

# PERMANENT ARBITRATION TRIBUNAL

## AWARD

RN 795

Before :

Rashid HOSSEN	-	Ag President
Binnodh RAMBURN	-	Member
Masseelamanee Goinden	-	Member

In the matter of:

Maritime Transport & Port Employees Union

And

P.A.P.O.L. Co. Ltd

RN 844

Maritime Transport & Port Employees Union

And

P.A.P.O.L. Co. Ltd

The following are disputes referred by the Minister of Labour, Industrial Relations and Employment to the Permanent Arbitration Tribunal for Arbitration by virtue of **Section 82(1) (f) of the Industrial Relations Act 1973**, as amended.

Maritime Transport & Port Employees Union is hereinafter referred to as the Union and P.A.P.O.L Co. Ltd, as the Employer.

Mr D. Ramano, of Counsel, appears for the applicant. Miss S. Collendavelloo, of Counsel, appears for the Respondent.

The two cases have been consolidated as they involve the same parties with connected issues. The demise of Mr R. Gayan, a member of the Tribunal followed sometimes later by the resignation of another member, Mr Chan who also heard the present matter led inevitably and regretfully to a rehearing of the matter.

The Terms of Reference read:-

(a)

*Whether the daily basic wage should be increased as follows:*

<i>Superintendent</i>		<i>from Rs 294.25 to Rs 360.00</i>
<i>Supervisor</i>		<i>from Rs 286.45 to Rs 340.00</i>
<i>Tally/Delivery Clerk</i>	}	<i>from Rs 276.45 to Rs 320.00</i>
<i>Senior Driver</i>		
<i>Foreman</i>		
<i>Watchman</i>		<i>from Rs 257.85 to Rs 300.00</i>
<i>Signalman</i>		<i>from Rs 217.85 to Rs 250.00</i>
<i>Stevedore or otherwise;</i>		<i>from Rs 205.75 to Rs 235.00</i>

(b) *Whether the "piece rate" should be increased as follows:*

<i>Container (full)</i>	<i>from Rs 5.25 to Rs 6.60</i>
<i>Container (empty)</i>	<i>from Rs 5.00 to Rs 6.25</i>
<i>Bags (pallets of 25)</i>	<i>from Rs 1.50 to Rs 1.90</i>
<i>Vehicles</i>	<i>from Rs 5.00 to Rs 6.25</i>
<i>Bundles (iron bars-1 ton)</i>	<i>from Rs 0.25 to Rs 0.35</i>
<i>Bundles (other items)</i>	<i>from Rs 1.00 to Rs 1.25</i>
<i>Drums (set of four)</i>	<i>from Rs 1.00 to Rs 1.25</i>
<i>Pre-palletized bags</i>	<i>from Rs 0.75 to Rs 0.95</i>

*(per pallet) or otherwise;*

- (c) *Whether the meal allowance should be .increased from Rs 45 to Rs 60, or otherwise; .*
- (d) *Whether a tea/light meal allowance of Rs 20 should be paid whenever the Workers have to work after 22.00 hours, or otherwise;*
- (e) *whether the work force of the vessel M V Mauritius Trochetia should be increased from 38 to 44, or otherwise;*
- (f) *Whether the salary of the employees of the Container Park should be paid in the following salary scale:*

<i>Cargo Handlers Cleaner Watchman</i>	}	<i>Rs 3500 x Rs 100 - 4000 x 125 - 4 750 x 150 - 6 000</i>
--	---	--

<i>Forklift Drivers Tally Clerk or otherwise</i>	}	<i>Rs 4 500 x 125 - 4 750 x 150 - 6250 x 200 -Rs 7050 x 250 - 8 050</i>
--	---	---

- (g) *Whether absences in the gang should be dealt with either by paying the absent worker his full salary on production of medical certificate or otherwise wages not paid are shared among employees present, or otherwise; and*
- (h) *Whether the new pension scheme should be extended to the P.A.P.O.L Cs Ltd employees, or otherwise.*

1. Whether the daily basic wage should be increased as follows:

Superintendent	from Rs 302.32 to Rs 360
Supervisor	from Rs 294.25 to Rs 353

Tally/Delivery Clerk	}
----------------------	---

Senior Driver, Foreman, Forklift Driver	from Rs 284.10 to Rs 340
Winchman	from Rs 257.85 to Rs 310
Signalman	from Rs 217.55 to Rs 260
Stevedores Or otherwise	from Rs 213.05 to Rs 255

2. Whether the "piece rate" should be increased as follows:

Container (full)	from Rs 5.25 to Rs 7.85
Container (empty)	from Rs 5.00 to Rs 7.50
Bags (pallets of 25)	from Rs 1.50 to Rs 1.90
Vehicles	from Rs 5.00 to Rs 7.50
Bundles (iron bars - 1 ton)	from Rs 0.25 to Rs 0.35
Bundles (other items)	from Rs 1.00 to Rs 1.50
Drums (set of four)	from Rs 1.00 to Rs 1.50
Pre-palletized bags Or otherwise	from Rs 0.75 to Rs 1.30

3. Whether the work force of M.V. Mauritius Trochetia should be increased from 42 to 44 or otherwise.

4. Whether the salary of the employees of the Container Park should be paid in the following salary scale:

Cargo Handlers

Rs 4,347 x 223.50 = 6,580

Cleaners

Watchman

Rs 4,200 x 210 = 6,300 + 500 Productivity Bonus

Forklift Drivers	Rs 5,945 x 262 - 8,565
Senior Tally Clerk	Rs 5,945 x 262 - 8,565
Junior Tally Clerk Or otherwise	Rs 5,038 x 259 - 7,628

During the course of proceedings, the parties agreed that for the sake of clarity and in order to avoid duplicity of disputes, those that are now left to be decided are to be read as follows:- (1), (2), (3), (4), + (5) and (6). In fact, the latter two disputes replace items (g) and (h).

The Union avers in their Statements of Case:-

## Points in dispute

### 1. Salary Increase

The Union has asked for an increase in salary in the range of 15 to 22%

This claim is supported by the following grounds:

- (i) Salaries have to be adjusted periodically to compensate for the full CPI increase.  
This exercise was done by Arbitrator Ahnee for period covering the previous agreement.
- (ii) The existing gap between salaries of similar categories and grades of employees employed by the Cargo Handling Corporation and Rogers Company Ltd should be bridged.
- (ii) The fact that the employees P.A.P.O.L. CS Ltd are paid only on days when MSC ships called at Port Mathurin, the Tribunal should see to it that they have reasonable income to sustain at least their physiological needs.

### 2. Piece Rate Scheme

The Piece Rate Scheme has been increased by 25 to 40%.

The income of the employees combines daily rates and piece rates. Whereas basic salary is subjected to the prescribed additional remuneration increase; Piece Rates are NOT.

In addition to the grounds submitted in support to claim No 1 above, the Tribunal is asked to adjust the piece-rates in relation to rises in CPI not compensated.

3. **Meal Allowance**

The existing allowance of Rs 45/ has to be increased in line with the rise in the cost of meals and refreshments in Rodrigues

4. **Tea/Light Meal**

Whenever required, the employees may be called to work beyond 22.00 Hours. The principle of paying an allowance was originally accepted by the Employer. Tea and Light Meal (Pain fourré) cost not less than Rs 20 in Rodrigues.

5. **Work force on Vessel M.V. Mauritius Trochetia**

The original agreement concerned the Mauritius Pride. The employer has asked that the M.V. Mauritius Trochetia be also covered by the Collective Agreement between parties.

The income of certain categories employees of P.A.P.O.L. CS Ltd is related to 3 factors:

- (1) The rates for the loading and unloading of cargo (both daily wages and piece rates).
- (2) The volume of cargo handled each time a vessel calls at Rodrigues; and
- (3) The number of days taken to load and unload cargo loaded.

The Union contends that the inclusion of M.V. Mauritius Trochetia in the list of vessels covered by the Collective Agreement should NOT affect adversely the monthly/yearly income of the employees. Hence, the claim that the gang composition should be increased from 38 to 44.

On the other hand work should be organized in the port and on board ships visiting Rodrigues, with full consideration given to health and safety.

## 6. **New Condition of Employment for Container Park Terminal**

The employees posted on the Container Park work on a monthly basis and therefore should be governed by conditions more or less obtainable in the Republic of Mauritius.

Hence on claim that:

They are paid and classified in a Salary Structure – Dispute 6

They are allowed to accumulate any unused sick leave – Dispute 7; and

Are paid any unused sick leave – dispute 8

The Union will support above claims on basis of extension of existing agreements in Mauritius governing these categories of employees.

## 7. **Payment of employees on sick leave**

The method of remunerating employees in relation to the organization of work is such that any absence in the gang, to a certain extent, is beneficial to the Employer. Hence the Union's claim that work carried out by the Gang for any absent worker (i.e in case the worker is not replaced) be either paid to the absent worker or otherwise shared among the employees present.

## 8 **Pension Scheme**

The revenue of the employees is such that contributions paid to the NPS will NEVER accumulate to the extent that – after 40 years service, an employee may expect to benefit from half of his salary as pension benefits.

Hence the claim of the Union that Rogers Pension Scheme be extended to P.A.P.O. L. Employees.

In its Statement of Case the Respondent avers the following:

1. P.A.P.O.L is a stevedoring company subcontracted by the Mauritius Shipping Corporation Ltd (hereinafter referred to as " the MSCorp") for the loading and unloading of the M/V Mauritius Pride and M/V Mauritius Trochetia in Rodrigues.
2. Either vessel calls at least once a week and sometimes twice a week. loading and unloading operations are therefore carried out between 3 to 5 times a month, i.e. whenever the vessels make the trip to Rodrigues.
3. P.A.P.O.L employs 81 casual workers (hereinafter referred to as "P.A.P.O.L workers") (of which 55 are employed as stevedores working in five gangs of 11 and the rest as tally clerks, winch men, signalmen, etc ".) to effect such loading and unloading every time the Mauritius Pride or the Mauritius Trochetia calls in Rodrigues.
4. In addition, PAPOL manages a labour depot (hereinafter referred to as" the Container Park") and employs 11 workers for that purpose.
5. The eight claims put in the statement of case dated 24 February 2004 are:
  - (1) an increase in the daily basic wage ranging from 14.22% to 22.35%
  - (2) an increase of the piece rate
  - (3) an increase of the meal allowance
  - (4) an allowance of Rs 20 as tea/light meal allowance whenever workers work after 22.00 hours.
  - (5) An increase in the workforce on the M/V Mauritius Trochetia.
  - (6) Employees posted on the Container Park be firstly paid and classified in a salary



structure, secondly be allowed to accumulate any sick leave and thirdly be paid any unused sick leave.

- (7) If there are absences in a gang, the absent worker should be paid its full wages or wages not paid should be shared among those present.
- (8) Rogers Pension Scheme should be extended by PAPOL.

- 6. These eight claims were the eight points of dispute referred to the Tribunal but by letter dated 5 September 2003, the Permanent Secretary for the Ministry had notified PAPOL that claims 6 and 7 had been withdrawn.
- 7. PAPOL wishes to highlight that it has at all times paid due consideration to the claims made by the Union, wherever it was reasonable to do so. There has been an ongoing process of collective bargaining since in or about June 2003 and as set out below. PAPOL has made proposals to the Union. Indeed Claims (3) and (5) are no longer in dispute.

## CLAIMS

### Claims (1): Daily Basic Wages

- 8. In December 2000, R. Ahnee sitting as private arbitrator of the disputes then existing between the Union and PAPOL awarded to the workers a general increase of 25% of their wages.
- 9. Since the said Award, wages have been increased every year in accordance with the additional remuneration legislation and have hence been subject to increases between 13.2% and 17.6%. Overtime rates and the end of the year bonus are also subject to those increases.
- 10. P.A.P.O.L does not agree that the wages of workers employed by PAPOL in Rodrigues should be at par with wages of workers employed by the Cargo Handling Corporation and Rogers Company Ltd in Mauritius because:
  - 10.1 For social and economic reasons particular to Rodrigues (less commercial activity and therefore less employment available). PAPOL recruits for the loading and unloading activities more workers than necessary for the task ( the 81 PAPOL workers being called upon when the Mauritius Pride calls and 40 when the Mauritius Trochetia calls).

- 10.2 The productivity level of P.A.P.O.L workers in Rodrigues is below that of workers in Mauritius. In Mauritius, a substantially lesser number of workers perform the same tasks.
- 10.3 The yearly earnings of the P.A.P.O.L workers in 2002 to 30 June 2003 varied from Rs 73,475.18 for a stevedore to Rs 111,589 for a forklift driver.
11. As regards paragraph 2(1)(iii) of the Union's statement of case PAPOL states that the earnings of the P.A.P.O.L workers are related to the *quantum* of work but that such earnings do take into account of the fact that the vessels call at Rodrigues only three to five times a month. Such earnings, when considering the work actually performed, are sufficient to provide for the needs of the PAPOL workers and compared if not exceed the salary earnings of other workers of equal grade in Rodrigues.
12. For the reasons stated above PAPOL avers that no increase in daily wages is due.
13. The P.A.P.O.L workers are not employed by the MSCorp and the MSCorp is in no way responsible for the remuneration and/or conditions of employment of the workers. Therefore, the MSCorp ought not be joined as a party.

### **Claim (2): Piece Rate Scheme**

14. Piece rates are computed by reference to productivity. In 1999, PAPOL, prior to the delivery of the Award had all the same and despite the productivity level in Rodrigues proposes increases in piece rates. No further increase can now be contemplated on account of the level of productivity.

### **Claim (3): Meal Allowance**

15. This item is no longer in dispute since the Union and PAPOL have since reached an agreement whereby the meal allowance has been increased from Rs 45 to Rs 50. Rs 50 had been the figure proposed by the Union and granted by P.A.P.O.L.
16. P.A.P.O.L avers that a meal allowance of Rs50 meets the cost of meals and refreshments in Rodrigues. The increased meal allowance of Rs50 has been paid to P.A.P.O.L workers since in or about August 2003, when P.A.P.O.L's proposal was accepted by the Union.

#### **Claim (4): Tea/Light Meal Allowance**

17. P.A.P.O.L accepts that workers called to work after 22.00 hours should be paid a tea/light meal allowance.
18. The tea or light meal is not meant to be a meal as such but a snack.
19. P.A.P.O.L has agreed to grant an allowance of Rs 8 whilst, in the course of negotiations, the Union's final position was Rs 12.

#### **Claim (5): Work force on MN Mauritius Trochetia**

20. The item should no longer be in dispute since the Union and PAPOL have since reached an agreement whereby, the workforce of the Mauritius Trochetia should be of 40. Since the Mauritius Trochetia is a pure container ship and no break bulk cargo unloading is effected by mechanical means. Therefore, less workers are required for the task.
21. The figure of 40 had been proposed by the Union and the new gang composition of 40 is already in operation since in or about July 2003.

#### **Claim (6): New Conditions of Employment for Container Park Terminal**

22. P.A.P.O.L agrees that workers at the Container Park be paid and classified according to a salary structure. It proposes the following classification and monthly basic salary structure:
- Cargo Handlers & Cleaners: starting - Rs 3,500; maximum - Rs 5,600
  - Watchmen: starting - Rs 3,500; maximum - Rs 5,400 plus Rs 500 as productivity bonus.
  - Forklift Drivers: starting - Rs 4,500; maximum - Rs 6,800
  - Senior Tally Clerk: starting - Rs 4,500; maximum - Rs 7,100
  - Junior Tally Clerk: starting - Rs 4,500; maximum - Rs 5,400

23. PAPOL also agrees that those workers be allowed to accumulate any unused sick leave up to a maximum amount of 45 days.

24. PAPOL is unable to agree with the claim that unused sick leaves should be paid because:

24.1 sick leaves are available to a worker as and when he is, *for* cause of illness, unable to work on a day he is supposed to work and on presentation of a medical certificate;

24.2 refunding sick leaves may have the negative effect of encouraging sick workers to nonetheless come to work in order to "save" sick leaves;

24.3 there is therefore no need to refund unused sick leaves and it is not the company's policy to do so.

**Claim (7): Payment of Employees on Sick Leave**

25. On presentation of a medical certificate, a worker who is, for cause of illness, unable to work on the day he is supposed to work is paid his basic wages for that day.

26. By letter dated 5 September 2003, the Permanent Secretary for the Ministry had notified PAPOL that this claim had been withdrawn.

**Claim (8): Pension Scheme**

27. In his Award, the Arbitrator (Mr Ahnee) held that PAPOL workers are employed under a Contract of determinate duration (para 1.18 of the Award) and that the workers "are not permanent employees in the Company's continuous employment" (para 5.1 of the Award). They are recruited (for the specific tasks of loading and unloading as and when a vessel calls in Rodrigues. As such, they do not qualify to join the Rogers Pension Scheme.

28. By letter dated 5 September 2003, the Permanent Secretary for the Ministry had notified PAPOL that this claim had been withdrawn.

29. PAPOL, therefore prays the Tribunal to set aside Claims (1), (2), (3), (5), (7), (8) and the claim for the refund of unused sick leaves and with respect to Claims (4) and (6) to award as offered at paragraphs 20, 23 and 24.

The union's first witness was one Louis Shirley Allas, who testified as follows:- in the past the ship used to stay on the high seas and the small boats went to them for disembarkation. Those small boats were owned by one Paul Elizé who employed a few workers and, at some later stage, formed the Company. Gradually, the quay was built and the ships, carrying containers could align themselves. As from 1980, those ships did not stay long in the harbour which over the years was modernized and they were carrying containers. In the process of modernization, some workers lost their job but some did receive a pension or a lump sum. However when the Mauritius Pride started serving Rodrigues, those workers who lost their job received no pension at all or lump sum. The witness joined the workforce at the harbour in 1989 and because the ship had a time constraint to remain in the harbour, he was informed of the new tonnage system. In those days, the ship tonnage was divided by 63 tons and that was worked out on a daily basic wage plus overtime. Although his normal working hours were reduced, he has had to do overtime. With the arrival of Mauritius Pride the tonnage system was removed. Their working hours were from 7 a.m. to 4 p.m. after which they could earn overtime which was twice their basic salary. Then the piece rate was introduced and this did not carry any bonus. Loose bags were being brought and for each 25 of them they were to be on the "palette".

According to the witness, the process of modernization led to a reduction of their income, and loose bags would bring earning of Rs1.50 for each 25 bags whereas the one which now carries a belt brings only 75 cents.

Witness Dartayan Hortense, a Stevedore testified to the effect that he used to work as such and is now retired and upon retirement he was given a compensation of Rs7000 plus a pension of Rs500 which is purely insufficient.

In a vain attempt to impress us about his lectures on world economics, Jack Bizlall, a Clerk has had to cut his cloth according to his size. Indeed, Counsel for the Respondent drew our attention to departures from the Terms of Reference, and we believe rightly so.

According to witness Jack Bizlall who represents the interest of the union, the periodicity of the collective agreement with the union is of 3 years whilst the periodicity of the agreement between Mauritius Shipping Corporation and P.A.P.O.L is of 4 years. The latter used to be for 3 years but there has been an agreement to have it increased. The next collective agreement will cover the 1st of July 2007 to 30 June 2011. The present one is from 1st July 2003 to 30th June 2007 and for the sake of the present award it has been agreed that it should take effect from 1st July 2004 and not 2003, ending in 3 years, that is 2007 but the periodicity is still for 4 years. Dispute number (3) has been settled and the union has moved for an Award in terms of the agreement. The witness added that one Ahnee delivered an Award which eventually required to be interpreted. A collective agreement was then signed between the parties. Since the publication of that Award there was then only one ship in operation, the Mauritius Pride. After the publication of the Award a second ship entered in the business, the Mauritius Trochetia and a second agreement has had to be signed to cover this ship. In fact it was an addendum to the first one. So the new element since that Award is that of the Mauritius Trochetia. But that ship has had an important impact on the organisation of Port Mathurin because the manning as agreed is of 44 persons whereas for the Mauritius Pride it is now 80. When the Mauritius Trochetia comes to Rodrigues about one of the manning is involved in the Cargo Handling.

The second thing is that when the union submitted their respective stand before the Arbitrator, there was a system whereby for the Stevedores there was one gang out of this which remained on stand by, that is when the Mauritius Pride called at Port Mathurin one gang remained idle. There has been a change right now when the Mauritius Pride calls at Port Mathurin all Stevedores have to work and there is no stand by gang. The third change is that the manpower used to be 88 persons and now it is 80 that is a reduction in the workforce of 8 employees. From information the witness received one Delivery Clerk, one Foreman, one Signaller and five Stevedores have either retired or died. On the basis of the system of payment whenever an employee retired, the Company makes a saving according to the witness it is to the tune of Rs600,000 he reached that figure if taking the sum of Rs73,000 which is the average salary of a Stevedore and multiply it by 8. There is an agreement to the effect that there will be an annual

reduction of manpower in Port Mathurin until the appropriate staffing is reached. Gradually and year after year whenever people retired they will not be replaced. Also according to the contract repairs are made by Rogers Shipping at least the minor ones, and there is a contract to that effect. The Management of the ship consists of providing the seafarers a staffing on board these ships these employees are members of the union who have a case for PAPOL. So far as the seafarers are concerned there is a procedure for establishing collective agreement and their renewal there is a problem for the employees that have got a case with PAPOL. Mauritius Shipping Corporation has got an office in Port Mathurin and PAPOL is a subsidised Company of Rogers entering into contract with Mauritius Shipping Corporation each time one of the ships of the Mauritius Shipping Corporation managed by Rogers called at Port Mathurin. PAPOL has got a source of income from the Mauritius Shipping Corporation under an agreement and a tariff scheduled which is fixed periodically and that Company also operates on Quays because in the Mauritius Shipping Corporation these are Stevedoring operations.

There are therefore two rates, one rate for "on board" and another rate for "operations on Quays" and the income of PAPOL comes from these two sources. Those rates were submitted to the Arbitrator. Agreement was reached between PAPOL and the Mauritius Shipping Corporation following the arbitration of an increase in the rates of up to 10%. These were eventually increased to 25%. The first element of compensation to the tune of 17.15% representing rises in the cost of living for period 1991 to 1999 and a second one of 7.85% which provided for the fact that there was a gang idle. At that time there were 6 to 8 employees who were idle. Now the figure is 36 in the case of Trochetia. The Unions expect an increase in the salary as per the mythology used by the Arbitrator. According to the witness the Arbitrator proposed as regards the issue of pension that when reaching the age of 60 each employee gets a lump sum. That compensation is based on 1/26 of the yearly earnings of these employees. Since then Rogers Company has changed its Pension Scheme. The previous scheme at that time was based as per the formula provided in the Pension Scheme itself. After that there was another scheme whereby one gets whatever has been contributed in one's name by the employer and by oneself. This is a different scheme which can be applied by these employees because if it is opened, 1/26 represents 3.8%.

As regard the claim for a salary increase, the witness stated that the Unions have claimed a salary increase across the board of 20%. He cited figures to support that claim as well as the element of full compensation. He added that the salaries should be adjusted on the full CPI and this would lead to an

increase of 10%. He stressed that whenever the employee gets the prescribed compensation on the 1st of July, that compensation is paid as a full amount. But the employees of P.A.P.O.L do not earn that full amount. They get it on a daily basis. The employees do not earn 26 days' salary per month which would allow them to get the full amount of compensation at the end of the month. According to the witness there should be some bridging somewhere to compensate for that. Also, he pointed that the agreement that the Unions have with P.A.P.O.L is an agreement which compels the employee to work beyond the normal 8 hours' work. As per his contract of employment he works out his daily duty from 7 a.m. to 4 p.m. and he has the obligation to remain at work from 4 p.m. to 9 p.m and on the last day if his services are required he has to stay beyond 9 p.m. This allows the ship to handle all its cargo as quickly as possible so as to leave Port Mathurin. The witness requested the Tribunal to take into account the fact that when the Trochetia steps in, this will have additional impact on the revenue of the employees. So much so that at the end of the day not only they are not fully compensated and get their full CPI amount but they also have their salaries adversely affected by the fact that the new ship makes more people idle and this leads to less revenue. There is also the fact that the standard of living must be preserved in Rodrigues.

On the issue of piece rate the witness stated that prescribed compensation was paid on piece rate until 1988. The Unions demand that the piece rate be increased taking into consideration the fact that no full adjustment was made by the Arbitrator and no revision was made since 1999. The witness explained that piece rate is part of the agreement. In fact there are three elements, the basic, the overtime and the piece rate.

The witness confirmed that dispute No (3) has been settled and has made an offer regarding dispute no. (4).

Before his cross-examination, Mr Bizlall confirmed that disputes Nos 3, 4 and 5 have been settled and we are left with only 3 disputes – the salaries, the piece-rate and the pension. The witness cross-examined by Miss Collendavelloo affirms that:-

1. the union has claimed a 20% salary increase and has partly used the 'methodology' applied by the said Ahnee, the PRB and the NRB. P.A.P.O.L. workers receive only half the COLA.



Moreover, workers who earn above a certain ceiling receive a decreased compensation. The salary should be adjusted to the full CPI.

2. more workers are employed in Rodrigues than in Mauritius to accomplish the same job because those who retire are not replaced.
3. there has been an increase in the income of workers. In the case of stevedores there has been an increase of 59% in their salary between 1999 and 2003.
4. there has been a decrease in the volume of cargo despite an increase in the number of trips.
5. the increase in the volume of work is to the advantage of the firm and it would be a win-win situation for both parties if the employees perceive an increase in salary.
6. there has been an important decrease in "Break Bulk" cargo and a slight increase concerning "container". The fixed cost has increased as well.
7. the piece rate is a "productivity bonus" i.e, the more there is work the more the employee is paid. However, there was another formula before whereby workers perceived more money.
8. he is not agreeable that employees in Rodrigues work less or make less efforts.
9. productivity in Rodrigues has increased though not to the same tune to that of Mauritius. The port in Rodrigues needs to be modernized.
10. the P.A.P.O.L. employees are casual workers. There are 80 employees of which 55 are stevedores and the remaining comprises of staff, drivers, forklift drivers, among others.
11. there has been a continuous change in the "techniques" of works in the port. P.A.P.O.L. should have a more intelligent deal with the Mauritius Shipping Corporation. There should be a safety clause in the contract with the Corporation.

12. the increase in salary of employees of P.A.P.O.L. will not have immediate effects on the cost of living in Rodrigues. There is "duty free goods" in Rodrigues.

Mr Driver, Operation Manager of P.A.P.O.L. examined by Miss Collendavelloo admits that:-

1. "Mauritius Pride" accomplishes 3 trips per month and the "Mauritius Trochetia" one per month and for each ship there is work for one or 2 days depending on the volume of cargo. Employees of P.A.P.O.L. are informed 3 to 4 months before of the arrival of the ships and the works to be performed.
2. between the year 2000 and the year 2005 the total COLA is approximately about 16%.
3. at times ships call to Rodrigues 5 or 6 times per month and there is work for more than 8 days.
4. a stevedore earns about Rs 8,000 monthly and from the year 2000 to the year 2004 his total earnings have increased by about 75%. A tally clerk perceives about Rs 10,000 monthly; a signalman Rs 9,2000, a winchman Rs 9,800 for 8 days of work.
5. there has been an increase regarding "Container" but a fall in "Break Bulk Cargo" from 15,851 tons to 11,663 tons.
6. when "Mauritius Pride" reaches Rodrigues, 80 employees are involved irrespective of the volume of cargo – be it 1,000 tons or 2,000 tons.
7. for the same cargo 28 employees are engaged in Mauritius and the same equipment are used.

8. all the team of the 80 embark and disembark the ship and are equally remunerated. Those who have accomplished their task earlier leave for their home.
9. although 80 employees are not required for the job – which is not productive – these employees are maintained in their job on account of social problems.
10. P.A.P.O.L. is a subsidiary of Rogers and employees of P.A.P.O.L. want to join the “Rogers Pension Fund”. Only permanent employees are eligible to join this “Pension Fund”. As per the Ahnee Report of 2000 P.A.P.O.L. employees are casual workers and both parties were agreeable to that.
11. the Ahnee Report viewed that no increase in piece rate could be given to P.A.P.O.L. employees because there were no productivity regarding P.A.P.O.L. employees.
13. only 45 employees are engaged when the “Mauritius Trochetia” comes to Rodrigues.

Mr Driver, cross-examined by Mr Ramano concedes that:

1. when the “Mauritius Pride” calls at Rodrigues there is work for all the employees, whereas as regard to the Trochetia only half the number of workers are employed and the other half who are not employed are not paid.
2. after the Ahnee Report, there was a Collective Agreement between the Employer and the Union. It concerned only the “Mauritius Pride” and eventually this agreement was extended to the “Mauritius Trochetia” as well.
3. the “Mauritius Pride” effects 3 trips to Rodrigues monthly whereas for the “Mauritius Trochetia”, it is 2 trips monthly.
4. P.A.P.O.L. employees are paid only half of the COLA prescribed by the Government.
5. in the past as regard to “Mauritius Pride” there was a gang of workers who remained idle and this vessel comes to Rodrigues more often than before.

6. piece rate has not been revised since the Ahnee Report of 2000 and with the modernization of the port in Rodrigues there is a fall in the earnings of employees as far as piece rate is concerned.
7. P.A.P.O.L. "gains economically" when a worker retires or passes away because there is no new recruits. This economic gain may be to the tune of Rs 100,000 per year per worker.
8. the unemployment problem is very acute in Rodrigues and it is very difficult for one to find an alternative job.
9. the income of port employees has increased considerably from the year 2000 to 2004 due to an increase in cargo following a series of infrastructural developments. However, this trend may be only of a temporary duration.
10. with the increase in trips the employees gain more in their pay packet.
11. although P.A.P.O.L. employees are casual workers, they have remained "*en permanence*" with their employer.
12. a formula for pension should be devised concerning the employees.

Mr Driver, re-examined by Miss Collendavelloo affirms that:

1. P.A.P.O.L. is overstaffed at Rodrigues as it still employs 80 workers compared to only 28 in Mauritius.
2. it is extremely rare that there is a delay in the arrival of ships, perhaps once in 2 years. The delay may vary from one to three days.
3. when there is less cargo, there is less income for the company.
4. the income of P.A.P.O.L. workers comprises of daily rates, piece rates and overtime; daily rates and piece rates are more or less in the same proportion.
5. P.A.P.O.L. is not paid for when there are passengers in ships.

6. a worker has the opportunity to work more when ships calls at Rodrigues more often.
7. there are workers who perform other jobs such as fishing, metal works, transportation of tourists among others.
8. the Additional Remuneration Act provides additional remuneration for monthly paid employees. Casual employees are paid "their rates".
9. the Ahnee Report awarded increase for piece rate as per the quantum proposed by the company.
10. there is no mobility from one hull to another.

Mr Elliah, examined by Miss Collendavelloo affirms that: on 18 July 2005 the loading of "Mauritius Pride" was effected at Port Louis from 7.25 a.m. to 16.15 p.m and the same cargo was unloaded at Rodrigues on 20 July 2005 from 7.15 a.m. to 18.000 p.m.. This shows that the employees in Rodrigues have taken more time to unload the same cargo. Moreover, the ship was not full. Normally this ship conveys more than 57 containers but for the said trip there were only 33 containers.

Mr Elliah, cross-examined by Mr Ramano conceded that:-

1. he is not agreeable to the fact that there is more facility for the loading of cargo in Mauritius than for the unloading of the same cargo in Rodrigues.
2. the employees in Mauritius are more highly paid than their colleagues in Rodrigues.
3. he agrees that the volume of cargo has increased between 2000 and 2004.
4. the volume of cargo for July 2005 does not reflect a tendency. It may increase later but may fall also.

In her submission, Miss Collendavelloo states that:-

1. we are left with only 3 disputes – the basic rate, the piece rate and the new pension scheme (Rogers Pension Fund)
2. As regard the basic rate, employees of P.A.P.O.L. are merely casual workers – who are called to work as when the ships call to Port Mathurin – and as such are not entitled to be the beneficiaries of this scheme. She refers to the Award made by the said Ahnee in 2000 where the status of P.A.P.O.L. employees of a participating employer. In any case under the statutory law, under the :Labour Act there is no obligation to provide for a pension fund, it

suffices that severance allowance is paid upon retirement. Hence P.A.P.O.L. cannot be asked to ask its holding company to join its employees to the fund.

3. as regard to the second dispute, the employees are claiming an across the board increase of approximately 20% of their basic rate. From the testimony of J. Bizlall it is seen that 10% is supported by the fact that salaries or wages have to be adjusted to the C.P.I. The second 10% is supported by the fact that P.A.P.O.L. workers do not work all 26 days of a month but only as and when ships call to Rodrigues.
4. J. Bizlall had conceded that
  - (a) P.A.P.O.L. employs more workers than necessary for the task and this he agrees is partly an "affair philanthropique";
  - (b) whilst the number of trips by the vessels to Rodrigues have increased materially from the year 2001 to the year 2005 the volume of cargo has dropped;
  - (c) more trips mean an increase of the fixed cost that has to be borne by P.A.P.O.L. and an increase in the revenue of employees because they are called upon to work much more often than in the past; and
  - (d) an increase in the cost of freight would mean an increase in the cost of articles and therefore an increase in the cost of living.
5. No increase in wages can be entertained because
  - (a) cargo have diminished and P.A.P.O.L. derives its revenue only from cargo and not from passengers and it cannot pay the increase claimed.
  - (b) The figures have shown that the yearly earnings of all P.A.P.O.L. employees have increased steadily from the year 2000 to the year 2005.

- (c) When an employee of P.A.P.O.L. works one day, as J. Bizlall has explained, he is remunerated three days because of overtime and the fact that the operation has to go continuously throughout the night. Therefore from the figures it can be seen that by working only a few days per month P.A.P.O.L. employees are remunerated as a full time employee would it be in Mauritius or in Rodrigues.
6. As regard the increase claimed on piece rate the said Ahnee in his award did not propose to increase the piece rate at all but finding that it cannot award less than what the employer proposed, he granted an award in terms of the offer of the employer. He stressed that there was a lack of productivity and there was no mobility from one hull to another. As per the evidence of Mr Driver the situation has not evolved and more workers than necessary are employed and this has been done for social reasons. Since the purpose of piece rate is to boost productivity and reward productivity, no increase can be awarded to the employees.
  7. Modernisation has improved the work and less effort is made by employees and they are remunerated accordingly. There has been a calculation made by the fact that if cargo comes "not palletized" one will earn more by piece rate.
  8. The schedule of trips is made at least 6 months in advance so that employees are aware when they will be required to work and can in their spare time do some separate work to boost up their revenue.
  9. There are 2 Terms of Reference. The difference between the two is that the second one claims an even higher increase and this has been justified by the fact that there is an increase in containerization. Evidence has been adduced – a letter from the State Trading Corporation – shows that rice would not be containerized anymore, and therefore that argument should fall.

In conclusion, Counsel submits that for all the above reasons stated no increase in wages is justified at this point either on daily basis or on piece rate.

Mr Ramano, for the Applicant, submits that:-

1. as to the item of daily rate there are 3 elements to be considered – the compensation to the full CPI, the fact that P.A.P.O.L. employees only half of the monthly COLA and the element of obligatory idleness of half the number of employees of P.A.P.O.L. when the Mauritius Trochetia comes to Port Mathurin.
2. there is a rise in the cost of living and this is a continuous trend. The COLA which is paid monthly to employees is only a partial compensation to the rise of the cost of living. So, there is a loss in the purchasing power of the employees and this accumulates over a certain period of years. This is why salary must be revised periodically in order to compensate workers for that loss in the purchasing power and this exercise is done by the National Remuneration Board, the Pay Research Bureau for major sectors in Mauritius. Mr Ahnee has done it for P.A.P.O.L. in his last award for the years 1991 to 1999. So we are left with the years 1999 to 2004 for which the employees of P.A.P.O.L. have lost in terms of purchasing power.
3. P.A.P.O.L. employees receive only half of the COLA which Government gives monthly to workers to enable them to face the rise in the cost of living.
4. only half of the P.A.P.O.L. employees work when the “Trochetia” calls at Rodrigues and with the modernization trend this vessel is coming more and more to Port Mathurin and this means that more often half of the employees will be left out of work. This is not because the workers do not want to work but it is due to the nature of the work with the “Trochetia”. They are obliged not to work and are not paid for that. The Ahnee Report catered for that idleness in relation to the “Mauritius Pride” when there was a gang lying idle each time the “Mauritius Pride” called to Rodrigues. He is of the humble opinion that the Tribunal must cater for that.



5. as regard to piece rate (the second dispute) the first thing to be noted is that it is an integral part of the salary composition of the workers of P.A.P.O.L. Piece rate forms part of the collective agreement between the Union and the company and it is paid the same amount to all P.A.P.O.L. workers. However, it is not indexed on the cost of living. So, it is imperative that piece rate is revised periodically in order to attend to the changing physiological needs of P.A.P.O.L. workers.
6. since 1999 piece rate has not been adjusted while the cost of living has known a sharp rise. With the modernization trend of loading and unloading the revenues of P.A.P.O.L workers have greatly been impaired. We are having pre-palletised and conteneurised system more and more. Just as an example, in the past for 400 bags which were embarked from ships the workers were receiving Rs 24 for that. With the pre-palletised system they are getting Rs 12 and only Rs 5.25 with the conteneurised system for the 400 bags. So, it is not a question that the workers are working less and asking for more pay – they are just asking an increase of Rs 2.60 on the piece rate of a container of 400 bags.
7. as to the volume of goods, it is only now that it is going down but it is not a trend as confirmed by Mr Elliah while he was in the witness box. If the revenue of workers have been on the rise it is because of the climate which prevailed between 2000 and 2004 – the statute of Rodrigues, its autonomy, more development among other things. However, now the revenue of workers has started shrinking. As an example the revenue of Mr Allas from January 2005 to June 2005 has dropped compared to the same period of year 2004.
8. there may be an increase in the number of trips but there are ships which carry passengers as well as cargo. There are ships which carry passengers as well as cargo. There are ships which are not fully loaded. A top loaded ship coming to Port Mathurin and staying there three to four days will bring more revenue to P.A.P.O.L. workers than three or five ships and only half loaded.

9. as far as alternative employment is concerned the employer itself has agreed that unemployment is an acute problem in Rodrigues. It is difficult to have another job elsewhere and even in the fishing industry or any other sector with a decent earning.
10. it is a fact that there is an excess of employees at P.A.P.O.L. but there is a historical element to be taken into consideration. In Mauritius between 1970 and 1980 when there was the modernization of the Port, when there was the vrac, there was provision for compensation, for lump sum so that workers may go off. However, in Port Mathurin there was no lump sum, no compensation and P.A.P.O.L. not paying all that accepted to keep some of the employees – 88 in number and now it is 80. The diminution in the number of employees results in economic gains for P.A.P.O.L. If it is 8 employees, who have gone either by retirement or passed away, it is an economic gain of Rs 800,000.
11. as regard to the issue of pension, the company has a social responsibility. After 30 to 40 years of loyal services, these employees who have been working towards the prosperity of the company and towards the community cannot be thrown on the pavement as old torn clothes with a pension equivalent to peanuts. His appeal is that this Tribunal sees that this situation be remedied.

After considering the testimonial and documentary evidence adduced, this Tribunal finds that:-

1. Rodrigues, although a district of Mauritius, has its specificity. (**Police v Rose (1976 MR)**)
2. P.A.P.O.L. employees are casual workers – they work only when the “Mauritius Pride” and the “Mauritius Trochetia” call at Rodrigues. As per his contract of employment a P.A.P.O.L. worker starts work at 7.00 a.m. and has the obligation to remain at work until

9.00p.m. and at times beyond 9.00 p.m. He is paid three days for one day's work because of overtime.

3. more workers are employed in Rodrigues than in Mauritius for the same volume of work. However, the employees in Mauritius are more highly paid than their colleagues in Rodrigues.
4. there has been an important decrease in "break bulk" and an increase concerning containers and the fixed cost has increased as well. The number of trips to Rodrigues has increased, but the volume of cargo has dropped.
5. an increase of about 17% to 18% has been noted in the basic salary of a worker and an increase of at least 59% in his earnings between the year 1999 and the year 2003.
6. P.A.P.O.L derives its revenue only from cargo and not from passengers.
7. Piece rate has not been revised since the Ahnee Report of 2000 and with the modernization of the port in Rodrigues there is a fall in the earnings of employees as far as piece rate is concerned
- 8.. the income of P.A.P.O.L. workers comprises of daily rate, piece rate and overtime. Basic rate is subjected to additional remuneration lincrease, whereas piece rate is not.

The Tribunal, after considering all the above facts, has come to the following conclusions:-

- (a) P.A.P.O.L. employees have to be compensated taking into consideration the cost of living. The last salary review was effected in 2000. Since then, the P.A.P.O.L. employees were not receiving the full CPI increase.
- (b) piece rate has not been revised since the year 2000. Since the earnings of the workers comprise of 3 elements – the piece rate, the basic rate and the overtime it is imperative that along with an increase in basic rate, there should be an increase in

piece rate. Here, we refer to the testimony of Mr Driver that in the earnings of the employees the basic rate and the piece rate are more or less in the same proportion. On granting an increase in basic rate would not mean much in the total earnings if piece rate is not increased as well.

We therefore recommend an increase of 7% across the board in the basic salary. Likewise, we recommend an increase of 7% in the piece rate. Those increases are to take effect as from 1<sup>st</sup> May 2007.

- (c) as far as the pension issue is concerned, this Tribunal views that it cannot intervene in favour of the P.A.P.O.L. workers for their joining to the Rogers Pension Fund Scheme as they are casual workers. However, for the sake of harmonious industrial relations and due to the fact that these employees have contributed to the survival and prosperity of the company, this Tribunal invites the employer to devise a pension scheme acceptable to both parties.

As regard disputes upon which agreement has been reached, we award as per the terms of the agreement.

**(sd)Rashid HOSSEN**

**Ag President**

**(sd)Binnodh RAMBURN**

**Member**

**(sd)Masseelamanee GOINDEN**

**Member**

**Date: 29<sup>th</sup> March 2007**