

The Permanent Arbitration Tribunal

INTERPRETATION OF AWARD

RN 834

Food & Allied Industries Ltd

v/s

The Food & Beverages Industry Employees Union

BEFORE

R. Hossen	-	Acting President
B. Ramburn	-	Member
M. Goinden	-	Member

This is an application for interpretation of an award delivered by the then President of the Permanent Arbitration Tribunal, Mr. H. Balgobin (R.N. 546)

The present Tribunal as constituted is being asked to interpret the effective date the award should come into operation with respect to salaries prevailing in 1996 – 1997 or July 2003.

Both parties agreed to this course of action and clearly indicated they have no objection to it.

In the present case, it is Management which applied for a declaration on the question in lite.

Background Facts

In 1996, the Union declared a dispute, which was referred to your Tribunal. The matter was heard in 1997. The terms of reference were as follows:

- (a) *Whether the salary scale of the following categories of employees should be revised with effect from 1st January 1996, or, otherwise:*

Driver Grade I = Rs 4,300 x 150 – 4,600 x 200 – 6,000

Factory worker = Rs 3,625 x 125 – 4,000 x 150 – 4,600 x 200 – 5,000

Mess Attendant = Rs 3,000 x 125 – 4,000 x 150 – 4,300

- (b) *Whether the weekly hours of work should be:*

From 7.00 a.m. – 11.00 a.m. and

12.00 – 4.00 p.m. from Monday to Friday, or otherwise

- (c) *Whether the maternity allowances should be increased from Rs 300 to Rs 500 or otherwise.*

2. At the end of the year 2003, Management received communication of the award of the Tribunal.
3. During the 6 – 7 years between the declaration of the dispute and the date of the award, there have been considerable changes in salary scales at the Company, and the maternity allowance has since July 2001 been increased to Rs 1,000 as per Factory Employees Remuneration Order.

Regarding item (a) of the dispute, Management contends that the increase awarded can only apply on the salaries prevailing in 1996 – 97 (which were the only elements brought before the Tribunal and upon which the Tribunal has jurisdiction).

On the other hand, the Union claims that the increase should take effect from 1st July 2003.

Section 88 of the Industrial Relations Act 1973 as amended provides:

"Interpretation of order, award and agreement

- (1) *Where any question arises as to –
 - (a) the interpretation of any order or award made by the Tribunal;
 - (b) any order or award being inconsistent with any enactment; or
 - (c) the interpretation of any collective agreement,any party to whom the order, award or agreement relates, or the Minister, may apply to the Tribunal for a declaration on the question, and thereupon the Tribunal shall make a declaration on the question after hearing the parties concerned.*
- (2) *A declaration by the Tribunal under subsection (1) shall be notified to the parties and shall be deemed to form part of the order, award or collective agreement.*
- (3) *Notwithstanding subsection (1), where a question arises out of any clerical mistake, incidental error or omission, the Tribunal may, on its own motion and without hearing the parties, make a declaration to rectify the mistake, error or omission.*

In Part II Second Schedule (Practice and Procedure) of the IRA Para 14 and 17 read:

"14 (1) Subject to any regulations made in that behalf, the Tribunal, the Commission and the Board may regulate their own procedure.

(2) The Tribunal, the Commission and the Board shall seek to avoid formality in their proceedings.

17 (1) The Tribunal, the Commission and the Board shall not be bound by the law of evidence in force in Mauritius."

We note that references made in the Award point only to materials submitted by parties in their statements of case.

In order to appreciate the submission of Mr Patrice de Speville, Counsel for Management, it is necessary to reproduce in toto the Award in lite.

"Terms of Reference

(a) Whether the salary scale of the following categories of employees should be revised with effect from 1st January 1996, or otherwise:

Driver Grade 1

Rs4300 x 150 – 4600 x 200 – 6000

Factory Worker

Rs3625 x 125 – 4000 x 150 – 4600 x 200 – 5000

Mess Attendant

Rs3000 x 125 – 4000 x 150 – 4300

(b) *Whether the weekly hours of work should be:*

*From: 7.00 a.m. - 11 a.m. and
12.00 - 4.00 p.m. from Monday to Friday, or otherwise;*

(c) *Whether the maternity allowance should be increased from Rs300 to Rs500, or otherwise.*

The matter was referred by the Minister in Charge of Industrial Relations to the Tribunal for settlement under the provisions of Section 82(1)(f) of the Industrial Relations Act 1973.

Item (a)

The union claims that its methodology is, inter alia, based on pay obtaining in comparable sectors. Since the Male and Female Factory Workers are, according to the Union, performing the same nature of job, they have been renamed as Factory Workers and the same salary scale is proposed for both categories.

They have proposed a master scale with incremental progression of about 3 to 4 percent.

The salary scale is therefore a segment of the master scale.

The Union claims that the salaries of managerial grades or even the middle staff is neither available nor forthcoming.

It is claimed that the present salary for the manual grade is substantially lower than the average income of a worker.

It is claimed that the recent price increase of products produced by the company has increased its capacity to pay.

The Respondent claims that the present classification of posts by the Union is unworkable.

It is further claimed that the wages actually paid are well above those prescribed by the Factories Workers Remuneration Order.

The stand of the Union that the male factory workers – female factory workers are assuming more or less the same responsibility and perform the same nature of job, is strongly disputed.

The regroupment of all factory workers into a single category would, according to Respondent, amount to a promotion to be granted to almost half the number of employees of the Processing Unit, without any merit or consideration.

It is claimed that the suggestion, that the standard of living of Respondent's workers is in the lower strata of the work population, is erroneous.

Respondent says that the volume of work performed by the workers had decreased in the recent past.

It is also claimed that, from July 1990 to July 1996, wages have increased to much higher rates than those prescribed in the Factory Remuneration Order.

The Tribunal finds that the present dispute is a fit case for examination in a broader and global context.

The Tribunal awards a 6% increase as follows: 3% with effect from 1st July 2003 and 3% with effect from 1st February 2004."

Counsel submitted that regarding item (c) Management, at least at the time the application was made in 2004, was giving Rs 1,000 as Maternity Allowance as per Factory Employees Remuneration Order whereas the Tribunal granted an increase from Rs 300 to Rs 500. This, according to Counsel, in itself shows that the Award was totally obsolete. Therefore when we are going to turn to the salary scale, the Tribunal when it was seized in 1996 was dealing with a specific salary scale of a specific time, that is, the year 1996. With the lapse of time, the salary scale had completely changed so that the employees concerned are now earning well above what had been requested initially as per the Terms of Reference.

Mr J Enouf, the Human Resource Director of Management Company, testified that various and gradual increases have taken place with respect to the salaries of Drivers, Factory Workers and Mess Attendants. According to the witness, Government Remuneration, annual increases and that of the company come to about 53%.

Mr D Ramano submitted that the increases awarded by the Tribunal can only mean that it is a 3% increase on the state of salaries as at 30 June 2003 and another 3% on the state of salaries at 31 January 2004. According to Counsel, if the Tribunal were to mean the state of salaries as at year 1996 or 1997, the Tribunal would have said in the Award that the percentage increases would have taken effect from such date in 1996 or 1997. Counsel further submitted that the only rational way that the Tribunal could have proceeded in this matter is that it goes back to the situation exposed in 1996/1997, assesses the evolution of salaries from there, take all the pertinent elements into consideration including the Cost of Living before coming out with an Award.

Interpretation

After having heard the parties concerned, the Tribunal interpretes the question in lite as to mean a 6% increase as follows:- 3% with effect from 1st July 2003 and 3% with effect from 1st February 2004, on salary prevailing as at June 1996.

We find no more that has been said in the Award regarding any increases that took place since 1996. Indeed, the fact that the Tribunal regarding item (c) found fair and reasonable the demand of the union to increase the maternity benefits from 300 rupees to 500 rupees (whilst the Remuneration Order had already prescribed Rs 1000) tends to show that the Tribunal based itself on facts forwarded at the time of the dispute and did not take into consideration the various changes that had occurred in that sector.

It appears to us that the Tribunal, as then constituted, adopted a quite restrictive view of what it actually awarded as shown by the following paragraph:-

"The Tribunal finds that the present dispute is a fit case for examination in a broader and global context"

R. Hossen
Acting President

B. Ramburn
Member

M. Goinden
Member

22 June 2005