

PERMANENT ARBITRATION TRIBUNAL

AWARD

RN 698

Before:

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

In the matter of:-

Union of Bus Industry Workers and Transport and Employees Union

And

- 1. National Transport Corporation**
- 2. United Bus Service Ltd**
- 3. Triolet Bus Service Ltd**
- 4. Rose-Hill Transport Ltd**

The present dispute has been referred back by the Supreme Court to the Permanent Arbitration Tribunal as presently constituted following a hearing on 9 March 2006 after the Rose Hill Transport Ltd has challenged by way of judicial review the interpretation given by the then constituted Tribunal presided over by Mr. Harris Balgobin in respect of item 20(a) and it reads as follows:-

“Whether a worker who works on a Public Holiday, other than a Sunday, should be entitled to one day’s rest in the following week”

Mr K. Bhayat SC appears for the Union of Bus Industry Workers.

Mr Y. Varma of Counsel appears for Transport and Employees Union

Mr G. Ithier of Counsel appears for Respondent No.1.

Sir Hamid Moollan QC appears for Respondent No. 2.

Mr R. Bunwaree of Counsel appears for Respondent No.3.

Mr S. Bhuckory of Counsel appears for Respondent No. 4.

BACKGROUND

As per letter dated 26 December 1997, the Minister of Labour and Industrial Relations in terms of Section 82 (l) (f) of the Industrial Act 1973 referred an industrial dispute to the Permanent Arbitration Tribunal on 20 points. The parties to the dispute (RN 569) were:

Union of Bus Industry Workers

And

1. National Transport Corporation
2. United Bus Service Ltd
3. Triolet Bus Service Ltd
4. Rose Hill Transport Ltd

On 22 April 1999, the Permanent Arbitration Tribunal which was then constituted of a different bench delivered a part-Award in relation to dispute No 14 which concerned a demand for a wage increase. The award for the remaining 19 points was delivered on 20 July 2002.

There was another dispute on 19 points (RN 573) similar to that of RN 569 between the Transport Employees Union and the Rose Hill Transport Ltd, save item 16 of RN 569 which does not appear in the case of RN 573. The Tribunal delivered a similar award to that of RN 569.

Subsequently, an Interpretation of the Award was applied by the Respondents on some items. The Tribunal delivered an Interpretation of Award on 28 March 2003 on those items including item 20 (a) which is the subject matter of the present dispute.

Regarding item 20 (a) "whether a worker who works on a Public holiday, other than a Sunday, should be entitled to one day's rest in the following week" the Tribunal gave its determination as follows:- "The Award means that the rest day must be given in the following week".

A further interpretation was sought regarding items 18 and 20 (a). Again regarding item 20 (a) the Tribunal on 30 October 2003 decided that the Award should be interpreted as follows:-

"The rest day referred to should be in addition to the two days rest".

Now on 11 October 2004, the Rose-Hill Transport Ltd. moved the Supreme Court for an order of CERTIORARI directing the Permanent Arbitration Tribunal to bring up before the Supreme Court all the files and documents in order to have the Tribunal's Award of 30 October 2003 regarding item 20 (a) quashed. The Company submitted that the Award was:

- (a) ultra vires
- (b) wrong on the fact of the record
- (c) without any basis in law and
- (d) unreasonable in the Wednesbury sense.

Furthermore, the Company averred that the Award lacked proportionality and no reason was given regarding the Tribunal's determination.

The Supreme Court, after hearing the case on 9 March 2006, allowed the application and referred the matter to the Tribunal as presently constituted for a new Award in respect of the said item. No New Statement of Case of the said union was filed in respect of item 20 (a) and 20 (b).

In its Statement of Case, the Union of Bus Industry Workers avers:

The present situation regarding this item is governed by GN 63 of 1988 first schedule paragraph 4 subparagraph (3) and (4) which read as follows:-

“4. Overtime

.....

.....

(3) *Work performed in excess of a normal day’s work, exclusive of spreadover, and meal time, shall be paid for:*

(a) *where the worker has been in attendance of work, exclusive of spreadover for more than 40 hours in the week.*

(i) *on a public holiday at not less than three times the basic rate per hour;*

(ii) *on any other day at not less than one and a half the basic rate per hour;*

(b) *where the worker has been in attendance at work, exclusive of spreadover, for not more than 40 hours in the week;*

(i) *on a public holiday at not less than twice the basic rate per hour;*

(ii) *on any other day at not less than the normal rate per hour.*

(4) *For the purpose of subparagraph (3), a worker who is on any day on authorised leave with pay shall be deemed in respect of that day to have put in a normal day’s attendance at work.”*

The Union of Bus Industry Workers further submitted the following in its Statement of Case:-

The Public Transport industry, like certain other sectors, is considered an essential public service. Its essence is not necessarily reduced in substance as it has to cater for those who have to attend to and from their place of work and those who need to travel for pleasure purposes. It is submitted that this causes great stress on the public transport workers. Hence the request for one days’ rest (without pay) in the following week.

The second part of the request is supported by the fact that all other workers in Mauritius do not work on Public Holidays but are paid their normal day's pay.

The Union of Bus Industry Workers invites the Tribunal to redress this anomaly.

The Transport Employees Union has also not submitted a new Statement of Case. We reproduce textually from its Statement of Case of October 1998 its submissions regarding the issue of public holidays.

"The workers of public transport have to face the uneasy task of helping other citizens to travel on holidays and sometimes have to shoulder heavy responsibilities especially when holiday goers are under the influence of alcohol.

Workers of the public transport industry have to become compensated and that is why we humbly submit a one day's rest in the week following the public holiday will help to restore the balance." (Dispute 20 (a) – Item 17 in Union's Statement of Case).

"Workers of the public transport industry are sometimes so unlucky that they can't have social life on public holidays and no family obligations with all its consequences. The union therefore, submits that workers who after having written one week in advance not to work on a public holiday must be prepaid a normal day's pay. We know also that the employer can make the necessary arrangement if one week in advance inform the employer of their intention .To note that workers in Mauritius do not work on public holidays and yet are paid one day's normal pay....." (Dispute 20 (b) – Item 18 in union's Statement of Case).

As regard the Employers, the Rose Hill Transport Ltd and the National Transport Corporation have not submitted a new Statement of Case. They are relying on their original ones.

The Rose-Hill Transport Ltd in its Statement of Case of September 1998 avers that rest days for work on public holidays (Item No 20) will cost annually as follows:-

For 50 drivers and 50 conductors- Rs 485,480

For 12 traffic officers)	
12 mechanics)	
3 watchman)	
3 sweepers)	
1 fuel attendant)	Total of – Rs 165,833

A revised figures for the cost of item 20 of the Award was submitted to the Tribunal, prepared by Mr A. Beeharry, Accountant, on 29 May 2003 for the Respondent. The revised cost amounted to Rs 761,648.

Hereunder is the Statement of Case of the National Transport Corporation dated 5 August 1998 in respect of dispute 20 (a) which we reproduce textually:-

“20.1 *The provisions governing pay on Public Holidays are detailed in Para 3 under heading “Public Holidays” and not under Para 4 which deals with overtime on public holidays.*”

Para 3 of the Remuneration Order stipulates that

1. *“A normal day’s work performed on a public holiday shall be remunerated at not less than twice the daily basic wage.”*
2. *“A worker who does not wish to perform work on a public holiday shall notify his employer in writing at least one week in advance, of his intention not to work on that day.”*

20.2 *The present provisions are in the view of the Corporation adequate. There does not seem to exist a logic in the argument of the Union as per its submission for this request. On the one hand it highlights the ‘essentiality’ of the Public Transport Service whereby the whole population who enjoy a holiday take this opportunity to go out and travel by bus.*

On the other hand it (the Union) claims that on Public Holidays “Public Transport workers suffer greater stress” and thus claim for one day’s rest (without pay) in the following week.

- 20.3 *The Corporation has to mention here that because of the rate of pay on public holidays very few employees absent themselves except of course if it is an employee's religious festival. In such a case advance notice is given by the worker and no complaint has been noted since years in that respect.*
- 20.4 *The Corporation therefore does not find any logic in the request of the Union at Section 20 A.*
- 20.5 *As regards request for one day's normal wages for those who notify the Corporation in writing at least one week in advance, the Corporation already complies with the present regulations which are adequate.*

The case of Triolet Bus Service Ltd is as follows:-

1. *In an award delivered on 20 July 2001, the Permanent Arbitration Tribunal allowed only the claim that the worker who works on a Public Holiday other than a Sunday be entitled to one day's rest in the following week as stated:*

"It is claimed that Public Transport Workers suffer great stress. It is on the other hand claimed that the respondents' financial situation cannot bear this additional cost. We shall allow the claim that the worker who works on a Public Holiday other than a Sunday be entitled to one day's rest in the following week. Part (b) of the dispute is not allowed. This claim might be reviewed when better times arrive".
2. *As the award was not clear, an interpretation was applied for and only after the final interpretation of 30 October 2003 that the Respondent started giving the one day rest for employed workers.*
3. *As it was unpractical to give the one day rest in the following week, an option was given to the Respondent's employed workers that instead of one day rest, they will be paid one day extra pay at normal rate and 100% of the workers opted for the extra day pay.*

4. *The award of this dispute governed only the four bus companies under reference which represents only 40% of the bus fleet in Mauritius. The remaining fleet is operated by other small companies and by numerous individual bus operators.*
5. *This has an adverse effect as the Respondent is uncompetitive to operate Private Hire and Special Route on Public Holidays as it has more than 50% of its fleet lying at the Garage.*
6. *For the reasons given above and also that given in its previous statement of defence, the Triolet Bus Service Ltd would therefore invite the Permanent Arbitration Tribunal to hold item no. 20 of the disputes should be set aside.”*

In an updated new Statement of Case of October 2007, the United Bus Service Ltd avers that:-

- (a) *It currently employs 1540 workers out of whom 650 are drivers and conductors. Drivers and conductors are employed on a 5 day week basis and runs its service on 52 routes ranging from 4.00 A.M. to 10.00 P.M. on its principal route.*
- (b) *The granting of one day's rest to a worker who works on a public holiday other than a Sunday poses serious practical difficulties and disrupts seriously the service provided to the traveling public.*
- (c) *Absenteeism is an inescapable reality in the bus industry and unfortunately that has to be taken into account. At the United Bus Service Ltd on an average there is about 15% of the workforce scheduled for work who do not turn up for one reason or another including sickness and other emergencies. Therefore the Company would have considerably less drivers and conductors available for work daily when it has to run a fleet of about 265 buses.*
- (d) *Disputes at item 20 have not yet been disposed of. After the Award there was application for interpretation. Subsequently, the matter was brought before the Supreme Court and afterwards an order of the*

Supreme Court referred back the matter to the Permanent Arbitration Tribunal for a new Award.

- (e) *In the meantime, the United Bus Service Ltd encountered difficulties to ensure compliance with the terms of Awards. Drivers and conductors were not available at a time when their services were required as they had to be given a rest day. To alleviate these difficulties, the United Bus Service Ltd implemented on an INTERIM MEASURE the following system for its drivers and conductors:*
- *For those drivers and conductors who work on a public holiday other than a Sunday and who want to take a rest in the following week, they are given their rest day in the following week. They have to notify the United Bus Service when they wish to take that day off in the following week.*
 - *For those drivers and conductors who do not ask for the one day rest, they are given one extra day's pay. 99% of drivers and conductors opt for the extra day's pay.*
- (f) *Under the present interim system, the discretion of either taking the one day off in the following week or take the extra day's pay is that of the worker. Such discretion with the worker poses serious practical difficulties in scheduling the required number of buses to run. It is the contention of the Company that the discretion should remain with the employer rather than with the employee. It is being understood that regular workers if and when available will be rostered by preference over relief workers.*
- (g) *The period within which the one day rest should be given is too short. At present, the rest day must be given in the following week. As has been said earlier, severe disruptions occur in the service when there are two or more public holidays in a week. That the rest day which should not be a public holiday be given in the following "month instead of "week" would enable a better planning of the number of buses which have to be run.*

- (h) *For the reasons given above, the United Bus Service Ltd would therefore invite the Permanent Arbitration Tribunal to hold that item no 20 of the disputes should be set aside.*

TRIBUNAL'S CONSIDERATIONS

(1) The general provisions governing work on a public holiday is to be found in Section 16 (2) & (3) of the Labour Act, as amended:-

“(2) *Subject to subsection (3), where a worker works on a public holiday, the employer shall, in addition to the remuneration payable under the agreement, remunerate the worker in respect of any work done-*

- (a) *during the stipulated hours, at not less than twice the rate at which the work is remunerated when performed during the stipulated hours on a week day; and*
- (b) *outside the stipulated hours, at not less than 3 times the rate at which the work is remunerated when performed during the stipulated hours on a week day.*

(3) *An agreement may provide that the remuneration provided for in it includes payment for work on public holidays and overtime where-*

- (a) *the maximum number of public holidays; and*
- (b) *the maximum number of hours of overtime on week days and on public holidays, covered by the remuneration are expressly provided for in the agreement.”*

The provisions governing pay on Public Holidays in the transport sector are detailed in Para 3 under the heading “Public Holidays” to the First Schedule of GN 63 of 1988 which is part of regulations made under Section 96 of the Industrial Relations Act 1973, as amended and cited as the Road Passenger Transport Industry (Buses) (Remuneration Order) Regulations 1988. Para. 3 provides:-

“Public Holidays

- (1) *A normal day's work performed on a public holiday shall be remunerated at not less than twice the daily basic wages.*
- (2) *A worker who does not wish to perform work on a public holiday shall notify his employer in writing, at least one week in advance, of his intention not to work on that day."*

Whereas para.4 deals with overtime which incidentally is not the case here and therefore wrongly invoked by the Union.

The para. 3 we quoted earlier is in relation to workers in the Traffic Section. We find a corresponding provision for workers in the Administrative Section (Second Schedule), and the Maintenance and Workshop section (Third Schedule), bearing the same para. number 3 and which reads:-

"3. Public Holidays

A normal day's work performed on a public holiday shall be remunerated at not less than twice the daily basic wage".

We find that workers in the Administrative and Maintenance and Workshop sections are dispensed from the written notice of intention not to work on public holidays and we assume that the logic is that drivers and conductors are more essential for the running of the buses. The Terms of Reference mentions "worker" without restricting it to any particular section. We therefore consider that "a worker" includes all those who work in all sections.

In any event, the Labour Act, as amended provides for the definition of "worker".

Section 2 of the said Act stipulated, inter alia,

" "Worker", subject to section 26 -

- (a) *means a person who has entered into or works under an agreement or contract of apprenticeship with an employer other than a contract of apprenticeship regulated under the Industrial and Vocational Training Act,*

whether by way of casual work, manual labour, clerical work or otherwise and however remunerated;

(b) includes a shareworker;

(c) does not include -

(i) a job contractor;

(ii) except, in relation to Para VI, a person whose basic wages salary is at a rate in excess of Rs 72,000.- rupees per annum.”

Section 26 deals with workers in the Sugar sector.

Workers who are called upon to work on a public holiday are already being remunerated at no less than twice the daily basic wage. We consider that in itself is compensative of being deprived of social and family gatherings as well as any additional stress working on a public holiday may bring. The respondents on the other hand are vehemently resisting to additional costs with respect to their financial situation. Indeed, assuming one day's normal wage for a worker to be Rs 500.00, the worker who works on a public holiday will earn Rs1000 for that day of work because working on a public holiday is paid as double pay. The 3rd day rest in the following week will cost Rs 500.00 as another worker will have to replace the worker on rest.

Working on public holiday	-	Rs 500.00 x 2
Replacement of cost of worker on rest-		Rs 500.00

Total cost	-	Rs 1,500
		=====

On the issue of stress, it is interesting to note that the National Transport Corporation advanced as part of its Statement of Case that *“because of the rate of pay on public holidays, very few employees absent themselves except of course if it is an employee's religious festival.”*

Similarly, it is part of the case of the Triolet Bus Service Ltd that on an option being given to workers to be paid an extra day at normal rate, 100% of the workers opted for the extra day pay.

We find again a corresponding averment in the updated Statement of Case of the United Bus Service Ltd which is to the effect that on being given an option, 99% of drivers and conductors opt for the extra day's pay.

Such contention on the part of the employers have not been disputed. The Tribunal is therefore of the view that workers suffer great stress having to work on a public holiday is an argument that does not carry much weight. They certainly do have to bear more stress but they still go for the pecuniary option instead of rest. In any event one must not lose sight of the fact that workers are entitled to 2 days rest after 5 days work. We also have to be cautious of the domino effect allowing an additional day's rest to a double pay may have in other sectors and thus affect the economy.

Be that as it may, the Tribunal is prepared to mellow down its strict views on the issue of allowing an extra day's pay for the following reasons:-

Some companies of the industry concerned, namely Triolet Bus Service Ltd. and United Bus Service Ltd have in the meantime implemented on an interim measure the following system for its drivers and conductors i.e. introducing the element of option for an extra day's pay or a rest day.

The United Bus Service Ltd and its workers have now entered into an agreement which is as follows:-

Under the present interim system, the discretion of either taking the one day off in the following week or take the extra day's pay is that of the worker. Such discretion with the worker poses serious practical difficulties in scheduling the required number of buses to run. It is the contention of the Company that the discretion should remain with the employer rather than with the employee. It is being understood that regular workers if and when available will be rostered by preference over relief workers.

The period within which the one day rest should be given is too short. At present, the rest day must be given in the following week. As has been said

earlier, severe disruptions occur in the service when there are two or more public holidays in a week. That the rest day which should not be a public holiday be given in the following “month instead of “week” would enable a better planning of the number of buses which have to be run.

The Tribunal considers that it should not go beyond what has been agreed as this is sufficient evidence that the system works. If the United Bus Service Ltd itself has agreed to shoulder some extra financial burden, this is praiseworthy enough. “ *A collective agreement reached by the employer and the trade union which complements the statutory rights of the employees, cannot therefore be considered as being **per se** in derogation of those rights and the terms of the agreement must generally be adhered to*”. **(State Bank of Mauritius Ltd. v/s A. Jagessur SCJ 8 of 2008).**

Mr Bhayat submitted that the principle of the interim agreed between management of the United Bus Service Ltd and its union is accepted by employees of the other companies (respondents Nos. 1, 3 and 4) with the exception that the discretion with respect to the option should remain with the employee. Counsel representing the interests of those Respondents have expressed their disapproval on this issue. Not extending the above interim measure to the other companies which are party to this case would certainly lead to a disorderly and chaotic situation whereby different pay packets and conditions of work would be created within the same industry, all of whom represent some 40% of the labour force in that particular industry.

The interim measure supports the principles and practices of good industrial relations and the Tribunal has a duty to promote same.

“47. Principles to be applied

Where any matter is before the Tribunal, the Commission or the Board, the Tribunal , the Commission or the Board shall, in the exercise of their functions under this Act, have regard, inter alia, to-

- (b) *the principles and practices of good industrial relations.”* **(Section 47 (b) of the Industrial Relations Act 1973, as amended).**

“The Third Schedule to the Industrial Relations Act sets out a Code of Practice which provides practical guidance for the promotion of good industrial relations and for the grant of negotiating rights. It also assists employers and trade unions of employees to make effective collective agreements. Article 8 of the Code of Practice states that the principal aim of trade unions of employees is to promote their members’ interests but that they also share with management the responsibility for good industrial relations. Article 14 provides that “the individual employee has obligations to his employer to his trade union if he belongs to one, and to his fellow employees....” (State Bank of Mauritius Ltd. v/s A. Jagessur Supra.).

After considering all the evidence adduced which is substantially based on documents, the Tribunal notes that :

The granting of a day’s rest in the following week to a worker who works on a public holiday other than a Sunday poses serious practical difficulties and disrupts seriously the service provided to the travelling public and Respondents’ financial situation cannot bear the demand of the workers.

Employers have to have recourse to other workers when the employed workers stay at home during public holidays. Those replacing workers are paid twice the normal rate. Here the situation involves the equivalent of three days normal pay during one day’s work-double pay for the day to the replacing worker and one day’s pay to the employed worker. This policy is being adopted by some Companies for some years now and alternatively, there are others who are paying their workers three times the normal pay (the workers not opting for the rest day) during the public holidays.

The Tribunal feels that for the smooth running of the Bus Companies and for the preservation of harmonious industrial relations it would be in order to accede to the demand of the workers to some extent. The tendency is that workers would have preferred to get three days pay for work on public holiday and not opt for the rest day.

The Tribunal also bears in mind that the granting of one day’s rest to the workers should not cause practical difficulties for the scheduling of the required number of buses to be run.

We accordingly award as follows:-

With regard to a public holiday which is not a Sunday, a worker is entitled to take one day off in the following month or take the extra pay and such discretion will be that of the employer. The one day off is in addition to the two days rest. Regular workers if and when available will be rostered by preference over relief workers. The rest day should not be on a public holiday.

This Award shall take effect as from the 1st of March 2008.

Rashid HOSSEN
Ag. President

Binnodh RAMBURN
Member

Masseelamanee GOINDEN
Member

Date: 15 February, 2008

