officers reckoning 25 years' service in a single grade, and who have been drawing the top salary of their scale prior to this Report, should be granted the converted salary corresponding to an additional increment to be read from their scale or the master salary scale with effect from 1 July 2003."

We are of the opinion that allowing extra increments for those who have stagnated would amount to an indirect increase in salary. It is pertinent to draw the attention of those concerned that the CEB employees initially chose not to be governed by any public service Salary Review or Recommendation and to invoke recommendation in the latest PRB Reports would in our mind be an attempt to have the best of both worlds.

The dispute is accordingly set aside.

Dispute No 3 " Whether the post of Senior Office Attendant as advertised on 18 June 2001, should be filled by persons who have applied

thereto and whether the transfer of the Despatch Rider to the post of Senior Office Attendant should be cancelled.”

True it is that the Respondent advertised the post of Senior Office Attendant, and that the decision to accept or to reject an applicant's transfer rests with the Head of the Department, however, paragraph 6.2.2 of the CEB's Internal Regulations also provides that if there is more than one request for transfer, the normal selection procedure shall be followed:

“Where an employee wishes to move from his post to a vacant one.

In this case, the employee shall have to wait until the post is advertised to submit his application. The decision to accept or to reject his transfer rests with the Head of Department, provided that if there is more than one request for transfer, the normal selection procedures shall be followed”.

Section 6 is as follows:

“Transfer”

For the purpose of these regulations, transfer shall mean movement from one post to another within the same hierarchical level”

In the present case, 10 applicants postulated for the job and it was Mr. V. Gobin who won at the post. What is that normal selection procedure that the CEB adopted for his recruitment? When taking into consideration the seniority qualification and experience of Mr V. Gobin and also the transfer effected although through advertisement from one job to another one of a totally different nature although they are both on the same salary scale, we are in the dark as to what criteria the CEB applied for his recruitment.

We are unable to intervene in the cancellation of Mr V. Gobin's appointment as the law does not provide us with such power. The Tribunal feels that applicants should be treated with fairness and that procedures as laid down in its own internal rules should not be ignored. A happy and contented staff means better productivity and greater efficiency. If morale is affected by an action which is not exempt from criticism, the staff cannot work to the best of their ability. We therefore invite the CEB for more scrutiny, fairness and transparency in selecting candidates, and to look into redressing the situation of other applicants to the present dispute who feel aggrieved by the appointment of Mr V. Gobin, and this as soon as the opportunity arises.

The dispute is therefore set aside.

R. Hossen
Vice-President

S.C. Chan Wan Thuen
Member

B. Ramburn
Member

19 May, 2004