

PERMANENT ARBITRATION TRIBUNAL

AWARD

RN 706

BEFORE

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

In the matter of:

1. Lindsay Cotte
2. Marcel Tadebois

And

Cargo Handling Corporation Ltd

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

The Terms of Reference read:

"Whether, in the context of port reforms, Lindsay Cotte and Marcel Tadebois should be paid in respect of each couple of additional shifts, the equivalent amount of 9 hours' pay on the same footing as other colleagues in the same category, or otherwise."

In their Statement of Case, the applicants aver:-

1. They are both senior terminal assistants at the Cargo Handling Corporation Ltd
2. Their basic complaint is that the principle of equal work and equal pay was not being adhered to by the Cargo Handling Corporation Ltd in as much as some employees of the same grade were earning more than their seniors within the same category.
3. This controversy arose as a result of the promotion of terminal assistants to senior terminal assistants.
4. According to agreements reached between the Cargo Handling Corporation Ltd and the Union, a number of grades including terminal assistants were guaranteed additional overtime shifts. These additional shifts were included in the pay packet of these terminal assistants and when they were promoted to the post of senior terminal assistants, they continued to benefit from these additional overtime shifts and this was reflected in their pay packet.
5. Furthermore, the method of calculation of real overtime was wrong in that the recently promoted senior terminal assistants did not have to cover the initial guaranteed shifts before overtime was calculated. It is therefore the employees contention that all senior terminal assistants ought to be brought to the same level and that their pay packet be re-aligned on that of those recently promoted to senior terminal assistants.

In its Statement of Case, the respondent, Cargo Handling Corporation Ltd avers-

1. The Cargo Handling Corporation Ltd started to operate with effect from 01 October 1983. It took over the:-
 - (a) stevedoring operations formerly performed by D'Hotman & Sons Ltd, Desmarais Brothers Ltd and Taylor & Smith Ltd ; and
 - (b) shore handling operations carried out by Société United docks. All those employees who were absorbed by the Cargo Handling Corporation Ltd, were employed on the same terms and conditions of employment prevailing with their former employers.

2. Certain of the categories of employees who performed shore handling operations were 1st Tally Clerk and 2nd Tally Clerk restyled Tally Clerk (shore), Berth Office Clerk, Warehouseman and Clerical Supervisor. While stevedoring operations were performed by Tally Clerk, Head Clerk Stevedore and Ship Supervisor, and so on.
3. In 1995, the Corporation set up a Salary Review Committee (SRC) to review and harmonise the pay structure and conditions of services of its employees. The SRC Report 1996 (as subsequently amended) was implemented as from 01 June 1997 after negotiations with the Union.
4. Messrs Lindsay Cotte and Marcel Tadebois were offered employment as 1st Category Clerk in the Cargo Handling Corporation Ltd as from 01 October 1983. One of the various recommendations made in the SRC Report of 1996 is that the categories Lighterage Clerk, Ship Tally Clerk and Tally Clerk Shore be restyled as Terminal Assistant.
As from 01 June 1997, they were appointed as Terminal Assistants and their terms and conditions of employment are governed by the provisions of the SRC Report 1996 (as subsequently amended). Messrs Lindsay Cotte and Marcel Tadebois have been promoted as Senior Terminal Assistants (formerly Berth Office Clerk and Survey Clerk) as from 01 November 1998 and 01 July 1999 respectively on the same terms and conditions of SRC Report 1996 (as subsequently amended).
5. The SRC Report 1996 also recommended for a topping up Scheme for certain categories of employees in post to provide them with opportunities to earn a reasonable pay package compared to their pay package drawn prior to the implementation of the SRC Report 1996, through a guaranteed work of additional shifts. Annexed to the Statement of Case is a list of grades with guaranteed work of additional shifts as follows:-

No	Nature of Post	No of Additional Shifts
1	Assistant Terminal Superintendent (formerly Ship Supervisor)	2
2	Senior Supervisor (Operations) (formerly Quay Supervisor)	4
3	Supervising Assistant (formerly Foreman (Fish) – Ship Foreman)	4
4	Operator (Plant and Equipment) Superior Grade (formerly Specialised Deck Stevedore)	6
5	Port Worker (Superior Grade) (formerly Hatch Stevedore I & II Hatch Stevedore (fish) Shoreworker Lighterage Hand)	5
6	Post Handyman (formerly Sewer (Stevedoring Section) Shore Sewer Cleaner (Stevedoring)	2
7	Supervisor (Operations) (formerly Head Clerk)	4
8	Foreman (General-on-Shift) (formerly Foreman Sewer (Stev.))	5

6. The Corporation has set up a fresh Salary Restructuring exercise which is being carried out by a Consultancy firm (Price Waterhouse Coopers). One of the main tasks of the consulting firm consists of carrying out a review of the existing salaries and conditions of service and correction of any anomalies contained in the SRC Report 1996 and any alleged discriminatory policy.
7. In an additional Statement of Case, Respondent adds the following: "It is contended that this continued benefit to the Senior Terminal Assistants (upon their promotion from the grade of Terminal Assistants), namely Messrs J.R. Mahon, G. Suggun, G. Louise, M. Labonté and C. St Medor (and late L. Savoournaden) were and are in the nature of personal allowance and cannot be extended to the Applicants.
8. The Corporation therefore submits that the claims of Messrs Lindsay Cotte and Marcel Tadebois are misconceived.

Mr Alain Hardy, the Union Adviser who works at the Cargo Handling Corporation Ltd as Data Officer deponed under oath to the effect that Mr Lindsay Cotte and Mr Marcel Tadebois in 1996 were already Senior Terminal Assistants at the Cargo Handling Corporation. In 1996 the ex-Lighterage Tally Clerks (now Technical Assistants) were granted additional shifts catered for a loss in the pay packet for the employee, meaning that the employer had to table two sets of overtime, and the additional shift before any other option of overtime calculation was compensated. At that stage there was the cleavage between board and shore operations. Eventually the ex-Literage Tally Clerks joined the pool of Senior Terminal Assistant and as such they carry the additional shift in the form of a personal allowance, i.e., those joining the grade of Senior Terminal Assistant were earning more than those who were already in the category. While referring to the addendum to the Statement of Case of the Respondent, the witness added that the continued benefit of the Senior Terminal Assistants, upon their promotion from the grade of Terminal Assistant namely Messrs J.R. Mahon, G. Suggun, G. Louise, M. Labonté and C. St Medor were and are in the nature of personal allowance and cannot be extended to the Applicants. It is clear, according to the deponent, that these employees are earning more than the Applicants for the same work. The issue which the applicants

are placing before the Tribunal is that they should be earning the same pay packet as those who are performing the same work in the same grade. Parity can be achieved between the applicants and the new Senior Technical Assistants namely Messrs J. R. Mahon and others and this by granting the two additional shifts to the former.

The witness further stated that there cannot be two employees in the same category with two sets of salaries. He refers to the document emanating from the dispute which arose between the Cargo Handling Corporation Ltd and Techniciens Portiques who are members of another union. The witness also added that there were 2 categories of workers, those working on board and those working on shore until 2002 when there has been a Salary Review Committee. The applicants have always worked on shore. Even when the applicants were Terminal Assistants they were not enjoying additional shift pay. They accepted this post without any contest and without making any remarks. They also made no contestation when they were offered the post of Senior Terminal Assistant. The Salary Review Committee of 1996 spelled out very clearly that for the post of Senior Terminal Assistant there is no additional shift allowance. The contention started with the movement of those working on board who came to work on shore. The problem has been aggravated concerning overtime. The Cargo Handling Corporation Ltd has computed overtime, taking into consideration the two additional shifts and paying overtime over and above the two additional shifts. The applicants are not earning any special allowance. After 1996 there was another salary review, the salary restructuring which was carried out in 2002 by Price Waterhouse Coopers which has not been fully implemented or agreed between parties. The Consultants say that the union is saying that some employees are enjoying additional shift and some are not. Some employees are getting more money than the two applicants in that the pay packets of these employees have to be preserved. The employees who were getting a personal allowance did so because they were working on board. There is a cleavage between operation on shore and operation on board. One cannot purport to join a promotional avenue with all the privilege that one has previously had and at the same time earning more than those who were in 15 years or 20 years in the same category. He supports his argument by quoting the Salary Review Committee:-

“No employees joining any grade should earn more than the employees in that category.”
The basic salary is the same with regard to those people who are working on shore and those who have joined.

Mr Hardy confirmed that at the Cargo Handling Corporation Ltd there are actually 28 Senior Terminal Assistants and among them there are 22 who are being paid a different salary, including the applicants and the rest are getting more because of a personal allowance. The 6 employees who are receiving this personal allowance have, in fact, being promoted from Terminal Assistant on board to Senior Technical Assistants. The 22 employees who are getting the same salary as the applicants have been promoted from the post of Terminal Assistant on shore to Senior Technical Assistants. The employees who are earning this personal allowance have been benefiting this when they were working as Terminal Assistant. When an employee is working as Terminal Assistant, he is either working on board or on shore. The witness is not aware that Senior Terminal Assistant very often are called upon to work on ship if needs be. He does not agree that if an employee who has been promoted from Terminal Assistant on shore to Senior Terminal Assistant is asked to work as Senior Terminal Assistant on board, he will not be able to handle the job. The Salary Review Committee paved the way for such mishaps. The Salary Review Committee recommends that any employee joining a grade is bound to have 3 increments on the scale of the grade provided he does not earn more than the one already in the category. He would be the first to fight if somebody is promoted and is receiving less salary than what he was getting on his previous post, than the group of 6 employees are not performing exactly the same duties as those of the group of 22. There are 2 types of terminals – the Multipurpose Terminal which operates manually, that is, with a limited information system and the Mauritius Container Terminal which perform with a hi-tech information technology. Depending on which Terminal they are operating the works will not be the same for all the Senior Terminal Assistants. The employees who have been promoted from Terminal Assistant on board to Senior Terminal Assistant have always benefited an additional shift since they were working on board. They came from board and the other group of 22 from shore and each group were not earning the same pay package. When one is getting promoted one cannot lose on his pay package.

The witness further testified that Mr Cotte and Mr Tadebois come from two different Terminals and yet both do not get this additional allowance. When the original complaint was made some time in October 2001, the basis of the complaint was that the same category of employees were earning more than others. The system of additional shift was not a permanent feature of the salary package. The two additional shifts should have been earned when there is no overtime work for these persons working on board. The computation of overtime would have taken place after having covered the two additional shifts but there was a change in the Salary Review Committee of 1996 whereby the two additional shifts were computed in the salary and used for computation of overtime. That was when the group of 6 employees who were working as Terminal Assistants. When this group of 6 employees were promoted as Senior Terminal Assistants, they kept the salary structure as it was as Terminal Assistants in order not to reduce their pay package thus creating the difference with other Senior Terminal Assistants appointed before them and senior to them. Neither one group nor the other of the Senior Terminal Assistants is responsible for this change. It is the responsibility of the Cargo Handling Corporation Ltd. It is not being asked that the pay packet of those 6 Senior Terminal Assistants be reduced but the pay packet of all the Senior Terminal Assistants be levelled. Now that they have joined the Senior Terminal Assistants category, this extra amount which they were earning has been removed from their basic salary and are probably now being called a personal allowance. The group of 6 Senior Terminal Assistants are not performing a different job from the other 22 Senior Terminal Assistants. The witness is absolutely sure basing on the scheme of service. It is not true to say that now and again they are called upon to perform task on board and that this personal allowance is to cater for that task on board.

The witness subsequently agreed that Mr Lindsay Cotte and Mr Marcel Tadebois became Senior Terminal Assistants on 1st November 1998 and on 22nd November 1999 respectively.

Mr D. Mohabirsingh, Personal Manager at the Cargo Handling Corporation Ltd testified to the effect that there are 2 categories of Terminal Assistants, Terminal Assistants Ship (they work on board ships) and Terminal Assistants shore who always work on shore. Terminal Assistants working on board were earning more pay package than those working on shore because they were performing more overtime. The question of additional shift was introduced by the Salary

Restructuring Committee Report of 1996 as a measure to compensate them for any loss in pay packet occurring at the implementation of the Report on 1st June 1997. The Senior Terminal Assistants comes from 2 groups – they have been promoted from Terminal Assistant on shore or Terminal Assistant on board. There are 28 in all – 6 who come from Ship Terminal Assistants and 22 from Shore Terminal Assistants. Those 6 persons whose name appear in the Statement of Case Messrs Mahon, Suggun and others draw a basic wage together with a personal productivity allowance and those who were earning previously the additional shift allowance now draw a personal allowance and those who were posted at the Mauritius Container Terminal draw an incentive bonus in addition to that personal allowance. Those 22 Senior Terminal Assistants always work on shore – the other 6 work at the Mauritius Container Terminal. The latter may be called upon when need be to work on ship. It is not possible for Senior Terminal Assistants who have always worked on shore to work on ship because there are Supervisor Operations to work on board. There is no discrimination within one category of workers. The SRC Report of 1996 and that of 2002 do not provide for payment of additional shift to Senior Terminal Assistants. If ever the Tribunal comes to the decision that all the 28 Senior Terminal Assistants should earn a personal allowance this would cause an additional cost of Rs 2 million to the Cargo Handling Corporation Ltd and they do not have the financial ability to pay. The case of the 2 applicants have been submitted to the Tribunal as a test case and if ever they win, this will extend to the other 22 Senior Terminal Assistants.

He further added that 2 additional shifts were paid to the Terminal Assistant ships following negotiations arising out of the implementation of the Salary Restructuring Committee Report of 1996 as from 1st June 1997. Terminal Assistants working on board ship draw higher wages than those working on shore. There are different duties for those working on board and those on shore although both group their job description is Terminal Assistant.

Again, the post of Terminal Assistant is a restyling of the job of shore Tally Clerk and ship Tally Clerk as they existed prior to the 1st June 1997 and one of the aim of the Salary Restructuring Committee of 1996 was to harmonize the different levels in the hierarchy of the employees. The appellation of the additional shift has been given by the Salary Restructuring Committee of 1996 but it was converted in a personal allowance later on by Management. He agrees to the fact that there is no personal allowance in the SRC of 1996 but in the course of implementation following

negotiations with different unions so that there may not be any short fall in pay and when somebody is especially promoted from Terminal Assistant to Senior Terminal Assistant, a special allowance had to be granted. In the post of Senior Terminal Assistant, Mr Lindsay Cotte is senior to Mr. J.R. Mahon and that is why his basic salary is higher. Senior Terminal Assistants, who have previous experience as ship Tally Clerk are sometimes called upon to work on board when there is a shortage of SOs (Supervisor Operations). Supervisor Operations work on board whereas Senior Supervisor Operations work on shore. Senior Terminal Assistants who have been appointed before were earning less in their pay packet because the newly appointed Terminal Assistants were drawing two additional shifts. He is not in a position to tell what is the first starting salary of a Senior Terminal Assistant. The basic notion of additional shift introduced by the Salary Restructuring Committee Report has to be taken into consideration because there should not be any short fall in the net take home earnings. The group of Mr Lindsay Cotte is still earning a higher take home earnings, in the sense that they are drawings Rs 22,866, whereas the group of Mr. J. R. Mahon is earning Rs 21,724. The highest basic salary of a Terminal Assistant is Rs 9,600 excluding the additional shift.

The witness added that the applicants have been promoted to the grade of Senior Supervisor Operations, Mr Marcel Tadebois with effect from 01 March 2004 and Mr Lindsay Cotte with effect from 14th April 2004 – on the grounds of merit and experience. Mr Mahon's personal allowance is still taken separately from basic wages. It has not been part of basic salary. The two applicants, prior to them being promoted were not receiving this personal allowance. There were employees who were doing the same job but some were having the element of personal allowance in their pay packet whereas others not. The overtime earnings of Mr Cotte for the month of December 2005 was Rs 6,984.28 and for Mr Mahon for the month of January 2005 was Rs 4,242.78. Mr Cotte has been promoted Senior Supervisor Operations on the ground of merit though he is junior to Mr Mahon. Mr Cotte is earning more in pay packet than Mr Mahon is because Mr Cotte is posted in the Computer Room where he draws extra overtime. The group of Senior Terminal Assistants drawing additional shift has now become only 4 as 3 persons have already left or have passed away and this group is not going to be enlarged in the future but is going to be phased out. Therefore the issue of additional shift is going to be phased out in the future for the category of Senior Terminal Assistants. It would not necessarily be correct to say that this group of

4 Senior Terminal Assistants are earning more money than their juniors in the same category. It depends on their posting, on the number of overtime they are performing. For example, Mr Cotte has drawn Rs 16,018 as overtime for the month of December 2005 whereas Mr Mahon earned Rs 4,143. Personal allowance or additional shift is the same thing and it remains fixed (Rs 1,417) and have never been included in the basic salary as stated by Mr Alain Hardy. It is always a separate item. With regard to the additional shift, the Salary Review Committee of 1996 introduced a topping up scheme so that, due to an introduction of maximum performance related variable pay there is no fall short of their present average take home earnings (which include work outside normal working hours). It should be to a maximum of four. Following negotiations between Management and the Unions, the grade of Terminal Assistants got two additional shifts according to the recommendations of the Salary Review Committee. For the category of Terminal Assistant Ship, additional shift and the wording "personal allowance" is the same thing. When Terminal Assistants ship have been promoted Senior Terminal Assistants, they are drawing it as a personal allowance.

In her submission, Counsel for the Respondent conceded that the contention of the applicants is that the principle of equal work and equal pay has not been adhered to, but according to her, it is just the contrary as Mr Cotte, who is junior to Mr Mahon, is earning more than Mr Mahon. The issue of additional shift is going to be phased out. There are only 4 employees in the category of addition shift and there will be no more employees who are going to join this category. At the end of the day, the salary will be the same for the group of 22 STAs and all those who will be joining them in the future. Only those who are working on ships are earning additional shift, in contrast to Mr Cotte and Mr Tadebois who have always worked on land. Those employees who have worked on board if they are promoted and do not receive this additional shift, they will find themselves with less money in their pay packets than what they were earning before. Therefore the idea of this personal allowance is that those people should earn a pay packet which is not less than what they were earning before. If ever there is any work to be done on ship this group of 4 STAs will be called upon to work on shift and Mr Hardy has agreed if ever somebody who has not been previously Terminal Assistant on ship is called to work as STA on ship he will not be able to perform the job.

Counsel for the Applicants submitted that there are three basic premises in this case –

- (a) the principle of equal work and equal pay which is not contested;
- (b) the two applicants who have been promoted while the case was before the Tribunal were earning basic salaries on the same scale as the others and that is not contested; and
- (c) it is clear that the two applicants were not earning the Rs 1,417 as personal allowance like others.

The application of the Salary Restructuring Committee of 1996 has given rise to a problem because in the same category of employees one person is drawing Rs 1417 more than the other. Therefore, the basic principle of equal work and equal pay is not being respected. Mr Glover concedes that the Cargo Handling Corporation Ltd had to give the group of Mr Mahon that allowance to maintain their pay packet. However, when this group joined a category and earns Rs 1417 while the others do not, this is unfair and not possible. What the Cargo Handling Corporation Ltd has done is to keep them in a separate group within the Senior Terminal Assistants. This group is going to dwindle and disappear and then the Cargo Handling Corporation Ltd will have more group of the Senior Technical Assistants on the same level playing field as far as salary and pay packet is concerned. The re-alignment of all the employees will mean that there will be no phasing out. By bringing Mr Mahon and others in the same level as the applicants as far as posting is concerned and by giving them Rs 1417 more the employer has before him one category of employees but with two category of pay home packets. The principle of equal work and equal pay must be adhered to and anyone joining one and the same posting must go home with the same allowances and the same calculation of overtime. The two additional shifts are akin to overtime but they are not called overtime because for now there are two additional shifts fixed, the figures remain the same. But when the overtime is calculated afterwards the two additional shifts become relevant. The moment that there are two groups of employees, as far as pay is concerned, in the same category, there are inequalities and the principle of equal work and equal pay is not adhered to. So the employer is bound to compensate those who have not been paid that personal allowance because they have been doing the same job. That allowance should be included in their pay slip and they should be paid since the dispute rose in 2001. There should then be a

recalculation of the overtime right from that time. The consequences are far reaching but cannot be the fault of the employees if an inequality has arisen on the restructuring exercise decided by the employer. The applicants precisely say there is inequality and that is why they are before the Tribunal.

Those employees who are getting this personal allowance – which is going to be phased out in the future – are also called upon to work on ship which those of the group of 22 are not doing.

Now the Tribunal is in the presence of the claims of the applicants whether the employer should pay the additional shifts on the same footings as other colleagues in the same category or otherwise.

The Tribunal finds that at the end of the day, it all boils down to the issue of equal pay for equal work. The Tribunal must first adjudicate whether those 2 different earners are doing substantially the same job and if so, they should be earning the same salary.

The principle of equal pay for an equal work is rooted from the discrimination that existed (and still does in some cases) between the sexes although the essential part of it, irrespective of the gender, is that it is what it says – equal pay for equal work. We refer here to paras 215, 216 and 217 of **European Employment & Industrial Relations Glossary: United Kingdom by Michael Terry and Linda Dickens (1991):-**

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215 EQUAL PAY ACT 1970 (EqPA 1970): Introduced prior to U.K. accession to the Treaty of Rome, in the last days of a Labour government, the Equal Pay Act was to come into force in 1975. It was amended and re-enacted by the **Sex Discrimination Act 1975**. Further amendments have been made (see contractual terms and conditions of employment for men and women in the same employment in two situations: when employed on work rated as equivalent under a **job evaluation scheme**. Employers were not required to undertake job evaluation. The main

objective of the Act was to equalise rates of pay (not levels) and the gap between women's hourly gross earnings and those of men did narrow after the introduction of the legislation, but without reaching parity. At the present time women's average hourly gross earnings are some 74 percent of men's. When weekly earnings are compared (including overtime, etc.) the proportion drops to around 66 per cent. Although many women benefited from the EqPA, job segregation and avoidance or minimisation strategies adopted by some employers (at times with local trade union collusion) reduced its impact, as did narrow interpretations by the tribunals and courts (for example, on what constituted "like work").

The Central Arbitration Committee was empowered (under a section of the EqPA, now repealed) to remove discrimination from collective agreements or employers' pay structures. The CAC took a broad approach to its powers at first, looking at the context within which agreements operated, but was restricted by the courts to tackling only those agreements or structures which were overtly discriminatory. References to the CAC dried up and individual claims to **Industrial Tribunals** for equal pay fell from 1,742 in 1976 to 39 in 1982. Following the United Kingdom accession to the Treaty of Rome in January 1973 and cases before the European Court of justice it was found that Article 119 of the Treaty and Article 1 of the Equal Pay Directive applied to a number of situations were introduced in 1983 and came into force in January 1984.

216 EQUAL PAY FOR WORK OF EQUAL VALUE: Also known as "comparable worth". See **equal value amendment**.

217 EQUAL VALUE AMENDMENT: The 1983 Regulations add a new basis of entitlement to equal terms and conditions, namely "where a women is employed on work which ...is, in terms of demands made on her (for instance under such headings as effort, skill and decision) of equal value to that of man in the same worth" test. A number of key issues of interpretation are still being worked out in the British courts and, for example, the ease with which British employers will be able to argue the "material difference" defence remains to be seen. But in an important decision it was held that,

although the British legislative formulation is that equal value is a residual basis for a claim (i.e. where like work and work rated as equivalent do not apply), application of European law means that the presence of a man doing like work does not prevent a woman claiming equal pay with a man doing dissimilar work claimed to be of equal value. There has been an increase in claims to **Its** since the Amendment (517 in 1986 -1987) but criticism has been made of the complexity of the Regulations and the length of the IT procedure in these cases. Some observers argue that, notwithstanding the Amendment, British provisions are still narrower in scope than Article 119 read with the Directive. There is evidence that the equal value amendment has stimulated employer review and revision of **job evaluation schemes** and fostered negotiations over pay structures. Some trade unions are seeking to use equal value as a lever to improve the position of low paid workers, for example in local authority manual employment."

The following extract from **Discrimination 19th Edit Industrial Law Reports P74** also refers to that principle:

"SCOPE OF EC LAW

Each Member State shall during the first stage ensure and subsequently maintain the application of the principle that men and women should receive equal pay for equal work.

For the purpose of this Article, "pay" means the ordinary basic or minimum wage or salary and any other consideration whether in cash or in kind, which the worker receives, directly or indirectly, in respect of his employment from his employer.

Equal pay without discrimination based on sex means:

- (a) that pay for the same work at piece rates shall be calculated on the basis of the same unit of measurement;
- (b) that pay for work at time rates shall be the same for the same job.

The principle of equal pay for men and women outlined in Article 141 of the Treaty, hereinafter called "principle of equal pay", means, for the same work or for work to which equal value is attributed, the elimination of all discrimination on grounds of sex with regard to all aspects and conditions of remuneration.

In particular, where a job classification system is used for determining pay, it must be based on the same criteria for both men and women and so drawn up as to exclude any discrimination on grounds of sex.

EQUAL PAY DIRECTIVE – Article 1

Member States shall introduce into their national legal systems such measures as are necessary to enable all employees who consider themselves wronged by failure to apply the principle of equal pay to pursue their claims by judicial process after possible recourse to other competent authorities.

EQUAL PAY DIRECTIVE – Article 2

Member States shall, in accordance with their national circumstances and legal systems, take the measures necessary to ensure that the principle of equal pay is applied. They shall see that effective means are available to take care that this principle is observed.

EQUAL PAY DIRECTIVE – Article 6

After going through all the documentary and testimonial evidence adduced as well as the submission of Counsel, the Tribunal finds that:-

1. the grievances of the applicants started with the application of the Salary Restructuring Committee of 1996 (as subsequently amended) as other Senior Terminal Assistants in the same category as them were earning a personal allowance of Rs 1417 while the applicants were not. In this context, they complain that the principle of equal work and equal pay has not been adhered to by the Cargo Handling Corporation Ltd.

2. the SRC Report of 1996 recommended for a topping up Scheme for certain categories of employees in post to provide them with opportunities to earn a reasonable pay package compared to their pay package drawn prior to the implementation of the SRC Report 1996, through a guaranteed works of additional shifts.
3. the applicants have always worked on shore and as in their previous postings as Terminal Assistants they were not earning this additional shift pay. The 6 Senior Terminal Assistants who are receiving this personal allowance have been promoted from Terminal Assistants on board, where they were benefiting this allowance.
4. there has been no cogent and reliable evidence showing that the Terminal Assistants working on board do substantially different jobs to those working on shore. On the contrary, we find evidence that those shifted on board stated receiving the additional shift allowance not because of the different natures of work, but as a compensation for any loss in pay packet In **Brunnhofer v Bank der osterreichischen Postsparkasse (200) IRL R 571 ECJ** the Court held that "in order to determine whether employees perform the same work or work to which equal value can be attributed, it is necessary to ascertain whether, taking account of a number of factors such as the nature of the activities actually entrusted to each of the employees, the training requirements for carrying them out and the working conditions, those persons are in fact performing the same or comparable work. The fact that the employees concerned are classified in the same job category under a collective agreement is not in itself sufficient for concluding that they perform the same work or work of equal value. The general indications provided in a collective agreement are only one indication amongst others and must, as a matter of evidence, be corroborated by precise and concrete factors based on the activities actually performed by the employees concerned."

5. there is no personal allowance as such in the Salary Review Committee Report of 1996 but in the course of the implementation following negotiations with different unions so that there may not be any shortfall in pay a special allowance had to be granted. This has also been continuing when Terminal Assistants working on board were promoted to Senior Terminal Assistants.
6. it has been revealed before this Tribunal that the group of the 22 Senior Terminal Assistants are not earning less than the group of the 6 Senior Terminal Assistants comprising of Mr J.R. Mahon and others.
7. the principle of equal work and Equal pay is not being respected. We have in the same grade more in their pay packet than others due to this personal allowance of Rs 1417. A group of Terminal Assistants were drawing more than their colleagues who were there before them, senior to them. By means the group of 6 Terminal Assistants when they were promoted to the grade of Senior Terminal Assistants cannot draw less salary than what they were earning prior to their being promoted.

The Tribunal concludes as follows:-

- (1) Mr Lindsay Cotte and Mr Pierre Marcel Tadebois were promoted to the grade of Senior Terminal Assistant as from the 1st November 98 and 1st July 99 respectively.
- (2) discrepancy in salary arose when 6 employees were promoted from Terminal Assistant to Senior Terminal Assistant and were paid an additional allowance known as additional shift and later on known as personal allowance so as to maintain their pay product or they shall have drawn less than their junior post as take home earnings.
- (3) the 2 personal allowance/shift allowance were not paid to the then Senior Terminal Assistant in post viz Messrs Cotte and Tadebois who were found to be drawing a lesser salary than their junior colleagues and the principle of "Equal Pay for Equal work" was not respected.

- (4) an adjustment in salary of Messrs Cotte and Tadebois should be considered to eliminate the discrepancy.

We fail to follow the stand of Counsel for the Applicant when he submitted that whatever be the burden on the Company is none of the Applicant's business. The Tribunal is not here to punish the wrongdoer. It is to look into a settlement of the dispute and the maintaining of good industrial relations. Section 47 of the Industrial Relations Act 1973, as amended provides:

" 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 so 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."*

We believe that the fact of recognizing there has been no application of the principle of equal pay for equal work should alleviate the bad feelings of applicants. In order not to inflict a heavy financial burden on the Company, the Tribunal having recognised the fact there has been no equal pay for equal work, we cannot put all the blame on the Respondent as the discrepancy, putting it at its best, only started with the implementation of the SRC report. The latter has its fair share of responsibilities. Also, we note that the Applicants do not contest the fact that it will bring additional financial burden on the Company should the Tribunal conclude in favour of the Applicants.

We therefore award as follows:

An allowance personal to bearer, should be paid to Messrs Lindsay Cotte and Marcel Tadebois. The monthly allowance should be the difference in the monthly basic salary of Mr Mahon (S.T.A.) + the Rs 1,417 personal allowance minus the monthly basic salary of Messrs. L. Cotte and Tadebois respectively.

The effective date of payment should be the date of promotion to the grade of S.T.A. of Mr Mahon and 5 others, beneficiaries of the Rs 1,417 personal allowance, until the promotion to the post of Senior Supervisor (Operations) of Messrs L. Cotte and M. Tadebois.

R. Hossen
Ag President

B. Ramburn
Member

R. Sumputh
Members

Date: 30th June 2006

for equal work should alleviate the bad feelings of applicants. In order not to inflict a heavy financial burden on the company, the award having recognised the fact there has been an equal pay for equal work, we cannot put all the blame on the Respondent as the discrepancy, putting it at its best, only started with the implementation of the SRC report. The latter has its fair share of responsibilities. Also, we note that the Applicants do not contest the fact that it will bring additional financial burden on the Company should the Tribunal conclude in favour of the Applicants.

We therefore award as follows:

The Tribunal awards accordingly.

R. Hossen
Ag President

B. Ramburn
Member

R. Sumpth
Member

Date: 30th June, 2006