Arbitration Tribunal

AWARD

RN 854

In the matter of

State Informatics Ltd Staff Union

And

State Informatics Ltd

BEFORE

R. Hossen	-	Acting President
B. Ramburn	-	Member
R. Sumputh	-	Member

The following disputes have been referred to the Tribunal for Compulsory Arbitrabion by the Minister responsible for Labour, Industrial Relations and Employment in accordance with section 82(1) (f) of the Industrial Relations Act 1973, as amended.

The State Informatics Ltd Staff Union (hereinafter referred as the Union) conducted its own case while the State Informatics Ltd (hereinafter referred as the Respondent) was assisted by Counsel.

The items in dispute are as follows:

1. “***Whether the payment of annual increment to the staff should not be linked to the performance appraisal of each individual employee or otherwise.”***

   and

2. “***Whether State Informatics Ltd should pay annual increment, due to every employee after having completed whether 12 months continuously or another additional year of service, without having to go through the Performance Appraisal System or otherwise.”***

The Union avers in its Statement of Case:-

1.1 It is a registered Union and as such enjoys an official recognition status at State Informatics Limited.

1.2 There are about one hundred and fifty staff at State Informatics Limited (SIL) and nearly all of them are members of the Union (SILSU).

1.3 Terms and conditions of work are governed by negotiated agreed collective agreements between the Company (SIL) and the Union (SILSU).

1.4 Salaries for the staff are being incorporated within the agreed negotiated different salary scales and same are formally considered as part and parcel of the official conditions of work,

including the annual increments due to all staff after having completed one year of service.

1.5 As per custom and practice it is understood that each year during the month of July all the employees after having completed 12 months of service are entitled to one annual increment.

1.6 This has been the case every year since 1989 with the only exception that on few occasions same has been slightly delayed but paid accordingly to all employees entitled to.

1.7 The annual increments have been paid to all employees qualified for without any derogation and this since 1989.

1.8 Hence it has never been conditional to any form of pre-qualification.

1.9 It is only this year (2004) few months before July 2004, Management of State Informatics Ltd submitted proposals for consideration in order to link payment of annual increments to a formal new condition, known as **"Performance Appraisal"** of each employee.

2.0 Following request from Management we had a couple of meetings whereby the issue was discussed.

2.1 The staff forwarded an official common letter of protest to the Company in the object to appeal for the review of Management's stand in respect to the performance appraisal.

2.2 Unfortunately despite our good will to convince Management that we cannot link performance appraisal to payment of annual increment because of major subjectivity issues, the Company maintained its initial position.

2.3 Finally Management unilaterally carried out the performance appraisal, which resulted to six employees were found deprived of their annual increment for this year, though being rightly eligible for.

2.4 Upon our request they submitted a formal protest in the form of a plea. Ultimately Management agreed to review its decision in four cases, whereas the two remaining ones are still being penalized regarding their annual increments due.

2.5 Henceforth we strongly believe that we have reached a deadlock stage in respect to payment of annual increment.

2.6 At the one and only meeting that we had at the Ministry of Labour & Industrial Relations, unfortunately there has been no positive settlement.

2.7 As a matter of principle we strongly hold the opinion that in the absence of an official agreement with the Union to change the basic conditions of work. Management is completely wrong to pursue its decision by unilaterally penalizing employees entitlement only on the basis of performance appraisal.

The Respondent avers in its Statement of Case:-

1.1 The Respondent has no knowledge of the Applicant's membership as set out in paragraph 1.2 of the Applicant's statement of case and puts the latter to the proof thereof.

2.1 Paragraphs 1.3 and 1.4 of the Applicant's statement of case is denied inasmuch as the terms and conditions of employment are not at all governed by union/employer collective agreements as alleged or at all but:

(i) are primarily governed by individual contracts signed between the Respondent Company and its employees, the terms and circumstances surrounding each contract of employment being different.

(ii) are also governed by the Respondent Company's rules and regulations of employment (also administratively referred to as SIL Terms & Conditions) which are referred to in each contract of employment and have applied to all the members staff since the creation of the Respondent Company in 1989.

2.2 The Respondent further avers that what is being depicted by the Applicant as a collective agreement is in fact a dispute settlement agreement only covering items referred to as "Agreement 1" to "Agreement 20-35" as set out in Doc 1 of the Applicant's statement of case.

2.3 The agreement attached as Doc 1 does not cover the issue of increment payments as alleged or at all but actually acknowledges the discretion of the Respondent in ascertaining the level of performance of its employees –*viz Agreement 3 of Doc 1.*

2.4 The Respondent avers that the rules governing the award of increments as set out in Annex 3 have never been and are not currently being challenged and are a matter of the employer's discretion as long as increments *in lite* are increments being over and above statutory increments.

3.1 It is neither by custom nor practice that such increments are allowed but has always been by application of the terms of employment as set out in the employees' contracts of employment as set out in Annex 1 & 2, more precisely under the following dispositions of the Plaintiff's Rules of Employment as set out in Annex 3:

<u>Section 5.2 – Annual Increments</u>

"*Where the salary of an employee is on incremental scale, the employee shall not draw any annual increment as of right, but only with the specific approval of the General Manager who shall satisfy himself of the good performance and conduct of the employee.*

<u>Section 5.3 – Increment Stopped, withheld or deferred</u>
"Where the performance of an employee is not satisfactory, the General Manager may on the recommendation of any of the employee's immediate superiors decide to stop, withheld or deferred"

3.2 It is further averred that in exercising its discretion under the above contract terms and rules of employment, the Respondent Company has always paid due regard to any applicable statutory minimums.

3.3 Paragraph 2.2 of the Applicant's statement of case is admitted in that payment of increments has always and still currently is being paid to all employees entitled to same. It is further averred that the issue of entitlement is to be governed by the provisions at Annex 1 to 3, such mechanism of exercise of such discretion being at the determination of the Respondent Company as long as labour laws are not being breached.

3.4 Paragraph 2.3 of the Applicant's statement of case is qualified for reasons set out under paragraph 3.3 above.

3.5 Paragraph 2.4 of the Applicant's statement of case is denied and paragraph 2 above is repeated.

3.6 Paragraph 2.5 is denied inasmuch as there is nothing new to the discretionary nature of the determination of entitlement to above statutory increments and there is also nothing new to reference being made to the performance of employees –

viz, inter alia, Doc 1. Agreement 3 of the Applicant's statement of case.

3.7 It has never been agreed, whether at the incorporation stage of the Respondent Company back in 1989, or after signature of the dispute settlement agreement referred to as Doc 1, that the entitlement of increments was a basic condition of work. The Respondent Company has always retained the discretionary right of award of increments, whether on informal representations being made at company board level or by the mechanism of a more formal performance appraisal structure.

In reply to Management Statement of Case, the Union avers the following:-

Ref – Point No 1

Prior to 2004, the Company has never retained any discretion with regards to payment of increments. There has been at any time no formal exercise carried out by the Company to determine entitlement for annual increments until the unilateral decision of the Company last year to change previous practices by withholding annual increments relying on performance exercise and on subjective criteria.

Ref – Point No 2.1 (i)

All individual employees contract is based on the terms and conditions of employment prevailing at the time in employment. Consequently Annex 1 (dated 1999) and Annex 2 (dated 1996) respectively are both obsolete as a result of the coming into force of the implementation of the new revised contract of employment effective as from July 2002.

Subsequently the latest terms and conditions of employment (position, salary and other related conditions) have been negotiated and officially agreed between the Company and the Union.

Hence details of same are clearly spelt out in the last agreement of November 2003.

Ref – Point No 2.1 (ii)

Company's rules and regulations of employment (also administratively referred to as SIL Terms and Conditions) can be part and parcel of each individual employee only if the later has given his/her assent in writing.

We strongly hold the view that this has never been the case.

Ref – Point No 2.2

Whether there was a dispute or not, any agreement negotiated and duly signed by all parties concerned, whereby terms and conditions of work are reviewed and is subject to implementation is certainly referred to as a collective agreement in line to relevant provisions of our labour laws.

Ref – Point No 2.3

Any provision whereby there has been no formal written acceptance from employees either individually or collectively cannot be considered as an official reference document pertaining to terms and conditions of work.

Ref – Point No 2.4

This statement of the Company is completely irrelevant, because the award of increment payments based on Performance Appraisal is certainly being challenged before the Permanent Arbitration Tribunal, arising from a trade dispute.

Ref – Under paragraph 2.1 : (3.1 to 3.7)

Mostly all the contents as laid down in paragraphs 3.1 to 3.7 of the Respondent's Company are strongly inaccurate, irrelevant and misleading, hence they are being strongly denied accordingly by the applicant's party.

Furthermore the Company officially invited the Union to discuss a reward mechanism for additional efforts and job excellence by outstanding employees, as per our Agreement of November 2003.

Unfortunately the said exercise could not be positively finalized, given that the last meeting ended by a deadlock as a result of strong reluctancy of the Respondent Company to consider favourably either financial or non-financial incentives for outstanding general inputs of the staff.

Mr Yousouf Sooklall deponed as Vice President of the Mauritius Trade Union Congress and also as negotiator of the State Informatics Ltd Staff Union. According to the witness, State Informatics Ltd is a Company that carries on in the business of Information Technology. It has approximately 140 employees most of whom belong to a union that has been duly registered and recognized. Following various negotiations, a deadlock cropped up at the level of

management of State Informatics Ltd on the question of payment of annual increment. Those involved are not governed by the Pay Research Bureau nor the National Remuneration Board although they are considered to be within a private company and their conditions of work are governed by collective agreement. The Company was incorporated in 1989 and with the exception of the year 1994 when the Company's financial situation was in dire straits, and therefore did not pay annual increment to its employees, it has otherwise consistently rewarded its employees of the annual increment. In 1998 the Pay Research Bureau and at the request of the Company effected a salary revision and recommended payment of an annual increment without any condition being attached with regard to the payment linked with a performance appraisal. In December 2000 the Company effected an in-house review exercise where some employees were rewarded with one increment while others up to 4, but no performance appraisal condition was attached to. The witness further stated that from 1997 to 2001 the respondent effected payment of a profit bonus which is based obviously on profit and this again was not linked to any performance appraisal exercise. The respondent was late for the payment of annual increment in 2001 and 2002 but effected a 10% salary increase as an interim payment pending discussions. A collective agreement was finalized on 19th November 2003 when the Company paid an annual increment without any performance appraisal condition. In July 2004 the Company decided unilaterally not to effect any annual increment payment.

This is the time when respondent introduced the performance appraisal exercise which would determine the payment of an increment. The union proceeded by way of a collective letter on the ground that that decision was arbitrary and unfair. The union was referred to the terms and conditions of work in which reference is made to an annual increment which is not automatic but depending on the recommendation of the General Manager.

The witness also added that by the end of 2002, the union submitted a report to management for discussion and it included about 20 points in dispute. These discussions lasted for about 8 months and it ended with an agreement that it was eventually ratified. That document recognized the union as the sole bargaining power to represent the interest of its members as regards the rates of pay, wages, hours of work and other conditions of work. In fact it is the latest collective agreement which is still in force and would only be terminated in June 2006. The witness drew the attention of the Tribunal that some time in 2002 Management came up with a system referred to as On Target Earning (OTE) as a way of compensating employees. This was abolished on 1st July 2002 as no agreement was reached on this issue as it was considered as over and above basic condition of work. Another point on which an agreement was reached was that for those employees who have reached the top of the scale, they shall have one increment over 2 years, provided there are no major adverse reports about their performance. So that at no time there has been any question of annual increment subject to performance appraisal. The witness referred also to the

introduction of a reward mechanism for additional effort and input in specific projects. However, there was a deadlock on that issue. By introducing the performance appraisal system unilaterally, 5 employees have been penalized and only after appealing 3 of them won their case. The witness reminded the Tribunal that in the public service the Pay Research Bureau has found it difficult to introduce the performance appraisal system. He also elaborated on the salary scale system and that of the piece rate salary. Any document that refers to the General Manager's discretion to pay an increment depending on performance, was not followed by any mechanism to determine that performance. At no time this exercise was effected except for the period which is the subject matter of this dispute. The union considers the annual incremental to be an acquired right and that it cannot be revoked unilaterally. The witness suggests that if an employee does not perform, management may have alternatively to see to it that progress is made instead of proceeding to cutting the increment. The witness produced various documents in support of his contention.

The Human Resource Manager of the Respondent's Company deponed to the effect that when employees are recruited by the respondent, the employment is governed by terms and conditions and that same do change every 4 or 5 years. However, section 5 of the initial terms and conditions carried no change. In other words, there has been no agreement overriding that provision. The witness reiterated that whether the salary of an employee is on an incremental scale, or not the employee was not drawing any annual increment as

of right but only with a specific approval of the General Manager and more importantly, who shall satisfy himself of the good performance and conduct of the employee. The witness denies that the annual increment forms part of the basic condition of work. He further denied that the non-payment of the increment can amount to the breach of the conditions of work. According to the witness there have been various disputes upon which agreement has been reached but none of them was to override section 5 of the terms and conditions of employment. The absence of any expressed overriding agreement would by no means put into question section 5. It is also for the Board to decide on payment of annual increment. The witness speaks of rules and regulations that govern a contract of employment.

We refer here to (**The New Mauritius Hotels Group v Benoit and The New Mauritius Hotels Group v Pierre) MR 1982 @ p 109).**

"There is authority to say that in order that a bonus should be assimilated to a *complement de salaire* and thus become due and demandable the employee must prove not only "*constance"* in the payment but also *fixité dans le montant"* of same.

The claim of the plaintiffs can only succeed if it can be said that payment of the bonus in the years 1970 to 1976 was enough to constitute a practice offering sufficient "*constance et fixité"* to convince the employees that it was no more a discretionary payment but a "*supplement de salaire verse en conformité d'un usage constant de l'entreprise et d'un accord tacite des parties liées au contrat de travail*"

We, too shall turn to Camerlynck in whose Traité de Droit du Travail, Les Salaires, Mise à jour, 1973, page 49, note 155, we read the following:

Une prime bien que qualifiée d'exceptionnelle dans une note de service, a pu être considérée comme un complément de salaire du fait de la généralité de son attribution et de sa constance et de sa fixité (Soc. 14 dec. 1966 D. 1967. 301).

Et un *pro rata* est dû, proportionnellement à la durée de présence dans l'entreprise, au cas de démission ou de congédiement en cours d'année.

En revanche une prime ne constitue pas un élément de rémunération qui serait dû par l'employeur, - lorsque celui-ci par une note de service avait précisé que sa reconduction d'annéee en année ne serait opérée qu'au cas de conjoncture économique favorable. Or, l'employeur avait fait des pertes (Soc. 21 fev. 1968. D 1968. 395). Malgré la constance du versement pendant quatre années de suite, la qualification d'élément de salaire est donc écartée, au prix de celle de libéralité bénévole.

De même une prime fixée souverainement chaque annéee par l'employeur, sans qu'il y ait promesse, ni usage revêt un caractère purement bénévole (Soc. 25 janv. 1967, Bull. 1967. iv. No 76 p. 62 Soc 8 juillet 1968 D. 1969.99).
Il apparaît donc qui'il faut outre les trois éléments de constance, fixité et généralité, tenir compte du libellé de la note qui l'institue, et de la conjoncture de la prime.

In a note to the decision reported in D. 1968. 395 and referred to above the learned arrêtiste says:-

La solution rapportée n'est pas sans précédent. En particulier un arrêt du 9 juin 1966 décidé qu'après avoir déduit des termes d'une lettre susceptible de plusieurs sens, qu'un employeur s'était engagé à payer une gratification annuelle uniquement en cas de bénéfices et que, si néanmoins, il avait consenti à la verser à la fin de certains exercises déficitaires, il avait agi par pure libéralité sans s'obliger, les juges du fond décident à bon droit que l'absence de bénéfices justifie le refus de l'employeur de payer la gratification litigieuse.

On note donc, semble-t-il, une tendance des juges à tenir compte de la conjoncture, dès lors, du moins, que l'employeur a manifesté lui-même son souci de lier la gratification annuelle à l'état de celle-ci ou de la réalisation de bénéfices.

As we have said, the appellant company had ever since 1975 warned the employees that the bonus which had been paid with "*fixité"* and a certain degree of "*constance"* in the years 1970 to 1974 was a "l*ibéralité"* which depended on the financial situation of the company. The employees cannot be heard to say that despite these warnings the payment of the bonus in June, however

catastrophic the financial situation of their employer could be, was a tacit condition of their contract of employment."

The same principle is reiterated in **New Goodwill Co Ltd v Murday (SCJ 4069 of 1989):-**

"It is absolutely true that the additional mid year bonus only started in June 1974, but it was regularly paid for eight years. In our opinion this is prima facie indication, that such a payment represented a "supplément de salaire". Now if it was not, and if it consisted merely in a 'libéralité' which depended on the financial situation of the company, was it not incumbent upon the defendant company to have clearly conveyed the message to his employees? The defendant could very have done so by a 'note de service' or otherwise. It never did. When going through the evidence of the defendant's representatives in Court it appears that the (a) the plaintiff was not aware of the financial situation of the company except as at the end of 1981);

(b) nor was he ever informed that his mid year bonus starting from June 1974 was conditional on the company's profits which had substantially increased as compared from the previous years; and

(c) nor was he ever told that if his employer incurred losses his mid-year bonus would be cut. It is our considered opinion that an employee who has a family budget to run is entitled to know exactly whether his bonus, be it the thirteenth or the fourteenth month, is or is not part of his salary; and that if

such a bonus has been paid for years the burden will rest on the employer to prove that the said bonus was not a "supplément de salaire" but a 'libéralité'".

Wikipedia Encyclopedia defines an increment to be "an increase, either of some fixed amount, for example added regularly, or of a variable amount. For example, a salary may receive an annual increment. A decrease would rather be called a decrement."

We find the following paragraphs of the Pay Research Bureau's Report quite relevant to the disputes *in lite.* Firstly, the Personal Management Manual (PMM) of 2002 reads:-

Increment not a Right

"1.2.3 (1) An officer is not entitled to draw any increments as of right but only with the specific approval of the Responsible Officer or the Supervising Officer, as appropriate.

(2) An increment may be granted by the Responsible Officer or the Supervising Officer, as the case may be, where the work and conduct of the officer during the previous twelve months have been at least satisfactory.

1.2.4 (1) An officer who is reinstated shall not be allowed to draw any increment for the period of interdiction except with the approval of the Secretary for Public Service Affairs.

(2) When making a case for the grant of increment(s) to such an officer, a Supervising Officer shall explain the circumstances leading to the officer's interdiction and submit relevant documents including a copy of the Court proceedings and judgment, where applicable."

Secondly, the latest PRB Report (2003) states: -

"Prevailing Environment

1.14 The present pay structures are characterized both by compressed pay differentials and distorted relativities; moreover the pay system does not differentiate between poor and very good performers as the grant of increment has become almost automatic. Pay levels at the higher echelon have further widened in comparison with private sector counterparts while there are indications that at the lower levels the private sector is rapidly catching up with the public sector

Automatic Increment

4.11 There is dissatisfaction and demotivation amongst high performing employees as commitment and outstanding performance are not always recognized and adequately rewarded as officers irrespective of

performance get the same pay and treatment in terms of promotion. The grant of yearly increment has become almost automatic.

Performance/Productivity Related Reward

8.1 Pay-for-performance in the corporate world, driven by companies' search for greater competitive advantage, has contributed significantly to the pressure on government to reinvent people management practices. As such, a primary goal in redesigning public sector compensation systems has been the strengthening of the linkage between Performance and Reward. In that regard, emphasis is being increasingly placed on merit pay and group incentive plans though many countries are still in a "trial and error mode" trying new ideas and working to strengthen existing plans.

Present Pay System

8.2 The existing pay structures in the Public Sector mainly comprise sets of pay scales with incremental progressions to which employees are eligible in July each year. **The increments are meant to be earned.** Though regulations provide that an officer is not entitled to draw any increment as of right but only with the approval of the Responsible or Supervising Officer and where his work and conduct have been at least satisfactory, the annual increment has invariable been recommended to every officer on pay scales such that today increments have become almost automatic. Only in rare exceptional cases of default or through strict application of regulations are increments stopped, withheld or deferred. The pay system

is thus deprived of one of its strongest motivators to induce desired behaviour to improve performance.

8.3 Moreover, our pay system has often been criticized as being too rigid with too little room for the exercise of discretion. Responsible and Supervising Officers who are accountable to achieve their mandates, are allegedly constrained by the existing system which does not give them a free hand to reward their staff. It is argued that a flexible system of reward linked with performance would go a long way towards motivating employees and enabling organizations to meaningfully achieve their mandates and targeted objectives. As case has been made for the need to have a system which would motivate through appropriate rewards the different levels of performance and effort differently."

We find therefore that although the Public Sector has repeatedly been reminded that the Annual Increment is not a right, but must be earned, it has gradually and sadly found its way in our custom as being something automatic and therefore acquired.

The state of affairs when it comes to recruitments of employees at the State Informatics Ltd can only be summarized in one word, i.e, confusion. The representative of the Respondent agreed that the terms and conditions of work are subject to various changes over a certain

lapse of time. However, what remained unchanged is Section 5 of the initial Terms and Conditions which stipulates that the Annual Increment is subject to good performance and conduct. The Tribunal cannot appreciate the procedure of recruitment when employees were asked to sign employment contracts in which they were asked to abide by the Rules and Regulations of the company. No such "Rules and Regulations" were made part of the contract. There was a flying sheet attached which in fact referred to Terms and Conditions of Employment, and which was not signed. The Respondent confessed that the initial words "Rules and Regulations" were changed after some time to "Terms and Conditions" although it cannot state when exactly this was effected. At one stage, the witness for the Respondent stated that "Rules and Regulations" are related to Terms and Conditions. He further confirmed that the Rules and Regulations were only verbally mentioned to the Employees at time of recruitment.

We are not at the end of the road of confusion since recruitment effected as from last year do not even refer to any "Rules and Regulations" nor "Terms and Conditions" but rather to "further details of contract of employment". (Document 4(a)). More surprisingly, there is no reference to any Annual Increment in that document. Now this document at Paragraph 18.1 reads:-

"Notwithstanding the above, the employee shall so be made subject to the Terms and Conditions of Employment prevailing at the Company, which the Employee has been given and agree that hereby acknowledges that such terms are subject to subsequent amendments." The Respondent claimed that the Terms and Conditions are attached to this Document where recruitment is being effected but could not say anything about "Rules and Regulations". "ça c'est autre chose" has been the witness' answer. In other words, those who joined service at the Respondent's company were verbally informed of the contents of the "Rules and Regulations" of their employment although no evidence has been adduced of their being informed in writing. It was a question of "go to the library and have a copy and read it".

We do not contest the view of counsel for the Respondent that a contract may be subject to amendments although terms previously agreed upon still prevail unless there is agreement for them to be overridden. But the recruitment procedure since 1989 at the Respondent's company has been nothing less than business at an oriental bazaar. It is time for State Informatics Ltd to put some order in the house so that employees are aware of their contractual rights and obligations.

We now turn to the issue of Performance Appraisal Exercise. Having already referred to the various procedures adopted by the

company in the recruitment exercise, we can only conclude that the employees must not be penalized for a state of confusion. From 1989 to 2003, with the exception of 1994 when the company's financial situation did not permit it and this with the consent of the employees, Annual Increment has been paid systematically without any Performance Appraisal. System being effected. A unilateral decision to impose a Performance Appraisal Exercise in July 2004 without proper discussion by way of collective agreement with the Union seems to us to be arbitrary:

"***Dalloz, Encyclopédie de Droit Social, vo. Contrat de travail, no 195 :***

En cas de modification unilatérale des conditions auxquelles le contrat de travail a été originairement souscrit le refus par le salarié d'accepter les conditions nouvelles n'empêche pas en principe la responsabilité de la rupture d'incomber à l'employeur… »

Indeed, no agreement seemed to have been reached with the Union regarding the Performance Appraisal mechanism. The e-mail copy of the 23rd June 2004 appears to confirm same: "Following the Management meeting of yesterday and in view of the long delay in coming up with a formula for the Performance Management; it has been decided that Management has no other alternative than to conduct the Performance Appraisal Exercise as from Monday 21st June 2004". Furthermore, in their last Collective Agreement duly signed, there has been no talk of Performance Appraisal attached to Annual Increment. Those increments given to employees having reached their top scale are increments applicable only to those employees and subject to no major adverse reports

about their performance. It is clearly not the Annual Increment initially referred to.

In the matter of **Ireland Blyth Ltd Staff Association and Ireland Blyth Ltd (January 1980)**, the Tribunal held: " A yearly increment in an employee's salaries, in the opinion of the Tribunal is something due to him at the beginning of each year. The Tribunal does not appreciate the terms "merit increment" used by the Employer as it considers that, from a moral and equitable point of view, a yearly increment is due to an employee after a 1 year of loyal and efficient service. In case of dishonesty, disloyalty or inefficiency on the part of an employee, the Employer has always the alternative of applying disciplinary sanctions or dispensing with his services for valid reasons. The Tribunal notes, however, that the Employer has not adduced any evidence to that effect during the course of the proceedings." Similarly and to the extent that Annual Increment in the present case had been given constantly and specifically on a fixed scale, we can say that it is an acquired right subject to adverse reports. Indeed, the principle of it cannot be taken away since the right to be at least considered for it is acquired. We find no evidence of any performance appraisal exercise effected on those whose Annual Increments had been withheld, and should therefore be refunded.

The Tribunal has closely examined the documents produced by both parties and after hearing the evidence adduced before it, has come to the conclusion that the claims of the Union are justified.

The present Performance Appraisal system is to be ignored and Management in agreement with the Union is to set up new, clear and transparent procedures.

The present Annual Increment grant is to be maintained subject to major shortcomings that would include dishonesty, disloyalty or inefficiency. Disciplinary action may always follow. Indeed, the idea is to encourage the employee to improve and this increment is not to be linked with the Performance Appraisal system. There should be further discussion on this latter issue. The Tribunal in fact welcomes Management's concern to introduce such a system which seems to have the blessings and approbation of all parties as it can only be beneficial and bring increased productivity. We recommend that it may not necessarily be linked only to monetary rewards.

The Tribunal awards accordingly.

Rashid Hossen

Acting President

B. Ramburn

Member

R. Sumputh

Member

Date: 21st September 2005