

**PERMANENT ARBITRATION TRIBUNAL****Interpretation of Award****RN 580****Before:**

<b>Rashid HOSSEN</b>	-	<b>Ag President</b>
<b>Binnodh RAMBURN</b>	-	<b>Member</b>
<b>Masseelamanee GOINDEN</b>	-	<b>Member</b>

**In the matter of :-****Central Electricity Board Staff Association****And****Central Electricity Board**

This is an application for the interpretation of part of an Award delivered in April 1997 (RN 333) and for an order for the enforcement of part of an Award delivered in May 1997 (RN 555). The interpretation concerns the meaning of monthly salary in relation to the eligibility of travel grant, whilst the order for enforcement relates to the meaning of present gross basic salary for the purpose of calculating the 21% increase awarded in the previous Award. They were delivered respectively on 23.04.97 and 21.05.97 by a differently constituted Bench presided over by Mr Harris Balgobin.

The application is made by virtue of Section 91 (3) and of Section 88 (1) (a) respectively of the Industrial Relations Act 1973.

Mr Antoine Domingue, of Counsel, appears for the Applicant.

Mr Eric Ribot, of Counsel, appears for the Respondent.

### **Background**

Pursuant to a dispute by letter dated 28 July 1993 by the Ministry of Labour and Industrial Relations between the Central Electricity Staff Association and the Central Electricity Board (RN 333), the Tribunal delivered its Award on 23 April 1997.

As per letter dated 2 May 1997, the Respondent applied to the Tribunal for an interpretation of some items of the Award. The requests were as follows:

1. On page 15 of the Award to define:
  - (a) the term 'present gross basic salary'
  - (b) when restoring the T.V. Allowance, whether the additional increment already granted in lieu of T.V. allowance in the context of the 1993 Salary Structure and other conditions of service with effect from 1 July 1993 should be removed and replaced by the said allowance as from 1 January 1995.
  
2. On page 16 to indicate the effective date with regard to:-
  - (a) Passage benefits and
  - (b) Travelling benefits
  
3. If the payment of a lump sum equivalent to twice the monthly salary of December 1994 is applicable to those who have retired prior to that date.

The Tribunal in its interpretation of Award (RN 555) delivered as hereunder:-

1. (a) The Tribunal declares that 'present gross basic salary' refers to the gross salary including extra-remuneration for the years 1995, 1996 and 1997.
- (b) The T.V. allowance is payable over and above any other increment already granted..
2. Passage benefits and Travelling benefits take effect on the date of publication of the Award in the Government Gazette.
3. The lump sum equivalent to twice the monthly salary of December 1994 is payable to officers having retired prior to that date on a 'pro-rata' basis.

Subsequently, the Applicant by letter dated 24 June 1998 applied to the Tribunal for:

- (i) the interpretation of the last but one paragraph of the Award RN 333 which reads as follows:-  
Employees drawing salary Rs 15500 but less than Rs 16,500 monthly inclusive of extra remuneration up to 1996 and this award should be eligible for a travel grant of Rs 3300 a month provided they use their car to attend work and/or for official travelling.
- (ii) the revision of pension benefits for the staff.
- (iii) the enforcement of the following part of its interpretation of the award of 21 May 1997 (RN 555):

3 (i) (a) The Tribunal declares that 'present gross basic salary' refers to the gross salary including extra-remuneration for the years 1995, 1996 and 1997.

- (iv) the enforcement of the terms of its Award at page 16 regarding travelling allowance payable to regular car users and those drawing salary in a scale the maximum of which is not less than Rs 16,500 a month inclusive of extra remuneration up to 1996.

On 27 July 2004 at an informal meeting at the Permanent Arbitration Tribunal, Mr Domingue stated that:

- (a) issue no (ii) has been dropped
- (b) there has been a settlement regarding issue no (iv)
- (c) negotiations are going on as far as issues nos (i) and (iii) are concerned.

However on 3 May 2006, Mr Domingue informed the Tribunal that in spite of earnest efforts matters have not been disposed of. The matter was thereupon fixed for hearing.

So issues nos (i) and (iii) are still alive.

It is to be noted that the Tribunal has ruled that it has jurisdiction to hear the present application.

There were originally 4 issues before the Tribunal. The parties informed us that issue No 4 had been settled and they are not pressing on issue No. 2.

We reproduce an extract from the Statement of Case dated 29 September 1998 from the Respondent in respect of issues Nos 1 and 3.

**1<sup>st</sup> issue**

“It should be stressed that for the purpose of determining our salary structure, that is, to grade the jobs and to establish the relativities, the parties to negotiations never take into consideration consolidated salaries. Besides, whenever a shift employee is called upon to double a shift, the extra overtime is calculated on the non-consolidated salary. Furthermore, for the sake of calculating the mileage credit, the benefits are calculated on the basis of the non-consolidated salary.

Consolidated salaries have been introduced in the Board so as to avoid computing overtime on a regular basis. As the term indicates, it is a salary consolidated by a percentage of overtime pay and where applicable extra remuneration.

In the present circumstances, the consolidated salary includes Extra Remuneration plus the 21% increase plus overtime element.

In extending travelling benefits to a few officers, we believe that the Tribunal has taken into account the status of the Officer more than anything else.

It would be illogical to assume that consolidated salaries can be likened to the salaries which include only Extra Remuneration and the 21% salary increase.

Any acquiescence in this direction would only trigger a similar move on the part of quite a number of employees whose total remuneration inclusive of overtime currently exceeds Rs 20,000 per head.

The Tribunal which has mentioned ‘monthly salary’ must have made a considered decision.”

**3<sup>rd</sup> issue**

“This issue relates to payment of the 21% increase as awarded by the Tribunal on the 1997 extra remuneration. The Board implemented the Award to the Staff Grades in June 1997 following filing of the interpretation Award No 333 in May 1997.

In pursuance of the implementation of the Award the Board took the stand that the 1997 Extra Remuneration having not been enacted at the time same could not logically be included in the computation of the gross basic salary. We are hereby giving an instance of a computation to illustrate the approach adopted:

<b><u>Salary Drawn</u></b>	<b><u>Details</u></b>	<b><u>TAP increase</u></b>
Jan 95	B.S. + C 93 + C 94 = A	21% of A
July 95	A + C 95 = B	21% of B
July 96	B + C 96 = C	21% of C
June 97	121% of C	
July 97	121% of C + C 97	

B.S. → Basic Salary

C → Compensation

The extra remuneration for the year 1997 has actually been paid on the basis of the gross salary drawn as at June 1997, which included the 21% increase. The Board has in fact based itself on the gross salary drawn by the employee to determine the scale of the extra remuneration applicable for the year 1997. It is a generally accepted fact that the higher the gross salary, the higher is the quantum of extra remuneration in absolute terms.

It must be pointed out that once the extra remuneration is decreed by the Government the actual quantum payable is determined by the prevailing gross salary drawn by the employee.”

Mr Domingue who appears for the Applicant considers that there is no need to call any evidence as there are only two legal issues to be dealt with. The first one relates to the meaning of salary in the award of the Tribunal. Should it be given an extended meaning so that it becomes applicable also to consolidated salary for shift workers? In its letter of application, applicant pointed out that consolidated salary is pensionable, therefore it must fall within the ambit of the definition of salary for the purpose of travel grant.

The second point of law relates to the application for the enforcement of the Tribunal’s interpretation of its award of 21<sup>st</sup> May 1997 where it says “The Tribunal declares that the present gross basic salary refers to the gross salary including extra remuneration for the years 1995, 1996 and 1997.” The 21% increase has been paid for the extra remuneration of 1995 and 1996 but not for that of 1997.

According to Counsel, the Tripartite Committee meets well before July and the amount of compensation is known since April and May of each year. When the Award was given in April 1997, the Tribunal has taken the precaution of pointing out that it has decided after anxious consideration.

Mr Ribot, Counsel for Respondent, drew the attention of the Tribunal on 19<sup>th</sup> April 2004 to the fact that we do not have the record of the proceedings and it would be difficult to submit on the interpretation of an award by simply looking at it. Both Counsel finally agreed to submit on the two issues ex-facie the award.

In his submission, Counsel for Applicant points out that the Tribunal will only have to decide on two legal issues. Firstly, whether the salary mentioned in the award of the Tribunal should not include the consolidated salaries drawn by the shift workers for

the purpose of travel grant. The Tribunal will have to look at the statement of case of both parties and find out what was the meaning attributed to each. The Award talks about a salary inclusive of extra remuneration up to 1996. Does the word salary englobe consolidated salary for shift workers or not?

The second issue relates to the enforcement of a part of the Tribunal's interpretation of its award of 21<sup>st</sup> May 1997, paragraph 3 (1) (a), where it declares that present gross basic salary refers to the gross salary including extra remuneration for the years 1995, 1996 and 1997. On a question of interpretation, the Tribunal gave a further award to interpret its previous award where mention of present gross basic salary inclusive of extra remuneration for the years 1995, 1996 and 1997 is made. The C.E.B. has paid the 21% increase awarded by the Tribunal on the gross basic salary inclusive of extra remuneration for the years 1995 and 1996 only, on the ground that the extra remuneration 1997 was not yet enacted. "Present gross salary" could therefore only mean the salary payable in April 1997 (1<sup>st</sup> award) or May 1997 (Interpretation of the award). The attention of the Tribunal was drawn to the fact that the tripartite committee meets well before the law comes into force in July and the amount of compensation is known since April/May of each year.

The second point which is even more telling is that when the award was given in April 1997, the Tribunal has taken the precaution of pointing out that it has decided after anxious consideration to give a 21% across the board increase until the next salary revision. The Tribunal has taken the care of pointing out that it is not a Salary Commission Body; it is not equipped for that exercise and it is therefore awarding an across the board increase. In the earlier part of the award it can be seen that, concerning the qualification for the payment of travelling allowance, the Tribunal has awarded that the employees drawing a salary of Rs 15,500 but less than Rs 16,500 monthly inclusive of extra remuneration up to 1996. It is plausible that the Tribunal may have taken into account in awarding the 21% increase the extra remuneration which was going to be paid as from 1<sup>st</sup> July 1997, which amount was already known by the time the award had been delivered.



In his submission, Counsel for Respondent refers to the Award dated 23<sup>rd</sup> April 1997 (Cause No. 333) regarding the first issue whether an employee drawing a monthly salary of Rs 15,500 – Rs 16,500 inclusive of extra remuneration would be eligible for a travel grant of Rs 3,300 etc.....The issue is whether the word ‘salary’ is just basic salary plus extra remuneration or, as the Trade Union is claiming, it must also include consolidated salary. So that the Tribunal may interpret the words contained already in an award dated 1997, one has to see first whether it was an issue before the application which gave rise to the award of 23<sup>rd</sup> April 1997. As a matter of fact, it was not an issue at all. Now, how is this present Tribunal going to interpret the words “monthly salary” where there is absolutely no evidence which was given on that issue? The Tribunal will have to go through the record of evidence at that time and the statement of case, then seek the meaning. This pre-supposes that the Tribunal has the record of all the proceedings of 1997. Even then, it will be seen that this issue is not in the statement of case. So, there is a difficulty there. Respondent’s case is also based on its statement of case submitted in a letter dated 29 September 1998. It is also to be noted that the Trade Union did apply for an interpretation of the first award in May 1997 but the issue of travel grant was not raised then. The C.E.B has been applying that issue of travel grant based on monthly salary, meaning basic salary plus extra remuneration. It stands to reason that the C.E.B was not applying this award on the basis that monthly salary meant consolidated salary.

As regards the second issue which was the subject of the award RN 333 in April 1997, the Tribunal then awarded 21% increase for the years 95, 96 and 97. Applicant is saying that the CEB has fulfilled the order in the award for 1995 and 1996 only. It is therefore claiming for 1997 the 21% increase on the extra remuneration applicable on 1<sup>st</sup> of July. Since the extra remuneration is voted in July each year, as at April 1997 there was no revision on salary for 1997. The award could only apply to what had happened as at April 1997. In its interpretation on that issue, given on 21<sup>st</sup> May 1997, the Tribunal declared that the 21% includes 95, 96 and 97. Again, in May 1997 there was no extra remuneration for same in July. Extra remuneration 1997 as at 21<sup>st</sup> May 1997 was therefore nil and that is what the CEB has been applying.

We appreciate the efforts put in by both Counsels to enlighten the Tribunal on the gist of the two issues. It is not disputed that the consolidated salary for shift workers is pensionable. This is an agreement between parties for pension purposes. Does it mean that we must consider consolidated salary as monthly salary in all exercises? The statement of case of Respondent clearly shows the contrary.

After going through the evidence, the Tribunal finds that:-

- (a) Regarding the gross basic salary, the Union is advancing that it should include the consolidated salary for shift workers because consolidated salary is pensionable.

Moreover, during the sitting of 1 December 1998 Mr Domingue stated that whenever a shift employee is on leave for whatever period he continues to draw the salary on basis of consolidated salary. Sir Marc David replied that this is the case but apparently that is done out of arrangement between the staff and the CEB.

However, this issue has not been raised by parties prior to the Award delivered by the then constituted Tribunal.

In its interpresentation of Award of 21 May 1997, the Tribunal clearly mentioned that 'present gross basic salary' refer to gross salary including extra remuneration for years 1995, 1996 and 1997. So there is no evidence that the then constituted Tribunal had in mind consolidated salary or any other component. Also, the fact that consolidated salaries include an element of overtime pay disqualifies those employees whose monthly basic salaries plus additional remuneration are below Rs 15,500 for the eligibility of the travel grant . We hold accordingly.

- (b) As far as the other issue of law is concerned, ( the enforcement of the Tribunal’s interpretation of its Award of 21 May 1997 at paragraph 3 (1) (a) ), the Tribunal fails to understand why the Respondent has not applied that part of the Award in respect of year 1997. The Award may date April 1997 or May 1997 but the quantum of compensation is practically known since April or May of each year. Anyhow payment is effected at the end of July for each year after Government enactment which is made well before end of July. The fact that mention of Extra Remuneration 1997 is made indicates that, although same was not yet enacted, the Tribunal intended to include it in the calculation of the gross basic salary of April 97 before giving the 21% increase. Otherwise, the Tribunal would have mentioned only extra remuneration for the years 1995 and 1996 as it did on the issue of travel grant. Now, again in May 97, when the Tribunal was requested to interpret “gross basic salary”, it confirms its intention by declaring “present gross salary” refers to the gross salary including extra remuneration for the years 1995, 1996 and 1997 (The underlining is ours).

We can but conclude that the spirit of the award is to include the additional remuneration 1997 in the calculation of the gross basic salary.

By all means, the point here is not to interpret what has been interpreted. Counsel for the Applicant is asking us to order an enforcement of the award by invoking **Section 91 (3) (a) of the Industrial Relation Act 1973, as amended.**

*This section reads:- “(1) Where it appears to the Tribunal on an application made to it under this section that, in regard to any existing or threatened strike or lack-out arising out of an industrial dispute, all the conditions specified in subsection (4) are fulfilled, the Tribunal may make an order under this section”.*

We hasten to say that the issue of “*any existing or threatened strike or lock-out*” has not been canvassed before us. We therefore consider that invoking this section to enforce an interpretation of part of the award is a procedural misconception.

In his “**Law of Industrial Relations**”, Dr. Daniel Fokhan writes at pages 19, 129 and 130 respectively the following:-

*“The Tribunal does not have any judicial function since it is not concerned with adjudicating upon the rights of the parties as such but merely to satisfy itself that the conditions as laid down in the Acts are satisfied and make orders thereupon. As such the PAT is different from the National Industrial Relations Court which existed under the IRA 71 and which had the status of a High Court. One consequence is that the orders of the PAT, in its administrative capacity, are not directly enforceable. In fact save for agency shop orders, which are enforceable through the Industrial Court, there are no provisions in the Act as to procedures for making the other orders of the PAT enforceable. The term ‘order for enforcement’ probably made sense in the context of the NIRC, but is somewhat of misnomer in relation to the PAT. This apparent lack of teeth in the PAT orders seems to have been of no consequence to this date since the parties to industrial relations generally do abide by these orders”.*

.....

#### “THE LEGAL NATURE OF THE BINDING EFFECT OF AN AWARD

*The PAT is not a court of law so that its decision cannot have the binding effect of a judgment and no provision is made in the Act to give it such effect. The question can, therefore, be raised as to how the award can become binding.*

*The first possibility is to refer to the rules relating to arbitration awards generally. There appears to be no controversy in English law as to the effect of an arbitration award being binding on the parties and enforceable, with leave of the court, in the same manner as a judgment. In French law, which the Mauritian law follows in that respect, there used to be a controversy as to whether an exequatur is or is not*

*essential before an arbitration award is to have the effect of a judgment. Both the Mauritian and the French legislature has now resolved that question, but differently. In French law it is now specifically provided that an arbitration award is to have the same effect as a judgment. The Mauritian law, on the other hand, specifically requires the exequatur of the Judge in Chambers.*

*The question may be asked here whether this procedure is to apply to arbitration awards from the PAT. That issue has never been raised and it appears that it has generally been assumed that it is directly enforceable. There is in fact no decision where the exequatur has been asked for. If that is to be so, the difficulty remains as to the nature of the enforceability of the award. In the absence of any specific provision in the Act, it can only be presumed that these awards are to become binding on the parties as a sort of statutory agreement between them, thereby by-passing the requirement of the exequatur. The argument that this requirement is one of public order and, therefore, cannot be waived can probably be met by pointing out that the waiver is here being provided for by the legislation itself.*

*The binding nature of a PAT award was considered in P.S. S. A. & Government of Mauritius v Fanchette. Following an industrial dispute the PAT made an award to the effect that a fund would be established out of which passage benefit would be paid to employees. The fund would be made up of contributions from members of the union, the employers and the government. As from 1978 appellant had in fact been deducting the contribution of the employees from their salary. In 1985 the fund was wound up by the employer and it was found that no contribution had been made either by government or by the employer. The respondent sued the appellants for damages. The respondent won both at first instance and on appeal. The term "statutorily binding" was used, but the court unfortunately did not explain what it meant -by it. Our submission is that it is a statutory contract. There is nothing in the judgment to contradict this view."*

To conclude, the Tribunal holds that :

- (i) on the 1<sup>st</sup> issue, the present gross basic salary to mean basic salary plus extra remuneration (and no other components); and
- (ii) on the 3<sup>rd</sup> issue, the Respondent is expected to comply with the interpretation of the award i.e gross salary should include the additional remuneration for the year 1997.

**Rashid HOSSEN**

**Ag. President**

**Binnodh RAMBURN**

**Member**

**Masseelamanee GOINDEN**

**Member**

**Date: 25<sup>th</sup> June, 2008**