PERMANENT ARBITRATION TRIBUNAL

JUDGMENT

RN 139

Before:

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

In the matter of:

Clency Bibi
(and representing 63 Others)

And

Ministry of Labour, Industrial Relations and Employment

In presence of: Central Electricity Board

This is an appeal under **Section 81 of the Industrial relations Act 1973** as amended against a rejection of a dispute reported to the Minister of Labour, Industrial Relations and Employment.

The grounds of appeal are as follows:-

"1. The appellants as employees and Shift Workers of the C.E.B are entitled to be parties to the industrial dispute as reported by them or on their behalf in the report of dispute dated 16.02.06 in relation to the issues and matters raised in the said report which concern their individual contracts of employment as shift workers.

2. A similar report of dispute made on behalf of the same category of workers was referred to the Tribunal by the Minister for compulsory arbitration on similar issues, Vide Case RN 816 listed for hearing on 30.06.06."

In support of their grounds of appeal the appellants filed a Statement of Case which reads as follows:-

APPELLANTS' CASE

"1. On 9 February 2006 the appellants' trade union, the Central Electricity Board Staff Association ("CEBSA"), did execute a Collective Agreement with the Central Electricity Board ("CEB") so as to implement the new

salary structure and conditions of service recommended by the Price Waterhouse Coopers report of May 2005 ("the PWC report").

2.. *Each appellant did sign an option form, but it is submitted that in this particular case it did not and could not prevent each individual employee from raising his grievances before the **"Grievance Committee"** established by paragraphs 9 and 10 of the aforesaid Collective Agreement. The notes of meeting of the Grievance Committee dated 14 and 28 April 2006 are appended hereto and the relevant parts highlighted.*

3. *Further, the aforesaid Collective Agreement specifically provided for the following **caveats** in respect of the general conditions of employment spelt out in the PWC report:*

   3.4 *They are not exhaustive and consequently the other existing terms and conditions not covered shall continue to be in force provided that they are not in conflict with any of the revised terms and conditions.*

   3.5 *In case of any conflict, a special provision in a letter of appointment or any other written instrument pertaining to the employee shall prevail over these general terms and condition.*

4. On account of the conflict between the general conditions of service spelt out in the PWC report and their respective individual contacts of service, the appellants did refer the dispute to the Grievance Resolution Committee set up by the CEB concerning their consolidated salary and their basic salary within the Master Salary Scale established by PWC.

5. A copy of a notice of vacancy and a letter of appointment of one of the appellants is submitted hereto for ease of reference. These show that the appellants were classified in a particular scale <u>with a basic salary</u> but were offered a consolidated salary on the basis of 880 hours for those appointed prior to 1987 and 768 hours for those appointed or promoted after 1987. Following the PWC report the basic salary of the appellants is not known and cannot be ascertained, as they do not fit within any recognized salary scale within the Master Scale.

6. Appellants submit that their specific conditions of service should prevail over the general conditions laid down in the PWC report which has reduced the appellants' consolidated salaries, the more so as this has a direct impact on their retiring benefits: their pensions being calculated on their respective ***"consolidated salary"*** *whilst other benefits such as*

overtime, sick leave, end of year bonus etc are calculated on their basic salary.

7. *It is submitted that this case is markedly distinguishable from the Mauritius Telecoms and University of Mauritius cases. The option forms did not* ***per se*** *authorise CEB to modify the appellants' respective conditions of service, in the teeth of specific safety clauses in terms of paragraphs 3.4 and 3.5 of the Collective Agreement of 2006 and the right of recourse to the Grievance Resolution Committee.*

8. *Further, it should also be borne in mind that there is a pending application for judicial review which has been filed by the trade union against the award in the Mauritius Telecom case and the matter is still* ***sub judice****. The application was last called on 6 October 2006 and listed for hearing on 18 January 2007.*

9. *The appellants submit that in such circumstances the respondent was wrong to have rejected the report of dispute which was made by and/or on behalf of appellants who are entitled to be parties to the industrial dispute in relation to the issues and matters raised in the report.*

10. Appellants submit that the appeal should be allowed and the Minister's decision should be revoked."

In answer to the above the respondent filed the following Statement of Case:-

<u>RESPONDENT'S STATEMENT OF CASE</u>

<u>"The facts</u>

1. In a letter dated 16 February 2006, Mr Clency Bibi reported, on behalf of shift workers, the existence of an industrial dispute against the Central Electricity Board on –

"Whether as from 1st July 2005, shift workers drawing a consolidated salary should be classified in their respective scale of 3, 5 and 6 and have their basic salary consolidated at the agreed formula of 1.423 or 1.369 (as applicable) as per their contract of employment and agreement or otherwise."

Copy of the report of dispute is at Annex I.

2. Following a Salary Commission Report released on 25 May 2005, the Unions (CEB Staff Association, CEB Workers' Union and the Union of Employees of (CEB) and Management negotiated for a collective agreement which was signed separately with each union on different

dates. The shift workers are members of the CEB Staff Association. In addition to the collective agreement, each employee has signed an irrevocable option from exercising his option to accept the revised emoluments, terms and conditions of service and revised scheduled of duties.

The Grounds

3. The Grounds of appeal against above decision of the Respondent not to refer the present dispute to the Permanent Arbitration Tribunal are as per Annex II.

The Preliminary Issue

4. The issue which the Ministry had to determine was whether an employee having signed an option form to agree a novated contract of employment can report an industrial dispute to remonstrate over the contents of that contract of employment.

Under Ground 1

Case-law

*5. In a ruling dated 12 January 2005 in the case **Telecommunication Workers Union v/s Mauritius Telecom** (Copy of the ruling is*

attached at Annex III), the Permanent Arbitration Tribunal has unequivocally held that an employee, having exercised an option to be governed by a set of conditions, cannot report an industrial dispute to disagree on what he has agreed. This ruling was again upheld on 27 May 2005 in the case of ***University of Mauritius Academic Staff Association v/s University of Mauritius*** *(Copy of ruling is at Annex IV).*

6. *Relying on section 80(1) (b) of the Industrial Relations Act the Minister rejected the report of industrial dispute. As per the above-mentioned cases, to accept that the shift workers are able to now dispute the agreement they have reached will undermine the process of collective bargaining.*

Under Ground 2

7. *The case RN 816* ***(i.e M.C Bibi & Others v/s CEB)*** *was referred to the Permanent Arbitration Tribunal on 16 February 2004 and the Ruling of the Tribunal in case of* ***Telecommunication Workers Union v/s Mauritius Telecom*** *was delivered on 12 January 2005 and on the basis of this Ruling that the Minister rejected the report of dispute dated 16 February 2006."*

Mr Domingue, Counsel for the Appellants submitted that this is an appeal against the decision of the Minister rejecting a report of dispute which was filed on behalf of the Appellants. The decision of the Minister, dated 17th March 2006, to reject the report and the dispute in terms of **Section 81 (b) of the Industrial Relations Act is** based on the ground that it has not been made by or on behalf of a party who is not entitled to be a party to an industrial dispute in relation to matters raised in the report. Counsel based his submission following three points (a) the present case is distinguishable from the previous decision of this Tribunal in the case of Mauritius Telecom. A Grievance Resolution Committee was set up and the matter was mooted before that Committee. Furthermore, there were certain reservations made in the report of Price Waterhouse Coopers to the effect that specific conditions contained in the Appellants individual contract of service would prevail. He submitted that one should bear in mind the fact that there are two sorts of disputes as defined in the schedule to the Industrial Relations Act under paragraph 105 of the Third Schedule to the Act, which deals with collective dispute procedures and distinguish the two kinds of disputes, namely (a) dispute of rights as to legal rights and (b) dispute of interest, that is economic disputes which relate to claims by employees or proposals by management about terms and conditions of employment. According to Counsel, this present matter falls within the latter category, that is, an economic dispute. It is also submitted that the decision in the Mauritius Telecom case is of no relevance to the present matter.

Counsel drew the attention of the Tribunal to the collective agreement signed in 2006 which was given retrospective effect and the effective date is 1st July 2005 as stipulated in paragraph 13 of the collective agreement. He agreed that there was an option form that was signed by all the employees but added that it consisted of a caveat that allows individual employees to raise their grievances before the Grievance Committee. Counsel referred to paragraph 3 of the collective agreement –

> *"3.4 They are not exhaustive and consequently the other existing terms and conditions not covered shall continue to be in force provided that they are not in conflict with any of the revised terms and conditions.*
>
> *3.5 In case of any conflict, a special provision in a letter of appointment or any other written instrument pertaining to the employee shall prevail over these general terms and conditions."*

He further submitted that there are existing terms which are not covered and which are not in conflict because according to an employee's conditions of service, he has to perform regular overtime, night and day on a roster and it has agreed that this is embodied in the Scheme of Service. In other words the agreement in the option form is to be bound by new conditions of service but that a caveat as found in the report of Bundhoo has expressly been referred to in the collective agreement.

In reply Miss Gareeboo, said Counsel for the Respondent submitted that there is a valid agreement which has led to the signature of an option form and that there is no indication that this agreement is to lapse which would entitle the Applicant to come forward and challenge the valid signature acceptance of this new agreement.

Section 79 to 81 of the Industrial Relations Act 1973 as amended read:-

79 Reporting of industrial disputes

(1) Any industrial dispute, whether existing or apprehended, may be reported to the Minister by or on behalf of any party to the dispute.

(2) Every report of an industrial dispute shall be made in writing and shall specify –

(a) the employees and employers, or the descriptions thereof, who are parties to the dispute;

(b) the party by whom or on whose behalf the report is made; and

(c) every issue or matter giving rise to the dispute.

(3) Where an industrial dispute is reported to the Minister, a copy of the report shall be served by or on behalf of the party making the report upon every other party to the dispute.

80 Rejection of report by Minister

(1) The Minister may reject a report under section 79, if it appears to him that the report –

(a) relates in whole or in part to a dispute which is not an industrial dispute;

(b) is made by or on behalf of a party who is not, or is not entitled to be, a party to an industrial dispute in relation to any of the issues or matters raised in the report; or

(c) does not contain sufficient particulars of the issues or matters giving rise to the industrial dispute.

(2) Where the Minister rejects a report under subsection (1), he shall give written notice of the rejection to all the parties specified in the report.

81 Appeal to Tribunal

Where a report of an industrial under section 79 is rejected by the Minister, any party aggrieved by the rejection may appeal against the rejection to the Tribunal and on any such appeal the Tribunal may confirm or revoke the decision of the Minister.

After carefully examining the documents submitted and the submissions of Counsel, we fully endorsed the view that this present matter is clearly distinguishable from what the Tribunal stated in the Mauritius Telecom and the University of Mauritius cases. The documents produced clearly show that by signing the option form, the Appellants did not close the door to declaring disputes on matters of conflict with any revised terms and conditions and these matters are to prevail over these general terms and conditions. (See paras. 3.4 and 3.5 of the Collective Agreement). One may certainly argue that this is a disguise way of entering into an agreement by signing an option form and yet not being fully bound by it. Whatever may be the case, the fact remained that such caveat does exist and has been agreed upon. It is therefore part and parcel of the agreement.

For the reasons stated above the Tribunal finds that the Minister was wrong to have rejected the report of the dispute. We accordingly uphold the appeal and quash the Minister's decision.

(sd)Rashid Hossen
Acting President

(sd)B. Ramburn
(Member)

(sd)R. Sumputh
(Member)

Date: 27th March 2007