PERMANENT ARBITRATION TRIBUNAL

Award

RN 729

BEFORE

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

In the matter of :-

Union of Artisans of the Sugar Industry
Artisans & General Worker's Union
Organisation of Artisans Union
And
Savannah Sugar Milling Co. Ltd

RN 730

In the matter of:

Savannah Sugar Milling Co. Ltd
And
(1) Union of Artisans of the Sugar Industry
(2) Artisans & General Worker's Union
(3) Organisation of Artisans Union

RN 732

In the matter of:

Savannah Sugar Milling Co. Ltd

And

(1) Union of Artisans of the Sugar Industry

(2) Artisans & General Worker's Union

(3) Organisation of Artisans Union

These three cases have been consolidated following a motion made by the parties. They are with regard to matters involving connected issues and same parties.

RN 729 and RN 732 are Compulsory Arbitration referred to the Tribunal by the Minister responsible for Labour, Industrial Relations and Employment by virtue of Section 82 (1) (f) of the Industrial Relations Act 1973, as amended, whereas RN 730 is a Voluntary Arbitration referred by both parties to the Tribunal in accordance with section 78 of the Industrial Relations Act 1973, as amended.

Mr P. de Speville, of Counsel appears for the Employer. Mr. A. Domaingue, of Counsel represents the interests of the Unions.

We bear in mind the specificity of each dispute in order to avoid the least possible confusion, the more so as the Applicants in the first case are Respondents in the other two. However, for practical purposes we find it convenient to refer to them in their global context which is the very reason for their consolidation.

In the introduction of its Statement of Case, Savannah Sugar Milling Co. Ltd avers:-

- During the Crop Season (approximately 100 days), some 50% of the employees Engaged at Savannah's factory were offered to work and were so working until the 2001 harvest on a 2 x 12 hours shift, 6 days per week, that is 45 hours of normal work and 27 hours on overtime.
- It is beyond dispute that the Mauritian Sugar Sector is currently facing serious and Unprecedented threats on the international front namely in respect of the WTO, the EU Régime and the EU enlargement. It is apposite to copy in annex:

  (i) the conclusions of the Mauritius Sugar Authority, which were produced before this very Tribunal in another dispute.

  (ii) The Sugar Sector Strategic Plan 2001-2005.
- In Mauritius, the labour costs account for about 55% of the total operating costs of the sugar production and this compares unfavourably with most of our competitors.
- In that context, the Sugar Sector has no other alternative but to lower drastically its costs of production if it wants to survive and be competitive.
- In that context, from January to June 2002, Savannah has organized several meetings with the factory employees and has explained to them:
- That in order to reduce the costs of production, it was necessary among other measures to pass from 2 to 3 shifts as from the 2002 crop season;
- That it was proposed that the 3 shifts system be organized on a 4 x 12 hours per week basis; and
- the implications of three shifts system on a 4 x 12 hours and three shifts system on a 3 x 8 hours.

- Although at first the employees express their agreement in writing in their vast majority (72.3%) to the 3 shifts of 12 hours, they came back subsequently on the same and a deadlock situation was then reached.

- In order to maintain good and harmonious industrial relations, Savannah has accepted in a spirit of co-operation that the Union's counter-proposal of 6 days x 8 hours (i.e 3 shifts of 8 hours per day) be implemented, subject to the whole matter being reviewed by the Tribunal (as per the agreement dated 18th July 2002 hereinafter referred to as the "Agreement").

- Being given that it is undisputedly the sole prerogative of the Employer to organize and/or reorganize its work structure, Savannah suggests that the Tribunal should at the outset, analyse the legality and implications of the Employer's proposal which consists in the introduction of the 4 x 12 hours shift system in as,much as this new work organization would be the best method to render the sector more cost effective.

Mr Jean Marc Aworer, testified to the effect that he is the representative of the three Unions in question. He has been working as Lab Attendant at Savannah Medine Co Ltd since 1980. He referred to what he called the old system that has been effective since 21st July, 2002 whereby employees were allowed overtime on a regular basis. An employee was earning an average of 27 hours overtime per week spread as follows:

15 minutes x Tea Break x 2 together with 1 hour Lunch a day.

These are to be added with other overtime hours the employee was doing per day which came to an average of 4 hours, so that from Monday to Friday the employee earned 20 hours and 7 hours on Saturday which make a total of 27 hours. This according to the witness has a bearing on the take home Pay Packet as well as other benefits for example the end of the year bonus, presence bonus, seniority bonus and guaranteed bonus of 9 per cent per year. At the beginning of 2002, management approached the employees and proposed 4 shifts of 12 hours and which the witness referred to as being 4 x 12. In other words the employee is to work 4 days per week, with 3 days off whereas in the old system the employee was working from Monday to Saturday with only

Sundays off. This led to the referral of the present dispute, but in the meantime the Unions proposed as a temporary measure to adopt a 3 shifts of 8 hours system per day, from Monday to Saturday. The witness reckoned that their 27 hours of overtime have now dropped to 3 hours. The Unions are seeking for a compensation for the loss of 24 hours of overtime or an increase in salary, as was done in a previous Award namely *Mauritius Marine Authority Employees Union and MMA (RN 218 of 1991).* According to the witness there was a concept of regular overtime which has a bearing on the Pay Packet of the fringe benefits and this system has been on for 22 years for all the employees of the factory. At least all those involved at the level of production, touched some 150 employees. At the end of the day, management proposed a 4 x 12 shift and a 3 x 8 shift was proposed by the Unions with a compensation for loss of overtime. The witness claimed that the employees have lost 89% on their regular overtime and therefore a considerable reduction in their Pay Packet and benefits. The witness own Pay Packet showed a reduction of Rs 3,300 per month not to mention a reduction on their fringe benefit. In September 2002 he received a Pay Packet of Rs 12,500. In September 2001 he received Rs12,500 but only Rs 9,000 in September 2002. The witness further added that the Unions have no objection to a new system of work being introduced as long as they are adequately compensated.

Mr Daniel Theveneau, Assistant Factory Manager at Savannah was called on behalf of Management. He confirmed the contents of Management's Statement of Case and clarified certain points. The whole objection is to cut down the cost of production in order to become competitive on the market. Labour cost only represent 50 per cent on the cost of production. Management opted for a change in shift instead of a reduction in the labour force. The witness confirmed that initially there was a 2 shifts x 12 x 6 days a week during crop season. During the month of January 2002, negotiations started and management proposed the 4 x 12, whereas the Unions preferred

the 3 x 8 subject to a compensation. Since the workers could work for only 3 hours overtime under the 4 x 12 system, management increased their overtime rate from 4 to 4.5. The implementation of 3 x 8 systems called for the recruitment of other workers from other sectors and this carried a cost. The witness further added that other neighbouring factories have adopted the 4 x 12 system since 2001 and this has worked very well. They include Riche-en-Eau and Union St Aubin. The advantage of the 4 x 12 system is that there is a 24 hours rest between 2 shifts whereas the 2 x 12 had only 12 hours and the 3 x 8 carries a 16 hours rest. He pointed out that the difference with the 3 x 8 system is that transport must be provided which also has a cost. Transport beyond 3.2 kilometers concerns 17 persons and cost Rs 17,500 per week. He added that washing the windmill on Sundays also bring revenues to the employees. He denied the existence of any meal allowance which was included in the 27 hours of overtime.

RN 729

The point in dispute is:-

"Whether a compensation representing 16 hours overtime at 1.5 rate, should be paid to the employees required to work on the 8 hour-6 days' shift as from 22 July 2002 for loss of structured overtime removed and consequential reduction in pay packet, or otherwise."

The Union avers:

1. The dispute rests on the principle of whether:
    1. when structured overtime is removed and /or
    2. pay packet is reduced

    compensation should be paid to the employees concerned.

2. In case the principle is awarded what quantum of compensation should be paid to employees concerned in direct relation to 1.1 and 1.2 above.
3. In the context of 1.1 there exists the following legal issue: whether in the case of removal of structured overtime it is an amendment to the contract of employment of the employees concerned and therefore falls outside the jurisdiction of the Tribunal and should be referred to the Industrial Court.
4. The Tribunal has in the past and in the case of MMA v/s MMA Employees Union awarded an 8 per cent compensation for overtime loss. The Unions are applying for an extension of that award to the present case.
5. The quantum claim by the Unions at Savannah sugar Milling Company Ltd represents 16 hours overtime at 1.5 rate weekly. The calculation of the compensation by the Unions is related to the overtime loss weekly.

Management avers:-

(i) There is no acquired right that the employees would be given work on an overtime basis. Hence, the employees "*ne peuvent s'opposer à la suppression des heures supplémentaires même s'ils subissent une baisse de revenus* ». (Encyclopédie Dalloz 2e Edition – Contrat de Travail (modification) note 72).

(ii) The employees are now working fewer hours and accordingly they earn less remuneration.

(iii) In consequence, the question of compensation cannot arise.

(iv) The case of MMA v/s MMA Employees Union can be of no assistance in as much as:

  (a) each case must be decided on its own merits; and

  (b) it appears that negotiations in that particular case were based on the assumption that parties agreed that the introduction of the double shift system would entail adequate compensation for the workers.

(v) Be that as it may, it is apposite to note that by claiming a compensation based on 16 hours, the Unions are saying that the employees should receive the same remuneration as before passing from the 2 x 12 hours shift system to the 3 x 8 hours shifts system although they would be working only 48 hours instead of 72 hours. Such a scenario would nullify all efforts and measures towards cost reduction.

RN 730

"What compensation should be paid to the Employees for not taking a meal break ?"

Management avers

(i) Previously, whilst working on a 2 x 12 hours shift system, the employees were not officially taking any meal break and were not getting any compensation in relation thereto.

(ii) Workers were then taking their meal during working hours and made arrangements with their colleague for a short replacement.

(iii) Now that the employees are working on a 3 x 8 hours shift system, the Unions claim that a compensation of 1 hour at normal hourly rate should be paid to them

(iv) If the law was not to be strictly adhered to, the employees would have to spend 9 hours at the factory instead of 8 hours and the factory would stop for one hour. This would be source of serious concern to Savannah because it is technically not feasible nor efficient for any sugar factory to stop its operation during one hour and to start over after its break.

(v) The proposal of Savannah for ½ hour conpensation is fair and favourable to the workers in that:

(a) workers would be taking a short meal break during working hours and will continue to be paid during that break; and

(b) the workers will receive an additional ½ hour pay compensation per day on which they are present at work.

The Union avers that:-

(i) the Union of Artisans of the Sugar Industry, the Artisans & General Workers Union and the Organisation of Artisans Unity are the 3 Unions duly recognized by the Savannah Sugar milling Company Ltd through the Mauritius Sugar Producers' Association. The employer has proposed the 4 x 12 shift system) and the Unions have counter proposed the 6 x 8 (3 x 8 hours shift system). The Unions' proposal has been accepted in the spirit of maintaining good industrial relations and has been implemented as from 2 July 2002.

(ii) Whereas the workers agreed in the past, whilst working on a 2 x 12 hours x 6 days shift, to take their meal during working hours, they are not agreeable to make similar arrangements with the 3 x 8 shift hours without an appropriate compensation for loss of revenue due to overtime foregone.

(iii) In that respect, the Unions and the Savannah Sugar milling Company Ltd have agreed that a compensation should be paid to those employees. The Unions are claiming one hour basic pay whilst the Savannah Sugar Milling Company Ltd has proposed ½ hour at normal hourly rate.

(iv) The parties have not been able to agree on the quantum of the compensation to be paid in lieu of the meal and tea breaks. An industrial dispute therefore exists between the three Unions and the Savannah Sugar Milling Company Ltd on the quantum of the compensation. The Savannah Sugar Milling Company Ltd and the three Unions have therefore decided to jointly refer the dispute to the Permanent Arbitration Tribunal under Section 78 of the Industrial Relations Act and pray for an award on this dispute.

(v) Pending the award of the PAT on the above issue the Savannah Sugar Milling Company Ltd has agreed to grant, on a temporary basis and without prejudice an incentive to the employees equivalent to one additional hour per day of actual work at normal rate, provided that the employees are physically present at work.

(i) the principle of paying a compensation to employees taking their meal and tea breaks while working is not a matter in dispute. The employer has agreed to compensate the employees concerned by way of ½ an hour at normal rate per day.

(ii) The claim of the Unions is for a compensation representing one hour on their basic pay daily.

(iii) Previous to that in the 6 x 12 shift system, the employees were drawing 4 hours overtime per day at 1.5 rate on weekdays (fro Monday to Friday) and 2.0 rate on public holidays falling on any day from Monday to Friday. 7 hours overtime on Saturdays morning shift and 7 hours overtime on Saturdays night shift. (1 hour at 1.5 rate and 6 hours at 2.0 rate).

(iv) In fact the employees were not granted any meal or tea time at all. They were however drawing 1.5 hours overtime at 1½ and 2.0 times where applicable.

(v) The balance of overtime paid for additional hours of overtime worked was of 2 ½ hours.

(vi) In the context of a new 6 x 8 shift the Unions are in fact claiming one hour basic pay compensation in lieu of 1½ at 1.5 or 2.0 times rate. This concession is the maximum that the Unions can concede.

(vii) The attention of the Tribunal is drawn to the fact that the meal time of one hour is mandatory. The 2 tea breaks of 15 minutes each within working hours is a long standing custom and practice which the MSPA has referred to arbitration as per RN 586. Refer annex iv paragraph © of the MSPA's counter proposal to UASI, AGWU dated 19 June 1998. Award of which is still pending before the PAT. (vide annex B).

(viii) Financially speaking an employee drawing Rs 5000.- monthly was receiving Rs 324.- weekly for meal and tea breaks not taken.

(ix) The claim of the Unions represents only a flat weekly compensation of Rs 144.- on full attendance of the employee.

RN 732

"Whether by virtue of Section 15(5) of the Labour Act and in the absence of any contrary provision in the Sugar Industry (Non-Agricultural Workers) (Remuneration Order) Regulations 1985, the Savannah sugar Estates should implement a new shift system based on 4 days x 12 hours a day, or otherwise"

Management avers:

Section 15(5) of the Labour Act provides:

"A worker on shift work may be employed in excess of the stipulated hours, without added remuneration, if the average number of hours covered by a pay period does not exceed the stipulated hours".

- there is no contrary provision in the Sugar Industry (Non-Agricultural) Workers Remuneration Order. All existing provisions refer to normal days work.
- The Sugar Industry (Non-Agricultural Workers) Remuneration Order Regulations provides that the length of a normal day's work shall be 5 hours on a Saturday and 8 hours on every other day which is not a public holiday that is 45 hours per week. Being given that the pay period is one month, the stipulated hours amount to 45 x 4.2 = 189 hours.

  The worker will be paid added remuneration for the hours worked in excess of the stipulated hours.
- Document D indicates how the 4 x 12 hours shift system could be organized.
- This 4 x 12 hours shift system which already exists at Union St Aubin Sugar Factory and Riche en Eau Sugar Factory (and also at the Mount sugar Factory before its closure) is the most appropriate way of lowering the costs of production.

- It is necessary to note that with the introduction of a 4 x 12 hours shift system, their position (social and financial) will be the same as today under a 3 x 8 hours shift system but, they will, in addition enjoy three full days rest/leisure per week.
- The question of doubling of shifts which is in any case exceptional, is the same on a 3 x 8 hours shift system as under a 4 x 12 hours shift system and the same indeed as in the past with the 6 x 12 hours shift system.
- it would be speculative to consider at this stage the consequence of any introduction of a 40 hour-week during the crop season. In any case, the problem would have been the same in case the parties had kept the 2 x 12 hours shift system.
- In the case of Mon Loisir Sugar Factory which did not operate in 1999 because of severe drought, no compensation was claimed nor considered for overtime not performed.
- It is finally the contention of Savannah that, on the one hand, it is a condition of the work of the employees engaged on shift work that they have to perform overtime work if need be, and, on the other hand, it is the sole prerogative of the Employer to reorganize work and determine whether they should perform the same and how much overtime they will actually be required to perform.

The Unions aver:

- The agreement reached between the parties dated 18 July 2002 fully satisfies the workers and does not pose any problem to the employer.
- Imposing 12 hours work per day on 4 days of the week affects the social life of the employees and it also represents a burden in case of doubling of shift.
- Does not provide as is the case of the 8 x 6 shift for payment of overtime in case of the application of the 40-hour week during the crop season and on the other hand not applicable in case of 40-hour week.

Tribunal's considerations:

A lot of stress has been laid by Counsel for the Respondent in his submission regarding the issue of overtime not being an acquired right. We find the following reference of overtime in our statutory law:

"Section 16 of the Labour Act 1982 as amended reads:

"*(1) Subject to subsection (3), where a worker works on a week day for more than the stipulated hours, the employer shall, in respect of the extra work, remunerate the worker at not less than one and a half times the rate at which the work is remunerated when performed during the stipulated hours.*

(2) Subject to subsection (3), where a worker works on a public holiday, the employer shall, in addition to the remuneration payable under the agreement, remunerate the worker in respect of any work done -

(c) during the stipulated hours, at not less than twice the rate at which the work is remunerated when performed during the stipulated hours on a week day; and

(d) outside the stipulated hours, at not less than 3 times the rate at which the work is remunerated when performed during the stipulated hours on a week day.

(3) an agreement may provide that the remuneration provided for in it includes payment for work on public holidays and overtime where –

(a) the maximum number of public holidays; and

(b) the maximum number of hours of overtime on week days and on public holidays, covered by the remuneration are expressly provided for in the agreement."

In New Mauritius Hotels v Permanent Secretary, Ministry of Labour on behalf of A. Désiré and S. Bissoon SCJ No 289 of 1979, the Supreme Court dealt with an issue of overtime and stated:

" In view of what follows, it is as well to observe that section 3 of the Labour Act 1975 (which was enacted whilst the Remuneration Order was already in existence) provides that –

> Subject to any provision to the contrary in any other enactment or in a Remuneration Order, this Act shall apply to every agreement."

Now sections 15 and 16 of the Labour Act contain general provisions, section 15 dealing with normal hours of work and section 16 with overtime. The former section lays down that a worker may not be required to work for more than six days in a week, that on five of those days eight is the maximum number of hours during which he may be compelled to remain at work, the limit for sixth day being five hours; the section finally provides that no worker may be compelled to work on any public holiday (i.e Sundays or proclaimed holidays). Section 16 says, in subsection (2), that a worker who agrees to work on a public holiday shall, in addition to the remuneration due to him under his agreement, be paid the equivalent of two hours' wages for every hour worked up to the stipulated number of hours (namely eight or five), and the equivalent of three times the hourly rate for every hour of work performed over and above the stipulated figure."

"Overtime is defined in European Employment & Industrial Relations Glossary: UK (1991) by Michael Terry and Linda Dickens as " Hours of work done in excess of any standard or basic working week as laid down in a contract of employment and/or collective agreement. Despite criticism from both employers and trade unions overtime levels have remained high, averaging between four and five hours for all full-time male manual workers, but increasing to nearly 10 hours a week for those male manual full-time workers who actually work overtime (only round 5o per cent. do). In 1985 the government estimated total overtime worked at 11.5 million hours, equivalent to 600,000 full-time jobs. For those who work overtime, it makes a significant contribution to pay, converting an inadequate level of pay into an acceptable wage. Thus it is often defended by workers and unions at local level, despite official disapproval. For managers too it represents a source of flexibility in enabling them to increase output in response to demand without recruiting extra staff. In unionised workplaces where overtime is regularly worked, unions have

often sought managerial agreement that it be distributed on a rota basis so that it is equally available to all those who wish to do it. Although most overtime is voluntary in nature, the routine working of overtime can lead to a situation in which a court may rule that a refusal to work "voluntary" overtime may constitute a breach of contract ".

The Tribunal reminds the parties *en passant* that nowhere is to be found the legal concept of "structured overtime".

Whereas "shiftwork" is defined as follows:

" SHIFTWORK: According to a survey undertaken in 1984, nearly 40 per cent of establishments employing 25 or more employees reported some shiftworking, with a significant correlation between shiftworking and size of plant. Shiftworking is more prevalent in the nationalized industries than the private manufacturing sector, with high rates in transport, posts and telecommunications, the Health Service, electricity supply and coal. The most common shift pattern was the double day shift. Workers who work shifts normally receive a supplementary shift premium payment on top of their basic pay."

We agree with the submission that overtime is not an acquired right. We find, on the other hand, an abundance of authorities allowing the employer to modify hours of work for the better running and exigencies of his enterprise.

In Cigarette Manufacturing Employees Union v/s The British American Tobacco (Mtius) PLC SCJ 364 of 1995:

"the applicant is a registered trade union which represents the majority of the hundred or so employees of the respondent. There exists between the two parties a collective agreement which regulates the terms and conditions of employment of the members of the applicant with the respondent and which, it is averred, cannot be amended unilaterally. Negotiations started between the two parties some time in June 1995 to provide for a new collective agreement which would pave the way for the introduction of shift work. The union avers that it had made it quite clear that any agreement would have to be vetted by its General Assembly. After several meetings, the representatives of the applicant signed an agreement with the respondent on 27 July 1995 relating

to the introduction of shift work "as from September 1995." This agreement was not submitted to the General Assembly of the applicant. On 23 August 1995 the respondent informed its employees that it would be introducing shift work as from Monday 11 September 1995."

"…. although it is agreed on both sides that the introduction of shift work would bring some inconvenience and hardship to the employees, there is unrebutted evidence that the respondent had invested in new machinery and equipment in order to maintain its competitive edge in the region. This new equipment could never give a positive return unless the shift system was introduced."

It is interesting to observe what was held in Hong Kong Restaurant Group Ltd v/s Mr T. Chummun SCJ 105 of 1957:

"Whilst the Catering Industry (Remuneration Order) Regulations 1987 provides that a worker is required to work 48 hours per week excluding meal breaks, there is nothing which prevents an employer from granting more favourable conditions of employment.

We read at note 73 of Encyclopédie Dalloz: Droit du travail, Verbo contrat de travail (Modification) that:-

"La durée du travail est généralement considérée comme un élément substantiel, ne serait-ce que parce qu'elle détermine le salaire. »

The change in the number of hours of work is a substantial one in the present case and this cannot be done unilaterally. However, we hasten to add that nothing prevents the employer from modifying those hours for the better running and exigencies of the business provided he pays for the overtime.

Coupled with the right to change the number of hours of work, there is also the right of the employer to modify the time at which work must start. But this does not entitle the employer to fix odd hours of work unless the concern has odd business hours. It must be borne in mind that the employer has the inherent power of administration and he can organize his business according to

the exigencies of the service but within the labour law and its remuneration orders (vide: Encyclopédie Dalloz: Droit du travail – Verbo Contrat de travail (Modification) notes 32 and 34.

Now, can an employee refuse to accept a unilateral change in one of the substantial terms of his contract of employment and if so, what would be its consequence?

At notes 37 and 91, encyclopédie Dalloz: Droit du travail, Verbo Contrat de travail (Modification), we read that :-

« note 37 :- Le salarié a le droit de refuser d'effectuer des tâches non prévues par le contrat, de se plier à un horaire différent de celui qui a été déterminant de son engagement, même si l'ordre est justifié par l'intérêt de l'entreprise.

Note 91 : Le salarié n'a ni à accepter ni à refuser une modification non substantielle, qui s'impose immédiatement à lui. Mais son acquiescement est nécessaire si la modification est majeure pour la formation d'un avenant au contrat du travail. Et il a le droit de refuser la modification substantielle, son refus ne pouvant justifier une sanction. »

Another authority for the proposition that the employer has the right to modify hours of work is S. L'Ingénie v/s Baie du Cap Estates Ltd SCJ 171 of 2000:

" It must be borne in mind that the employer has the inherent power of administration and he can organize his business according to the exigencies of the service but within the labour law and its remuneration orders. No doubt the number of hours of work is one of the substantial terms of employment and as such cannot be changed unilaterally. (Vide Hong Kong Group Ltd v Manick (1997)."

In the present case, the main concern of the Unions is not so much a change in the working hours or a new system of work being introduced but rather the payment of compensation for hours of overtime.

True it is therefore that the Employer has the prerogative of organizing and re-organizing its work structure, although in the present case it chose not to sack but to re-shuffle.

However, on the principles of good practices of good industrial relations as provided for in section 47 of the Industrial Relations Act, as amended, it is essential that there should be an 'entente' between the Employers and the Employees. Good human relations between Employers and Employees are essential to good industrial relations. Indeed, reducing the number of hours of work that has an impact on the overtime hours and therefore the end of the monthly pay packet without any sort of compensation can only lead to a deterioration of harmonious industrial relations. One should not lose sight of the fact that both Employers and Employees have a common interest in the success of the undertaking. We need to place on record here that the Union had not backed out from their place of work and offered a temporary measure to allow the factory to run pending a final decision. We salute this initiative on the part of the Employees.

No doubt the workers were on a more rewarding shift system, financially speaking.

Mr K. Pertab who replaced Mr. A. Domaingue as Counsel for the Unions did not address the Tribunal and left the matter in the hands of the Tribunal to decide.

On the other hand, we have been favoured with cogent submissions on behalf of Mr P. de Speville, Counsel appearing for Management.

That the Sugar Industry is going through a difficult time and may soon be in its dying phase if no measures are taken for its survival is a matter known to one and all. The writings have been on the walls for quite some time now. The Tribunal is not here to interfere in Management's policy of cost reduction. No sound enterprise would survive if a policy of cost reduction is not applied seriously and especially when economic realities are facing the red light. We cannot lose sight of the provisions laid down in section 47 of the Industrial Relations Act 1973, as amended.:

"47 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 and balance of payments;

(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 fo 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 employees being more concerned with a compensation for hours of overtime, rather than the changing hours of work, and the Employer having the right to organize his business according to the exigencies of the service as long as he remains with the parameters of the labour law and remuneration orders, the Tribunal is of the considered view that the 4 days x 12 hours x 3 shift system be introduced. This would be equivalent to a 48 hours work, whereby 3 hours would be paid at the normal overtime rate in accordance with section 3 of the Second Schedule of the Sugar Industry/Non-Argicultural Worker) Remuneration Order. There is evidence on record that the 4 x 12 system is already applicable and functional, namely at Riche en Eau and Union St Aubin factories. It is the intention of the Société Usinière du Sud (SUDS) that all factories should have the same operational shift for practical purposes.

It stands to reason that the 3 x 8 x 6 days shift lapses with the introduction of the new formula, i.e 4 x 12 shift.

We also invite Management to grant an incentive to those working on the shift system during the crop season, equivalent to 6.5 hours at normal overtime rate.

Furthermore, in a spirit of harmony between employees and employers for the sake of good industrial relations, the Tribunal appeals to Management understanding and good faith to consider a "*one off* payment"to workers on shift in the context of staff re-organization at that particular factory. Indeed, it is after careful considerations of the whole matter that the Tribunal especially decides to grant this "*one off* payment". We consider reasonable an amount of Rs 20,000.- flat per worker on shift. There is a case for such payment on the basis of a dispute of interest. The Tribunal also finds the employees to have been understanding and cooperative, which renders this "*one off* payment"more justifiable. We would also add that the overtime hours in the present case to be so substantial that the necessity for such payment is called for. Besides, we do not see it being consequential on the factory's long terms cost. The latter will already benefit considerably in the application of the new shift system of the workers without whose contribution the factory cannot run.

We have already examined the authorities that support the proposition that the Employer has the right to change working hours in consultation with the workers so that it

cannot be said that a legal due exists as a result of that exercise. The claim for compensation therefore does not arise. The MMA case was based on an agreement between the Employer and the workers and we do not see the Tribunal doing otherwise than to award accordingly. No such agreement exists in the present matter. This Award therefore should not be invoked as a precedent in view of the fact that it stands on its own facts. Indeed, each case must be viewed on its own facts and the present award cannot be a principle of general application. This case is therefore " un cas d'espèce".

The 4 x 12 x 3 shift system and incentive scheme shall be implemented at Savannah factory as from crop 2006.

We are left with the issue of meal allowance. Whereas the workers agreed in the past, while working on a 2 x 12 hours x 6 days shift, to take their meal during working hours, they are not agreeable to make similar arrangements with the 3 x 8 hours shift without an appropriate compensation for loss of revenue due to overtime forgone. It is in that respect that the Unions and Savannah Sugar Milling Company Ltd have agreed that a compensation should be paid to those employees. The Unions are claiming one hour basic pay while the Savannah Sugar Milling Company Ltd has proposed ½ hour at normal hourly rate. What we find is that there is no dispute on the principle of payment but rather on the issue of quantum of the compensation to be paid in lieu of the meal and tea breaks. The Unions' version is that with the old shift of 2 x 12 hours, they were working for 12 hours and were doing 2½ hours overtime which included one 1½ hours of meal and tea break. It is during cross-examination that witness Aworer conceded that they were actually eating while working. So that this meal break is something more on paper than in reality It stands to reason that the factory cannot stop running although the law provides for the meal break. We have not been convinced regarding the basis of ½ hour allowance for the meal break. We consider on the other hand that the substantive reduction in the workers pay packet justifies the payment of one hour basic pay for meal allowance.

The Tribunal awards accordingly.

This Award shall take effect on the date of its publication in the Gazette.

The Tribunal thanks the parties for their understanding and commitment to stand by “la poule aux oeufs d’or” for it to survive.

R. Hossen
Ag President

H. Girdharee
Member

B. Ramburn
Member

03 May, 2006