

PERMANENT ARBITRATION TRIBUNAL

Award

RN 608

Before:

Rashid Hossen	-	Ag President
Binnodh Ramburn	-	Member
Rajendranath Sumputh	-	Member

In the matter of:-

Union of Employees of the Catering Industry

And

Plaisance Catering Ltd

The present disputes have been jointly referred for voluntary arbitration with notice given to the Minister responsible for Labour, Industrial Relations and Employment as per **sections 82(C) and 78 (1) of the Industrial Relations Act 1973** as amended.

Both Parties were represented by Counsel.

Mr P de Speville for the Plaisance Catering Ltd.

Mr M Gujadhur for the Union of Employees of the Catering Industry.

The Plaisance Catering Ltd will be referred to as the “Company” and the Union of Employees of the Catering Industry as the “Union”.

The points in dispute are:-

1. REPLACEMENT

Whether the following Daily Replacement Allowance scheme should apply whenever the services of any worker is required for the replacement of another worker.

- | | | |
|----|---|--------------|
| 1. | Replacement in a grade of same level. | |
| | <ul style="list-style-type: none"> • When performing both duties | Rs 25 |
| 2. | Replacement in a higher grade. | |
| | <ul style="list-style-type: none"> • When performing both duties • When performing the higher duties only | Rs40
Rs25 |

2. PAYMENT OF ARREARS

Whether the workers should draw the following compensation in lieu of arrears for period 01.01.98 to 30.09.98 related to the introduction of the new salary structure.

Basic compensation Rs310 x 9

i.e – Rs2,790

Scale 1:	Rs2,790 x 1	- Rs2,790
Scale 2:	Rs2,790 x 1.09	- Rs3,041
Scale 3:	Rs2,790 x 1.22	- Rs3,403
Scale 4:	Rs2,790 x 1.37	- Rs3,822
Scale 5:	Rs2,790 x 1.58	- Rs4,408

Scale 6:	Rs2,790 x 1.89	- Rs5,273
Scale 7:	Rs2,790 x 2.41	- Rs6,723

3. PARTICIPATION BONUS

Whether the participation bonus based on 5% of the Revenue Brut d'Exploitation (R.B.E) should be maintained in its original form.

4. OVERTIME

Whether

1. Overtime time worked in excess of scheduled hours (roster) shall be paid for work performed in excess of 45 hours weekly.
2. For the purpose of calculating the excess hours worked
 - (a) a week shall be deemed to start on Monday
and
 - (b) any approved leaves/permissions shall be considered as effective work.

5. SPECIAL OVERTIME RATE/DISTRUBANCE ALLOWANCE

Whether in addition to the rates stipulated in the Catering Industry Remuneration Order.

- (i) Overtime performed in excess of the scheduled hours (roster) on any day from Monday to Saturday (which is not a public holiday) should be paid:
 - At plus 0.5 rate for any overtime performed after 0.00 hours.
- (ii) Overtime performed on a Public Holiday (including a Sunday) or on a rest day: should be paid
 - At plus 1.0 rate for first 8 hours and plus 1.5 rate thereafter or for overtime work performed after 0.00 hours.
- (iii) Work performed during a cyclone class III or class IV: should be paid
 - At plus 2.0 rate with a guaranteed 4 hours overtime.

- (iv) Whether on resumption of duty after the passage of a cyclone which necessitated the temporary closure of the premises, work performed on that day and during scheduled hours should be paid at plus 0.5 rate.
- (v) In addition to above, the following disturbance allowances should be paid:
1. Rs400 when scheduled to work on the 25 and 31 December the 1 and 2 January and the 1 May.
 2. Rs400 when the worker has finished his work and has already returned home and is called back to work for reason of emergency.
 3. Rs700 when called to work on "*an additional Sunday*".

6. HOURS OF WORK

Whether the working week should be deemed to start on Monday.

7. TRAVELLING

Whether workers residing within 3.2 km from the place of work should be paid an allowance of Rs100 monthly.

On the 7th of November 2001, the Permanent Arbitration Tribunal presided by the then President Mr Harris Balgobin delivered an "Award" Ref RN 608.

On the 23rd of January 2002, the "Company" sworn an affidavit requesting a judicial review of the Permanent Arbitration Award dated 7th November 2001.

On Tuesday 18th of February 2003, the Supreme Court quashed the Award and the Court held the following:-

- Court agrees that there is a long line of authorities including local case law to the effect that reasons must be given in any decision made by a Court or other adjudicating body – vide for example – *Quality Soaps Ltd & Anor v/s MCCB Ltd SCJ 221 of 1999 MR 272 of 1999*.
- Court orders that the Award of the first respondent be quashed.
- Court further orders that the matter be remitted to the first respondent.

Withdrawal of disputes

At the Permanent Arbitration Tribunal sitting of the 9th of July 2004, both parties submitted that disputed items Nos. 4, 6 & 7 be withdrawn.

Item 4	-	Overtime
Item 6	-	Hours of work
Item 7	-	Travelling

The Tribunal was to consider items 1, 2, 3 & 5.

Item 1	-	Replacement
Item 2	-	Payment of Arrears
Item 3	-	Participation Bonus
Item 5	-	Special Overtime / Disturbance Allowance.

Item No. 1 – Replacement

Whether the following Daily Replacement Allowance Scheme should apply whenever the services of any worker is required for the replacement of another worker.

1. Replacement in a grade of same level.
 - When performing both duties - Rs25

2. Replacement in a higher grade
 - When performing both duties - Rs40
 - When performing the higher duties - Rs25

In its Statement of Case the Union submits that the principle of paying an allowance to employees requested to perform additional or/and higher duties is a very largely accepted principle, however such is not the case at the Plaisance Catering Ltd

In its updated Statement of Case, the Union pointed out that the Remuneration Order for the Catering Industry already provides that: “ when a worker is called upon to replace a worker drawing higher remuneration, he shall be paid the remuneration applicable to that other worker”.

In its Statement of Case the Company submitted that:-

- In its organizational set up, provision has been made for absenteeism.

- Whenever a worker is called upon to work during his rest day in replacement of an absent day, he is paid overtime.

- Salaries of different grades overlapped – there are cases when the worker of a lower grade is drawing more than the initial salary of a higher grade.

- There is the situation of overlapping of functions:- there is no definite declaration between the duties of one grade and that of a higher one.

- Work at the Plaisance Catering Ltd is a team-work system, where the team usually pull this effort together to cope with the work in hand and the work load is not evenly distributed throughout the week and varies in function of flight departures.

- The company pointed out that the question of performing “both duties” cannot arise. The only possibility is when an employee is called to assume fully the duties of an absentee performing to a higher grade.
- In very exceptional cases e.g “chikungunia Epidemics” when the rate of absenteeism is abnormally high, the replacement will be made by outsiders (casual workers/workers on rest day) who will be remunerated accordingly.

In its examination in chief, the Union representative avers that there shall be no allowance for:-

1. When an employee on off duty, is called to replace an absent employee and overtime is paid.
2. Where an employee is transferred temporarily to another division to do the same duties.

However, the third possibility concerns team work. When an employee is absent and is not replaced, the remaining employees have to perform the duty of the absent one, e.g when a cook is absent and is not replaced, the assistant cook has to do the job without extra remuneration. The Union representative fully agreed that allowance has been made for absenteeism; however the problem is when the rate of absenteeism is below the minimum level and the remaining employees have to perform the same amount of work. Sometimes in certain cases, employees have to do their job combined with that of a higher grade and in other cases to do more work to compensate for absenteeism. The concern of the company is how and to whom to pay as the job is that of a team:-

“In fact what we fear is that each time a team will find itself reduced because someone who was to work, did not turn up, a claim will be made to grant an allowance irrespective of the fact that the reduced team can cope with the work load in hand on that particular day within prescribed hours. How will we manage to determine to whom should that allowance go?”

In his examination in chief, the General Manager of the company avers that provision has been made for up to 20% absenteeism, however the normal rate of absenteeism is usually 1 to 3% with the exception of the “Chikungunia Epidemics” and there also employees on rest day and casual were called to replace. He has fully explained how the set-up work being a team, replacement is both ways, i.e down to up and also up to down.

He also produced a document on the “Analysis of workers”

Hours of Work - January 06 - August 06 compared to
January 04 – August 04

The Permanent Arbitration Tribunal observation and recommendation

On the dispute – Replacement - consideration has been given to:-

- (i) Statement of Case of the Union and the Company
- (ii) Averments of the Union representative and the Company during examination in chief and cross-examination.
- (iii) Documents submitted.

It is observed that the organizational set-up of the company providing for 20% margin of absenteeism has been contested.

The normal rate of absenteeism from 1 to 3% and abnormal rate during “Chikungunia Epidemic” where casual/rest day employees were called for replacement is not challenged.

Overlapping of salaries and overlapping of functions do exist.

But there is no concrete evidence that employees are doing “both duties”.

The Tribunal recommends that the only remaining element that may crop out is when employee is called up to assume the responsibility and duties of a higher grade and there the provision of the

Remuneration Order is to be applied – “**Catering & Tourism Industry Remuneration Order**”
Section 5.

“Where a worker is called upon to replace another worker drawing higher remuneration, he shall be paid the remuneration applicable to the other worker”.

Dispute No. 1 is therefore set aside.

Item No. 2 – Payment of Arrears

Whether the workers should draw the following compensation in lieu of arrears for period 01.01.98 to 30.09.98 related to the introduction of the new salary structure.

Basic Compensation Rs310 x 9 - Rs2,790

Scale 1:	Rs2,790 x 1	- Rs2,790
Scale 2:	Rs2,790 x 1.09	- Rs3,041
Scale 3:	Rs2,790 x 1.22	- Rs3,403
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Scale 6:	Rs2,790 x 1.89	- Rs5,273
Scale 7:	Rs2,790 x 2.41	- Rs6,723

According to the Union:-

- This is a one go compensation which has no effect on the actual salaries paid. No compensation has been claimed for overtime worked during that period and regarding end of year bonus.
- The salary structure introduced with effect from 01.10.98 is the same as the one introduced in the other companies of the New Mauritius Hotel Group (to which the Plaisance Catering Unit belongs) since 1st January 98.

- Time taken to negotiate a new salary structure should not be a constraint in the application of what is eventually agreed. Good industrial relations can only be maintained when certain principles are fairly applied. In this case it concerns the payment of compensation for arrears not paid.
- The payment of compensation in lieu of arrears is a current practice.
- The financial situation of the Company allows for such payment in terms of principle and quantum.

The Union representative in his cross-examination stated:-

- The Employer is saying that it has reduced the R.B.E (Revenue Brut D'Exploitation) from 5 to 4% so as to grant a 10.5% of salary increase. Having done so, it has no back-pay to give because during the ten months, an employee has drawn a full 5% R.B.E bonus and that there would be a duplication if they have to pay compensation and the full 5%.
- There were negotiations in connection with salary increase but no agreement as far as the reduction of R.B.E bonus be reduced from 5 to 4%.
- The decision to reduce the R.B.E was initially taken by the Employer.
- The new salary structure has been introduced on the 1st of January in other hotels and 1st of October for Plaisance Catering.

The Union representative maintains the facts that there were proposals made for the integration of the R.B.E (Revenue Brut D'exploitation) bonus in the salary. However, there was no agreement on the issue.

- At Plaisance Catering Ltd, the employees kept the R.B.E bonus because it brought a better income to the workers. When parity between the salaries was discussed the Union wanted to have the R.B.E increased and then reached an agreement with the employer that gradually be integrated in the salary because the system of work at Plaisance Catering is different to the system of work in the hotels.
- The Employer has only introduced partly on one side and unilaterally removed 1% from the R.B.E bonus. There has not even been a collective agreement signed.

The Company contended:-

- (a) The salary structure which is obtained for employees of the Company prior to the introduction of the new structure which took effect from 1st October 1998, already exceeded the rate prescribed in the Catering industry Remuneration Order.

The Company was therefore under no obligation to bring any improvement to the existing structure and still less to give retrospective effect to any change which could be introduced.

At the request of the Union, management agreed to align the Company's salary structure with that obtaining for employee's of the various hotels managed by Beachcomber. In the course of the negotiations which led to the introduction of the new structure as from the 1st October 1998, management made it clear that employee of the Company should not expect to get the best of all worlds and that certain other conditions of service would have to be reviewed downward to more or less attaining parity of treatment with employees of Beachcomber Hotels. Management had particularly in mind the comparable advantages drawn by the employees of the two sectors in matters of Profit Sharing (Participation Bonus).

The Scheme which was in operation in the Company was based on the allocation of 5% of the Revenue Brut d'Exploitation (R.B.E) for distribution to the employees on a monthly basis. It was known that such scheme, in the aggregate was affording to the Company's employees much

higher advantages compared to those extended to the Beachcomber Hotels employees in respect of whom a different scheme was in operation.

The following table shows, in terms of monthly salary equivalent, the difference between the two sectors in the above respect.

SECTOR	1995	1996	1997	1998
Beachcomber Hotels	1	1	1.32	1.377
Plaisance Catering Ltd	2	2.5	2.8	3

The principle of integrating part of the Participation Bonus in the salary structure was acceptable to the Union as evidenced by the following excerpts from the Joint Negotiating Committee meeting held on 2nd April 1998.

“It should be pointed out that employees of Plaisance Catering Ltd benefit from the Profit Sharing Scheme (which has earned them around 3 months salary for last year) and that this aspect, also, should be taken up in the realignment process.

Mr Bizall stated that he is, however, waiting for some counter proposals from Management and if the salaries are not to be aligned with the hotels, that the company do come with a specific salary policy (i.e with a own salary structure). He also suggested that part of the earnings on Productivity Bonus & Profit Sharing, be integrated in the basic salaries every 3 to 4years.”

On the 8th June 1998, Management wrote to the Union to make proposals for new conditions of service to take effect from 1st October 1998. This implied the introduction of the same salary structure as that obtained for employees of the Beachcomber Hotels, on the one hand, and the integration of 1% of the “Revenue Brut d’Exploitation” (out of the 5% allocated for distribution) in the salaries of the employees on conversion, on the other hand. (appendix 2).

The company maintained that the Union having requested Management to review its proposal concerning the conversion method, new proposals were made in the course of a meeting of the

Joint Negotiating Committee held on 10th September 98 and the Union after having analysed Management's offer made counter proposals which Management promised to study (appendix 3).

On the 24th September 1998, Management agreed to the conversion method requested by the Union whilst pointing out that such conversion method was linked with the Participation Scheme being henceforth operated on the basis of 4% of the R.B.E instead of the former 5% (appendix 4). This was implemented as from the 1st October 1998.

The Union's request for the payment of compensation in lieu of arrears for period 1st January 2998 to 30th September 1998 is not justified being given the following facts:-

Furthermore the company was under no obligation to introduce a new salary structure. However, having agreed to do so, it was quite free to fix the terms thereof, including the implementation date.

Also the employees having earned the Participation Bonus on the basis of 5% of the R.B.E for period 01/01/98 to 30/09/98, the payment of arrears for that same period would amount to a duplication.

Letter dated 8th of June 98 – addressed to the Secretary, Union of Employees of the Catering Industry, reads:-

“Since the Company has agreed to align the salary structure with that obtained in Beachcomber Hotels, the Company thinks that it would be desirable that the system of profit sharing be also made to operate along the same line as adopted in the case of the hotels. However, for the time being, we will maintain our system of profit sharing scheme with the rate of 4% instead of actual 5%, the 1% has been consolidated in the basic salary”.

Extracts of Minutes of Proceedings of meeting held on the 18th of September 1998 read: –

- (1) *Conversion to the new salary structure will be made on the basis of the nearest higher point + 5 increments.*

- (2) *The percentage to be distributed as Productivity Bonus and Profit Sharing would be reduced from 5 to 4% of the R.B.E – both to take effect from 1st October 98.*

The letter to Mr Bizlall, negotiator of the Union dated 24th September 98, reads:-

“It must be understood and agreed that the proposal is linked with the new Productivity Bonus and Profit Sharing (participation) Scheme being operated on the basis of 4% of the R.B.E instead of the former 5%, the other qualifying conditions remaining unchanged”.

Extract of sworn affidavit of Mr Merven – General Manager of Plaisance Catering Ltd, reads:-

“Moreover the Applicant had no contractual obligation to implement a new salary structure but as it did so in good faith in order to improve the relations between the employees and employer, it was at liberty to fix the terms thereon”.

The Tribunal notes:-

- (1) Proposal, counter proposal and agreement reached between the Company and the Union to align the salary structure of the employees of the Plaisance Catering Ltd to that of the Beachcomber Hotel Group is not linked with the reduction of the R.B.E from 5 to 4%.
- (2) Alignment of the salary structure was based on that of the Beachcomber Hotel Group as at 1st January 98.
- (3) The decision to link the two issues was a unilateral decision on the part of the Company
- (4) The Company’s submission that the salary structure as paid from 1st October 98 could not be backdated as there would be double payment, being given that the R.B.E Bonus has already been paid on 5% instead of 4% for the 10 months, is against the interest of the employees.

Both parties having agreed to have a new salary structure based on that of the Beachcomber Hotel Group as at 1st January 98 and the Union having already made a conversion of the payment of a composition to cover the part under review instead of back-pay. The Tribunal invites the Company on its part to concede to the 1% payment made during that period.

As regard this dispute (No. 2), the Tribunal awards as per the Union's claim.

Item No. 3 – Participation Bonus

Whether the participation bonus based on 5% of the R.B.E (Revenue Brut D'Exploitation) shall be maintained in its original form.

The Union's case is as follows:-

- The salary structure obtainable at the Plaisance Catering has been put at par with the salary obtainable in other hotels of the New Mauritius Hotels Group i.e Shandrani, Trou aux Biches, Paradise etc, as from 1st January 1998.
- Prior to the introduction of the new salary structure a participation bonus was paid on basis of 5% of the R.B.E.
- As from 01.10.10.98 it has been reduced to 4% on the ground that the employer has granted 10% salary increase.
- Negotiations held were not related to a change in the participation bonus, neither in terms of its formula (i.e calculated on the R.B.E) nor on its 5% element. It was therefore a unilateral change from the part of the employer.
- The participation bonus was not even an element raised on the table of negotiations for a review.

- The Union has no objection that part of the R.B.E bonus be integrated in the salaries if this is negotiated and applied by mutual agreement. This stand has been communicated to the employer during the course of the 1998 negotiations.
- The bonus should be considered as an “acquired right” and cannot in anyway be reduced without compensation.

The Union’s representative maintained that the decision to reduce the R.B.E from 5 to 4% was unilaterally made and there was no negotiation on the issue.

He did not challenge the fact that the Union requested that the R.B.E bonus be reviewed taking into consideration what is actually being applied in the hotels. However, no negotiation was held and no agreement reached.

The Company’s case is as follows:-

- It is not disputed that the participation bonus has been reduced from 5 to 4% (R.B.E) from 1st October 1998 date from which the new salary structure became effective.
- It is totally incorrect on the part of the Union to state that such reduction constituted a unilateral change brought by the employer and still more that “the participation bonus was not even an element raised at the table of negotiations for a review”.
- The question of integration was further raised at the joint negotiations meeting held on the 18th September 1998 and in the letter dated 24th September 98 addressed to the Union.
- Had the Union indicated at that time that they were opposed to the reduction of the R.B.E from 5 to 4%, the Company would certainly not have implemented the new conditions and would have reserved its position pending the outcome of further negotiations on the whole matter.

Documents submitted

- Document dated 17/03/98 In memorandum No. 1, the Union requested that productivity, profit-sharing bonus be reviewed.
- Document dated 02/04/98 In a meeting held between the company and the Union, Mr Bizlall the negotiator suggested that part of the earnings as Productivity Bonus/Profit Sharing be integrated in basic salary every 3 to 4 years.
- Document dated 08/06/98 Letter to Union – New salary structure to take effect on 1st October 98 including the integration of the 1% of the R.B.E bonus
- Document dated 27/06/98 Union addressed a memorandum to the company mentioning that negotiations be continued on modality for integration of the 1% Productivity/Profit Sharing bonus.
- Document dated 18/09/98 At a meeting held between the Union and Company, management made the following proposals:-
- (i) Conversion to the new salary structure will be made on the basis of the nearest higher point + 5 increments.
 - (ii) The percentage to be distributed on Productivity Bonus and Profit Sharing would be reduced from 5 to 4% of the R.B.E both to take effect from October 98.
- After a short break the Union submitted new proposals on the conversion.
- Document dated 24/09/98 The Company addressed a letter to Mr Bizlall pointing out the Agreement on this proposal made on the 18th of September 98:-

“It is understood and agreed that the proposal is linked with the new Productivity Bonus/Profit Sharing (participation scheme be operated on the basis of 4% R.B.E instead of the former 5%, the other qualifying conditions remaining unchanged”.

Both Mr Merven, the General Manager and Mr Montocchio the Human Service Manager denied the fact that the reduction of the R.B.E bonus from 5 to 4% was a unilateral decision of the Company.

There has been no correspondence and/or telephone conversation in between 24/09/98 and 18/09/98 (Date of submission of Accounts for salary payment).

Correspondences resumed on the 2nd of November 98 on the said issue and following a dead-lock, the dispute is submitted to the Permanent Arbitration Tribunal.

The Tribunal observes that:-

- (1) It has not been contested that the Company accepted the proposal of the Union to review the salary structure of the employees on the basis of the Beachcomber Hotel Group.
- (2) The said agreement was linked with the reduction of the R.B.E bonus from 5 to 4%. This was neither accepted nor rejected by the Union.
- (3) The Union was fully informed of the Company's stand on the issue, however they did not respond.
- (4) The Union deliberately kept silent and allowed its members (employees) to cash their October 98 salary and then to forward a memorandum on the 2nd of November 98 for new negotiations on the R.B.E bonus.

- (5) The strategy used by the Union cannot be condoned by the Tribunal. As rightly pointed out by Mr Bizlall in his cross-examination on the 24th September 2004 sitting:-

“Most often, an employee may use his individual personality to reach an agreement with the employer but when he attends the assembly of workers, now he uses his collective personality to ask the Union, which is itself, to bring a demand to the employer”.

Whatever cap an employee or his Union chooses to wear, the Tribunal cannot condone any act tainted with bad faith.

Dispute No. 3 is therefore set aside.

Item No. 5 – Special Overtime/ Disturbance Allowance

Whether in addition to the rates stipulated in the Catering Industry Remuneration Order.

- (vi) ***Overtime performed in excess of the scheduled hours (roster) on any day from Monday to Saturday (which is not a public holiday) should be paid:***
- ***At plus 0.5 rate for any overtime performed after 0.00 hours.***
- (vii) ***Overtime performed on a Public Holiday (including a Sunday) or on a rest day: should be paid***
- ***At plus 1.0 rate for first 8 hours and plus 1.5 rate thereafter or for overtime work performed after 0.00 hours.***
- (viii) ***Work performed during a cyclone class III or class IV: should be paid***
- ***At plus 2.0 rate with a guaranteed 4 hours overtime.***
- (ix) ***Whether on resumption of duty after the passage of a cyclone which necessitated the temporary closure of the premises, work performed on that day and during scheduled hours should be paid at plus 0.5 rate.***

- (x) ***In addition to above, the following disturbance allowances should be paid:***
- 1. Rs400 when scheduled to work on the 25 and 31 December the 1 and 2 January and the 1 May.***
 - 2. Rs400 when the worker has finished his work and has already returned home and is called back to work for reason of emergency.***
 - 3. Rs700 when called to work on "an additional Sunday".***

The Union filed an updated Statement of Case dated 21st May 2007.

The Labour Act provides for overtime rates for work performed AFTER working hours and during Sundays, etc.

The claim of the Union is for additional compensation for hardship and disturbance NOT covered by the Labour Act. These hardships and disturbances are:-

1. Employees on shift and on scheduled hours are sometimes compelled to work overtime after midnight. This is linked to arrival or departure of airplanes outside scheduled hours.

The claim is that the existing rates be increased by 0.5. That is where 1.50 is paid, it is increase to 2.00 rate. It is applicable when work is carried out AFTER midnight.

2. Employees are sometimes asked to come to work on a Public Holiday or a rest day for 8 hours and more.
3. Employees are compelled to remain at work during a Class III or a Class IV warning. The Catering Industry is NOT an essential service.

As per law employees should leave their work as from the publication of a Class III warning. Workers are not compelled to work during Class IV warning. What the Union is claiming is that whenever a worker accepts to work during a Class III or a Class IV warning, he should be paid 2 rates over and above the existing rates.

4. Reinstatement work after the passage of a cyclone is an essential activity and has to be completed before resumption of normal activities.

After the passage of a cyclone, work starts as from the time public transport is available. However some workers are fetched to attend duty to clean the premises etc. The others are allowed to remain home.

The Union is requesting that those who are asked to attend duty be paid 0.50 rate over the existing rates.

2. Employees are asked to work on Christmas and New Year and on the Labour Day. Employees are asked to return to work in emergency situations. Employees are asked to work on more than 2 Sundays per months.

The Union is claiming that over and above the existing payment scheme, those employees should draw:-

- Rs400 when scheduled to work on the 25th and 31st December and the 1st and the 2nd January and the 1st May.
- Rs400 when the worker has finished his work and has already returned home and is called back to work for reason of emergency, and.
- Rs700 when called to work on an additional Sunday.

We do not consider the demand of the Union to be reasonable inasmuch as payments for such conditions of work are already governed by the existing laws and/or are otherwise included in their salaries.

When one takes into account that by the very nature of the activities of the Company, its employees are bound to put in their time to satisfy the imperatives of a business dealing with civil aviation companies, it is quite obvious that one cannot expect these employees to draw overtime benefits at rates that do not cater for work carried out under the conditions mentioned above.

The issue is related to the reasonableness of the claim.

The Company averred in an updated Statement of Case dated 27th February 2007:-

- That the nature of its activities required the attendance of workers on everyday of the year to prepare the meals to be loaded on board aircrafts leaving Mauritius.
- This operational constraint is taken into account when recruiting the employees and deciding on their remuneration.
- These workers when joining the Company are fully aware of the hours and conditions of work that they will have to perform.
- The payment of overtime is based on the Catering & Tourism Industry Remuneration Order (CTIRO).
- Employees are not normally made to work an additional Sunday, unless the employee made a written request to that effect.

However the Company re-iterates its proposals

- (1) To increase the special allowance granted during the Prime Season (i.e during the period 21st December to 10th January as follows:-

Scales 1 – 4 - Rs 450 instead of Rs300

Scales 5 - 6 - Rs 750 instead of Rs500

Scales 7 Rs1,000 instead of Rs700

- (2) For workers who resume duty after a cyclone warning Class III or IV, the company will be agreeable to guarantee 4 hrs overtime at double rate and attended duty – as per regulations – but who would not be asked to work and be returned home.

- (3) The actual situation at the Plaisance Catering Ltd is as follows:-

1. Overtime is paid as per rate recommended by the Catering & Tourism Industry Remuneration Order (CTIRO)
2. Overtime is calculated after a 48-hrs weeks (normal week).
3. Off-duty employees are paid overtime whenever they are called for duty on their off-day.
4. Employees who so request to work on additional Sunday, overtime is paid.
5. Overtime is paid during Public Holidays.
6. Workers who remain on duty during cyclone warning III / IV are paid overtime.
7. Special allowance during “Prime Season” i.e 21st December to 10th January.

Scales 1 – 4 - Rs300

Scales 5 –6 - Rs500

Scale 7- Rs700

8. A number of employees have to remain on duty after their normal roster to cater for late or delayed departures of aircrafts, overtime is paid only if they have completed their 48 hrs week (Normal week).
9. According to the regulations, employees are on call-system, i.e they be called to work on any day/time and have always to be available to cater for arrival and departure of aircraft.

The Union's Stand

The Union's representative rejected the company's proposals.

"The proposal of the employer cannot be accepted, it does not compensate for the effort made by the employees. The claim is first on interpretation of the Remuneration Order which says that whatever salaries and conditions that are fixed are minimum: if employers are paying and granting higher benefits and conditions, they cannot remove same. Remuneration Orders do not prevent employees to pay more."

Special rate of overtime should be paid for work performed on 25th and 31st December, 1st and 2nd January and the 1st of May, and

- (2) special overtime in emergency cases
 - (3) special overtime after midnight
 - (4) Disturbance allowance should be paid for additional effort.
- The union's representative has defined additional effort as an effort which is not asked from other workers and which contain an element of duress and personal sacrifice and is not recurrent.

After the removal of Class III & IV warning, all employees have to report for duty, however only a number will be needed for duty. An additional compensation for the additional effort and duress should be paid.

The Tribunal's considerations

1. The President and Members visited the Plaisance Catering Centre at Plaisance on the 11th of August 2006, accompanied by the legal advisors, the General Manager of the company and the Union's representative. It was a visit, to all the stages of production including the kitchens, stores, while the employees were at work, were visited and information gathered from the workers themselves. The full organizational set-up was introduced and studied.
2. The nature of work at the Plaisance Catering Ltd cannot be totally compared to any other sector.
3. As per document produced and not challenged, the average working week is around 36 hrs weekly and overtime is paid as per CTIRO only after 48 hrs (Normal week).
4. As per evidence adduced there is a factor of disturbance and duress for the employees during:-
 - (i) cyclonic period
 - (ii) Delay in the departures of flights
 - (iii) Other emergency circumstances
5. In any unusual circumstances, for a normal week, certain employees will have to put an additional 12 hrs work and only afterwards that they will be qualified for overtime.
6. It was unreasonable for the Union to completely reject the proposal of the Company – Prime season allowance and overtime payment after cyclone clearance.
7. The roster of duties is prepared well in advance taking into consideration flight schedule.

With respect to this dispute (No. 5), the Tribunal awards as follows:-

1. Rate of Overtime payment recommended by CTIRO be maintained.
2. Overtime to be calculated on a daily basis, whenever an employee has completed his 8 hrs or lesser hours as per his roster and is required to continue duty, the number of additional hours should be paid as overtime. This will compensate in lieu of disturbance allowance.
3. Payment of overtime for Public Holidays, Sundays (additional) cyclone warning Class III, and IV and those employees called to replace in case of absenteeism be maintained.
4. Special allowance for Prime Season i.e for period 21st December to 10th January be as proposed by the Company.
 - i.e Scales 1 – 4 - Rs 450
 - Scales 5 - 6 - Rs 750
 - Scales 7 Rs1,000

However this allowance would be in addition to any overtime payment due as per above recommendations.

5. Granting of 4 hours overtime at double rate to those who resume work after the removal of cyclone warning Class III or IV and whose services are not required and are returned home (As proposed by the Company).

The Tribunal's Recommendation.

The Plaisance Catering Unit plays a key role in the fast growing Tourism Industry. The number of flights arrivals and departures would continue to increase and the Unit will have to be prepared to meet challenges.

The Tribunal invites the Plaisance Catering Ltd and the Union of the Catering Industry to settle all disputes through consultation and to negotiate for a sound collective agreement on salary,

conditions of employment and fringe benefits and so as both management and employees work in good and harmonious environment.

This Award will take effect as from the date it is *gazetted*.

Rashid HOSSEN
Acting President

Binnodh RAMBURN
Member

Rajendranath SUMPUTH
Member

Date: 19th December 2007