The Permanent Arbitration Tribunal

AWARD

RN 784

In the matter of

G. Runghasawmi & Ors

And

CWA

BEFORE

R. Hossen	-	Acting President
B. Ramburn	-	Member
H. Girdharee	-	Member

This dispute has been referred by the Minister responsible for Labour, Industrial Relations and Employment for Compulsory Arbitration by virtue of section 82 (1) (f) of the Industrial Relations Act 1973, as amended.

The point in dispute is:

"*Whether the Central Water Authority, responsible for the administration of the billing and cash collection system of the Waste Water Authority, should pay a compensatory allowance equivalent to 20% of the gross salary to:*
G. Rungasawmi, V. Marimootoo, S. Ramasawmy, S. Sagoonoo, P. Kistnah, M. Descubes, J. Joseph, S. Ullagoo and R. Govind for performing public relations services to customers of WWA since the month of January 2000 except to R. govind who should be paid as from 26 July 2000"

The Applicants aver in their Statement of Case:-

1. Following the decision of the Wastewater Authority to contract out its billing and cash collection system to the Central Water Authority (with effect from January 2000), CWA started producing waste water bills based on the volume of water consumed. The bills were delivered by the CWA Meter Readers and were payable at CWA cash offices. The Wastewater Authority's cash offices could not collect the monies due in respect of waste water bills as the data for updating of payments were available at CWA only. As such wastewater customers started making complaints at our customer service centres of Rose Hill and St Paul and through correspondences. It should be noted that the then Wastewater Authority could not attend to the complaints of its customers as it did not have the necessary data on consumption of water.

2. The CWA approved the list of employees eligible for compensation , but excluded the Customer Service from the list submitted by the Union.

3. A new agreement was signed on 14 September 2000, and though additional grades/employees were added thereto, staff of the Customer Service was again omitted.

4. As no reply to the request for compensation came through, an industrial dispute was submitted to the Ministry of Labour and Industrial Relations on 11 October 2001.

5. Since the CWA was unwilling to compensate staff of the Customer Service, the case was referred to the Industrial Relations Commission for conciliation.

6. Following the election of a new Union Executive Committee in March 2002, the Union and the CWA, made a request to the Industrial Relations Commission in April 2002 to refer the case back to the Staff Negotiations Committee for settlement.

7. After several meetings between the CWA and the Union, the management made an offer of a 10% compensatory allowance for staff of the Customer Service concerned. The management referred its offer to the CWA Board; the proposal was rejected. Instead, the Board advised the management to set up a committee to look globally into the matter.

8. The CWA appointed an Ad-hoc Committee in October 2002 to 'consider and investigate representations made' by the Union and individual employees. The Ah-hoc Committee was chaired by the Mr. D. Heeralall, with the following Terms of Reference –

Having regard to –

1. *the Agreement signed on 2 June 2000 by the CWA and the WMA for the implementation of an Integrated system for the separate and combined Billing and Collection of Water and Wastewater charges by the CWA;*
2. *the Agreement dated 14 September 2000 for the payment of an allowance to certain categories of officers/employees for their involvement/contributions in the discharge of activities connected with the WMA project;*
3. *the statutory requirements and additional responsibilities entrusted to the CWA under Section 49(2) of the Wastewater Management Authority Act (No. 39) of 2000;*
4. *the numerous requests/applications received from staff for either a revision of the quantum of the allowance currently payable and/or the extension of its payment to other officers/categories of officers; and*
5. *the amount of money received/receivable as commission from the WMA and the present administrative arrangement of a 40:60 (40% for Management and 60% for Employees) sharing ratio.*

The Ad-hoc Committee should undertake the following

1. *to consider and investigate all disputes submitted to the Industrial Relations Commission as well as all claims submitted by the UECWA or individual employees to the CWA management, for the payment of an allowance or increase in allowances currently being paid;*
2. *to receive, analyse and consider any request/application for such an allowance from any other officer/employee of the CWA;*

3. *to analyse and evaluate the additional workload/responsibility devolving on each officer/category of officers mentioned on the list approved on 14 September 2000; and*
4. *to evaluate and determine the appropriate compensation payable to officer(s) /grade(s) of officer(s) for their input/contributions in the discharge of activities carried out under Phase I of the project and to be carried out under Phase II of the project (as laid down in Section 49 of the Watewater Management Authority Act (No. 39) 2000;*

and to submit appropriate recommendations in the matter.

9. *The Ad-hoc Committee submitted its Report in December 2002. While confirming, @without any possible doubt, that all the staff whose cases are currently before the Industrial Relations Commission has something to do with the scheme', it recommended a 10% compensatory allowance for staff of the Customer Service.*
10. *However, the Ad-hoc Committee recommended, at paragraph , that payment of allowance be effective as from 1 July 2001, on the ground that 'inflationary pressures (that) would build up if large sums of money are injected into the economy at one go'*
11. *Payment of arrears of allowance for period July 2001 onward was effected accordingly. Total arrears paid following the implementation of the Report amount to less than Rs 1.2 M.*
12. *We accepted the recommendation for a 10% compensatory allowance but rejected the effective date of implementation, that is, July 2001, as this was another clear example of the injustice inflicted upon by the staff of the Customer Service.*

13. *In 14 May 2003, the Industrial Relations Commission, though conscious of the injustice caused, submitted its findings and stated that it could not make any comment on the stand of the CWA, on the ground that the point raised was a legal one.*
14. *On 2 July 2003, we informed the Minister of Labour and Industrial Relations that we rejected the findings of the Industrial Relations Commission and requested that the case be referred to the Permanent Arbitration Tribunal for an award.*
15. *The employees identified by the CWA, prior to the implementation of the Waste Water Authority billing and cash collection system, were paid the appropriate compensatory allowance accordingly, that is, with effect from the date they started shouldering the additional responsibilities.*
16. *However, though we shouldered extra responsibilities on behalf of the Waste Water Authority, now the Waste Management Authority as from the same date as our other colleagues, we are denied compensation for the period January 2000 to June 2001.*
17. *The Chairman of the IRC stated at one of the sitting of the Commission, and in the presence of Mr. Tuyay, Personnel Officer, that those employees who have been performing duties related to the WMA system should be compensated with effect from the date such duties have been performed. Mr Tuyau gave the undertaking that he would inform CWA Management accordingly. This has not been the case.*
18. *The Terms of Reference of the Ad-hoc Committee <u>do not mention any effective date</u>, and at no time did the management or the CWA Board mention or discuss with the Union or any other employee the effective date for payment of compensation. As far as we are concerned the only issue that was being negotiated concerning our case was the inclusion of staff of the*

Customer Service in the existing agreement and the rate of compensation applicable.

19. *By recommending an implementation date in its Report, the Ad-hoc Committee has gone against and beyond its Terms of Reference. The recommendation of the Ad-hoc Committee that the effective date be July 2001 has created different categories of beneficiaries namely:*

    (1) Those who have performed the duties related to Wastewater with effect from January 2000 and have received compensatory allowance with effect from, January 2000; and

    (2) Staff of Customer Service who have performed duties related with waste water with effect from January 2000 but having received compensation with effect from July 2001 only.

The Respondent filed a Statement of Case in which it averred that:-

(1) Following a decision of the Government to request the CWA to carry out certain functions of the WMA, especially as regards the billing and cash collection activities, the CWA started to implement the above decision as from January, 2000. In consideration for such services, the WMA paid to the CWA a commission representing 5% + VAT on the amount collected.

(2) It has subsequently been agreed between the Management of the CWA that 60% of the commission receivable from the WMA would be paid as an allowance to CWA employees involved with the WMA exercise, whilst the remaining 40% will remain for the CWA.

(3) At its sitting on 08 March 2000, the Central Water Board approved payment of a monthly allowance, initially, to the Meter Readers, Senior Meter Readers, Senior Meter Readers, Senior Clerk, Ag. Deputy Manager (Commercial Services) and Meter Reading Supervisors who were identified to be involved in the WMA exercise.

(4) Later on and following discussions between the CWA Management and the CWA Union, another consolidated agreement dated 14 September 2000 was drawn to include a larger number of CWA officers to be paid the Waste Water allowance.

(5) Despite the agreement reached on 14 September 2000 various representations have been received from different categories of Officers, including the above disputants, to be included in the list. The claims/representations received were carefully being looked into at the management level. However, in the meantime, certain officers had referred their case to the Ministry of Labour & Industrial Relations. Being given that the CWA could not consider the claims of the disputants in

isolation, the matter was then referred to the Industrial Relations Commission. Before the Commission, the disputants agreed to the appointment of an 'arbitrator' and mandated the Union of Employees of CWA to enter into an agreement, on their behalf, with the CWA Management as to the terms and attribution of the said "arbitrator". The parties have agreed to the appointment of an Ad-hoc Committee consisting of Mr Dyachand Heeralall and Mrs Sylvie Dupré.

The agreement between the CWA and the Union further provided that the decision of the 'arbitrator' would be final and binding and would not be subject to appeal.

(6) Following the publication of the Ad-hoc Committee's Report, the disputants accepted before the IRC the recommdation of a 10% compensatory allowance, so that, there can now be no more dispute as far as the quantum of allowances is concerned. Their effective complaint now is as regards the date of implementation which the Ad-hoc Committee has set at July 20001 instead of January 2000 as claimed by them.

(6) The CWA has already paid to the disputants the recommended allowance with effect from July 2001 and further considers that it is not entitled to entertain claims for period January 2000 to June 2001 as same goes against the recommendation of the Ad-hoc Committee.

The Applicants called the President of the Central Water Authority's Union as their representative. The latter stated that following the setting up of the Waste Water Authority, there were several negotiations that took place between Management and Employees regarding the compensation. The matter was eventually referred to the Industrial Relations Commission before it was withdrawn. An arbitrator, Mr. Heeralall, was appointed to look into the matter. An agreement was signed on the 11th of October 2002 between the Union and the Central Water Authority regarding the terms of reference. However, those terms of reference did not include the effective date compensation was to take effect. All that was agreed upon, according to the witness was that the agreement would be binding. The report that came out in December 2002 was to have retroactive effect and be effective as from 1st July 2001. According to the witness the effective date should in fact be January 2000, the month in which Central Water Authority started doing work for Waste Water Authority. The reason behind this delay in payment is to avoid the blowing up of inflationary pressures as per the dictum of Mr. Heeralall. The witness maintained that this conclusion has no basis as no reason has been advanced in the report regarding inflation.

Both parties agree that the point in issue is no more the payment of 20%. The question of quantum has been agreed. The only issue that remains to be thrashed out is the effective date the Ad-hoc Committee Report should become effective, i.e whether from July 2001 or January 2000. On the principle that the greater includes the lesser, we find no impediment regarding the contents of the Terms of Reference. So, while accepting the quantum awarded, the Employees are in disagreement with the implementation date, arguing that they have been doing this work since January 2000. The Employer argued that the agreement entered with the Union for the appointment of the arbitrator provided that the decision of the latter would be final and binding and would not be subject to appeal. It is therefore the contention of the Respondent that it would abide by the implementation date awarded by the arbitrator and was not prepared to consider any other implementation date for the period January 2000 to July 2001.

In the course of the proceedings we stated the following in a ruling delivered earlier:-

"It is apposite here to refer to ALLIED BUILDERS LTDS v/s ALUMINIUM INDUSTRIES LTD SCJ No 5 of 2002:

"The appellant is now praying for an order, amending annulling, reversing, quashing and/or setting aside the award made by the co-respondent on the ground that:

the said award is null and void as it contravened articles 1027 and 1027-3 of the Code of Civil Procedure viz:-

the award as made is contrary to law and public order inasmuch as the award is not based on any evidence but contrary to the evidence adduced.

We have to bear in mind that pursuant to article 1027-1 the parties had in the arbitration agreement expressly renounced their right of appeal. They are consequently left to a recourse in annulment as provided for in article 1027-3 which reads as follows:

"Lorsque suivant les distinctions faites à l'article 1027-1, les parties ont renoncé l'appel, ou qu'elles ne se sont pas expressément reservées cette faculté dans la convention d'arbitrage, un recours en annulation de l'acte qualifié sentence arbitrale peut néanmoins être formé malgré toute stipulation contraire. »

Il n'est ouvert que dans les cas suivant :

1. *Si l'arbitre a statué sans convention d'arbitrage ou sur convention Nulle ou expirée ;*

2. *Si le tribunal arbitral a été irrégulièrement composé ou l'arbitre unique irrégulièrement désigné ;*
3. *Si l'arbitre a statué sans se conformer à se conformer à la mission qui lui avait été conférée ;*
4. *Lorsque le principe de la contradiction n'a pas été respecté ;*
5. *Dans tous les cas de nullité prévus à l'article 1026-5 ;*
6. *Si l'arbitre a violé une règle d'ordre public.*

From the affidavits in support of the appeal it would appear that the appellant is relying on *alinéa 1027-3(6).* Since appeal has been excluded pursuant to paragraph 4 of the Form of Agreement, we shall nevertheless

consider the present "appeal" as if it were an application for *"recours en annulation"*

We have not been favoured with the proceedings before the arbitrator. We have to make do with the affidavits evidence and the annexures.

The contention of the appellant that the testimony of Mr Kalyan Kurji Patel in respect of his evidence relating to the alleged discount of 5% on the contract was not contested by the respondent, is denied by Mr F. Mowlabaccas who deponed on behalf of the respondent. In his affidavit Mr Mowlabaccas averred that, "*the avernments of Mr Patel were highly contested and rebutted by me when I deponed."*

In view of the two conflicting versions before us, the fact that the arbitrator motivated his award, and in the absence of evidence as to the actual proceedings before the arbitrator, we are unable to say that the arbitrator infringed "*l'ordre public".* **(Vide Encyclopédie Dalloz Procédure Civil verbo Arbitrage (en droit interne) Notes 416, 420, and 421). See also Espitalier Noel v. Régnard [199 MR 140] »**

We further find in Chapter 4 of « Arbitrage en droit Interne » (B. Moreau) paragraphs 382 to 384 the following:

Renonciation à l'rappel.

382. " La renonciation à l'appel est expressément prévue par l'article 1482 qui décide que la sentence est susceptible d'appel sauf renonciation

> par les parties dans la convention d'arbitrage; du moins cette renonciation doit résulter d'actes manifestant sans équivoque la volonté de renoncer (Cass. 2e civ., ler juill. 1992, *Rev. arb.* 1995.63, note C. Jarrosson; CA Paris, 14 sept. 1994, *D.* 1994, IR 227).

383. L'article 557 du nouveau code de procédure civile, selon lequel la renonciation a l'appel ne peut etre antérieure a la naissance du litige, n'est pas applicable en matière d'arbitrage; cette renonciation peut donc valablement intervenir dans une clause compromissoire (CA Paris, 2 juill. 1976, 2 arrets, *Rev. arb.* 1977. 160, note Rubellin-Devichi; 17 dec. *1976,JCP* 1977.11. 18612, note J. Robert; *contra..* Rouen, 16 dec. 1975, casse par Casso 2e civ., 5 oct. 1977, *JCP* 1977. IV. 281). On peut legitimement penser que les parties peuvent renoncer a l'appel a tout moment lors de la procedure d'arbitrage. La renonciation a l'appel est sans effet chaque fois qu'est en cause une question d'ordre public (la jurisprudence est si constante en la matiere que ne sont ici données que les principales decisions: Casso civ., 10 juill. 1958, *Rev. arb.* 1958.48;3 novo 1969, *ibid.* 1961. 14; 20 dec. 1965, *ibid.* 1966. 16; Casso *_s,* com., 29 mai 1972, *ibid.* 1973.20, note E. Loquin; CA Paris, 7 fevr. 1957, *D.* 1957. 251; 27fevr. 1958, *D.* 1958.489; Aix-en-Provence, *'s* 19 mars 1963, *D.* 1963. 524; Paris, 14 fevr. 1970, *Rev. arb.* 1970. '148, note J. Robert; 6 juill. 1971, *ibid.* 1971. 119; et, sur pourvoi, Casso 2e civ., 7 juin 1972, *D.* 1973. 73, note J. Robert; CA Paris, 20 avr. 1972, *Rev. arb.* 1973. 84, note E. Loquin; 15 dec. 1972, *ibid.* 1973.98, note Mezger).

384. Comme cependant la renonciation a l'appel a neanmoins produit ses effets entre les parties (J. ROBERT, note so us CA Paris, 18 juin 1974, *Rev. arb.* 1975. 179). l'appel interjete en cas de violation de l'ordre public et nonobstant la renonciation ne pourra aboutir a une reformation de la sentence, mais seulement a son annulalion. Il s'agira du recours en annulation, qui est notamment ouvert en cas de violation de l'ordre public (V. *infra,* no 420). Il n'intervient que lorsque l'appel ne peut etre diligente, les parties V avant renonce ou avant confere aux arbitres la mission d'amiables compositeurs, sans se reserver la faculte d'appel. La cour d'appel agira a l'encontre de la sentence comme le ferait le juge de cassation pour violation de la loi. Techniquement, les moyens proposés au juge d'appel s'apparenteront a ceux qui l'auraient *ete* devant la Cour de cassation (CA Paris, 19 dec. 1972, *Rev. arb.* 1973. 173; 18 juin 1974, *ibid.* 1975. 179, note J. Robert). Toutefois le recours en annulation n'est ouvert que dans quelques cas tres precis (V. *infra,* nos 395 et s.). La Cour de cassation a neanmoins considere que le recours en annulation de la sentence ne s'etendait pas a la denaturation des documents soumis aux arbitres (Cass. civ., 16 novo 1976, *Rev. arb.* 1977.281, note J. Robert; 28 avr. *1980,ibid.* 1982.424; CA P.aris, 9 juill. 1982, *ibid.* 1983.345; J. ROBERT, La dénaturation par l'arbitre, réalité et perspectives, Rev. Arb. 1982. 405). Si, cependant, la nullité intervenue n'affectait qu'une partie de la sentence qui soit séparable des autres chefs de celle-ci, la sentence ne serait annulée que du chef affecté par la nullité (NCPC, art, 1490).

From what has been adduced and submitted before us, we are in the dark as to whether the dispute regarding public relations services or whatever additional services were part and parcel of what had been considered before the Heeralall Committee. We are of opinion that it is only after going on the merits of the case that the Tribunal can reach a sound conclusion."

Now that we have gone through the evidence, both testimonial and evidential as well as the submissions of Counsel, we are unable to consider "reversing" or amending the decision reached by the Arbitrator, a decision to which both parties agreed to be bound.

Indeed, both parties agreed to be bound by the Ad-hoc Committee's Report and para 1.4 of the Reported Award cannot be more explicit:

"Agreement between CWA and UECWA

The Committee noted with a singular appreciation that the Central Water authority (CWA) and the Union of Employees of the CWA (UECWA) had reached agreement not only on the assignment of the Committee, but also for its Award to"be final and binding on both parties and not subject to appeal".

The Tribunal is not sitting as an Appellate forum and it will exceed its mandate in adjudicating upon the reasons mentioned by Mr. Heeralall for the implementation date of the compensation. Rightly or wrongly, Mr. Heeralall mentioned that no retroactive compensation is to be paid to some categories of employees as this would build up inflationary pressures. Suffice it to say that the

analysis upon which Mr. Heeralall went through to reach to that conclusion cannot be made the basis of a challenge before the Tribunal, the more so when both parties agreed to be bound by the Report. We are of the view that correcting an administrative decision is more within the purview of the Supreme Court by way of Judicial Review.

The effective date the agreed quantum of compensation is to take effect is therefore July 2001.

The Tribunal awards accordingly.

Rashid Hossen
Acting President

B. Ramburn
Member

H. Girdharee
Member

15 July 2005