

Permanent Arbitration Tribunal

Extension of Award

RN 935

Before:

Rashid HOSSEN	-	Ag President
Binnodh RAMBURN	-	Member
Rajendranath SIMPUTH	-	Member

In the matter of:-

Docks and Wharves Staff Employees Association

And

Cargo Handling Corporation Ltd

This is an application for an extension of an Award delivered by the Tribunal on 30.06.2006 in the matter of Lindsay Cotte, Marcel Tadebois and Cargo Handling Corporation Ltd.

The Docks and Wharves Staff Employees Association requests that it be extended to 38 other employees of the Cargo Handling Corporation.

The Applicant, (DAWSEA) was assisted by Counsel Gavin Glover and the Respondent (CHC) by Mrs Gaytree Manna of the State Law Office.

The reasons put forward by the Applicant are on two main points:-

1. When the case was forwarded to the Tribunal, it was intended to be used as example for implementation and extension to the other employees in the category.

2. With the implementation of the award to only Messrs Cotte and Tadebois there will be a marked disparity between the employees mentioned and those appearing on our list.

In the statement of Case of the Applicant, it is averred that

- (1) The Union supported the formal declaration of dispute between Messrs Lindsay Cotte and Marcel Tadebois of the Cargo Handling Corporation.
- (2) The employees were chosen to represent employees falling under their category but not drawing additional shift allowance.
3. In its Ruling the Tribunal awarded 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) + Rs1,417 personal allowance minus the monthly basic salary of Messrs L Cotte and Tadebois respectively”.

“Its 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 Rs1,417 personal allowance, until the promotion to the post of Senior Supervisor (operations) of Messrs L Cotte and Mr Tadebois.

4. The Union avers that the award shall be extended to the employees appearing in Annex 1 on the following premises:-
 - (a) one cannot purport to correct salary discrimination within a given category but in the same breath creating discrimination towards other employees in the same category.
 - (b) In awarding to only Messrs Lindsay Cotte and Marcel Tadebois other employees of the same category have been discriminated.

In its Statement of Case, the Respondent submitted:-

- (1) There is a difference in the duties of Senior Technical Assistant working on shore and on ship.

- (2) The 38 Senior Technical Assistants have now contested their pay packet when they were offered the post of Senior Technical Assistant.
- (3) Messrs L Cotte and M Tadebois have already been promoted Senior Supervisor (operations).
- (4) The C.H.C has no capacity to pay, it has sustained losses amounting to Rs46 million in year 2005/2006.

In his testimony, Mr Jacques Alain Hardy agreed that the basic salary and condition of service of all the Senior Technical Assistants are the same with the exception that some drawing an additional allowance which is the cause of discrimination.

Mr Raj Gunoo the Human Resource Manager stated that all the Senior Technical Assistants have the same basic salary depending on years of service.

In his submission, Counsel for the Respondent referred to section **87(2) of the Industrial Relations Act** and argued that the claim represents 3 to 4% of the actual work force. The allowance paid as per the Permanent Arbitration Tribunal award does in no way affect the terms and conditions of work of other workers in the CHC.

In his submission, Counsel for the applicant submitted that the Award shall be extended to the 38 Senior Technical Assistants and not to all category of the CHC. The Tribunal has awarded the personal allowance to 2 others only because only 2 asked for it. The Tribunal is to apply the principle of equal pay for equal work and the award should be extended to the 38 other employees.

Section 87 of the Industrial Relations Act 1973 as amended stipulates:

“

- (1) Subjection to subsection (2), where an award or a collective agreement which governs the terms and conditions of employment in a part of an industry is in force, an employer or a trade union of employees to whom the award or agreement applies may make an application to the Tribunal for an order to extend the award or agreement to the whole of the industry, and on hearing the application, the Tribunal may grant or refuse the order.

- (2) No order shall be made under subsection (1) unless the Tribunal is satisfied that -
- (a) the parties to the award or agreement are or represent a substantial proportion of the employees or of the employers in the industry, the employees being employees of the description to which the award or agreement applies;
 - (b) an employer engaged in the industry is not bound by the award or agreement;
 - (c) the extension of the award or agreement is necessary or desirable in the interests of uniformity of terms and conditions of employment in the industry.
- (3) An order under subsection (1) may be made subject to such conditions as the Tribunal thinks fit and, in particular, the order may provide that where an employer is observing terms and conditions of employment which are more favourable than the terms and conditions of employment specified in the award or agreement, the employer shall continue to be bound by the more favourable terms and conditions of employment.
- (4) The terms of an order under subsection (1) shall be deemed to form part of the award or agreement and shall be deemed to have had effect on the date on which the award or agreement came into force.”

“Terms and Conditions of Employment” is defined in the European Employment & Industrial Relations Glossary: United Kingdom by Michael Terry and Linda Dickens (1991) as follows:

“The key substantive elements of the **contract of employment** are thus described. They include **pay** and all other **benefits, holidays**, special leave entitlements, as well as such matters as the nature of the work to be performed, working hours, disciplinary regulations, etc. **EPCA** requires that employers furnish employees with a written statement of the main terms within thirteen weeks to include remuneration details; hours and holidays, holiday pay; sick pay arrangements; pensions; notice required to terminate the contract; the job title; and information on discipline/dismissal rules and **grievance procedures.**”

“Pay” is therefore a substantive element of the contract of employment and an increase of the pay element followed by what has been agreed as perks in the Remuneration Order 1998 (although the latter does not form part of the Award) becomes “an implied terms of a novated contract”. Indeed, in **Central Water Authority v/s Narainsamy 1989 MR 16**, the Supreme Court had this to say:

“Since a remuneration order only regulates minimum conditions of employment, employers are bound to provide no less than those conditions although they may provide more advantageous conditions. This latter faculty is more often than not specifically, if perhaps needlessly, spelt out in numerous remuneration orders. The award of the Tribunal is different in character. It is the result of an arbitration which may be either voluntary (section 78) where both parties refer the matter to the Tribunal) or compulsory (sections 82 and 84). [...] Whatever the nature of the arbitration, voluntary or compulsory, the Tribunal is required to be guided by the principles incorporated in section 47

which include, inter alia, the economic conditions of the country. [...] It is important to consider what is the legal effect of an award once it has been made, and the resolution of possible conflicts between an award and agreements made between the parties whether before or after the award. Section 85 of the Act regulates these matters [...] It is clear from the terms of section 85 that an award supercedes whatever terms may have been previously been agreed between the parties and becomes an implied term of a novated contract. If the parties subsequently wish a term of the novated contract to be varied, then section 85(3) applies. In so far as there may be possible inconsistencies between a prior agreement and a subsequent award, section 88(10(a) enables the Tribunal to make a declaration on the matter”

Tribunal’s observations.

The two points put forward by the DAWSEA in its letter dated 29th September 2006 are not sustainable for an extension of the award.

- (a) The first point that it was intended to be used as an example for implementation and extension to other employees in the category in itself does not carry weight in as much the Tribunal considered the case RN 706 and awarded as per the merit of the case based on its own facts and on a personal to bearer basis.
- (b) As far as the issue of marked disparity between employees is concerned, the Tribunal is in presence of a list comprising 38 names with date of birth (D.O.B) and date of employment (D.O.E). There is no indication of their category and present post held from the list submitted. No reliable evidence has been adduced in support of that contention.

We find no justification to conclude that the extension of the Award is desirable in the interests of uniformity of terms and conditions of employment in the industry. The application is set aside.

Rashid HOSSEN

Acting President

Binnodh RAMBURN
Member

Rajendranath SUMPUTH
Member

Date: 28th December 2007

Annex I

EMPLOYEES FOR CONSIDERATION OF AWARD

	NAMES	D.O.B	D.O.E	D.A.P.G
1.	ABEL JEAN MARIE JOCELYN	08.02.49	01.07.78	
2.	ALBERT JEAN CLAUDE	01.07.55	01.03.79	
3.	ANAMAH HENRICO LUC HARRIS	07.01.56	01.03.79	
4.	BARNES JODY REGINALD LESLIE	10.07.53	01.03.79	
5.	BERTRAND LOUIS	08.10.54	01.08.81	
6.	BIENVENU PATRICK FRANCOIS GERARD	03.12.55	02.04.79	
7.	CHAN HIN HI PHILLIPPE HENRIOT	17.04.45	01.07.68	
8.	CONSTANCE LOUIS CYRIL MAX	09.02.59	01.08.81	
9.	DINDOYAL SERGE DESIRE GEORGES	07.09.59	01.03.79	
10.	DITRAOULT PAUL SERGE	09.11.50	01.01.76	
11.	DODERO PHILIPPE JOSEPH GAETAN	20.06.55	01.03.79	
12.	DOMINGO JOSE HEDLEY	31.07.55	15.03.79	
13.	GUEVIN PIERROT	26.04.48	01.07.71	
14.	JOSEPH JEAN DANIEL DIDIER	07.11.47	01.01.71	
15.	KHEDOO EMMANUEL ANTOINE	13.01.53	01.03.79	
16.	LACASE JOSEPH DESIRE	02.03.51	09.04.79	
17.	LEFEVRE CLAUDE	29.12.52	01.07.76	
18.	MACKA LOUIS JUDE	07.11.48	01.01.76	
19.	MARIE RENE YVON FRANCOIS	04.03.54	01.03.79	
20.	MESLIER FRANCE ROLAND	22.11.44	01.07.68	
21.	MOHIDINKHAN SWALEY	26.07.50	01.03.79	

22.	MOTET MARIE LAVAL JOSEPH VIVIAN	29.11.48	01.07.67	
23.	NOMBRO GERARD CLENCY XAVIER	01.07.48	01.01.76	
24.	RAHIMAN JEAN FRANCOIS ALLAN	01.12.52	01.01.76	
25.	RAHIMAN JEAN SERGE CARL	12.05.51	01.07.76	
26.	SERVIALE JEAN CLAUDE ALAIN	02.01.53	01.01.76	
27.	SEVERE JOSEPH GERARD ALAIN	13.10.50	01.03.79	
28.	THEODORE JACQUES HEROLD A PANSY	12.11.48	01.03.79	
29.	THEODORE JEAN CLAUDE	05.02.53	01.01.76	
30.	VINAY LOUIS FRANCE	16.01.53	01.03.79	
31.	VOLFRIN LOUIS NELVILLE	13.03.54	01.03.79	
32.	WONG TONG CHONG JEAN RENE	13.03.54	01.03.79	
33.	BAYA LOUIS SERGE	22.08.49	30.07.71	
34.	ENGLEBERIGHT FRANCIS HARVEY JAMES	10.07.50	01.07.74	
35.	LABOUR MARIE JOSEPH ALAIN	18.03.56	02.05.80	
36.	LE MERLE JULIUS MARCEL HENRI	17.03.58	15.01.79	
37.	LABOUR JEAN CLAUDE DANIEL	22.09.58	05.11.79	
38.	HAREL BRYAN CLIFFORD	20.02.60	23.03.79	