PERMANENT ARBITRATION TRIBUNAL

AWARD

Before Mr R Hossen, Acting President

Member: Mr B Ramburn

Member: Mr M Goinden

RN 789

In the matter of :-

R Busawah

And

Prof Basdeo Bissoondoyal College

In presence of: **(1) PSSA**
(2) SICOM

The Minister of Labour, Industrial Relations and Employment referred the present matter to the Permanent Arbitration Tribunal for arbitration by virtue of Section 82 (1)(f) of the Industrial Relations Act 1973, as amended.

R. Busawah is hereinafter referred to as the Applicant and Professor Basdeo Bissoondoyal College as the Respondent.

The points in dispute are:-

(i) Whether Mr Busawah, a Senior Education Officer, should be regarded as being in the continuous employment of Professor Basdeo Bissoondoyal College as from 1964 till this date.

(ii) Whether the study leave granted to him following a scholarship awarded by the said college from 1975 till 1978, should be included in the computation of the number of years of service.

(iii) Whether he should on retirement on 9 October 2003 be paid his dues, benefits, gratuities, lump sum, pension etc, following computation of number of years of service made from 1964.

It is averred that in 1964 the Applicant started employment with Eastern College, which was later to become the Professor Basdeo Bissoondoyal College. In 1975 he left for India on a scholarship granted to him by the Respondent. He came back in 1978 and took up employment or continued his employment (depending upon whether it is the version of the Respondent or that of the Applicant) with the Respondent. It is agreed that during his stay in India, the Applicant was paid an amount equivalent to his salary. The Respondent said that when the Applicant left for India the latter resigned from his employment and that when he came back in 1978 he was re-employed on new terms and conditions. This is denied by the Applicant who stated that had he been told that he had to resign to take up the scholarship he might have taken the decision not to accept it.

The SICOM's stand is that it manages the pension fund to which the PSSA, which is the paying agent and the employees of the colleges contribute.

Both the Respondent and the SICOM concurred with the PSSA in an objection raised to the effect that the Tribunal does not have jurisdiction to entertain the present matter following an Option Form signed by the Applicant that he would accept the new salaries as well as Terms and Conditions of employment in the PRB 2003.

In support of that contention, the PSSA argued that the Option Form was signed on 30th June 2003, after the passing of the Industrial Relations (Amendment) Act 2003 which reads as follows:-

"**3. Section 2 of principal amended**

Section 2 of the principal Act is amended –

(a) in the definition of "industrial dispute" by deleting paragraph (a) and replacing it by the following paragraph:-

(a) a contract of employment or a procedure agreement except, notwithstanding any other enactment, those provisions of the contract or agreement which –

(i) concern remuneration or allowance of any kind; and

(ii) apply to the employee as a result of the exercise by him of an option to be governed by the corresponding recommendations made in a report of the Pay Research Bureau.

(b) by inserting in its appropriate alphabetical place the following definition –

"Pay Research Bureau" means the bureau referred in the yearly Recurrent Budget under the Vote of Expenditure pertaining to the Prime Minister's Office".

It is not disputed that the three disputes are interlinked and that the finality that is being sought is the computation of number of years of service with respect to, inter alia, dues, benefits, gratuities, lump sum and pension.

The whole issue now boils down to the signing of the Option Form. We refer here to a ruling delivered in **RN 743 A. Chung Chuen Yeung and**

Municipal Council of Port Louis, In the Presence of Ministry of Local Government:-

"Section 2 of the principle Act previously defined "Industrial Dispute" to be "a dispute between an employee or a trade union of employees and an employer or a trade union of employers which relates wholly or mainly to:-

(a) a contract of employment or a procedure agreement;

(b) the engagement or non-engagement, or termination or suspension of employment, of an employee; or

(c) the allocation of work between employees or groups of employees."

Under the title "Terms of Reference" the Minister responsible for Industrial Relations particularizes the present dispute to be –

"Whether the commuted travelling and 100% Duty Free remission on car should be restored to disputant as from 1 July 1993, or otherwise."

The Labour Laws 1991, as amended read:-

" "*remuneration*"

(a) means all emoluments earned by a worker under an agreement;

(b) includes –

(i) any sum paid by an employer to a worker to cover expenses incurred in relation to the special nature of his work; and

(ii) any money to be paid to a job contractor, for work by the person employing the job contractor;

(c) does not include money due as a share of profits**"**.

The definition of emoluments is to be found in the Income Tax Act 1996 as amended:-

" "*emoluments"*

(a) means any advantage in money or in money's worth referred to in section 10(1)(a); and

(b) includes –

(i) remuneration to the holder of any office and fees payable to the director of a company;

(ii) an allowance under the National Assembly Allowances Act or a pension under the National Assembly (Retiring Allowances) Act;

(iii) remuneration payable to a Mayor, Chairman of a District Council or Chairman of Village Council under the Local Government Act; and

(iv) an allowance payable to an apprentice;

(v) an allowance under the Rodrigues Regional Assembly (Allowances and Privileges) Act 2002;

(Added 18/03) **"**.

There is evidence on record that the Applicant has signed the Option Form and has chosen to be governed by the PRB Report 2003 and the issue remains whether he has relinquished his rights for his application to be entertained by the Permanent Arbitration Tribunal.

Counsel for the Respondent argued that to the extent a person, as an employee of the Civil Service or Local Organisation has opted to be governed by the revised condition as per the PRB Report, no dispute can be referred to this Tribunal, and this despite the fact that the law has no retrospective effect.

Counsel for the Applicant took a contrary stand. He submitted that the Industrial Relations Act Amendment Act 2003 which was passed in June 2003 only came into effect as from June 2003 and it is inapplicable to the present matter for the following reasons:-

(a) the Tribunal was seized of this matter following a reference from the Minister which dated back to the 1st November 2002, at a time when the Industrial Relations Act Amendment Act 2003 had not yet come into being;

(b) the present reference is a compulsory one by virtue of Section 82 of the Industrial Relations Act;

(c) the Industrial Relations Amendment Act 2003 restricts the definition of an industrial dispute with effect from 2003 and does not purport to amend part 7 of the Act which deals with the jurisdiction of the Tribunal".

"It is not disputed that the reference in the present matter was made before the coming into effect of the new Industrial Relations Act Amendment Act 2003. The Tribunal therefore had already been seized of a dispute compulsorily referred to by the Minister. The Law that was introduced to amend the meaning of "industrial dispute" does not have any retrospective effect and there is no qualifier as to the time it was to come into effect except the following: "Passed by the National Assembly on the thirteenth day of June two thousand and three", and assented by the President of the Republic on 13.06.2003 .

It is our considered view that although the Legislator intended that disputes in relation to the PRB Report should be chanelled to the

PRB in view of the methodology used and the impact of relativity of remuneration and allowances across all sectors of the service for the making of appropriate recommendations, the Legislator could not have intended that this ought to have retrospective effect or they would have expressed such intention clearly and explicitly.

It would be wrong and unfair in our mind to view that the Tribunal is only seized of the dispute when it starts hearing evidence when in fact the Tribunal has already been seized of it when it was referred to it. There may have been a redefinition to the meaning of "industrial dispute" but that cannot deprive the applicant's claim from being entertained by the Tribunal despite having signed the Option Form, which in the light of what we have already said, became necessarily a void exercise in the present case".

In another ruling, **RN 754 Telecommunications Workers Union and Mauritius Telecoms,** the Tribunal again referred to the issue of Option Form.

"We need to address our mind on the issue of Option Form first. True it is that in a few past Awards, the Tribunal held that a dispute may be delivered notwithstanding the signing on an Option Form agreeing on new Terms and Conditions of employment.

This present Tribunal respectfully disagrees with that Obiter Dictum. Adopting such a course would in our view allow employees to having it both ways. The very fact of putting their signatures on the new Terms and Conditions of Employment is an act of finality. To come and say that they disagree over what they agreed can only lead to some sort of absurdity and thus rendering 'caduc' the contract they signed. We are further comforted in our stand by the amendment introduced by the legislature in July 2003 regarding Option form. We reproduce it below for the sake of clarity:-

THE INDUSTRIAL RELATIONS (AMENDMENT) ACT 2003

Act No 13 of 2003

I assent

KARL AUGUSTE OFFMANN

16 June 2003 President of the Republic

ARRANGEMENT OF SECTIONS

Sections

An Act

To amend the Industrial Relations Act

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the Industrial Relations (Amendment) Act 2003.

2. Interpretation

In this Act –

"principal Act" means the Industrial Relations Act.

3. Section 2 of principal Act amended

Section 2 of the principal Act is amended –

(a) in the definition of "industrial dispute" by deleting paragraph (a) and

replacing it by the following paragraph –

(d) a contract of employment or a procedure agreement except, notwithstanding any enactment, those provisions of the contract or agreement which –

(i) concern remuneration or allowance of any kind; and

(ii) apply to the employee as a result of the exercise by him of an option to be governed by the corresponding recommendations made in a report of the Pay Research Bureau.

(b) by inserting in its appropriate alphabetical place the following definition –

"Pay Research Bureau" means the bureau referred to in the yearly Recurrent Budget under the Vote of Expenditure pertaining to the Prime Minister's Office"

Passed by the National Assembly on the thirteenth day of June two thousand and three.

André Pompon
Clerk of the National Assembly

We find therefore that in the light of such recent amendment brought to the Industrial Relations Act in respect of PRB Awards, it is already against Government policy to have matters which have been considered and not agreed upon in the course of negotiations be reconsidered by way of industrial dispute immediately after an agreement has been reached between employers and employees arising out of the same negotiations". (**See also RN 890, University of Mauritius Academic Staff Association and University of Mauritius).**

In the present matter, the Applicant signed the Option Form before declaring the present dispute as evidenced by Doc C. This document clearly and unambiguously states:-

"I understand the acceptance of the revised emoluments also constitutes acceptance of all the revised terms and conditions of service and the recommendations approved for implementation. Any acceptance made subject to a reservation/qualification shall be treated as a rejection of the revised emoluments and terms and conditions and the recommendations approved for implementation".

Applicant's dues, as claimed, certainly concern remuneration and having voluntarily opted for the PRB 2003, he has relinquished his right by virtue of

the statutory provision to declare a dispute on that issue. There is no evidence of any reservation/qualification to be treated as a rejection

The three disputes are therefore set aside.

R. Hossen
Acting President

B Ramburn
Member

M. Goinden
Member

21st October 2005